# 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).

**August 2011 through August 2012**

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|---|---|---|
| 27:26 | August 10, 2011 | August 29, 2011 |
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| 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 |
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| 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 2. AGRICULTURE

### PESTICIDE CONTROL BOARD

### Agency Decision

Title of Regulation: **2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Name of Petitioner: Robert Taylor.

Nature of Petitioner's Request: The petitioner is requesting that the Pesticide Control Board exempt cotton boll weevil trappers working under the auspices of the Virginia Department of Agriculture and Consumer Services from having to hold or obtain pesticide applicator or registered technician certification.

Agency Decision: Granted.

Statement of Reason for Decision: The Pesticide Control Board determined at its July 21, 2011, meeting that the placement of a pesticide product inside cotton boll weevil traps by cotton boll weevil surveyors working under the auspices of Virginia Department of Agriculture and Consumer Services can be accomplished with minimal risk to public health and safety. At its meeting on October 20, 2011, the board will hold a public hearing regarding the exempt regulatory action to amend 2VAC20-51, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act, to include the requested exemption.

Agency Contact: Liza Fleeson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 371-6559, or email liza.fleeson@vdacs.virginia.gov.

VA.R. Doc. No. R11-30; Filed July 29, 2011, 8:45 a.m.

### Agency Decision

Title of Regulation: **2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Name of Petitioner: Jerryanne Bier.

Nature of Petitioner's Request: The petitioner is requesting that the Pesticide Control Board exempt gypsy moth trappers working under the auspices of the Virginia Department of Agriculture and Consumer Services from having to hold or obtain pesticide applicator or registered technician certification.

Agency Decision: Granted.

Statement of Reason for Decision: The Pesticide Control Board determined at its July 21, 2011, meeting that the placement of a pesticide product inside gypsy moth traps by gypsy moth surveyors working under the auspices of the Virginia Department of Agriculture and Consumer Services can be accomplished with minimal risk to public health and safety. At its meeting on October 20, 2011, the board will hold a public hearing regarding the exempt regulatory action to amend 2VAC20-51, Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act, to include the requested exemption.

Agency Contact: Liza Fleeson, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 371-6559, or email liza.fleeson@vdacs.virginia.gov.

VA.R. Doc. No. R11-29; Filed July 29, 2011, 8:47 a.m.

## TITLE 12. HEALTH

### STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

### Agency Decision

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

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

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Establish a new provision in the Human Rights regulations that prohibits Virginia State Training Centers from requiring chosen representatives to have Training Center authorization prior to have access to the residents service records for the residents they represent pursuant to the human rights complaint resolution process.

Agency Decision: Denied.

Statement of Reason for Decision: This appears to be an administrative practice issue and not appropriate for regulatory action.

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

VA.R. Doc. No. R11-33; Filed July 29, 2011, 9:29 a.m.

### Agency Decision

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

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

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Establish a new provision in the Human Rights regulations that requires Virginia State Training Centers to petition Virginia Judicial Districts to assign the population they service legal guardians.

Agency Decision: Denied.

Statement of Reason for Decision: The request exceeds the scope of 12VAC35-115.

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

VA.R. Doc. No. R11-34; Filed July 29, 2011, 9:23 a.m.

### Agency Decision

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

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

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115 to require CSBs and Virginia State Training Centers to physically post FOIA information prescribed under § 2.2-3704.1 of the Code of Virginia.

Agency Decision: Denied.

Statement of Reason for Decision: The request exceeds the scope of 12VAC35-115.

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

VA.R. Doc. No. R11-35; Filed July 29, 2011, 9:18 a.m.

### Agency Decision

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

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

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-10 to separate the legal aspects, administrative aspects, and clinical aspects of the Department of Behavioral Health and Developmental Services duties.

Agency Decision: Denied.

Statement of Reason for Decision: 12VAC35-115-10 does not address Department of Behavioral Health and Developmental Services duties, so it is unclear what regulatory change the petitioner is seeking.

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

VA.R. Doc. No. R11-36; Filed July 29, 2011, 9:18 a.m.

### Agency Decision

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

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

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-30 definition of "providers" to include the Commissioner, State Human Rights Director (SHRD), Human Rights Advocate and governing bodies of licensed providers.

Agency Decision: Denied.

Statement of Reason for Decision: The requested regulatory change is inconsistent with the definition of "providers" contained in the Code of Virginia.

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

VA.R. Doc. No. R11-37; Filed July 29, 2011, 9:17 a.m.

### Agency Decision

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

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

Name of Petitioner: Steven Shoon.

Nature of Petitioner's Request: Amend 12VAC35-115-80 to require providers notify an individual receiving services that a

person, other than a healthcare provider, attempted to contact the individual when a person has attempted to contact them.

Agency Decision: Denied.

Statement of Reason for Decision: This appears to be a practice issue and not appropriate for regulatory action. 12VAC35-115-80 deals with an individual's right to have all identifying information remain confidential.

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

VA.R. Doc. No. R11-38; Filed July 29, 2011, 9:21 a.m.

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# TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

## BOARD OF PSYCHOLOGY

### Initial Agency Notice

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology.**

Statutory Authority: § 54.1-3600 of the Code of Virginia.

Name of Petitioner: James D. Watwood.

Nature of Petitioner's Request: Increase the time limit for romantic or sexual relationships with patients from two years after termination to indefinite when the patient has been a victim of rape, incest, or sexual abuse.

Agency's Plan for Disposition of Request: In accordance with Virginia law, the petition was filed with the Register of Regulations with a request for comment to be received until September 20, 2011. The petition will also be posted for comment on the Virginia Regulatory Townhall at www.townhall.virginia.gov. At its next meeting, which is scheduled for November 8, 2011, the board will consider the petition and any comment received to decide whether to initiate the rulemaking process.

Public Comment Deadline: September 20, 2011.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4699, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R11-51; Filed July 28, 2011, 9:46 a.m.

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

### Final Regulation

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-20, 4VAC50-60-30, 4VAC50-60-40, 4VAC50-60-100, 4VAC50-60-150; adding 4VAC50-60-45, 4VAC50-60-46, 4VAC50-60-47, 4VAC50-60-47.1, 4VAC50-60-48, 4VAC50-60-51, 4VAC50-60-53, 4VAC50-60-54, 4VAC50-60-55, 4VAC50-60-56, 4VAC50-60-57, 4VAC50-60-58, 4VAC50-60-59, 4VAC50-60-62, 4VAC50-60-63, 4VAC50-60-65, 4VAC50-60-66, 4VAC50-60-69, 4VAC50-60-72, 4VAC50-60-74, 4VAC50-60-76, 4VAC50-60-85, 4VAC50-60-92, 4VAC50-60-93, 4VAC50-60-93.1, 4VAC50-60-94, 4VAC50-60-95, 4VAC50-60-96, 4VAC50-60-97, 4VAC50-60-98, 4VAC50-60-99, 4VAC50-60-102, 4VAC50-60-103, 4VAC50-60-104, 4VAC50-60-106, 4VAC50-60-108, 4VAC50-60-112, 4VAC50-60-114, 4VAC50-60-116, 4VAC50-60-118, 4VAC50-60-122, 4VAC50-60-126, 4VAC50-60-142, 4VAC50-60-144, 4VAC50-60-146, 4VAC50-60-148; repealing 4VAC50-60-50, 4VAC50-60-60, 4VAC50-60-70, 4VAC50-60-80, 4VAC50-60-90, 4VAC50-60-110, 4VAC50-60-120, 4VAC50-60-130, 4VAC50-60-140).**

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

Effective Date: September 13, 2011.

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

Preamble: On May 24, 2011, the board amended and readopted the third set of final regulations for this regulatory action. The previous final version was published in the Virginia Register of Regulations on January 4, 2010 (26:9 VA.R. 1230-1269) and suspended by the Virginia Soil and Water Conservation Board on January 14, 2010, in response to 25 petitions received during the final adoption period. The amendments described in the summary below reflect changes made between the previous final version published on January 4, 2010, and the final version readopted on May 24, 2011.

NOTE: Chapters 137 and 370 of the 2010 Virginia Acts of Assembly stipulated that these regulations are required to become effective within 280 days after the establishment by the federal Environmental Protection Agency (EPA) of a Chesapeake Baywide Total Maximum Daily Load (TMDL), but in any event no later than December 1, 2011. As the TMDL was adopted by EPA on December 29, 2010, these regulations must be effective on or before October 5, 2011.

Summary:

*Overall, this final regulatory action amends the technical criteria applicable to stormwater discharges from construction activities including postdevelopment requirements, establishes minimum criteria for locality-administered stormwater management programs (local stormwater management programs) and Department of Conservation and Recreation (department) administered stormwater management programs, specifies the authorization procedures and review procedures for local stormwater management programs, and amends the definitions section applicable to all of the Virginia Stormwater Management Program (VSMP) regulations.*

*Part II was modified as follows:*

*1. General sections applicable to all of Part II were amended or added related to authority, implementation date, general objectives, applicability of other laws and regulations, time limits on applicability of approved design criteria, grandfathering, and Chesapeake Bay Preservation Act land-disturbing activity;*

*2. A new Part II A was added that includes administrative criteria for regulated land-disturbing activities;*

*3. Water quality and quantity technical criteria were moved from Part II A to Part II B; and*

*4. Water quality technical standards referenced in both the time limits on applicability of approved design criteria and grandfathering sections were moved from Part II B to Part II C.*

*General sections in Part II were amended as follows:*

*1. A new section titled "Time limits on applicability of approved design criteria" was created, and language carved out the grandfathering section that specifies that any project that receives general permit coverage shall be held to the technical criteria under which permit coverage is issued and shall remain subject to those criteria for an additional two permit cycles. This*

*represents a tightening of today's administrative processes and equates to the period within which over 90% of construction projects are typically completed.*

*2. The grandfathering section was updated to move away from paralleling local vesting standards and contains specified grandfathering provisions associated with projects for which local plan approval has been received; local, state, or federal funding has been obligated; or governmental bonding or public debt financing has been issued prior to July 1, 2012. For projects grandfathered under the receipt of local plan approval or the obligation of local, state, or federal funding provisions, construction needs to be completed by June 30, 2019.*

*3. A Chesapeake Bay Preservation Act section has been added that specifies the requirements for small land-disturbing projects within the Chesapeake Bay Act jurisdictions. These small projects, between 2,500 square feet and less than one acre, would now be subject only to state requirements, rather than state and federal requirements as federal requirements only need to extend down to one acre. These projects would not be required to receive coverage under the VSMP general permit, but would be required to receive local permits and meet the specified criteria in Parts II A and B.*

*New Part II A contains:*

*1. Requirements to inform the operator as to what is expected in order to receive general permit coverage including items such as stormwater plan or SWPPP requirements (these elements were previously outlined in Part III);*

*2. A TMDL requirement that an operator identify and implement additional control measures on a site for specified pollutants so that discharges are consistent with the assumptions and requirements of any applicable wasteload allocation; and*

*3. EPA-adopted federal effluent limitation guidelines.*

*In Part II B the revised water quality and quantity technical requirements applicable to stormwater discharges from construction activities include:*

*1. A scientifically based 0.41 lbs/acre/year phosphorus standard for new development activities statewide (prior adopted standard was 0.45). References to different standards being allowable in a UDA in order to encourage compact development were removed as it was not believed that a 0.41 standard would encourage sprawl, especially with the offsite compliance methodologies that will be available;*

*2. A redevelopment requirement for projects where land disturbance results in no net increase in impervious cover over the predevelopment condition with total phosphorus load reduction requirements of either 10% or 20% below the predevelopment phosphorus condition depending on the size of the land-disturbing activity. For land-disturbing activities that result in new increases in impervious cover, the new development standard shall be applied to the increased impervious area (the prior version of the regulations was not based on changes in imperviousness and did not specify the use of the new development standard for portions of a site where levels of imperviousness are being increased);*

*3. Water quantity minimum standards and procedures to address channel protection and flood protection including the addition of a provision stating that compliance with these minimum standards shall be deemed to satisfy the requirements of minimum standard 19 of the Virginia Erosion and Sediment Control Regulations. Under channel protection, references to stable and unstable conveyance systems were removed and under channel protection, in the energy balance formula (for natural stormwater conveyance systems), the peak flow rate and volume of runoff for the existing land use at a given storm was changed from an assumed "good pasture" condition to now utilize the peak flow rate and volume of runoff from the actual predeveloped land use condition. To moderate this calculation, there is an improvement factor inputted into the equation (0.8 for sites > 1 acre or 0.9 for sites < 1 acre); and*

*4. Offsite options to achieve compliance with the water quality and, where allowed, water quantity requirements. Such options incorporate those requirements specified in Chapter 523 of the 2011 Virginia Acts of Assembly. The amended language sets out conditions under which an operator must be allowed to utilize offsite compliance options and specifies that offsite options must achieve the necessary nutrient reductions prior to commencement of the operator's land disturbing activity. Additionally, the state buy down option was eliminated.*

*Part III was reorganized in this version of the regulations. Part III A was restructured to include both locality-administered programs and department-administered programs within the same subpart and, accordingly, Part III C was moved to Part III B and Part III D was moved to Part III C.*

*1. Part III A establishes the minimum criteria for a stormwater management program implemented by a stormwater program administrative authority (either a local stormwater management program or a department-administered program). Ordinance requirements for a Virginia Soil and Water Conservation Board authorized local stormwater management program have also been established. Minimum criteria for the stormwater programs include, but are not limited to, administration,*

*plan review, inspection, enforcement, reporting, and recordkeeping.*

*2. Part III B establishes the procedures that the board will utilize in authorizing a locality to administer a local stormwater management program.*

*3. Part III C establishes the criteria the department will utilize in reviewing a locality's administration of a local stormwater management program. The primary technical change to Part III is in how local programs operate. Under the previous version of the regulations, an approved local stormwater management program was going to issue coverage under the general permit and enforce under the Stormwater Management Act and regulations. Under this final version, approved local programs operate and enforce under the auspices of a local ordinance that includes the elements of the stormwater regulations. Localities will still make sure that the applicant has received state general permit coverage prior to issuing a local land-disturbing permit. Localities must adopt ordinances that are at least as stringent as the VMSP General Permit for Discharges of Stormwater from Construction Activities. The department will enforce the VSMP General Permit for the Discharge of Stormwater from Construction Activities.*

*Finally, this action makes changes to definitions in Part I, which is applicable to the full body of the VSMP regulations. Unnecessary definitions are deleted, needed definitions are added, and many existing definitions are updated. In this final action, several definitions were added and other minor refinements made to address comments received. A number of definitions previously subject to deletion were moved to Part II C where they will only be applicable to those grandfathering sections.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I
Definitions, Purpose, and Applicability

**4VAC50-60-10. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

~~"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer~~

~~(vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.~~

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

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

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

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

[ "Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC10-20) adopted pursuant to the Chesapeake Bay Preservation Act. ]

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

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

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

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

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

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

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

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

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

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

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

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

"Department" means the Department of Conservation and Recreation.

"Development" means ~~a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units~~ land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. [ The regulation of discharges from development, for purposes of these regulations, does not include the exemptions found in 4VAC50-60-300. ]

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge of a pollutant" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

"Flood fringe" [ ~~is~~ means ] the portion of the floodplain outside the floodway~~, usually associated with standing rather than flowing water, which is covered by floodwater during the 100-year discharge~~ that is [ usually ] covered with water from the 100-year [ flood or ] storm event. [ This includes, but is not limited to, the flood or floodway fringe designated by the Federal Emergency Management Agency. ]

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

"Floodplain" means [ ~~any land~~ the ] area [ ~~adjoining~~ adjacent to ] a channel, river, stream, or other water body that is susceptible to being inundated by water [ ~~. It includes the floodway and flood fringe areas~~ normally ] associated with the 100-year [ flood or ] storm event. [ This includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency. ]

[ "Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers or other areas adjacent to the main channel. ]

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the ~~base flood~~ 100-year [ flood or ] storm event without cumulatively increasing the water surface elevation more than one foot [ ~~. or as otherwise~~ This includes, but is not limited to, the floodway ] designated by the Federal Emergency Management Agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. [ Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. ]

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

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

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

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

a. Physical interconnections between the municipal separate storm sewers;

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

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

d. The nature of the receiving surface waters; and

e. Other relevant factors.

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

[ "Layout" means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval. ]

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

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

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

[ "Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events. ]

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

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

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

"Manmade" means constructed by man.

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

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

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

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

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

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

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

storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

a. Physical interconnections between the municipal separate storm sewers;

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

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

d. The nature of the receiving surface waters; or

e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

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

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

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

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

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

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

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

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

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

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

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

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

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

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

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

3. Which is not a new source; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Sewage from vessels; or

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

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

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

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

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

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

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

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

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

"Qualified personnel" means a [ person knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction site for the operator that could impact

stormwater quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of stormwater discharges from the construction activity. This may include a ] licensed professional engineer, responsible land disturber, or other person who holds a certificate of competency from the board in the area of project inspection or combined administrator.

"Qualifying local stormwater management program" or "qualifying local program" means a local [ stormwater management ] program [ ~~that is,~~ ] administered by a locality [ , ] that has been authorized by the board [ . ~~to issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1170).~~ To authorize a qualifying local program, the board must find that the ordinances adopted by the locality are consistent with the VSMP General Permit for Discharges of Stormwater from Construction Activities (Part XIV (4VAC50-60-1100 et seq.) of this chapter. ]

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

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

~~"Regional (watershed-wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience land development.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, [ ~~or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act,~~ ] and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

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

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

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

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

"State" means the Commonwealth of Virginia.

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

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

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

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

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

"Stormwater conveyance system" means [ ~~any of the following~~ a combination of drainage components that are used to convey stormwater discharge ], either within or downstream of the land-disturbing activity [ . This includes ]:

[ ~~(i) a manmade~~ 1. "Manmade ] stormwater conveyance [ ~~system,~~ system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems; ]

[ ~~(ii) a natural~~ 2. "Natural ] stormwater conveyance [ ~~system,~~ system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; ] or

[ ~~(iii) a restored~~ 3. "Restored ] stormwater conveyance [ ~~system,~~ system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel ].

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

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

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

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

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

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

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

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

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

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

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

[ "Stormwater program administrative authority" means a local stormwater management program or the department, as the permit-issuing authority, in the absence of a local stormwater management program, which administers the Virginia Stormwater Management Program. ]

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

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

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

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

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

"Surface waters" means:

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

2. All interstate waters, including interstate wetlands;

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

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

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

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

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

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

6. The territorial sea; and

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

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

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

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

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

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

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

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

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

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

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

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

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia

Stormwater Management Act and associated regulations and that is jointly created by the department and the Virginia Water Resources Research Center subject to advice to the director from a permanent stakeholder advisory committee.

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

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

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

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

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

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

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

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

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

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

**4VAC50-60-20. Purposes.**

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

**4VAC50-60-30. Applicability.**

This chapter is applicable to:

1. Every [ ~~private, local , state, or federal entity~~ locality ] that [ ~~establishes~~ administers ] a [ local ] stormwater management program [ ~~or a MS4 program~~ ];

2. The department in its oversight of locally administered programs or in its administration of [ ~~a local program~~ the Virginia Stormwater Management Program ];

~~2.~~ 3. [ Every MS4 program;

4. ] Every state agency project regulated under the Act and this chapter; and

~~3.~~ [ ~~4.~~ 5. ] Every land-disturbing activity regulated under § 10.1-603.8 of the Code of Virginia unless otherwise exempted in § 10.1-603.8 B.

Part II [ ~~A~~
~~Stormwater Management Program Technical Criteria~~
Administrative and Technical Criteria for Land-Disturbing Activities ]

**4VAC50-60-40. ~~Applicability~~ Authority ~~and applicability~~.**

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

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

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

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

**4VAC50-60-45. [ ~~Applicability~~ Implementation date ].**

[ ~~In accordance with the board's authority, this part establishes the minimum technical criteria and stormwater management standards that shall be employed by a state agency in accordance with an implementation schedule set by the board, or by a qualifying local program or department-administered local stormwater management program that has been approved by the board, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, except as provided in 4VAC50-60-48.~~ The technical criteria in Part II A and Part II B shall be implemented by a stormwater program administrative authority when a VSMP General Permit for Discharges of Stormwater from Construction Activities has been issued that incorporates such criteria. Until that time, the required technical criteria shall be found in Part II C.

**4VAC50-60-46. General objectives.**

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

**4VAC50-60-47. Applicability of other laws and regulations.**

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

**4VAC50-60-47.1. Time limits on applicability of approved design criteria.**

Beginning with the VSMP General Permit for Discharges of Stormwater from Construction Activities issued July 1, 2009, all land-disturbing activities that receive general permit coverage shall be conducted in accordance with the Part II B or Part II C technical criteria in place at the time of initial permit coverage and shall remain subject to those criteria for an additional two permit cycles, except as provided for in subsection D of 4VAC50-60-48. After the two additional permit cycles have passed, or should permit coverage not be maintained, portions of the project not under construction shall become subject to any new technical criteria adopted since original permit coverage was issued. For land-disturbing projects issued coverage under the July 1, 2009 permit and for which coverage was maintained, such projects shall remain subject to the technical criteria of Part II C for an additional two permits. ]

**4VAC50-60-48. Grandfathering.**

A. [ ~~Land-disturbing activities that receive coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities prior to the adoption of a local stormwater management program within their jurisdiction shall not be subject to the technical criteria of Part II A, but shall be subject to the technical criteria of Part II B, until the expiration of that permit on June 30, 2014.~~ Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final

subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, was approved by a locality prior to July 1, 2012, and for which no coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities has been issued prior to July 1, 2014, shall be considered grandfathered by the stormwater program administrative authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C for those areas that were included in the approval, provided that the stormwater program administrative authority finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C. In the event that the locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before. ]

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

~~For purposes of this subsection and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions that specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan, or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property. For the purposes of this subsection and without limitation, for state and federal projects, the approval of state or federal funding for a project or the approval of a stormwater management plan are deemed to be significant affirmative governmental acts.~~ B. Until June 30, 2019, for locality, state, and federal projects for which there has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the department has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the stormwater program administrative authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C for those areas that were included in the approval. ]

C. [ ~~Where a land-disturbing activity is part of a common plan of development or sale that has obtained VSMP general permit coverage from the department prior to July 1, 2010 , the land-disturbing activity will be subject to the technical criteria of Part II B. The registration statement shall include the permit coverage number for the common plan of development or sale for which association is being claimed.~~ For land-disturbing activities grandfathered under subsections A and B of this section, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical criteria of Part II B. ]

D. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, [ ~~2010~~ 2012 ], such project shall be subject to the technical criteria of [ ~~Part II B~~ Part II C ].

[ E. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion. ]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**[ 4VAC50-60-51. Chesapeake Bay Preservation Act land-disturbing activity.**

In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation Act land-disturbing activities shall be controlled. Such land-disturbing activities shall not require completion of a registration statement or require coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the following technical criteria and program and administrative requirements:

1. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by either the local erosion and sediment control program or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.

2. A stormwater plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with 4VAC50-60-55. Prior to land disturbance, this plan must be approved by the stormwater program administrative authority.

3. Exceptions may be requested in accordance with 4VAC50-60-57.

4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 4VAC50-60-58.

5. Water quality design criteria in 4VAC50-60-63 shall be applied to the site.

6. Water quality compliance shall be achieved in accordance with 4VAC50-60-65.

7. Channel protection and flood protection shall be achieved in accordance with 4VAC50-60-66.

8. Offsite compliance options in accordance with 4VAC50-60-69 shall be available to Chesapeake Bay Preservation Act land-disturbing activities.

9. Such land-disturbing activities shall be subject to the design storm and hydrologic methods set out in 4VAC50-60-72, linear development controls in 4VAC50-60-76, and criteria associated with stormwater impoundment structures or facilities in 4VAC50-60-85.

Part II A
General Administrative Criteria for Regulated Land-Disturbing Activities ]

**4VAC50-60-53. [ ~~General requirements~~ Applicability ].**

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

**4VAC50-60-54. Stormwater pollution prevention plan requirements.**

A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.

B. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the local erosion and sediment control program or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.

C. A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the stormwater program administrative authority.

D. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

E. In addition to the requirements of subsections A through D of this section, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a State Water Control Board-approved TMDL.

F. The stormwater pollution prevention plan must address the following requirements, to the extent otherwise required by state law or regulations and any applicable requirements of a VSMP permit:

1. Control stormwater volume and velocity within the site to minimize soil erosion;

2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

3. Minimize the amount of soil exposed during construction activity;

4. Minimize the disturbance of steep slopes;

5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;

7. Minimize soil compaction and, unless infeasible, preserve topsoil; and

8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the stormwater program administrative authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the stormwater program administrative authority.

G. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

**4VAC50-60-55. Stormwater management plans.**

A. A stormwater management plan shall be developed and submitted to the stormwater program administrative authority. The stormwater management plan shall be implemented as approved or modified by the stormwater program administrative authority and shall be developed in accordance with the following:

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land-disturbing activity.

2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

B. A complete stormwater management plan shall include the following elements:

1. Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and postdevelopment drainage areas;

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

3. A narrative that includes a description of current site conditions and final site conditions or if allowed by the stormwater program administrative authority, the information provided and documented during the review process that addresses the current and final site conditions;

4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

5. Information on the proposed stormwater management facilities, including (i) the type of facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) the surface waters or karst features into which the facility will discharge;

6. Hydrologic and hydraulic computations, including runoff characteristics;

7. Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;

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

a. All contributing drainage areas;

b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

d. Current land use including existing structures, roads, and locations of known utilities and easements;

e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

f. The limits of clearing and grading, and the proposed drainage patterns on the site;

g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

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

9. If an operator intends to meet the requirements established in 4VAC50-60-60 or 4VAC50-60-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and

10. If payment of a fee is required with the stormwater management plan submission by the stormwater program administrative authority, the fee and the required fee form in accordance with Part XIII must have been submitted.

C. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

D. A construction record drawing for permanent stormwater management facilities shall be submitted to the stormwater program administrative authority in accordance with 4VAC50-60-108 and 4VAC50-60-112. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. ]

**4VAC50-60-56. [ ~~Applicability of other laws and regulations~~ Pollution prevention plans ].**

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

A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

1. Wastewater from washout of concrete, unless managed by an appropriate control;

2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

4. Soaps or solvents used in vehicle and equipment washing.

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

**4VAC50-60-57. Requesting an exception.**

A request for an exception for Part II B or Part II C of this chapter, including the reasons for making the request, may be submitted in writing to the stormwater program administrative authority. Economic hardship alone is not a sufficient reason to request an exception from the requirements of this chapter. The request for an exception will be reviewed pursuant to 4VAC50-60-122. An exception to the requirement that the land disturbing activity obtain a VSMP permit will not be granted by the stormwater program administrative authority.

**4VAC50-60-58. Responsibility for long-term maintenance of permanent stormwater management facilities.**

A recorded instrument shall be submitted to the stormwater program administrative authority in accordance with 4VAC50-60-112.

**4VAC50-60-59. Applying for VSMP permit coverage.**

The operator must submit a complete and accurate registration statement on the official department form to the stormwater program administrative authority in order to apply for VSMP permit coverage. The registration statement must be signed by the operator in accordance with 4VAC50-60-370. ]

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

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

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

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

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

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

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

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

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

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

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

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

~~Table 1*~~

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

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

[ Part II B
Technical Criteria for Regulated Land-Disturbing Activities

**4VAC50-60-62. Applicability.**

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

**4VAC50-60-63. Water quality design criteria requirements.**

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

1. New development. The total phosphorus load of new development projects shall not exceed ~~0.28~~ [ ~~0.45~~ 0.41 ] pounds per acre per year, as calculated pursuant to 4VAC50-60-65 [ ~~, except:~~. ]

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

~~b. Within~~ [ ~~a. Should the board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay watershed, then a qualifying local program may establish a standard of no greater than 0.45 pounds per acre per year to be applied within urban development areas designated pursuant to § 15.2-2223.1 of the Code of Virginia~~ ] ~~in the Chesapeake Bay watershed a qualifying local program may establish a phosphorus standard between 0.28 and 0.45 pounds per acre per year~~ [ ~~for projects greater than or equal to one acre in order to encourage compact development that achieves superior water quality benefits. The qualifying local program shall provide to the board for approval a justification for any standards established~~ ] ~~if greater than 0.28~~ [ ~~and shall define the types of projects within a UDA that would qualify for the~~ ] ~~relaxed~~ [ ~~standards. The standard shall be based upon factors including, but not limited to, number of housing units per acre for residential development, floor area ratio for nonresidential development, level of imperviousness, brownfield remediation potential, mixed use and transit oriented development potential, proximity to the Chesapeake Bay or local waters of concern, and the presence of impaired waters. This provision shall not apply to department administered local programs.~~ ]

~~c. Localities~~ [ ~~b. Should the board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay watershed, localities that have lands that drain to both the Chesapeake Bay watershed and other non-Chesapeake Bay watersheds may choose to apply the~~ ] ~~0.28 pounds per acre per year~~ [ ~~more stringent phosphorus standard for the Chesapeake Bay watershed to land-disturbing activities that discharge to watersheds other than the Chesapeake Bay watershed.~~

~~c. Upon the completion of the Virginia TMDL Implementation Plan for the Chesapeake Bay Nutrient and Sediment TMDL approved by EPA, the board shall by regulatory action establish a water quality design criteria for new development activities that is consistent with the pollutant loadings called for in the approved Implementation Plan.~~ ]

2. Development on prior developed lands.

a. [ ~~The total phosphorus load of~~ ] ~~projects~~ [ ~~a project occurring on prior developed lands and~~ ] ~~distributing~~ [ For land-disturbing activities ] disturbing greater than or equal to one acre [ that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load ] shall be reduced [ ~~to an amount~~ ] at least 20% below the predevelopment total phosphorus load.

~~However, the~~ b. [ ~~The total phosphorus load of a project occurring on prior developed lands and~~ For regulated land-disturbing activities ] disturbing less than one acre [ that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load ] shall be reduced [ ~~to an amount~~ ] at least 10% below the predevelopment total phosphorus load.

c. [ For land-disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivisions a or b above, shall be applied to the remainder of the site.

d. In lieu of subdivision c, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.

e. ] The total phosphorus load shall not be required to be reduced to below ~~0.28 pounds per acre per year~~ the applicable standard for new development unless a more stringent standard has been established by a [ ~~qualifying~~ ] local [ stormwater management ] program.

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

[ ~~4.~~ C. ~~TMDL. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, necessary control measures must be implemented by the operator to meet the WLA in accordance with the requirements established in the General Permit for Discharges of Stormwater from Construction Activities or an individual permit, which address both construction and postconstruction discharges.~~ Upon completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan, the department shall review the water quality design criteria standards.

~~5.~~ D. ] Nothing in this section shall prohibit a [ ~~qualifying~~ local stormwater management ] program from establishing [ ~~a~~ ] more stringent [ ~~standard~~ water quality design criteria requirements ].

**4VAC50-60-65. Water quality compliance.**

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

~~equivalent or more stringent results and is~~ ] approved by the board.

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

[ ~~TABLE 1~~
~~BMP Pollutant Removal Efficiencies~~

| ~~Practice~~ | ~~Removal of Total Phosphorus by Runoff Volume Reduction (RR, as %) (based upon 1 inch of rainfall - 90% storm)~~ | ~~Removal of Total Phosphorus by Treatment - Pollutant Concentration Reduction (PR, as %)~~ | ~~Total Mass Load Removal of Total Phosphorus (TR, as %)~~ [5] |
|---|---|---|---|
| ~~Green Vegetated Roof 1~~ | ~~45~~ | ~~0~~ | ~~45~~ |
| ~~Green Vegetated Roof 2~~ | ~~60~~ | ~~0~~ | ~~60~~ |
| ~~Rooftop Disconnection 1~~ [2] | ~~25 or 50~~ [1] | ~~0~~ | ~~25 or 50~~ [1] |
| ~~Rooftop Disconnection 2~~ | ~~50~~ | ~~0~~ | ~~50~~ |
| ~~Rain Tanks/Cisterns 1 Rainwater Harvesting~~ | ~~actual volume x .75 up to 90~~ [3, 5] | ~~0~~ | ~~actual volume x .75 up to 90~~ [3, 5] |
| ~~Soil Amendments 1~~ | ~~50~~ | ~~0~~ | ~~50~~ |
| ~~Soil Amendments 2~~ | ~~75~~ | ~~0~~ | ~~75~~ |
| ~~Soil Amendments~~ | ~~Can be used to decrease runoff coefficient for turf cover at site. See designs for Rooftop Disconnection, Sheet Flow, and Grass Channel practices.~~ | | |
| ~~Permeable Pavement 1~~ | ~~45~~ | ~~25~~ | ~~59~~ |
| ~~Permeable Pavement 2~~ | ~~75~~ | ~~25~~ | ~~81~~ |
| ~~Grass Channel 1~~ | ~~10 or 20~~ [1] | ~~15~~ | ~~23~~ |
| ~~Grass Channel 2~~ | ~~20~~ | ~~15~~ | ~~32~~ |
| ~~Bioretention 1 (also applies to Urban Bioretention)~~ | ~~40~~ | ~~25~~ | ~~55~~ |
| ~~Bioretention 2~~ | ~~80~~ | ~~50~~ | ~~90~~ |
| ~~Infiltration 1~~ | ~~50~~ | ~~25~~ | ~~63~~ |
| ~~Infiltration 2~~ | ~~90~~ | ~~25~~ | ~~93~~ |
| ~~Dry Swale 1~~ | ~~40~~ | ~~20~~ | ~~52~~ |
| ~~Dry Swale 2~~ | ~~60~~ | ~~40~~ | ~~76~~ |
| ~~Wet Swale 1~~ | ~~0~~ | ~~20~~ | ~~20~~ |
| ~~Wet Swale 2~~ | ~~0~~ | ~~40~~ | ~~40~~ |
| ~~Sheet Flow to Conserved Filter/ Open Space 1~~ | ~~0 25 or 50~~ [1] | ~~50 0~~ | ~~25 or 50~~ [1] |

| ~~Sheet Flow to Conserved Filter/ Open Space 2~~[52] | ~~0 50 or 75~~[1] | ~~75 0~~ | ~~50 or 75~~[1] |
|---|---|---|---|
| ~~Extended Detention Pond 1~~ | ~~0~~ | ~~15~~ | ~~15~~ |
| ~~Extended Detention Pond 2~~ | ~~15~~ | ~~15~~ | ~~28 31~~ |
| ~~Filtering Practice 1~~ | ~~0~~ | ~~60~~ | ~~60~~ |
| ~~Filtering Practice 2~~ | ~~0~~ | ~~65~~ | ~~65~~ |
| ~~Constructed Wetland 1~~ | ~~0~~ | ~~50~~ | ~~50~~ |
| ~~Constructed Wetland 2~~ | ~~0~~ | ~~75~~ | ~~75~~ |
| ~~Wet Pond 1~~ | ~~0~~ | ~~50 (45~~[4]~~)~~ | ~~50 (45~~[4]~~)~~ |
| ~~Wet Pond 2~~ | ~~0~~ | ~~75 (65~~[4]~~)~~ | ~~75 (65~~[4]~~)~~ |

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

~~[3] The removal can be increased to 50% for C and D soils by adding soil compost amendments, and may be higher yet if combined with secondary runoff reduction practices.~~

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

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

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

1. Vegetated Roof (Version 2.3, March 1, 2011);

2. Rooftop Disconnection (Version 1.9, March 1, 2011);

3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);

4. Soil Amendments (Version 1.8, March 1, 2011);

5. Permeable Pavement (Version 1.8, March 1, 2011);

6. Grass Channel (Version 1.9, March 1, 2011);

7. Bioretention (Version 1.9, March 1, 2011);

8. Infiltration (Version 1.9, March 1, 2011);

9. Dry Swale (Version 1.9, March 1, 2011);

10. Wet Swale (Version 1.9, March 1, 2011);

11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);

12. Extended Detention Pond (Version 1.9, March 1, 2011);

13. Filtering Practice (Version 1.8, March 1, 2011);

14. Constructed Wetland (Version 1.9, March 1, 2011); and

15. Wet Pond (Version 1.9, March 1, 2011). ]

C. BMPs differing from those listed [ ~~in Table 1~~ in subsection B of this section ] shall be reviewed and approved by the director in accordance with procedures established by the BMP Clearinghouse Committee and approved by the board.

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

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

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

requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-92.

~~G. Where no plan exists pursuant to subsection F of this section, offsite controls may be used to meet the postdevelopment pollutant load water quality technical criteria set out in subdivisions 1 and 2 of 4VAC50-60-63 provided:~~

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

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

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

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

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

~~H. Alternatively, the local program may waive the requirements of subdivisions 1 and 2 of 4VAC50-60-63 through the granting of an exception pursuant to 4VAC50-60-122.~~

[ ~~G.~~ F. ] Offsite alternatives where allowed in accordance with 4VAC50-60-69 may be utilized to meet the design criteria of [ ~~subdivisions 1 and 2~~ subsection A ] of 4VAC50-60-63.

**4VAC50-60-66. Water quantity.**

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of subdivision 7 of § 10.1-603.4 of the Code of Virginia. Nothing in this section shall prohibit a [ ~~qualifying~~ ] local [ stormwater management ] program from establishing a more stringent standard. [ Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of 4VAC50-30-40 (Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations). ]

B. Channel protection. Concentrated stormwater flow [ ~~from the site and offsite contributing areas~~ ] shall be released into a stormwater conveyance system [ ~~and shall meet one of the following criteria as demonstrated by use of accepted hydrologic and hydraulic methodologies:~~ and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection. ]

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

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

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

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

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

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

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

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

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

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

~~$Q_{Developed}$ = The allowable peak flow rate from the developed site. Such peak flow rate must be less than or equal to $Q_{Good\ Pasture}$;~~

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

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

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

~~However, in the case that the predeveloped condition is forested, ] both the peak flow rate and the volume of runoff from the developed site shall be held to the forested condition [ the forested condition shall be utilized instead of the good pasture condition in all instances in the calculation above.~~

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

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

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

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

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

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

[ 1. Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:

a. The manmade stormwater conveyance system shall convey the postdevelopment peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the stormwater program administrative authority; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

2. Restored stormwater conveyance systems. When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural design concepts, following the land-disturbing activity, either:

a. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision 3 of this subsection shall be met.

3. Natural stormwater conveyance systems. When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity shall be calculated either:

a. In accordance with the following methodology:

$Q_{Developed} \leq I.F. * (Q_{Pre\text{-}developed} * RV_{Pre\text{-}Developed}) / RV_{Developed}$

Under no condition shall $Q_{Developed}$ be greater than $Q_{Pre\text{-}Developed}$ nor shall $Q_{Developed}$ be required to be less than that calculated in the equation $(Q_{Forest} * RV_{Forest}) / RV_{Developed}$; where

I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.

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

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

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

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

$Q_{Forest}$ = The peak flow rate of runoff from the site in a forested condition.

$RV_{Forest}$ = The volume of runoff from the site in a forested condition; or

b. In accordance with another methodology that is demonstrated by the local stormwater management program to achieve equivalent results and is approved by the board.

4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

a. Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or

b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures. ]

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

1. Concentrated stormwater flow to [ ~~manmade~~ ] stormwater conveyance systems [ ~~-~~ that currently do not experience localized flooding during the 10-year 24-hour storm event: ] The point of discharge releases stormwater into a [ ~~manmade~~ ] stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm [ event ] within the [ ~~manmade~~ ] stormwater conveyance system. [ Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the stormwater program administrative authority. ]

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

a. Confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the stormwater program administrative authority; or

b. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event that is less than the predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria is this option is utilized. ]

3. [ ~~Concentrated stormwater flow to natural stormwater conveyance systems. The point of discharge releases stormwater into a natural stormwater conveyance system that currently does not flood during the 10-year 24-hour storm and, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm within the system~~ Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:

a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;

b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or

c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality ].

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

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

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

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

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

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

[ F. E. ] For purposes of computing predevelopment runoff [ from prior developed sites ], all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the [ local stormwater ] program [ administrative authority ] that actual site conditions warrant such considerations.

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

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

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

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

A. [ A qualifying local program shall have the authority to consider the use of the following offsite Offsite ] compliance options [ that a stormwater program administrative authority may allow an operator to use to meet required phosphorus nutrient reductions include the following ]:

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

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

3. The nonpoint nutrient offset program established [ by pursuant to ] § 10.1-603.8:1 of the Code of Virginia [ -; ]

4. [ Where no comprehensive watershed stormwater management plan or pro rata fee exists, or where a qualifying local program otherwise elects to allow the use of this subdivision, offsite stormwater management facilities may be used by the operator of a land disturbing activity to meet the water quality reductions required for a site by this chapter provided: Any other offsite options approved by an applicable state agency or state board; and

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

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

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

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

5. When an operator has additional properties available within the same HUC or upstream HUC that the land-disturbing activity directly discharges to or within the same watershed as determined by the stormwater program administrative authority, offsite stormwater management facilities on those properties may be utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity. ]

[ ~~B. Should the board establish by regulatory action a standard more stringent than 0.45 pounds per acre per year in the Chesapeake Bay watershed, the offsite compliance option provided by this subsection shall be available as follows. Where the offsite options of subsection A of this section are not available for use, where the fee established by a qualifying local program to offset a pound of phosphorus removal onsite pursuant to subdivision A 2 exceeds $23,900, or where a qualifying local program otherwise elects to allow the use of this subsection, offsite compliance may be achieved through a payment in accordance with the following:~~

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

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

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

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

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

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

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

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

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

~~e. The board shall periodically review the payment amount, at least every five years or in conjunction with the development of a new construction general permit,~~

~~and shall evaluate the performance of the fund and the sufficiency of the payment rate in achieving the needed offsite pollution reductions. The board shall adjust the payment amount based upon this analysis.~~

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

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

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

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

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

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

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

B. Notwithstanding subsection A of this section, and pursuant to § 10.1-603.8:1 of the Code of Virginia, operators shall be allowed to utilize offsite options identified in subsection A of this section under any of the following conditions:

1. Less than five acres of land will be disturbed;

2. The postconstruction phosphorus control requirement is less than 10 pounds per year; or

3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at least 75% of the required phosphorus nutrient reductions can not be met on-site, and the operator can demonstrate to the satisfaction of the stormwater program administrative authority that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options. ]

C. [ ~~Where the department is administering a local program, only offsite options set out in subdivisions A 3 and A 4, and, when available, subsection B of this section shall be available.~~ Notwithstanding subsections A and B of this section, offsite options shall not be allowed:

1. Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land-disturbing activity. In the case of a phased project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land-disturbing activity in an amount sufficient for each phase.

2. In contravention of local water quality-based limitations at the point of discharge that are (i) consistent with the determinations made pursuant to subsection B of § 62.1-44.19:7 of the Code of Virginia, (ii) contained in a municipal separate storm sewer system (MS4) program plan approved by the department, or (iii) as otherwise may be established or approved by the board.

D. In order to meet the requirements of 4VAC50-60-66, offsite options described in subdivisions 1 and 2 of subsection A of this section may be utilized. ]

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

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

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

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

~~D. In addition to subsections B and C of this section permit-issuing authorities, by local ordinance may, or the board by state regulation may, adopt more stringent channel analysis~~

~~criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land disturbing activities. These criteria may include, but are not limited to, the following:~~

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

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

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

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

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

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

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

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

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

[ E. For drainage areas of 200 acres or less, the stormwater program administrative authority may allow for the use of the Modified Rational Method for evaluating volumetric flows to stormwater conveyances. ]

**4VAC50-60-74. Stormwater harvesting.**

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

**4VAC50-60-76. Linear development projects.**

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

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

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

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

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

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

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

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

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

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

[ ~~D.~~ B. ] Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a ~~geological~~ study of the geology and hydrology of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

[ ~~E.~~ C. ] Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 4VAC50-60-63 and the water quantity criteria set out in 4VAC50-60-66.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. During the plan's implementation, the [ ~~qualifying~~ ] local [ stormwater management ] program shall [ ~~account for~~ document ] nutrient reductions accredited to the BMPs specified in the plan.

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

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

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

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

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

[ Part II C
Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to the Provisions of 4VAC50-60-47.1

**4VAC50-60-93.1. Definitions.**

For the purposes of Part II C only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

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

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

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

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

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

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4VAC50-60-94. Applicability.**

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

**4VAC50-60-95. General.**

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

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

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

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

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

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

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

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

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

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

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

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

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas defined in the Chesapeake Bay Preservation Act, provided that (i) the local government has conclusively established that the location of the facility within

the resource protection area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and (iii) the facility must be consistent with a stormwater management program that has been approved by the board, the Chesapeake Bay Local Assistance Board, or the Board of Conservation and Recreation.

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

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

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

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

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

~~4. State and federal agencies may participate in comprehensive watershed stormwater management plans where practicable and permitted by the local program.~~

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

B. ~~If the qualifying local program allows for a pro rata fee in accordance with § 15.2-2243 of the Code of Virginia, then the reductions required for a site by this chapter may be achieved by the payment of a pro rata fee sufficient to fund improvements necessary to adequately achieve those requirements in accordance with that section of the Code of Virginia and this chapter.~~ Performance-based criteria. For land-disturbing activities, the calculated postdevelopment nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load based upon the average land cover condition or the existing site condition. A BMP shall be located, designed, and maintained to achieve the target pollutant removal efficiencies specified in [ ~~Table 2~~ Table 1 ] of this section to effectively reduce the pollutant load to the required level based upon the following four applicable land development situations for which the performance criteria apply:

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

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

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

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

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

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

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

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

C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater runoff from the impervious cover shall be treated by an appropriate BMP as required by the postdeveloped condition percent impervious cover as specified in [ ~~Table 2~~ Table 1 ] of this section. The selected BMP shall be located, designed, and maintained to perform at the target pollutant removal efficiency specified in [ ~~Table 2~~ Table 1 ] or those found in 4VAC50-60-65. Design standards and specifications for the BMPs in [ ~~Table 2~~ Table 1 ] that meet the required target pollutant removal efficiency are available in the 1990 Virginia Stormwater Management Handbook. Other approved BMPs available on the Virginia Stormwater BMP Clearinghouse website at http://www.vwrrc.vt.edu/swc may also be utilized.

[ ~~Table 2~~ Table 1 ]*

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

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

**4VAC50-60-97. Stream channel erosion.**

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

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

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

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

1. Criteria and procedures for channel analysis and classification.

2. Procedures for channel data collection.

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

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

**4VAC50-60-98. Flooding.**

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

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

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

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

**4VAC50-60-99. Regional ~~(watershedwide)~~ (watershed-wide) stormwater management plans.**

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

[ Part III ]

~~Local Programs~~ [ General Provisions Applicable to Stormwater Program Administrative Authorities and to Local Stormwater Management Programs ]

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

This part ~~specifies technical criteria, minimum ordinance requirements, and administrative procedures for all localities operating local stormwater management programs.~~ establishes the board's procedures for the authorization of a qualifying local program, the board's procedures for the administration of a local stormwater management program by an authorized qualifying local program, board and department oversight authorities for an authorized qualifying local program, and the board's procedures for utilization by the department in administering the Virginia Stormwater Management Program in localities where no qualifying local program is authorized. ]

[ ~~Part III A~~
~~Local Programs~~ ]

**4VAC50-60-102. Authority [ ~~and applicability~~ ].**

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

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

**4VAC50-60-103. Stormwater program administrative authority requirements for Chesapeake Bay Preservation Act land-disturbing activities.**

A. A stormwater program administrative authority shall regulate runoff associated with Chesapeake Bay Preservation Act land-disturbing activities in accordance with the following:

1. Such land-disturbing activities shall not require completion of a registration statement or require coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the technical criteria and program and administrative requirements set out in 4VAC50-60-51.

2. A permit shall be issued permitting the land-disturbing activity.

3. The stormwater program administrative authority shall regulate such land-disturbing activities in compliance with the:

a. Program requirements in 4VAC50-60-104;

b. Plan review requirements in 4VAC50-60-108 with the exception of subsection D of 4VAC50-60-108;

c. Long-term stormwater management facility requirements of 4VAC50-60-112;

d. Inspection requirements of 4VAC50-60-114 with the exception of subdivisions A 3 and A 4 of 4VAC50-60-114;

e. Enforcement components of 4VAC50-60-116;

f. Hearing requirements of 4VAC50-60-118;

g. Exception conditions of 4VAC50-60-122 excluding subsection C of 4VAC50-60-122 which is not applicable; and

h. Reporting and recordkeeping requirements of 4VAC50-60-126 with the exception of subdivision B 3 of 4VAC50-60-126.

B. A local stormwater management program shall adopt an ordinance that incorporates the components of this section.

C. In accordance with subdivision 5 of § 10.1-603.4 of the Code of Virginia, a stormwater program administrative authority may collect a permit issuance fee from the applicant of $290 and an annual maintenance fee of $50 for such land-disturbing activities.

Part III A
Programs Operated by a Stormwater Program Administrative Authority ]

**4VAC50-60-104. [ ~~Technical criteria~~ Criteria ] for [ ~~qualifying local~~ ] programs [ operated by a stormwater program administrative authority ].**

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

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

C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state [ or federal ] project [ , unless authorized by separate statute ].

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

**4VAC50-60-106. [ ~~Qualifying local program administrative~~ Additional ] requirements [ for local stormwater management programs ].**

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

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

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

~~3. Procedures for the submission and approval of plans;~~

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

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

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

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

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

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

A. A local stormwater management program shall adopt ordinances that ensure compliance with the requirements set forth in 4VAC50-60-460 L.

B. The local stormwater management program shall adopt ordinances at least as stringent as the provisions of the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities. ]

**4VAC50-60-108. [ ~~Qualifying local program stormwater~~ Stormwater ] management plan review.**

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

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

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

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

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

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

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

~~b. Contact information including the name, address, and telephone number of the property owner and the tax~~

~~reference number and parcel number of the property or properties affected;~~

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

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

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

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

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

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

~~(1) All contributing drainage areas;~~

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

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

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

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

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

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

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

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

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

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

~~3. Completeness~~ 1. The stormwater program administrative authority shall determine the completeness ] of a plan [ ~~and required accompanying information shall be determined by the qualifying local program~~ in accordance with 4VAC50-60-55 ], and [ shall notify ] the applicant [ ~~shall be notified~~ ] of any determination, within 15 calendar days of receipt. [ Where available to the applicant, electronic communication may be considered communication in writing. ]

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

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

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

d. The [ ~~qualifying local~~ stormwater ] program [ administrative authority ] shall [ ~~act~~ review, ] within 45 [ calendar ] days [ ~~on~~ of the date of resubmission, ] any plan that has been previously disapproved [ ~~and resubmitted~~ ].

[ ~~4.~~ 2. ] During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the [ ~~qualifying local~~ stormwater ] program [ administrative authority ]. Where available to the applicant, electronic communication may be considered communication in writing.

[ ~~5.~~ 3. ] If a plan meeting all requirements of this chapter and of the [ ~~qualifying local~~ stormwater ] program [ administrative authority ] is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

[ ~~C. Notwithstanding the requirements of subsection A of this section, if allowed by the qualifying local program, an initial stormwater management plan may be submitted for review and approval when it is accompanied by an erosion~~

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

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

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the [ qualifying local stormwater ] program [ administrative authority ]. The [ qualifying local stormwater ] program [ administrative authority ] shall have 60 calendar days to respond in writing either approving or disapproving such requests.

2. Based on an inspection, the [ qualifying local stormwater ] program [ administrative authority ] may require amendments to the approved stormwater management plan to address [ the noted any ] deficiencies [ and notify the permittee of the required modifications within a time frame set by the stormwater program administrative authority ].

[ D. A stormwater program administrative authority shall not provide authorization to begin land disturbance until provided evidence of VSMP permit coverage.

E. The stormwater program administrative authority shall require the submission of a construction record drawing for permanent stormwater management facilities in accordance with 4VAC50-60-55. A stormwater program administrative authority may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to 4VAC50-60-112. ]

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

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

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

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

2. Watershed or locality size; and

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

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

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

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

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

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

**4VAC50-60-112. [ Qualifying local program authorization of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities Long-term maintenance of permanent stormwater management facilities ].**

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

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

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

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

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

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

A. The stormwater program administrative authority shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to permit termination or earlier as required by the stormwater program administrative authority and shall at a minimum:

1. Be submitted to the stormwater program administrative authority for review and approval prior to the approval of the stormwater management plan;

2. Be stated to run with the land;

3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the stormwater program administrative authority; and

5. Be enforceable by all appropriate governmental parties. ]

B. [ ~~Coverage or termination of coverage shall be authorized through a standardized database or other method provided by the department. Such database shall include, at a minimum, permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location as well as date of termination.~~ At the discretion of the stormwater program administrative authority, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the stormwater program administrative authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the stormwater program administrative authority.

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

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

**4VAC50-60-114. Inspections.**

A. The [ ~~qualifying local~~ stormwater ] program [ ~~or its designee~~ administrative authority ] shall inspect the land-disturbing activity during construction for [ ~~compliance~~:

1. Compliance ] with the [ ~~VSMP General Permit for Discharges of Stormwater from Construction Activities.~~ approved erosion and sediment control plan;

2. Compliance with the approved stormwater management plan;

3. Development, updating, and implementation of a pollution prevention plan; and

4. Development and implementation of any additional control measures necessary to address a TMDL. ]

B. [ ~~The person responsible for the development project or their designated agent shall submit to a qualifying local program a construction record drawing for permanent stormwater management facilities, appropriately sealed, and signed by a professional in accordance with all minimum standards and requirements pertaining to the practice of that profession pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. The qualifying local program shall have the construction record drawing and certification on file prior to the release of the portion of~~ ] ~~the~~ [ ~~any performance bond or surety associated with the stormwater management facility. The qualifying local program may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to 4VAC50-60-124.~~ The stormwater program administrative authority shall establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

1. Be approved by the board;

2. Ensure that each stormwater management facility is inspected by the stormwater program administrative authority, or its designee, not to include the owner, except as provided in subsections C and D of this section, at least once every five years; and

3. Be documented by records. ]

C. The ~~owners~~ [ ~~owner of a stormwater management~~ ] ~~facilities~~ [ ~~facility for which a maintenance agreement is required pursuant to 4VAC50-60-124 shall be required to conduct inspections in accordance with an inspection schedule in~~ ] ~~a~~ [ ~~the recorded maintenance agreement, and shall submit written inspection and maintenance reports to the qualifying local program~~ ] ~~upon request~~ [ ~~. Such~~ stormwater program administrative authority may utilize the inspection ]

reports [ ~~, if consistent with a board approved~~ of the owner of a stormwater management facility as part of an ] inspection program established in subsection ~~D~~ [ ~~E~~ B ] of this section [ ~~, may be utilized by the qualifying local program~~ ] if the inspection is conducted by a person who is licensed as a professional engineer, architect, ~~certified~~ landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 [ ; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; ] or [ a person ] who holds [ ~~a~~ an appropriate ] certificate of competence from the board. [ ~~The reports, if so utilized, must be kept on file with the qualifying local program.~~ ]

D. [ ~~A qualifying local~~ If a recorded instrument is not required pursuant to 4VAC50-60-112, a stormwater ] program [ administrative authority ] shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff ~~solely~~ primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the [ ~~qualifying local~~ stormwater ] program [ ~~every five years contained within subsection E of this section~~ administrative authority ].

[ ~~E. A qualifying local program shall establish an inspection program that ensures that the stormwater management facilities are being maintained as designed. Any inspection program shall be:~~

~~1. Approved by the board prior to implementation;~~

~~2. Established in writing;~~

~~3. Based on a system of priorities that takes into consideration the purpose and type of the facility, ownership and the existence of a recorded maintenance agreement and inspection schedule where required, the contributing drainage area, and downstream conditions;~~

~~4. Demonstrated to be an enforceable inspection program that meets the intent of the regulations and ensures that each stormwater management facility is inspected by the qualifying local program or its designee, not to include the owner, except as provided in~~ ] ~~subsection~~ [ ~~subsections C and D of this section, at least every five years; and~~

~~5. Documented by inspection records.~~ ]

~~E.~~ [ ~~F. Inspection reports shall be generated and kept on file in accordance with 4VAC50-60-126 for all stormwater management facilities inspected by the qualifying local program.~~ ]

**4VAC50-60-116. [ ~~Qualifying local program enforcement~~ Enforcement ].**

A. A [ ~~qualifying local~~ stormwater ] program [ ~~may~~ administrative authority shall ] incorporate [ ~~the following~~ ] components [ ~~:~~ from subdivisions 1 and 2 of this subsection. ]

1. Informal and formal administrative enforcement procedures [ ~~including~~ may include ]:

a. Verbal warnings and inspection reports;

b. Notices of corrective action;

c. Consent special orders and civil charges in accordance with subdivision 7 of § 10.1-603.2:1 and § 10.1-603.14 D 2 of the Code of Virginia;

d. Notices to comply in accordance with § 10.1-603.11 of the Code of Virginia;

e. Special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia;

f. Emergency special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia; and

g. Public notice and comment periods [ for proposed settlements and consent special orders ] pursuant to 4VAC50-60-660.

2. Civil and criminal judicial enforcement procedures [ ~~including~~ may include ]:

a. Schedule of civil penalties [ ~~set out in subsection D of this section~~ in accordance with § 10.1-603.14 of the Code of Virginia ];

b. Criminal penalties in accordance with § 10.1-603.14 B and C of the Code of Virginia; and

c. Injunctions in accordance with §§ 10.1-603.12:4, 10.1-603.2:1 and 10.1-603.14 D 1 of the Code of Virginia.

B. A [ ~~qualifying local~~ stormwater ] program [ administrative authority ] shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and [ ~~the~~ ] local [ ~~ordinance~~ ordinances ].

[ ~~C. A qualifying local program may utilize the department's Stormwater Management Enforcement Manual as guidance in establishing policies and procedures.~~

~~D. A court may utilize as guidance the following Schedule of Civil Penalties set by the board in accordance with~~ C. Pursuant to ] § 10.1-603.14 A of the Code of Virginia [ , the permit-issuing authority shall use the following schedule of civil penalties for enforcement actions ]. [ ~~The range contained within the schedule reflects the degree of harm caused by the violation, which is site specific and may vary~~

~~greatly from case to case, as may the economic benefit of noncompliance to the violator. Each day of violation of each requirement shall constitute a separate offense. Assignment of the degree of harm is a qualitative decision subject to the court's discretion.~~ ] The court has the discretion to impose a maximum penalty of $32,500 per violation per day in accordance with § 10.1-603.14 A of the Code of Virginia. [ Such violation may reflect the degree of harm caused by the violation. The court may take into account the economic benefit to the violator from noncompliance. Such violations include, but are not limited to:

| ~~1. Gravity based Component~~ | ~~Marginal~~ | ~~Moderate~~ | ~~Serious~~ | |
|---|---|---|---|---|
| ~~Violations* and Frequency of Occurrence **~~ | ~~$$ x occurrences~~ | ~~$$ x occurrences~~ | ~~$$ x occurrences~~ | ~~SUBTOTAL~~ |
| ~~No Permit Registration (each month w/o coverage = 1 occurrence)~~ | ~~500 x ____~~ | ~~1,000 x ____~~ | ~~2,000 x ____~~ | |
| ~~No SWPPP~~<br>~~(No SWPPP components including E&S Plan)~~<br>~~(each month of land-disturbing without SWPPP = 1 occurrence)~~ | ~~1,000 x ____~~ | ~~1,500 x ____~~ | ~~2,000 x ____~~ | |
| ~~Incomplete SWPPP~~ | ~~300 x ____~~ | ~~500 x ____~~ | ~~1,000 x ____~~ | |
| ~~SWPPP not on site~~ | ~~100 x ____~~ | ~~300 x ____~~ | ~~500 x ____~~ | |
| ~~No approved Erosion and Sediment Control Plan~~ | ~~500 x ____~~ | ~~1,000 x ____~~ | ~~2,000 x ____~~ | |
| ~~Failure to install stormwater BMPs or erosion and sediment ("E&S") controls~~ | ~~300 x ____~~ | ~~500 x ____~~ | ~~1,000 x ____~~ | |
| ~~Stormwater BMPs or E&S controls improperly installed or maintained~~ | ~~250 x ____~~ | ~~500 x ____~~ | ~~750 x ____~~ | |
| ~~Operational deficiencies (e.g., failure to initiate stabilization measures as soon as practicable; unauthorized discharges of stormwater; failure to implement control measures for construction debris)~~ | ~~1,000 x ____~~ | ~~2,000 x ____~~ | ~~5,000 x ____~~ | |
| ~~Failure to conduct required inspections~~ | ~~500 x ____~~ | ~~2,000 x ____~~ | ~~3,000 x ____~~ | |

| | | | | |
|---|---|---|---|---|
| ~~Incomplete, improper or missed inspections (e.g., inspections not conducted by qualified personnel; site inspection reports do not include date, weather information, location of discharge, or are not certified, etc.)~~ | ~~300 x ____~~ | ~~500 x ____~~ | ~~1,000 x ____~~ | |
| | | | ~~Subtotal #1~~ | |
| ~~2. Estimated Economic Benefit of Noncompliance (if applicable)~~ | | | ~~Subtotal #2~~ | |
| ~~3. Recommended civil penalty~~ | | | ~~Total (#1 and #2)~~ | |
| ~~* Each stormwater BMP or E&S control that is either not installed or improperly installed or maintained is a separate violation.~~<br>~~** The frequency of occurrence is per event unless otherwise noted.~~ | | | | |

1. No permit registration;

2. No SWPPP;

3. Incomplete SWPPP;

4. SWPPP not available for review;

5. No approved erosion and sediment control plan;

6. Failure to install stormwater BMPs or erosion and sediment controls;

7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;

8. Operational deficiencies;

9. Failure to conduct required inspections;

10. Incomplete, improper, or missed inspections. ]

[ ~~E.~~ D. ] Pursuant to subdivision 2 of § 10.1-603.2:1 of the Code of Virginia, authorization to administer a [ ~~qualifying~~ ] local [ stormwater management ] program shall not remove from the board the authority to enforce the provisions of the [ ~~Virginia Stormwater Management~~ ] Act and attendant regulations.

[ E. The department may terminate VSMP permit coverage during its term and require application for an individual permit or deny a permit renewal application for failure to comply with permit conditions or on its own initiative in accordance with the Act and this chapter. ]

F. Pursuant to § 10.1-603.14 A of the Code of Virginia, [ ~~amounts~~ civil penalties ] recovered by a [ ~~qualifying~~ ] local [ stormwater management ] program shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

[ G. The department may provide additional guidance concerning suggested penalty amounts in its Stormwater Management Enforcement Manual. ]

**4VAC50-60-118. Hearings.**

[ ~~A qualifying local~~ The stormwater ] program [ administrative authority ] shall ensure that any permit applicant or permittee [ aggrieved by any action of the stormwater program administrative authority taken without a formal hearing, or by inaction of the stormwater program administrative authority, ] shall have a right to a hearing pursuant to § 10.1-603.12:6 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in accordance with § 10.1-603.12:7 of the Code of Virginia or as otherwise provided by law.

**4VAC50-60-120. ~~Requirements for local program and ordinance.~~ (Repealed.)**

~~A. At a minimum, the local stormwater management program and implementing ordinance shall meet the following:~~

~~1. The ordinance shall identify the plan approving authority and other positions of authority within the program, and shall include the regulations and technical criteria to be used in the program.~~

~~2. The ordinance shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land development projects. The party responsible for conducting inspections shall be identified. The local program authority shall maintain, either on-site or in local program files, a copy of the approved plan and a record of all inspections for each land development project.~~

~~B. The department shall periodically review each locality's stormwater management program, implementing ordinance, and amendments. Subsequent to this review, the department shall determine if the program and ordinance are consistent with the state stormwater management regulations and notify the locality of its findings. To the maximum extent practicable the department will coordinate the reviews with other local government program reviews to avoid redundancy. The review of a local program shall consist of the following:~~

~~1. A personal interview between department staff and the local program administrator or his designee;~~

~~2. A review of the local ordinance and other applicable documents;~~

~~3. A review of plans approved by the locality and consistency of application;~~

~~4. An inspection of regulated activities; and~~

~~5. A review of enforcement actions.~~

~~C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies from imposing stricter technical criteria or other requirements as allowed by law.~~

**4VAC50-60-122. [ ~~Qualifying local program exceptions~~ Exceptions ].**

A. A [ ~~qualifying local~~ stormwater ] program [ administrative authority ] may grant exceptions to the provisions of ~~Part II (4VAC50-60-40 et seq.)~~ [ ~~Parts II A and II B~~ Part II B or Part II C ] of this chapter [ ~~through an administrative process~~ ]. [ ~~A request for an exception, including the reasons for making the request, shall be submitted in writing to the qualifying local program.~~ ] An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer [ ~~on the permittee~~ ] any special privileges that are denied [ ~~to~~ in ] other [ ~~permittees who present~~ ] similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the [ ~~qualifying local~~ stormwater ] program [ administrative authority ] grant an exception to the requirement that the land-disturbing activity obtain [ ~~a~~ required VSMP ~~permit~~ permits nor approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website ].

D. [ ~~Any exception to the water quality technical criteria of subdivisions 1 and 2 of 4VAC50-60-63 shall require that all available offsite options be utilized before an exception is granted and that any necessary phosphorus reductions unable to be achieved on site or through the available offsite options of subsection A of 4VAC50-60-69 be achieved through a payment made in accordance with subsection B of 4VAC50-60-69, when such payment option is available. In the case of the granting of an exception, the minimum on site thresholds of subsection B of 4VAC50-60-69 shall not apply.~~ Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through 4VAC50-60-69 have been considered and found not available. ]

E. A record of all exceptions [ ~~applied for and~~ ] granted shall be maintained by the [ ~~qualifying local~~ stormwater ] program [ ~~and reported to the department~~ administrative authority ] in accordance with 4VAC50-60-126.

**[ ~~4VAC50-60-124. Qualifying local program stormwater management facility maintenance.~~**

~~A. Responsibility for the operation and maintenance of stormwater management facilities in accordance with this chapter, unless assumed by a governmental agency, shall remain with the property owner or other legally established entity and shall pass to any successor.~~

~~1. The~~ ] ~~government entity implementing the~~ [ ~~qualifying local program shall~~ ] ~~be a party to each~~ [ ~~require a maintenance agreement for each stormwater management facility except as provided in subdivision 2. Such maintenance agreement shall~~ ] ~~include a schedule for~~ [ ~~require the owner to (i) perform inspections~~ ] ~~by the owner, and, in addition to ensuring that each~~ [ ~~on a specified schedule, (ii) maintain the facility~~ ] ~~is maintained~~ [ ~~as designed,~~ ] ~~shall ensure that~~ [ ~~and (iii) maintain the designed flow and drainage patterns from the site to a permanent facility~~ ] ~~are maintained.~~ [ ~~Such agreements may also contain provisions specifying that, where maintenance or repair of a stormwater management facility located on the owner's property is neglected, or the stormwater management facility becomes a public health or safety concern and the owner has failed to perform the necessary maintenance and repairs after receiving notice from the locality, the qualifying local program may perform the necessary maintenance and repairs and recover the costs from the owner. In the specific case of a public health or safety danger, the agreement may provide that the written notice may be waived by the locality.~~

~~2. Maintenance agreements, at the discretion of the qualifying local program, shall not be required for stormwater management facilities designed to treat stormwater runoff~~ ] ~~solely~~ [ ~~primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the qualifying local~~

~~program that future maintenance of such facilities will be addressed through a deed restriction or other mechanism enforceable~~ ] ~~by~~ [ ~~at the discretion of the qualifying local program.~~

~~B.~~ ] ~~The~~ [ ~~Where a maintenance agreement is required for a stormwater management facility, the qualifying local program shall be notified of any transfer or conveyance of ownership or responsibility for maintenance of a stormwater management facility.~~

~~C.~~ ] ~~The~~ [ ~~Where a maintenance agreement is required for a stormwater management facility, the qualifying local program shall require right of entry agreements or easements from the property owner for purposes of inspection and maintenance.~~ ]

**4VAC50-60-126. [ ~~Qualifying local program report~~ Reports ] and recordkeeping.**

A. On a fiscal year basis (July 1 to June 30), a [ ~~qualifying~~ ] local [ stormwater management ] program shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, [ geographic ] coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;

[ ~~2. Number of VSMP General Permit for Discharges of Stormwater from Construction Activities projects inspected and the total number of inspections by acreage categories determined by the department during the fiscal year;~~

~~3.~~ 2. ] Number and type of enforcement actions during the fiscal year; and

[ ~~4.~~ 3. ] Number of exceptions [ ~~applied for and the number~~ ] granted [ ~~or denied~~ ] during the fiscal year.

[ ~~B. A qualifying local program shall make information set out in subsection A of this section available to the department upon request.~~

~~C.~~ B. ] A [ ~~qualifying local~~ stormwater ] program [ administrative authority ] shall keep records in accordance with the following:

1. [ ~~Permit files~~ Project records, including approved stormwater management plans, ] shall be kept for three years after permit termination [ or project completion ]. [ ~~After three years, the permit file shall be delivered to the department by October 1 of each year.~~ ]

2. Stormwater [ ~~maintenance~~ management ] facility inspection [ ~~reports~~ records ] shall be [ ~~kept~~ documented and retained ] for [ at least ] five years from the date of inspection.

3. [ ~~Stormwater maintenance agreements, design standards and specifications, posteonstruction surveys~~ [ ~~construction~~ Construction ] record drawings [ ~~, and maintenance records~~ ] shall be maintained in perpetuity or until a stormwater management facility is removed [ ~~due to redevelopment of the site~~ ].

[ 4. All registration statements submitted in accordance with 4VAC50-60-59 shall be documented and retained for at least three years from the date of project completion or permit termination. ]

[ ~~Part III B~~
~~Department of Conservation and Recreation Administered Local Programs~~

**~~4VAC50-60-128. Authority and applicability.~~**

~~In the absence of a qualifying local program, the department, in accordance with an adoption and implementation schedule set by the board and upon board approval, shall administer the local stormwater management program in a locality in accordance with § 10.1-603.3 C of the Code of Virginia. This part specifies the minimum technical criteria for a department-administered local stormwater management program in accordance with the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), and the standards and criteria established in these regulations by the board pursuant to its authority under that article. Such criteria include but are not limited to administration, plan review, issuance of coverage under the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, issuance of individual permits, inspection, enforcement, and education and outreach components.~~ ]

**4VAC50-60-130. ~~Administrative procedures: stormwater management plans.~~ (Repealed.)**

~~A. Localities shall approve or disapprove stormwater management plans according to the following:~~

~~1. A maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review will be allowed for the review of the plan. During the 60-day review period, the locality shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the locality's stormwater management program.~~

~~2. A disapproval of a plan shall contain the reasons for disapproval.~~

~~B. Each plan approved by a locality shall be subject to the following conditions:~~

1. The applicant shall comply with all applicable requirements of the approved plan, the local program, this chapter and the Act, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

2. The land development project shall be conducted only within the area specified in the approved plan.

3. The locality shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project.

4. The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the locality may require to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.

5. No changes may be made to an approved plan without review and written approval by the locality.

**[ 4VAC50-60-132. Technical criteria.**

A. The department administered local stormwater management programs shall require compliance with the provisions of ] Part II [ Part II A and Part II B as applicable (4VAC50-60-40 et seq.) of this chapter unless an exception is granted pursuant to 4VAC50-60-142 D and shall comply with the requirements of 4VAC50-60-460 L.

B. When reviewing a federal project, the department shall apply the provisions of this chapter.

C. Nothing in this chapter shall be construed as limiting the rights of other federal and state agencies to impose stricter technical criteria or other requirements as allowed by law.

**4VAC50-60-134. Administrative authorities.**

A. The department is the permit-issuing authority, plan approving authority, and the enforcement authority.

B. The department or its designee is the plan reviewing authority and the inspection authority.

C. The department shall assess and collect fees.

D. The department may require the submission of a reasonable performance bond or other financial surety in accordance with the criteria set forth in § 10.1-603.8 of the Code of Virginia prior to the issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities and in accordance with the following:

1. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management BMPs approved under the stormwater management plan, plus 25%;

2. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions that may be required in accordance with the approved stormwater management plan;

3. Upon failure by the applicant to take such action as required, the department may act and may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held; and

4. Within 60 days of the completion of the requirements and conditions of the VSMP General Permit for Discharges of Stormwater from Construction Activities and the department's acceptance of the Notice of Termination, such bond, cash escrow, letter of credit, or other legal arrangement shall be refunded to the applicant.

**4VAC50-60-136. Stormwater management plan review.**

A. Stormwater management plans shall be reviewed and approved by the department prior to commencement of land-disturbing activities.

B. The department shall approve or disapprove a stormwater management plan and required accompanying information according to the criteria set out for a qualifying local program in 4VAC50-60-108 B.

C. The department shall not ] accept [ review or approve initial stormwater management plans.

D. Each approved stormwater management plan may be modified in accordance with the criteria set out for a qualifying local program in 4VAC50-60-108 D.

**4VAC50-60-138. Issuance of coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.**

The department shall issue coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with the following:

1. The applicant must have a department approved stormwater management plan for the land-disturbing activity.

2. The applicant must have submitted a complete registration statement for the VSMP General Permit for Discharges of Stormwater from Construction Activities in accordance with Part VII (4VAC50-60-360 et seq.) of this chapter and the requirements of the VSMP General Permit for Discharges of Stormwater from Construction Activities, which acknowledges that a SWPPP has been developed and will be implemented, and the registration statement must have been reviewed and approved prior to the commencement of land disturbance.

3. The applicant must have submitted the required fee form and fee for the registration statement seeking coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.

~~4. Applicants submitting registration statements deemed to be incomplete must be notified within 15 working days of receipt by the department that the registration statement is not complete and be notified (i) of what material needs to be submitted to complete the registration statement, and (ii) that the land-disturbing activity does not have coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities.~~

~~5. The applicant shall be notified of authorization of permit coverage by the department.~~

~~6. Individual permits for qualifying land-disturbing activities may be issued at the discretion of the board or its designee pursuant to 4VAC50-60-410 B 3.~~ ]

**4VAC50-60-140. ~~Administrative procedures: exceptions.~~ (Repealed.)**

~~A. A request for an exception shall be submitted, in writing, to the locality. An exception from the stormwater management regulations may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved.~~

~~B. Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.~~

[ Part III B
Department of Conservation and Recreation Procedures for Review of Local Stormwater Management Programs ]

**4VAC50-60-142. [ ~~Inspections, enforcement, hearings, exceptions, and stormwater management facility maintenance~~ Authority and applicability ].**

[ ~~A. Inspections shall be conducted by the department in accordance with 4VAC50-60-114.~~

~~B. Enforcement actions shall be conducted by the department in accordance with 4VAC50-60-116. The department's Stormwater Management Enforcement Manual shall serve as guidance to be utilized in enforcement actions under the Stormwater Management Act and attendant regulations. Any amounts assessed by a court as a result of a summons issued by the board or the department shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Management Fund established pursuant to § 10.1-603.4:1 of the Code of Virginia.~~

~~C. Hearings shall be conducted by the department in accordance with 4VAC50-60-118.~~

~~D. Exceptions may be granted by the department in accordance with 4VAC50-60-122.~~

~~E. Stormwater management facility maintenance shall be conducted in accordance with 4VAC50-60-124.~~

This part specifies the criteria that the department will utilize in reviewing a locality's administration of a local stormwater management program pursuant to § 10.1-603.12 of the Code of Virginia following the board's approval of such program in accordance with the Act and this chapter.

**4VAC50-60-144. Local stormwater management program review.**

A. The department shall review each board-approved local stormwater management program at least once every five years on a review schedule approved by the board. The department may review a local stormwater management program on a more frequent basis if deemed necessary by the board and shall notify the local government if such review is scheduled.

B. The review of a board-approved local stormwater management program shall consist of the following:

1. An interview between department staff and the local stormwater management program administrator or designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of a subset of the plans approved by the local stormwater management program for consistency of application including exceptions granted and calculations or other documentation that demonstrates that required nutrient reductions are achieved using appropriate on-site and off-site compliance options;

4. A review of the funding and staffing plan developed in accordance with 4VAC50-60-148;

5. An inspection of regulated activities; and

6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions.

C. To the extent practicable, the department will coordinate the reviews with its other local government program reviews to avoid redundancy.

D. The department shall provide its recommendations to the board within 90 days of the completion of a review.

E. The board shall determine if the local stormwater management program and ordinances are consistent with the Act and state stormwater management regulations and notify the local stormwater management program of its findings. If such findings indicate that the program is consistent with the Act and attendant regulations, the findings shall be provided to the local stormwater management program at least 21 days in advance of the meeting where the board will take action on the locality's program. If such findings indicate that the program is inconsistent with the Act and attendant regulations, the findings shall be provided to the local stormwater management program at least 35 days in advance

of the meeting where the board will take action on the locality's program.

F. If the board determines that the deficiencies noted in the review will cause the local stormwater management program to be out of compliance with the Act and attendant regulations, the board shall notify the local stormwater management program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the local stormwater management program agrees to the corrective action approved by the board, the local stormwater management program will be considered to be conditionally compliant with the Act and attendant regulations until a subsequent finding of compliance is issued by the board. If the local stormwater management program fails to take the board's required corrective action within the specified time, the board may take action pursuant to § 10.1-603.12 of the Code of Virginia. A local stormwater management program that fails to take corrective action in accordance with the board requirements shall not be considered a qualifying local program for purposes of the Virginia Stormwater Management Program permitting regulations.

Part III C
Virginia Soil and Water Conservation Board Authorization Procedures for Local Stormwater Management Programs

**4VAC50-60-146. Authority and applicability.**

Subdivision 1 of § 10.1-603.4 of the Code of Virginia requires that the board establish standards and procedures for authorizing a locality to administer a stormwater management program. In accordance with that requirement, and with the further authority conferred upon the board by the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), this part specifies the procedures the board will utilize in authorizing a locality to administer a qualifying local program.

**4VAC50-60-148. Local stormwater management program administrative requirements.**

A. A local stormwater management program shall provide for the following:

1. Identification of the authority accepting complete registration statements and of the authorities completing plan review, plan approval, inspection, and enforcement;

2. Submission and approval of erosion and sediment control plans in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations and the submission and approval of stormwater management plans;

3. Requirements to ensure compliance with 4VAC50-60-54, 4VAC50-60-55, and 4VAC50-60-56;

4. Requirements for inspections and monitoring of construction activities by the operator for compliance with local ordinances;

5. Requirements for long-term inspection and maintenance of stormwater management facilities;

6. Collection, distribution to the state if required, and expenditure of fees;

7. Enforcement procedures and civil penalties;

8. Policies and procedures to obtain and release bonds, if applicable; and

9. Procedures for complying with the applicable reporting and recordkeeping requirements in 4VAC50-60-126.

B. A local stormwater management program shall adopt and enforce an ordinance(s) that incorporates the components set out in subdivisions 1 through 5 and 7 of subsection A of this section. ]

**4VAC50-60-150. ~~Administrative procedures: maintenance and inspections.~~ [ ~~(Repealed.)~~ Authorization procedures for local stormwater management programs ]**

[ ~~A. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.~~

~~B. In the case of developments where lots are to be sold, permanent arrangements satisfactory to the locality shall be made to ensure continued performance of this chapter.~~

~~C. A schedule of maintenance inspections shall be incorporated into the local ordinance. Ordinances shall provide that in cases where maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the locality has the authority to perform the work and to recover the costs from the owner.~~

~~D. Localities may require right-of-entry agreements or easements from the applicant for purposes of inspection and maintenance.~~

~~E. Periodic inspections are required for all stormwater management facilities. Localities shall either:~~

~~1. Provide for inspection of stormwater management facilities on an annual basis; or~~

~~2. Establish an alternative inspection program which ensures that stormwater management facilities are~~

~~functioning as intended. Any alternative inspection program shall be:~~

~~a. Established in writing;~~

~~b. Based on a system of priorities that, at a minimum, considers the purpose of the facility, the contributing drainage area, and downstream conditions; and~~

~~c. Documented by inspection records.~~

~~F. During construction of the stormwater management facilities, localities shall make inspections on a regular basis.~~

~~G. Inspection reports shall be maintained as part of a land development project file.~~

A. A locality required to adopt a program in accordance with § 10.1-603.3 A of the Code of Virginia or those electing to seek authorization to administer a qualifying local program must submit to the board an application package which, at a minimum, contains the following:

1. The draft local stormwater management program ordinance(s) as required in 4VAC50-60-148;

2. A funding and staffing plan; and

3. The policies and procedures including, but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities for the administration, plan review, inspection, and enforcement components of the program.

B. Upon receipt of an application package, the board or its designee shall have 30 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify to the locality in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the board or its designee shall have 120 calendar days for the review of the application package, unless an extension of time is requested. During the 120-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and this chapter.

D. A locality required to adopt a local stormwater management program in accordance with § 10.1-603.3 A of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 10.1-603.3 and shall adopt a local stormwater management program consistent with the Act and this chapter within the timeframe established pursuant to § 10.1-603.3.

E. A locality not required to adopt a local stormwater management program in accordance with § 10.1-603.3 A of the Code of Virginia but electing to adopt a local stormwater management program shall notify the board in accordance with the following:

1. A locality electing to adopt a local stormwater management program may notify the board of its intention within six months of the effective date of these regulations. Such locality shall submit a complete application package for the board's review pursuant to a schedule set by the board and shall adopt a local stormwater management program within the timeframe established by the board.

2. A locality electing to adopt a local stormwater management program that does not notify the board within the initial six-month period of its intention may thereafter notify the board at any regular meeting of the board. Such notification shall include a proposed schedule for adoption of a local stormwater management program within a timeframe agreed upon by the board.

F. A local stormwater management program approved by the board shall be considered a qualifying local program for purposes of the Virginia Stormwater Management Program permitting regulations.

G. The department shall administer the responsibilities of the Act and this chapter in any locality in which a local stormwater management program has not been adopted. The department shall develop a schedule, to be approved by the board, for adoption and implementation of the requirements of this chapter in such localities. Such schedule may include phases of implementation and shall be based upon considerations including the typical number of permitted projects located within a locality, total number of acres disturbed by such permitted projects, and such other considerations as may be deemed necessary by the board. ]

**[ ~~4VAC50-60-154. Reporting and recordkeeping.~~**

~~A. The department shall maintain a current database of permit coverage information for all projects that includes permit number, operator name, activity name, acres disturbed, date of permit coverage, and site address and location.~~

~~B. On a fiscal year basis (July 1 to June 30),~~ ] ~~a local program shall report to~~ [ ~~the department shall compile a report on the local programs it administers by October 1 in accordance with 4VAC50-60-126 A.~~ ]

~~C. On a fiscal year basis (July 1 to June 30), the department shall compile information provided by local programs.~~

~~D.~~ [ ~~C. Records shall be maintained by the department in accordance with 4VAC50-60-126 C.~~

Part III C
Department of Conservation and Recreation Procedures for Review of Qualifying Local Programs

**4VAC50-60-156. Authority and applicability.**

This part specifies the criteria that the department will utilize in reviewing a locality's administration of a qualifying local program pursuant to § 10.1-603.12 of the Code of Virginia following the board's approval of such program in accordance with the Virginia Stormwater Management Act and these regulations.

**4VAC50-60-157. Stormwater management program review.**

A. The department shall review each board approved qualifying local program at least once every five years on a review schedule approved by the board. The department may review a qualifying local program on a more frequent basis if deemed necessary by the board and shall notify the local government if such review is scheduled.

B. The review of a board approved qualifying local program shall consist of the following:

1. An interview between department staff and the qualifying local program administrator or his designee;

2. A review of the local ordinance(s) and other applicable documents;

3. A review of a subset of the plans approved by the qualifying local program and consistency of application including exceptions granted;

4. An accounting of the receipt and of the expenditure of fees received;

5. An inspection of regulated activities; and

6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions.

C. To the extent practicable, the department will coordinate the reviews with other local government program reviews to avoid redundancy.

D. The department shall provide its recommendations to the board within 90 days of the completion of a review. Such recommendations shall be provided to the locality in advance of the meeting.

E. The board shall determine if the qualifying local program and ordinance are consistent with the Act and state stormwater management regulations and notify the qualifying local program of its findings.

F. If the board determines that the deficiencies noted in the review will cause the qualifying local program to be out of compliance with the Stormwater Management Act and its attendant regulations, the board shall notify the qualifying local program concerning the deficiencies and provide a reasonable period of time for corrective action to be taken. If the qualifying local program agrees to the corrective action recommended by the board, the qualifying local program will be considered to be conditionally compliant with the Stormwater Management Act and its attendant regulations until a subsequent finding is issued by the board. If the qualifying local program fails to take the corrective action within the specified time, the board may take action pursuant to § 10.1-603.12 of the Code of Virginia.

Part III D
Virginia Soil and Water Conservation Board Authorization for Qualifying Local Programs

**4VAC50-60-158. Authority and applicability.**

Subdivision 1 of § 10.1-603.4 of the Code of Virginia requires that the board establish standards and procedures for authorizing a locality to administer a stormwater management program. In accordance with that requirement, and with the further authority conferred upon the board by the Virginia Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), this part specifies the procedures the board will utilize in authorizing a locality to administer a qualifying local program.

**4VAC50-60-159. Authorization procedures for qualifying local programs.**

A. A locality required to adopt a program in accordance with § 10.1-603.3 A of the Code of Virginia or those electing to seek authorization to administer a qualifying local program must submit to the board an application package which, at a minimum, contains the following:

1. The local program ordinance(s);

2. A funding and staffing plan based on the projected permitting fees; and

3. The policies and procedures, including but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other entities, for the administration, plan review, permit issuance, inspection, and enforcement components of the program.

B. Upon receipt of an application package, the board or its designee shall have ] 20 [ 30 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the board or its designee shall have 90 calendar days for the review of the application package. During the 90 day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the

~~locality in writing. If the application is not approved, the reasons for not approving the application shall be provided to the locality in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and these regulations.~~

~~D. A locality required to adopt a qualifying local program in accordance with § 10.1-603.3 A of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 10.1-603.3 and shall adopt a qualifying local program consistent with the Act and this chapter within the timeframe established pursuant to § 10.1-603.3.~~

~~E. A locality not required to adopt a qualifying local program in accordance with § 10.1-603.3 A but electing to adopt a qualifying local program shall notify the board in accordance with the following:~~

~~1. A locality electing to adopt a qualifying local program may notify the board of its intention within six months of the effective date of these regulations. Such locality shall submit a complete application package for the board's review pursuant to a schedule set by the board and shall adopt a qualifying local program within the timeframe established by the board.~~

~~2. A locality electing to adopt a qualifying local program that does not notify the board within the initial six-month period of its intention may thereafter notify the board at any regular meeting of the board. Such notification shall include a proposed schedule for adoption of a qualifying local program within a timeframe agreed upon by the board.~~

~~F. The department shall administer the responsibilities of the Act and this chapter in any locality in which a qualifying local program has not been adopted. The department shall develop a schedule, to be approved by the board, for adoption and implementation of the requirements of this chapter in such localities. Such schedule may include phases of implementation and shall be based upon considerations including the typical number of permitted projects located within a locality, total number of acres disturbed by such permitted projects, and such other considerations as may be deemed necessary by the board.~~ ]

DOCUMENTS INCORPORATED BY REFERENCE (4VAC50-60)

Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical Assessments, EPA Cooperative Agreement X-82907801-0, October 2004, by Center for Watershed Protection and Robert Pitt, University of Alabama, available on the Internet at http://cfpub.epa.gov/npdes/stormwater/idde.cfm.

Getting in Step – A Guide for Conducting Watershed Outreach Campaigns, EPA-841-B-03-002, December 2003, U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, available on the Internet at http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf, or may be ordered from National Service Center for Environmental Publications, telephone 1-800-490-9198.

Municipal Stormwater Program Evaluation Guidance, EPA-833-R-07-003, January 2007 (field test version), U.S. Environmental Protection Agency, Office of Wastewater Management, available on the Internet at http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=allprog&sort=name#ms4_guidance, or may be ordered from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or (703) 605-6000.

[ ~~Erosion & Sediment Control Technical Bulletin #1~~ ] ~~- Stream Channel Erosion Control~~ [ ~~Improving Soil Quality in Urbanizing Areas, Virginia Department of Conservation and Recreation, 2000.~~

~~Technical Memorandum – The Runoff Reduction Method, April 2008, and~~ ] ~~beta version addendum~~ [ ~~addendums,~~ ] ~~September~~ [ ~~December~~ ] ~~2008~~ [ ~~2009.~~

~~Virginia Runoff Reduction Method Worksheet.~~ ] ~~September~~ [ ~~December~~ ] ~~2008~~ [ ~~2009.~~

~~Virginia Runoff Reduction Method Worksheet – Redevelopment.~~ ] ~~September~~ [ ~~December 2009.~~

Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011. ]

VA.R. Doc. No. R08-587; Filed August 9, 2011, 10:00 a.m.

# TITLE 5. CORPORATIONS

## STATE CORPORATION COMMISSION

### Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **5VAC5-20. State Corporation Commission Rules of Practice and Procedure (amending 5VAC5-20-260, 5VAC5-20-280).**

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

Effective Date: September 1, 2011.

Agency Contact: Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box

1197, Richmond, VA 23218, telephone (804) 371-9733, FAX 804371, or email joel.peck@scc.virginia.gov.

Summary:

*The amendments modify the opportunity for parties and the commission staff to obtain discovery in regulatory and adjudicatory proceedings. Revisions provide for additional discovery of the commission staff and the commission staff's experts in regulatory proceedings and permit the expansion of discovery regarding witnesses and items of evidence in adjudicatory proceedings.*

*The final amendments further expand discovery from the proposed amendments, including adding provisions that permit discovery of documents and objects obtained for a case and all relevant witness statements, regardless of whether the staff intends, or does not intend, to introduce those documents as evidence or call those witnesses at hearing. Additionally, the final amendments add a definition of "witness statement" and clarify that discovery will not be required when prohibited by legal privilege.*

AT RICHMOND, AUGUST 9, 2011

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. CLK-2011-00001

Ex Parte: In the matter concerning revised
State Corporation Commission Rules of
Practice and Procedure

ORDER ADOPTING REVISIONS TO PART IV OF THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

On January 10, 2011, the State Corporation Commission ("Commission") issued its Order for Notice of Proceeding to Consider Revisions to the Commission's Rules of Practice and Procedure ("Order for Notice of Proceeding") in this case. The Commission determined that it was appropriate to revisit Part IV of the Rules of Practice and Procedure, 5 VAC 5-20-10 et seq. ("Rules"), to consider issues related to discovery in Commission proceedings. The Commission invited interested parties to address, among other things, whether: (i) the Commission's Staff ("Staff") should be subject to additional discovery and, if so, what types of additional discovery and in what types of proceedings; and (ii) whether experts or consultants retained by Staff should be subject to discovery and, if so, what types of discovery and in what types of proceedings. The Commission also invited interested parties to address how subjecting Staff to additional discovery may affect: (i) the Commission's ability to meet statutory deadlines in certain types of proceedings; (ii) available resources and efficiency in handling cases; (iii) the Staff's ability to interact informally with regulated entities and their customers to effect resolution of disputes; (iv) the ability of Staff to work with regulated entities in competitive industries; and (v) the protection of sensitive information provided to Staff by regulated entities.

The Commission received eight comments in response to its Order for Notice of Proceeding. The Virginia Committee for Fair Utility Rates and the Old Dominion Committee for Fair Utility Rates ("Committees"), representing large industrial customers, filed comments in support of maintaining the Commission's existing Rules. The following filed comments suggesting revisions to the Rules: Columbia Gas of Virginia, Inc. ("Columbia Gas"); Washington Gas Light Company ("Washington Gas"); Verizon Virginia Inc. and Verizon South Inc. ("Verizon"); and the Virginia Telecommunications Industry Association ("VTIA"). One individual filed comments adopting the position of the VTIA. The Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel") filed a Notice of Participation and raised no concerns with the existing Rules. Shenandoah Valley Electric Cooperative filed comments in support of electronic filing and management of documents.

On April 8, 2011, the Staff filed its Response to the comments submitted herein, addressing the necessity for the suggested revisions. Staff noted that no electric, water, or sewer utilities filed comments raising concerns with the Commission's Rules, nor did any companies or individuals associated with the financial services industry.

On May 26, 2011, the Commission issued an Order for Notice and Hearing to Consider Proposed Revisions to Part IV of the Commission's Rules of Practice and Procedure ("Order for Notice and Hearing"). The Order for Notice and Hearing, among other things: (1) identified proposed revisions to Part IV of the Rules ("Proposed Rules"), which expand the discovery on Staff in adjudicatory and regulatory cases; (2) directed that public notice of the Proposed Rules be given; (3) permitted interested persons and Staff to file written or electronic comments on the Proposed Rules; and (4) scheduled a public hearing to receive oral comment from interested persons on the Proposed Rules.

The public hearing was convened on July 12, 2011, at which time oral comment was received from the following, seriatim: Verizon; Virginia Electric & Power Company ("Virginia Power"); Columbia Gas; Consumer Counsel; Committees; and Staff.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that we shall adopt the rules appended hereto as Attachment A, effective as of September 1, 2011. In making our determination in this matter, the Commission has considered all of the comments and arguments submitted in this proceeding. The rules approved herein, which satisfy all legal requirements, significantly expand Staff's obligation to respond to discovery in both adjudicatory and regulatory proceedings before the Commission.[1]

For example, in adjudicatory cases, Staff is required to provide the following – which will necessarily include any information that is favorable to the defendant:

All relevant statements made by the defendant;

All relevant statements made by Staff's witnesses;

All relevant statements made by witnesses that Staff does not intend to call to testify at the hearing;

All documents and objects that Staff intends to introduce at the hearing;

All documents and objects that Staff obtained for purposes of the case (regardless of whether such will be introduced at the hearing); and

A list of witnesses that Staff intends to call to testify at the hearing.[2]

In addition, the rules adopted herein likewise require Staff to respond to discovery in regulatory proceedings and to provide the following:

• All factual information supporting workpapers of Staff or an expert or consultant filing testimony on behalf of Staff;

• All electronic spreadsheets, including underlying formulas and assumptions, supporting workpapers of Staff or an expert or consultant filing testimony on behalf of Staff;

• All documents relied upon as a basis for recommendations or assertions in prefiled Staff testimony, Staff reports or exhibits filed by Staff, or by an expert or consultant filing testimony on behalf of Staff; and

• The identity of other formal proceedings in which an expert or consultant filing testimony on behalf of Staff testified regarding the same or a substantially similar subject matter.[3]

The Commission received no opposition to the Proposed Rules from any investor-owned electric utility, any electric cooperative, any natural gas utility, any water and/or sewer company, any insurance company or agent, the banking industry, the securities industry, or any consumers or representatives thereof.

Virginia Power supported the Proposed Rules, stating that the rules "are adequate and will serve the parties well."[4] Similarly, Allegheny Power submitted a letter in support of the Proposed Rules.[5] Columbia Gas stated that the Proposed Rules "adequately address the comments" filed by Columbia Gas in this case.[6] Washington Gas also "does not object to the Proposed Rules, and does not, at this time, propose any revisions to the Proposed Rules."[7]

The Committees – comprised of large industrial users of electricity – argued that, even though they often take positions "fiercely adverse to those of … Staff:" (a) no party has shown that a discovery problem actually exists; (b) no additional discovery of Staff should be permitted; (c) the Proposed Rules are not necessary; and (d) additional obligations on Staff would be contrary to the public interest.[8] The Committees, however, did not ultimately object to adoption of the Proposed Rules.[9]

Consumer Counsel supported the Proposed Rules, explaining that the rules "expand the scope of discovery, both in regulatory and adjudicatory proceedings."[10]

Verizon and VTIA objected to the Proposed Rules.[11] While these participants asserted that the Proposed Rules should be further modified, we note that the final rules adopted herein extensively and meaningfully increase the discovery on Staff. The new discovery rules, for example, require Staff to provide: (1) evidence favorable to the defendant; (2) hearing exhibits and other documents obtained for the case; (3) a list of witnesses; (4) statements obtained from witnesses and non-witnesses; (5) factual information, including electronic spreadsheets, supporting Staff's workpapers; (6) access to information from experts testifying on behalf of Staff; and (7) documents relied upon by Staff or its testifying consultant. Indeed, Verizon conceded that, even for criminal cases, (i) Commonwealth Attorneys' prosecutorial staff is not subject to the type of discovery that Verizon seeks herein, and (ii) the federal Jencks Act (regarding discovery in federal criminal cases)[12] does not go as far as the discovery rules adopted here in terms of the discovery requirements placed on federal prosecutorial staff.[13]

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules of Practice and Procedure, as set forth in 5 VAC 5-20-10 et seq., are hereby revised and adopted as set forth on the attachment to this Order Adopting Revisions to Part IV of the Commission's Rules of Practice and Procedure, effective as of September 1, 2011.

(2) The Commission's Division of Information Resources shall forward this Order Adopting Revisions to Part IV of the Commission's Rules of Practice and Procedure and the rules adopted herein to the Registrar of Virginia for publication in the Virginia Register.

(3) This case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all public utilities providing service within the Commonwealth of Virginia and to representatives of the insurance, banking, and securities industries as shown on the attached appendices and to the individuals and organizations on the service list attached hereto.

[1] The rules approved herein also reflect changes to the Proposed Rules that, among other things: (i) require Staff to provide evidence that it does not intend to introduce at the hearing, including evidence favorable to the defendant; (ii) define a witness "statement" as used in these rules; and

(iii) clarify that these rules do not require disclosure of information prohibited by statute or other legal privilege.

[2] Rule 5 VAC 5-20-280.

[3] Rule 5 VAC 5-20-260.

[4] Tr. 49.

[5] Allegheny Power's June 8, 2011 Letter.

[6] Tr. 50.

[7] Washington Gas' July 5, 2011 Comments at 3-4. Washington Gas also "supports discovery of the Staff, and Staff's consultants or experts, to the same extent allowed for the applicant and other parties…." Id. at 4.

[8] Tr. 51-64; Committees' March 18, 2011 Comments at 4.

[9] Tr. 63.

[10] Tr. 50.

[11] See, e.g., Verizon's July 5, 2011 Comments at 2; VTIA's July 5, 2011 Comments at 1.

[12] See 18 U.S.C. § 3500.

[13] Tr. 41-46.

**5VAC5-20-260. Interrogatories ~~to parties~~ or requests for production of documents and things.**

The commission staff and any party in a formal proceeding before the commission, other than a proceeding under 5VAC5-20-100 A, may serve written interrogatories or requests for production of documents upon a party, to be answered by the party served, or if the party served is an entity, by an officer or agent of the entity, who shall furnish to the staff or requesting party information as is known. Interrogatories or requests for production of documents, including workpapers pursuant to 5VAC5-20-270, that cannot be timely answered before the scheduled hearing date may be served only with leave of the commission for good cause shown and upon such conditions as the commission may prescribe. Such otherwise untimely interrogatories or requests for production of documents, including workpapers pursuant to 5VAC5-20-270, may not be served until such leave is granted. ~~No interrogatories~~ Interrogatories or requests for production of documents may be served upon a member of the commission staff, ~~except~~ or an expert or consultant filing testimony on behalf of the commission staff, in a proceeding under 5VAC5-20-80 to discover: (i) factual information that supports the workpapers submitted by the staff pursuant to 5VAC5-20-270, including electronic spreadsheets that include underlying formulas and assumptions; (ii) any other documents relied upon as a basis for recommendations or assertions in prefiled testimony, staff reports or exhibits filed by staff, or by an expert or consultant filing testimony on behalf of the staff; or (iii) the identity of other formal proceedings in which an expert or consultant filing testimony on behalf of the staff testified regarding the same or a substantially similar subject matter. The disclosure of communications within the commission shall not be required and, except for good cause shown, no interrogatories or requests for production of documents may be served upon a member of the commission staff, or an expert or consultant filing testimony on behalf of the staff, prior to the filing of staff's testimony. All interrogatories and requests for production of documents shall be filed with the Clerk of the Commission. Responses to interrogatories and requests for production of documents shall not be filed with the Clerk of the Commission.

The response to each interrogatory or document request shall identify by name the person making the response. Any objection to an interrogatory or document request shall identify the interrogatory or document request to which the objection is raised, and shall state with specificity the basis and supporting legal theory for the objection. Objections shall be served with the list of responses or in such manner as the commission may designate by order. Responses and objections to interrogatories or requests for production of documents shall be served within 10 days of receipt, unless otherwise ordered by the commission. Upon motion promptly made and accompanied by a copy of the interrogatory or document request and the response or objection that is subject to the motion, the commission will rule upon the validity of the objection; the objection otherwise will be considered sustained.

Interrogatories or requests for production of documents may relate to any matter not privileged, which is relevant to the subject matter involved, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of evidentiary value. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.

Where the response to an interrogatory or document request may only be derived or ascertained from the business records of the party questioned, from an examination, audit, or inspection of business records, or from a compilation, abstract, or summary of business records, and the burden of deriving or ascertaining the response is substantially the same for one entity as for the other, a response is sufficient if it (i) identifies by name and location all records from which the response may be derived or ascertained; and (ii) tenders to the inquiring party reasonable opportunity to examine, audit, or inspect the records subject to objection as to their proprietary or confidential nature. The inquiring party bears the expense of making copies, compilations, abstracts, or summaries.

**5VAC5-20-280. Discovery applicable only to 5VAC5-20-90 proceedings.**

This rule applies only to a proceeding in which a defendant is subject to a monetary penalty or injunction, or revocation, cancellation, or curtailment of a license, certificate of authority, registration, or similar authority previously issued by the commission to the defendant:

1. Discovery of material in possession of the commission staff. Upon written motion of the defendant, the commission shall permit the defendant to inspect and, at the defendant's expense, copy or photograph [ (exclusive of investigative notes) ]: (i) any relevant written or recorded statements, the existence of which is known, after reasonable inquiry, by the commission staff counsel assigned to the matter to be within the custody, possession, or control of commission staff, made by (a) the defendant, or representatives~~,~~ or agents of the defendant if the defendant is other than an individual, or (b) any witness whom the commission staff intends [ , or does not intend, ] to call to testify at the hearing [ ~~(exclusive of investigative notes)~~ ], to a commission staff member or law enforcement officer; (ii) designated books, tangible objects, papers, documents, or copies or portions thereof, that are within the custody, possession, or control of commission staff and that commission staff intends to introduce into evidence at the hearing [ or that the commission staff obtained for the purpose of the instant proceeding ]; and (iii) the list of the witnesses that commission staff intends to call to testify at the hearing. Upon good cause shown [ to protect the identity of persons not named as a defendant ], the commission or hearing examiner may direct the commission staff to withhold disclosure of [ ~~the identity of the persons described in clause (iii)~~ material requested under this rule. The term "statement" as used in relation to any witness (other than a defendant) described in clause (i) of this subdivision includes a written statement made by said witness and signed or otherwise adopted or approved by him, and verbatim transcriptions or recordings of a witness' statement that are made contemporaneously with the statement by the witness ].

A motion by the defendant [ or staff ] under this rule shall be filed and served at least ~~10~~ [ ~~20~~ 30 ] days before the hearing date. The motion shall include all relief sought. A subsequent motion may be made only upon a showing of cause as to why the motion would be in the interest of justice. An order or ruling granting relief under this rule shall specify the time, place, and manner of making discovery and inspection permitted, and may prescribe such terms and conditions as the commission may determine.

[ ~~The~~ Upon written motion of the ] commission staff [ , staff ] may also obtain the list of witnesses that the defendant intends to call to testify at the hearing, and inspect, copy, and photograph, at commission staff's expense, the evidence that the defendant intends to introduce into evidence at the hearing.

The commission staff and the defendant shall be required to produce the information described above as directed by the commission or hearing examiner, but not later than 10 days prior to the scheduled hearing; and the admission of any additional evidence not provided in accordance herewith shall not be denied solely on the basis that it was not produced timely, provided the additional evidence was produced to commission staff or the defendant as soon as practicable prior to the hearing, or prior to the introduction of such evidence at the hearing. The requirement to produce the information described in this section shall be in addition to any requirement by commission staff or the defendant to timely respond to an interrogatory or document request made pursuant to 5VAC5-20-260.

Nothing in this rule shall require the disclosure of any information, the disclosure of which is prohibited by statute [ or other legal privilege ]. The disclosure of the results of a commission staff investigation or work product of commission staff counsel shall not be required.

2. Depositions. After commencement of a proceeding to which this rule applies, the commission staff or a party may take the testimony of (i) a party, or (ii) a person not a party for good cause shown to the commission or hearing examiner, other than a member of the commission staff, by deposition on oral examination or by written questions. Depositions may be used for any purpose for which they may be used in the courts of record of the Commonwealth. Except where the commission or hearing examiner finds that an emergency exists, no deposition may be taken later than 10 days in advance of the formal hearing. The attendance of witnesses at depositions may be compelled by subpoena. Examination and cross-examination of the witness shall be as at hearing. Depositions may be taken in the City of Richmond or in the town, city, or county in which the deposed person resides, is employed, or does business. The parties and the commission staff, by agreement, may designate another place for the taking of the deposition. Reasonable notice of the intent to take a deposition must be given in writing to the commission staff counsel and to each party to the action, stating the time and place where the deposition is to be taken. A deposition may be taken before any person (the "officer") authorized to administer oaths by the laws of the jurisdiction in which the deposition is to be taken. The officer shall certify his authorization in writing, administer the oath to the deponent, record or cause to be recorded the testimony given, and note any objections raised. In lieu of participating in the oral examination, a party or the commission staff may deliver sealed written questions to the officer, who shall propound the questions to the witness. The officer may terminate the deposition if convinced that the examination is being conducted in bad faith or in an unreasonable manner. Costs of the deposition shall be borne by the party noticing the deposition, unless otherwise ordered by the commission.

3. Requests for admissions. The commission staff or a party to a proceeding may serve upon a party written requests for admission. Each matter on which an admission is requested shall be stated separately. A matter shall be

deemed admitted unless within 21 days of the service of the request, or some other period the commission may designate, the party to whom the request is directed serves upon the requesting party a written answer addressing or objecting to the request. The response shall set forth in specific terms a denial of the matter set forth or an explanation as to the reasons the responding party cannot truthfully admit or deny the matter set forth. Requests for admission shall be filed with the Clerk of the Commission and simultaneously served on commission staff counsel and on all parties to the proceeding.

VA.R. Doc. No. R11-2429; Filed August 9, 2011, 11:58 a.m.

# TITLE 9. ENVIRONMENT

## VIRGINIA WASTE MANAGEMENT BOARD

### Forms

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available from the Department of Environmental Quality website at: http://www.deq.virginia.gov/waste/wasteforms.html or may be viewed at the Office of Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Title of Regulation: **9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees.**

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 E. Main Street, Richmond, VA 23219, email melissa.porterfield@deq.virginia.gov.

FORMS (9VAC20-90)

Solid Waste Information and Assessment Program - Reporting Table, DEQ Form 50-25 (rev. 10/10).

Solid Waste Annual Permit Fee Quarter Payment Form PF001 (rev. 7/11).

VA.R. Doc. No. R11-2921; Filed August 9, 2011, 9:29 a.m.

## STATE WATER CONTROL BOARD

### Final Regulation

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

Title of Regulation: **9VAC25-20. Fees for Permits and Certificates (amending 9VAC25-20-50).**

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

Effective Date: September 28, 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:

*In conformance with Chapter 149 of the 2011 Acts of Assembly, the amendment exempts Department of the Navy-sponsored dredging projects from permit application fees.*

**9VAC25-20-50. Exemptions.**

A. No permit application fees will be assessed to:

1. An applicant for a permit, permit authorization, certificate or special exception pertaining to a farming operation engaged in production for market.

2. An applicant for a permit, permit authorization, or certificate pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of Engineers-sponsored or Department of the Navy-sponsored dredging projects.

3. Permit holders who request minor modifications or minor amendments to permits, permit authorizations or certificates as defined in 9VAC25-20-10.

4. Permit, permit authorization or certificate holders whose permits, permit authorizations or certificates are modified or amended at the initiative of the board.

5. VPDES permit holders or VPA permit holders for the regularly scheduled renewal of an individual permit for an existing facility, except VPDES and VPA permit holders whose permits expire on or before December 27, 2004.

6. An applicant for a permit, permit authorization, permit modification, or certificate pertaining solely to biosolids research.

B. No permit maintenance fees will be assessed to:

1. VPDES and VPA facilities operating under a general permit.

2. Permits pertaining to a farming operation engaged in production for market.

3. Virginia Water Protection (VWP), Surface Water Withdrawal (SWW), and Ground Water Withdrawal

(GWW) permits, permit authorizations, certificates and special exceptions.

4. Permits pertaining solely to biosolids research.

C. No fee shall be imposed on the land application of materials classified as "exceptional quality biosolids" or the equivalent thereof, as defined by 9VAC25-32.

VA.R. Doc. No. R11-2850; Filed August 8, 2011, 2:49 p.m.

## Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board 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 Water Control Board will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-940).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503.

Effective Date: September 28, 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:

*In conformance with Chapter 252 of the 2011 Acts of Assembly, the amendments remove references to the delegation of authority from the State Water Control Board to the Director to the Department of Mines, Minerals and Energy to issue Virginia Pollutant Discharge Elimination System (VPDES) permits related to coal surface mining. The statute was recently revised to clarify that the Director of the Department of Mines, Minerals and Energy has the authority to issue VPDES permits for coal surface mining operations. This regulatory change does not impact the current process that is used to issue VPDES permits to coal surface mining operations.*

Part X
~~Delegation of~~ Permitting and Enforcement Authority

**9VAC25-31-940. ~~Delegation of authority to~~ Authority of the Department of Mines, Minerals and Energy for coal surface mining operations.**

For the purpose of Part X of this chapter, NPDES and VPDES permits are synonymous.

A. ~~The board pursuant to § 45.1-254 of the Code of Virginia hereby delegates to the~~ The Director of the Department of Mines, Minerals and Energy (DMME)~~, Division of Mined Land Reclamation (DMLR) or its authorized agents its~~ has the authority to issue, revoke and reissue, modify, or terminate NPDES permits for the discharge of industrial wastes or other wastes other than sewage from coal surface mining operations as defined in § 45.1-229 of the Code of Virginia. Any NPDES permit issued, modified, or revoked and reissued~~, under this delegation~~ by the Director of DMME that meets the conditions set forth in this chapter shall be as valid and enforceable as if issued by the board.

B. ~~The delegation of authority contained in subsection A of this section is conditioned upon compliance with the following provisions~~ Prior to issuing permits, the Director of DMME shall adhere to the following requirements:

1. That every permit issued, revoked and reissued, or modified shall conform to the requirements of this chapter, the CWA, and all pertinent regulations adopted by the board under law and those adopted under the CWA;

2. That the ~~DMLR~~ Director of DMME shall transmit to the department a copy of each application for a NPDES permit received by it, a copy of every draft NPDES permit prepared by it, and written notice of every action taken or contemplated to be taken by the ~~DMLR~~ Director of DMME with respect to such a permit; and

3. That no NPDES permit shall be issued, revoked and reissued, or modified if, within 30 days of the date of the transmittal to the department of the complete application and the draft NPDES permit to it, the board objects in writing to the issuance, revocation and reissuance, or modification of such permit. Where required, the board shall stipulate more stringent permit conditions as necessary to maintain applicable water quality standards and provisions of the law. Each such stipulation shall be accompanied by a justifying documentation to the ~~DMLR~~ Director of DMME. Such stipulations shall be binding upon the ~~DMLR~~ Director of DMME. However, nothing herein shall affect or impair any rights that the applicant may have to a public hearing before the board pursuant to the law or to judicial review of such decision pursuant to the law.

C. The ~~board hereby delegates to the DMLR its authority to~~ Director of DMME shall enforce NPDES permits issued to coal surface mining operations for the discharge of industrial wastes and other wastes; provided, however, that the board reserves the right to assert its enforcement authority as provided in § 45.1-254 ~~E~~ F of the Code of Virginia and provided further that the board reserves the right to take emergency enforcement action where the ~~DMLR~~ Director of DMME has not taken or cannot take effective emergency enforcement action.

VA.R. Doc. No. R11-2851; Filed August 8, 2011, 2:53 p.m.

## Final Regulation

REGISTRAR'S NOTICE: The State Water Control 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 State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-100, 9VAC25-31-450, 9VAC25-31-790).**

**9VAC25-151. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity (amending 9VAC25-151-190).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503.

Effective Date: September 28, 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 current regulatory action is necessary to update the citations to the Solid Waste Management Regulations in the State Water Control Board's regulations.*

Part II
Permit Applications and Special VPDES Permit Programs

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

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

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

C. Time to apply.

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

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

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

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

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

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

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

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

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

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

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

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

E. Completeness.

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

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

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

4. A permit application shall not be considered complete if the board has waived application requirements under subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

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

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

1. The activities conducted by the applicant which require it to obtain a VPDES permit;

2. Name, mailing address, and location of the facility for which the application is submitted;

3. Up to four SIC codes which best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under RCRA (42 USC § 6921);

b. UIC program under SDWA (42 USC § 300h);

c. VPDES program under the CWA and the law;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

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

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

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

i. Other relevant environmental permits, including state permits.

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

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

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

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

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

3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

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

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

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

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9VAC25-31-120). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2005). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling for any outfall for which

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

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

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

Biochemical oxygen demand ($BOD_5$)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

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

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2005)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

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

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

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged

which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

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

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

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

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

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

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

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

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

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

10. Reserved.

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

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

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

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

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

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon

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

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

(1) Biochemical oxygen demand ($BOD_5$).

(2) Total suspended solids (TSS).

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

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

(5) Oil and grease.

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

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

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

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

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

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

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

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

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

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

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

1. For concentrated animal feeding operations:

a. The name of the owner or operator;

b. The facility location and mailing address;

c. Latitude and longitude of the production area (entrance to the production area);

d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision F 7 of this section;

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

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor

pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

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

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

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

2. For concentrated aquatic animal production facilities:

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

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

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

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

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

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

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

a. Name, mailing address, and location of the facility for which the application is submitted;

b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under § 404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

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

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

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

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

(1) Treatment plant area and unit processes;

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

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

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

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

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

c. Process flow diagram or schematic.

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

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

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

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

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

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

a. The following information about each outfall:

(1) Outfall number;

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

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

(4) Distance from shore and depth below surface;

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

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

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

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

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

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

(1) Name of receiving water;

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

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

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

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

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

(a) Design biochemical oxygen demand ($BOD_5$ or $CBOD_5$) removal (percent);

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

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

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

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

(1) Biochemical oxygen demand ($BOD_5$ or $CBOD_5$);

(2) Fecal coliform;

(3) Design flow rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids.

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

(1) Ammonia (as N);

(2) Chlorine (total residual, TRC);

(3) Dissolved oxygen;

(4) Nitrate/Nitrite;

(5) Kjeldahl nitrogen;

(6) Oil and grease;

(7) Phosphorus; and

(8) Total dissolved solids.

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

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (2005), and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

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

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

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

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

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

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

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

5. Effluent monitoring for whole effluent toxicity.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the

dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

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

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

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

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

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

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

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

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

(1) Name and mailing address;

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

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

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

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

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

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

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

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

(2) A pretreatment program.

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

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

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

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

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

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

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

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

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

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

a. The following information regarding the combined sewer system:

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

(a) All CSO discharge points;

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

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

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

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

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

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

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

(e) The locations of pump stations.

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

(1) The following information on each outfall:

(a) Outfall number;

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

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

(d) Distance from shore and depth below surface;

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

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

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

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

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

(c) The average volume per CSO event, if available; and

(d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

(a) Name of receiving water;

(b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

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

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

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

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

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production

reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

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

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

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

(3) Total organic carbon (TOC).

(4) Total suspended solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

(8) pH.

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

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

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

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

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

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

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

L. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §§ 301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2005) have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

M. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (2005).

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance

request to submit a request explaining how the requirements of 40 CFR Part 125 (2005) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

O. Recordkeeping. Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as federal, state, private, public, or other entity;

f. The name, mailing address, and telephone number of the applicant; and

g. Indication whether the applicant is the owner, operator, or both.

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

b. UIC program under the Safe Drinking Water Act (SDWA);

c. NPDES program under the Clean Water Act (CWA);

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

e. Nonattainment program under the Clean Air Act;

f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

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

h. Other relevant environmental permits, including state or local permits.

3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and

b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

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

b. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490 unless an alternative has been specified in an existing sewage sludge permit.

d. The monitoring data provided must include at least the following information for each parameter:

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(2) The analytical method used; and

(3) The method detection level.

7. If the applicant is a person who prepares sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined in 9VAC25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(9) Other information that describes how the site will be managed, as specified by the board.

d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 9VAC25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9VAC25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

(1) Describes the geographical area covered by the plan;

(2) Identifies the site selection criteria;

(3) Describes how the site(s) will be managed;

(4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge and to notify persons residing on property bordering such sites for the purpose of receiving written comments from those persons for a period not to exceed 30 days. The department shall, based upon these comments, determine whether additional site-specific requirements should be included in the authorization for land application at the site; and

(5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

A request to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

9. An applicant for a permit authorizing the land application of sewage sludge shall provide to the department, and to each locality in which the applicant proposes to land apply sewage sludge, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than $1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of sewage sludge in Virginia. The aggregate amount of financial liability to be maintained by the applicant shall be $1 million for companies with less than $5 million in annual gross revenue and shall be $2 million for companies with $5 million or more in annual gross revenue.

10. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1 X $10^{-7}$cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

11. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

12. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the ~~Virginia~~ Solid Waste Management Regulations, ~~9VAC20-80~~ 9VAC20-81.

13. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

14. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

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

Q. Applications for facilities with cooling water intake structures.

1. Application requirements. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.

2. Source water physical data. These include:

a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. Location maps.

3. Cooling water intake structure data. These include:

a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;

b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;

c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and

e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;

b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in subdivision 4 of this subsection is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.

Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

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

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

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

Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

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

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

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

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

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

**9VAC25-31-450. Relationship to other regulations.**

Disposal of sewage sludge in a municipal solid waste landfill unit that complies with the requirements in the ~~Virginia~~ Solid Waste Management ~~Regulation (9VAC20-80-10 et seq.)~~ Regulations (9VAC20-81) constitutes compliance with § 405(d) of the CWA. Any person who prepares sewage sludge that is disposed in a municipal solid waste landfill unit shall ensure that the sewage sludge meets the requirements in ~~9VAC20-80-10 et seq.~~ 9VAC20-81 concerning the quality of materials disposed in a municipal solid waste landfill unit.

**9VAC25-31-790. Removal credits.**

A. General.

1. Definitions for the purpose of this section:

"Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.

"Sludge requirements" means the following statutory provisions and regulations or permits issued thereunder (or more stringent Virginia or local regulations): § 405 of the CWA; the Solid Waste Disposal Act (SWDA) (42 USC § 6901 et seq.) (including Title II more commonly

referred to as the Resource Conservation Recovery Act (RCRA) (42 USC § 6901 et seq.) and Virginia regulations contained in any Virginia sludge management plan prepared pursuant to Subtitle D of SWDA); the Clean Air Act (42 USC § 4701 et seq.); the Toxic Substances Control Act (15 USC § 2601 et seq.); and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

2. General. Any POTW receiving wastes from an industrial user to which a categorical pretreatment standards applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical pretreatment standards. The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with subdivision 4 of this subsection. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical pretreatment standard if the categorical pretreatment statement so specifies.

3. Conditions for authorization to give removal credits. A POTW is authorized to give removal credits only if the following conditions are met;

a. Application. The POTW applies for, and receives, authorization from the director to give a removal credit in accordance with the requirements and procedures specified in subsection E of this section;

b. Consistent removal determination. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with subsection B of this section;

c. POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with and to the extent required by this part; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in subsection D of this section;

d. Sludge requirements. The granting of removal credits will not cause the POTW to violate the local, state and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the director that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial users to whom the removal credit would apply is required to meet its categorical pretreatment standards as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal costs, the additional sludge management costs will not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants:

(1) For any pollutant listed in Appendix G-I of the regulation incorporated by reference in 9VAC25-31-750 for the use or disposal practice employed by the POTW, when the requirements of Part VI of this chapter for that practice are met;

(2) For any pollutant listed in Appendix G-II of the regulation incorporated by reference in 9VAC25-31-750 for the use or disposal practice employed by the POTW when the concentration for a pollutant listed in Appendix G-II of the regulation incorporated by reference in 9VAC25-31-750 in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in Appendix G-II of the regulation incorporated by reference in 9VAC25-31-750; and

(3) For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill that meets the criteria in the Code of Virginia and the Solid Waste Management ~~Regulation, 9VAC20-80~~ Regulations, 9VAC20-81;

e. VPDES permit limitations. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the director that even though it is not presently in compliance with applicable limitations and conditions in its VPDES permit, it will be in compliance when the industrial user or users to whom the removal credit would apply is required to meet its categorical pretreatment standard or standards, as modified by the removal credit provision.

4. Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1 - r}$$

where:

x = pollutant discharge limit specified in the applicable categorical pretreatment standard

r = removal credit for that pollutant as established under subsection B of this section (percentage removal expressed as a proportion, i.e., a number between 0 and 1)

y = revised discharge limit for the specified pollutant (expressed in same units as x)

B. Establishment of removal credits; demonstration of consistent removal.

1. Definition of "consistent removal." "Consistent removal" means the average of the lowest 50% of the removal measured according to subdivision 2 of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in subdivision 2 of this subsection must be reported and used in computing consistent removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the director. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between eight and 12, the average of the lowest six removals shall be used. If there are less than eight samples with concentrations equal to or above the limit of measurement, the director may approve alternate means for demonstrating consistent removal. The term "measurement" refers to the ability of the analytical method or protocol to quantify as well as identify the presence of the substance in question.

2. Consistent removal data. Influent and effluent operational data demonstrating consistent removal or other information, as provided for in subdivision 1 of this subsection, which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

a. Representative data; seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed;

b. Representative data; quality and quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided for in subdivision 1 of this subsection;

c. Sampling procedures: composite.

(1) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(2)(a) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as workdays. If the director determines that this schedule will not be most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(b) In addition, upon the director's concurrence, a POTW may utilize an historical data base amassed prior to July 24, 1996, provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

(3) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW elects to include detention time compensation or unless the director requires detention time compensation. The director may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

d. Sampling procedures: Grab. Where composite sampling is not an appropriate sampling technique, a grab sample or samples shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes;

e. Analytical methods. The sampling referred to in subdivisions 2 a through d of this subsection and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 (2005) and amendments thereto. Where 40 CFR Part 136 (2005) does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant

in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator; and

f. Calculation of removal. All data acquired under the provisions of this section must be submitted to the department. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percentage of the influent concentration, or, where such data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the director as provided for in subdivision 1 of this subsection.

C. Provisional credits. For pollutants which are not being discharged currently (i.e., new or modified facilities, or production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the requirements of subsection B of this section. If, within 18 months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of subsection B of this section, the authority to grant provisional removal credits shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director.

D. Exception to POTW pretreatment program requirement. A POTW required to develop a local pretreatment program by 9VAC25-31-800 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

1. All industrial users who are currently subject to a categorical pretreatment standard and who wish conditionally to receive a removal credit must submit to the POTW the information required in 9VAC25-31-840 B 1 through 7 (except new or modified industrial users must only submit the information required by 9VAC25-31-840 B 1 through 6), pertaining to the categorical pretreatment standard as modified by the removal credit. The industrial users shall indicate what additional technology, if any, will be needed to comply with the categorical pretreatment standard or standards as modified by the removal credit;

2. The POTW must have submitted to the department an application for pretreatment program approval meeting the requirements of 9VAC25-31-800 and 9VAC25-31-810 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's VPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;

3. The POTW must:

a. Compile and submit data demonstrating its consistent removal in accordance with subsection B of this section;

b. Comply with the conditions specified in subdivision A 3 of this section; and

c. Submit a complete application for removal credit authority in accordance with subsection E of this section;

4. If a POTW receives authority to grant conditional removal credits and the director subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in subdivisions 2 and 3 of this subsection, the authority to grant conditional removal credits shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director;

5. If a POTW grants conditional removal credits and the POTW or the director subsequently makes a final determination, after appropriate notice, that the industrial user or users failed to comply with the conditions in subdivision 1 of this subsection, the conditional credit shall be terminated by the POTW or the director for the noncomplying industrial user or users and the industrial user or users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director. The conditional credit shall not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the industrial user or users or the industrial user or users had demonstrated subsequential compliance; and

6. The director may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the director. This review may occur at any time in accordance

with the procedures of 9VAC25-31-830, but in no event later than the time of any pretreatment program approval or any VPDES permit reissuance thereunder.

E. POTW application for authorization to give removal credits and director review.

1. Who must apply. Any POTW that wants to give a removal credit must apply for authorization from the director.

2. To whom application is made. An application for authorization to give removal credits (or modify existing ones) shall be submitted by the POTW to the department.

3. When to apply. A POTW may apply for authorization to give or modify removal credits at any time.

4. Contents of the application. An application for authorization to give removal credits must be supported by the following information:

a. List of pollutants. A list of pollutants for which removal credits are proposed;

b. Consistent removal data. The data required pursuant to subsection B of this section;

c. Calculation of revised discharge limits. Proposed revised discharge limits for each affected subcategory of industrial users calculated in accordance with subdivision A 4 of this section;

d. Local pretreatment program certification. A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at subsection D of this section;

e. Sludge management certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in subdivision A 3 d of this section; and

f. VPDES permit limit certification. A certification that the granting of removal credits will not cause a violation of the POTW's VPDES permit limits and conditions as required in subdivision A 3 e of this section.

5. Director review. The director shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of 9VAC25-31-830 and shall, in no event, have more than 180 days from public notice of an application to complete review.

6. Nothing in this part precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

F. Continuation and withdrawal of authorization.

1. Effect of authorization. Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in subdivision A 3 d of this section or its VPDES permit limits and conditions as required by subdivision A 3 e of this section. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory or one or more industrial users that initially were not granted removal credits, it must notify the department.

2. Inclusion in POTW permit. Once authority is granted, the removal credits shall be included in the POTW's VPDES permit as soon as possible and shall become an enforceable requirement of the POTW's VPDES permit. The removal credits will remain in effect for the term of the POTW's VPDES permit, provided the POTW maintains compliance with the conditions specified in subdivision 4 of this subsection.

3. Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the director, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

4. Modification or withdrawal of removal credits.

a. Notice of POTW. The director shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to subdivision 3 of this subsection or other relevant information available to it, the director determines:

(1) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or

(2) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's VPDES Permit.

b. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the director shall either withdraw such discharge limits or require modifications in the revised discharge limits.

c. Public notice of withdrawal or modification. The director shall not withdraw or modify revised discharge

limits unless it shall first have notified the POTW and all industrial users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a public hearing. Following such notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical pretreatment standards) as may be specified by the director.

G. Removal credits in state-run pretreatment programs. Where the director elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program the POTW will not be required to develop a pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of subdivision A 3 of this section.

H. Compensation for overflow. For the purpose of this section, "overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant. POTWs which at least once annually overflow untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either subdivision 1 or 2 of this subsection. However, this subsection shall not apply where industrial users can demonstrate that overflow does not occur between the industrial users and the POTW treatment plant:

1. The industrial user provides containment or otherwise ceases or reduces discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the department evidence that:

a. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

b. The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in subdivision 1 c of this subsection, to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

c. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, the director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur; or

2. a. The consistent removal claimed is reduced pursuant to the following equation:

$$r_c = \frac{r_m\ 8760 - z}{8760}$$

where:

$r_m$ = POTW's consistent removal rate for that pollutant as established under subsections A 1 and B 2 of this section

$r_c$ = removal corrected by the overflow factor

Z = hours per year that overflow occurred between the industrial user or users and the POTW treatment plant, the hours either to be shown in the POTW's current VPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

b. The POTW is complying with all VPDES permit requirements and any additional requirements in any order or decree, issued pursuant to the Clean Water Act affecting combined sewer outflows. These requirements include, but are not limited to, any combined sewer overflow requirements that conform to the Combined Sewer Overflow Control Policy.

**9VAC25-151-190. Sector L - Landfills, land application sites and open dumps.**

A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from waste disposal at landfills, land application sites, and open dumps that receive or have received industrial wastes (Industrial Activity Code "LF"), including sites subject to regulation under Subtitle D of RCRA. Open dumps are solid waste disposal units that are not in compliance with state/federal criteria established under

RCRA Subtitle D. Landfills, land application sites, and open dumps that have storm water discharges from other types of industrial activities such as vehicle maintenance, truck washing, and/or recycling may be subject to additional requirements specified elsewhere in this permit.

B. Special conditions. Prohibition of nonstorm water discharges. In addition to the general nonstorm water prohibition in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated storm water" means storm water that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined below. Some specific areas of a landfill that may produce contaminated storm water include, but are not limited to: the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

"Landfill wastewater" as defined in 40 CFR Part 445 (2007) (Landfills Point Source Category) means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill process wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated storm water" means storm water that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated storm water includes storm water that flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

D. Storm water pollution prevention plan requirements. In addition to the requirements in Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation/surface runoff: active and closed landfill cells or trenches; active and closed land application areas; locations where open dumping is occurring or has occurred; locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff; and leachate collection and handling systems.

b. Summary of potential pollutant sources. The SWPPP shall also include a description of potential pollutant sources associated with any of the following: fertilizer, herbicide and pesticide application; earth/soil moving; waste hauling and loading/unloading; outdoor storage of significant materials including daily, interim and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; and failure or leaks from leachate collection and treatment systems.

2. Storm water controls.

a. Preventive maintenance program. As part of the preventive maintenance program, the permittee shall maintain: all containers used for outdoor chemical/significant materials storage to prevent leaking; all elements of leachate collection and treatment systems to prevent commingling of leachate with storm water; and the integrity and effectiveness of any intermediate or final cover (including making repairs to the cover as necessary to minimize the effects of settlement, sinking, and erosion).

b. Good housekeeping measures. As part of the good housekeeping program, the permittee shall consider providing protected storage areas for pesticides, herbicides, fertilizer and other significant materials.

c. Routine facility inspections.

(1) Inspections of active sites. Operating landfills, open dumps, and land application sites shall be inspected at least once every seven days. Qualified personnel shall inspect areas of landfills that have not yet been finally stabilized, active land application areas, areas used for storage of materials/wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks enter and exit the site. Erosion and sediment control measures shall be observed to ensure they are operating correctly. For stabilized sites and areas where land application has been completed, or where the climate is seasonally arid (annual rainfall averages from 0 to 10 inches) or semi-arid (annual rainfall averages from 10 to 20 inches), inspections shall be conducted at least once every month.

(2) Inspections of inactive sites. Inactive landfills, open dumps, and land application sites shall be inspected at least quarterly. Qualified personnel shall inspect landfill (or open dump) stabilization and structural erosion control measures and leachate collection and treatment systems, and all closed land application areas.

d. Recordkeeping and internal reporting procedures. Landfill and open dump owners shall provide for a tracking system for the types of wastes disposed of in each cell or trench of a landfill or open dump. Land application site owners shall track the types and quantities of wastes applied in specific areas.

e. Certification of outfall evaluation for unauthorized discharges. The discharge test and certification shall also be conducted for the presence of leachate and vehicle washwater.

f. Sediment and erosion control plan. Landfill and open dump owners shall provide for temporary stabilization of materials stockpiled for daily, intermediate, and final cover. Stabilization practices to consider include, but are not limited to, temporary seeding, mulching, and placing geotextiles on the inactive portions of the stockpiles. Landfill and open dump owners shall provide for temporary stabilization of inactive areas of the landfill or open dump which have an intermediate cover but no final cover. Landfill and open dump owners shall provide for temporary stabilization of any landfill or open dumping areas which have received a final cover until vegetation has established itself. Land application site owners shall also stabilize areas where waste application has been completed until vegetation has been established.

g. Comprehensive site compliance evaluation. Areas contributing to a storm water discharge associated with industrial activities at landfills, open dumps and land application sites shall be evaluated for evidence of, or the potential for, pollutants entering the drainage system.

E. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart B (2007), the numeric limitations in Table 190-1 apply to contaminated storm water discharges from municipal solid waste landfills (MSWLFs) that have not been closed in accordance with 40 CFR 258.60 (2006), and contaminated storm water discharges from those landfills that are subject to the provisions of 40 CFR Part 257 (2006) (these include CDD landfills (also known as C&D landfills), and industrial landfills) except for discharges from any of the facilities described in subdivisions 1 through 4 of this subsection:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N (2007) as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

3. Landfills operated in conjunction with centralized waste treatment (CWT) facilities subject to 40 CFR Part 437 (2007) so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 190-1.
Sector L – Numeric Effluent Limitations.

| Parameter | Effluent Limitations | |
|---|---|---|
| | Maximum Daily | Maximum Monthly Average |
| Landfills (Industrial Activity Code "LF") that are Subject to the Requirements of 40 CFR Part 445 Subpart B (2007). | | |
| Biochemical Oxygen Demand ($BOD_5$) | 140 mg/L | 37 mg/L |
| Total Suspended Solids (TSS) | 88 mg/L | 27 mg/L |
| Ammonia | 10 mg/L | 4.9 mg/L |
| Alpha Terpineol | 0.033 mg/L | 0.016 mg/L |
| Benzoic Acid | 0.12 mg/L | 0.071 mg/L |
| p-Cresol | 0.025 mg/L | 0.014 mg/L |
| Phenol | 0.026 mg/L | 0.015 mg/L |
| Zinc (Total) | 0.20 mg/L | 0.11 mg/L |
| pH | Within the range of 6.0 - 9.0 s.u. | |

F. Benchmark monitoring and reporting requirements. Landfill/land application/open dump sites are required to monitor their storm water discharges for the pollutants of concern listed in Table 190-2. These benchmark monitoring cutoff concentrations apply to storm water discharges

associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table 190-1.

Table 190-2.
Sector L – Benchmark Monitoring Requirements.

| Pollutants of Concern | Benchmark Concentration |
|---|---|
| Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF"). | |
| Total Suspended Solids (TSS) | 100 mg/L |
| Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF"), except MSWLF Areas Closed in Accordance with the Requirements of the ~~Virginia~~ Solid Waste Management ~~Regulation, 9VAC20-80~~ Regulations, 9VAC20-81 | |
| Total Recoverable Iron | 1.0 mg/L |

VA.R. Doc. No. R11-2887; Filed August 8, 2011, 3:05 p.m.

## Final Regulation

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

Title of Regulation: **9VAC25-71. Regulations Governing the Discharge of Sewage and Other Wastes from Boats (amending 9VAC25-71-60).**

Statutory Authority: § 62.1-44.33 of the Code of Virginia and § 312 of the Clean Water Act.

Effective Date: September 28, 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:

*Pursuant to Chapter 220 of the 2011 Acts of Assembly, the amendment provides additional options for boats and vessels to prevent sewage from being discharged while in a no discharge zone.*

**9VAC25-71-60. No discharge zones.**

The following requirements apply in designated ~~No Discharge Zones~~ no discharge zones:

1. All discharge of sewage, whether treated or not, and other wastes from all vessels into designated no discharge zones is prohibited. A listing of designated no discharge zones within the state appears at 9VAC25-71-70.

2. Vessels without installed toilets shall dispose of any collected sewage from portable toilets or other containment devices at facilities approved by the Virginia Department of Health for collection of sewage wastes, or otherwise dispose of sewage in a manner that complies with state law.

3. Vessels with installed toilets shall have a marine sanitation device to allow sewage holding capacity unless the toilets are rendered inoperable.

4. Houseboats having installed toilets shall have a holding tank with the capability of collecting and holding sewage and disposing of collected sewage at a pump-out facility or other facility approved by the Virginia Department of Health for collection of sewage wastes; if a houseboat lacks such ~~capability, the installed toilet shall be removed~~ tank, the sanitation device shall meet the requirements of subdivision 5 of this subsection.

5. Y-valves, macerator pump valves, discharge conveyances, or any other through-hull fitting valves capable of allowing a discharge of sewage from marine sanitation devices shall be secured in the closed position while in a no discharge zone by ~~a device that is not readily removable, including, but not limited to, a numbered container seal, such that through-hull sewage discharge capability is rendered inoperable~~ use of a padlock, nonreleasable wire tie, or removal of the y-valve handle. The method chosen shall present a physical barrier to the use of the y-valve or toilet.

6. Every owner or operator of a marina within a designated ~~No Discharge Zone~~ no discharge zone shall notify boat patrons leasing slips of the sewage discharge restriction in the ~~No Discharge Zone~~ no discharge zone. As a minimum, notification shall consist of ~~No Discharge Zone~~ no discharge zone information in the slip rental contract and a sign indicating the area is a designated ~~No Discharge Zone~~ no discharge zone.

VA.R. Doc. No. R11-2868; Filed August 8, 2011, 3:10 p.m.

## Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 b of the Code of Virginia, which excludes regulations that are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 1313(e) of the Clean Water Act.

Effective Date: September 28, 2011.

Agency Contact: John Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4312, or email john.kennedy@deq.virginia.gov.

Background: At its April 27, 2009, meeting, the State Water Control Board approved amendments to the Water Quality Management Planning Regulation (9VAC25-720) that increased nutrient waste load allocations for Merck, Inc., a discharger in the Potomac-Shenandoah basin. The approved increases were as follows:

- Total Nitrogen increase from 14,619 lbs/yr to 43,835 lbs/yr

- Total Phosphorus increase from 1,096 lbs/yr to 4,384 lbs/yr

In June 2009 the Chesapeake Bay Foundation and Virginia Waterman's Association filed an appeal with the Richmond Circuit Court contesting this action. The parties involved have agreed to settle the case according to the terms set out in a Consent Decree entered with the court on April 27, 2011. Most notable among the terms of the decree was an order by the court that provides that "The Board shall forthwith amend its Water Quality Management Planning Regulation, 9 VAC 25-720-50, as shown in Exhibit A."

The amended waste load allocations in Exhibit A of the decree are the same as the revisions approved by the State Water Control Board on April 27, 2009. In addition, Exhibit A modified the footnote that accompanies the Merck allocations.

Summary:

*According to a judicial consent decree entered April 27, 2011, in the Richmond Circuit Court, the amendments revise the nutrient waste load allocations for Merck, Inc. (VPDES VA0002178) by increasing discharges of total nitrogen to 43,835 lbs/yr and of total phosphorus to 4,384 lbs/yr. Additionally, amendments to footnote 10 detail Merck's responsibilities for implementation and possible future actions under the Chesapeake Bay Total Maximum Daily Load approved by the Environmental Protection Agency in December 2010.*

**9VAC25-720-50. Potomac-Shenandoah River Basin.**

A. Total Maximum Daily Load (TMDLs).

| TMDL # | Stream Name | TMDL Title | City/County | WBID | Pollutant | WLA | Units |
|---|---|---|---|---|---|---|---|
| 1. | Muddy Creek | Nitrate TMDL Development for Muddy Creek/Dry River, Virginia | Rockingham | B21R | Nitrate | 49,389.00 | LB/YR |
| 2. | Blacks Run | TMDL Development for Blacks Run and Cooks Creek | Rockingham | B25R | Sediment | 32,844.00 | LB/YR |
| 3. | Cooks Creek | TMDL Development for Blacks Run and Cooks Creek | Rockingham | B25R | Sediment | 69,301.00 | LB/YR |
| 4. | Cooks Creek | TMDL Development for Blacks Run and Cooks Creek | Rockingham | B25R | Phosphorus | 0 | LB/YR |
| 5. | Muddy Creek | TMDL Development for Muddy Creek and Holmans Creek, Virginia | Rockingham | B22R | Sediment | 286,939.00 | LB/YR |
| 6. | Muddy Creek | TMDL Development for Muddy Creek and Holmans Creek, Virginia | Rockingham | B22R | Phosphorus | 38.00 | LB/YR |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 7. | Holmans Creek | TMDL Development for Muddy Creek and Holmans Creek, Virginia | Rockingham/ Shenandoah | B45R | Sediment | 78,141.00 | LB/YR |
| 8. | Mill Creek | TMDL Development for Mill Creek and Pleasant Run | Rockingham | B29R | Sediment | 276.00 | LB/YR |
| 9. | Mill Creek | TMDL Development for Mill Creek and Pleasant Run | Rockingham | B29R | Phosphorus | 138.00 | LB/YR |
| 10. | Pleasant Run | TMDL Development for Mill Creek and Pleasant Run | Rockingham | B27R | Sediment | 0.00 | LB/YR |
| 11. | Pleasant Run | TMDL Development for Mill Creek and Pleasant Run | Rockingham | B27R | Phosphorus | 0.00 | LB/YR |
| 12. | Linville Creek | Total Maximum Daily Load Development for Linville Creek: Bacteria and Benthic Impairments | Rockingham | B46R | Sediment | 5.50 | TONS/YR |
| 13. | Quail Run | Benthic TMDL for Quail Run | Rockingham | B35R | Ammonia | 7,185.00 | KG/YR |
| 14. | Quail Run | Benthic TMDL for Quail Run | Rockingham | B35R | Chlorine | 27.63 | KG/YR |
| 15. | Shenandoah River | Development of Shenandoah River PCB TMDL (South Fork and Main Stem) | Warren & Clarke | B41R B55R B57R B58R | PCBs | 179.38 | G/YR |
| 16. | Shenandoah River | Development of Shenandoah River PCB TMDL (North Fork) | Warren & Clarke | B51R | PCBs | 0.00 | G/YR |
| 17. | Shenandoah River | Development of Shenandoah River PCB TMDL (Main Stem) | Warren & Clarke | WV | PCBs | 179.38 | G/YR |
| 18. | Cockran Spring | Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins | Augusta | B10R | Organic Solids | 1,556.00 | LB/YR |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 19. | Lacey Spring | Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins | Rockingham | B47R | Organic Solids | 680.00 | LB/YR |
| 20. | Orndorff Spring | Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins | Shenandoah | B52R | Organic Solids | 103.00 | LB/YR |
| 21. | Toms Brook | Benthic TMDL for Toms Brook in Shenandoah County, Virginia | Shenandoah | B50R | Sediment | 8.1 | T/YR |
| 22. | Goose Creek | Benthic TMDLs for the Goose Creek Watershed | Loudoun, Fauquier | A08R | Sediment | 1,587 | T/YR |
| 23. | Little River | Benthic TMDLs for the Goose Creek Watershed | Loudoun | A08R | Sediment | 105 | T/YR |
| 24. | Christians Creek | Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA | Augusta | B14R | Sediment | 145 | T/YR |
| 25. | Moffett Creek | Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA | Augusta | B13R | Sediment | 0 | T/YR |
| 26. | Upper Middle River | Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA | Augusta | B10R | Sediment | 1.355 | T/YR |

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|---|---|---|---|---|---|---|---|
| 27. | Mossy Creek | Total Maximum Daily Load Development for Mossy Creek and Long Glade Run: Bacteria and General Standard (Benthic) Impairments | Rockingham | B19R | Sediment | 0.04 | T/YR |
| 28. | Smith Creek | Total Maximum Daily Load (TMDL) Development for Smith Creek | Rockingham, Shenandoah | B47R | Sediment | 353,867 | LB/YR |
| 29. | Abrams Creek | Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia | Frederick | B09R | Sediment | 478 | T/YR |
| 30. | Lower Opequon Creek | Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia | Frederick, Clarke | B09R | Sediment | 1,039 | T/YR |
| 31. | Mill Creek | Mill Creek Sediment TMDL for a Benthic Impairment, Shenandoah County, Virginia | Shenandoah | B48R | Sediment | 0.9 | T/YR |
| 32. | South Run | Benthic TMDL Development for South Run, Virginia | Fauquier | A19R | Phosphorus | 0.038 | T/YR |
| 33. | Lewis Creek | Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic) | Augusta | B12R | Sediment | 40 | T/YR |
| 34. | Lewis Creek | Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic) | Augusta | B12R | Lead | 0 | KG/YR |
| 35. | Lewis Creek | Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic) | Augusta | B12R | PAHs | 0 | KG/YR |

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|---|---|---|---|---|---|---|---|
| 36. | Bull Run | Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic) | Loudoun, Fairfax, and Prince William counties, and the Cities of Manassas and Manassas Park | A23R-01 | Sediment | 5,986.8 | T/TR |
| 37. | Popes Head Creek | Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic) | Fairfax County and Fairfax City | A23R-02 | Sediment | 1,594.2 | T/YR |
| 38. | Accotink Bay | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Fairfax | A15R | PCBs | 0.0992 | G/YR |
| 39. | Aquia Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Stafford | A28E | PCBs | 6.34 | G/YR |
| 40. | Belmont Bay/ Occoquan Bay | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Prince William | A25E | PCBs | 0.409 | G/YR |
| 41. | Chopawamsic Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Prince William | A26E | PCBs | 1.35 | G/YR |
| 42. | Coan River | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Northumberland | A34E | PCBs | 0 | G/YR |
| 43. | Dogue Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Fairfax | A14E | PCBs | 20.2 | G/YR |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 44. | Fourmile Run | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Arlington | A12E | PCBs | 11 | G/YR |
| 45. | Gunston Cove | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Fairfax | A15E | PCBs | 0.517 | G/YR |
| 46. | Hooff Run & Hunting Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Fairfax | A13E | PCBs | 36.8 | G/YR |
| 47. | Little Hunting Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Fairfax | A14E | PCBs | 10.1 | G/YR |
| 48. | Monroe Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Fairfax | A31E | PCBs | .0177 | G/YR |
| 49. | Neabsco Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Prince William | A25E | PCBs | 6.63 | G/YR |
| 50. | Occoquan River | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Prince William | A25E | PCBs | 2.86 | G/YR |
| 51. | Pohick Creek/Pohick Bay | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Fairfax | A16E | PCBs | 13.5 | G/YR |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 52. | Potomac Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Stafford | A29E | PCBs | 0.556 | G/YR |
| 53. | Potomac River, Fairview Beach | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | King George | A29E | PCBs | 0.0183 | G/YR |
| 54. | Powells Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Prince William | A26R | PCBs | 0.0675 | G/YR |
| 55. | Quantico Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | Prince William | A26R | PCBs | 0.742 | G/YR |
| 56. | Upper Machodoc Creek | PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries | King George | A30E | PCBs | 0.0883 | G/YR |
| 57. | Difficult Creek | Benthic TMDL Development for Difficult Run, Virginia | Fairfax | A11R | Sediment | 3,663.2 | T/YR |
| 58. | Abrams Creek | Opequon Watershed TMDLs for Benthic Impairments | Frederick and Clark | B09R | Sediment | 1039 | T/YR |
| 59. | Lower Opequon | Opequon Watershed TMDLs for Benthic Impairments | Frederick and Clark | B09R | Sediment | 1039 | T/YR |
| 60. | South River | Bacteria and Benthic Total Maximum Daily Load Development for South River | Augusta and Rockingham | B32R | Sediment | 619.4 | T/YR |
| 61. | South River | Bacteria and Benthic Total Maximum Daily Load Development for South River | Augusta and Rockingham | B32R | Phosphorus | 6,929.9 | KG/YR |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 62. | South River | Total Maximum Daily Load Development for Mercury in the South River, South Fork Shenandoah River, and Shenandoah River, Virginia | Augusta, Rockingham, Page, and Warren | B32R | Mercury | 112 | G/YR |
| 63. | South Fork Shenandoah River | Total Maximum Daily Load Development for Mercury in the South River, South Fork Shenandoah River, and Shenandoah River, Virginia | Augusta, Rockingham, Page, and Warren | B32R, B33R | Mercury | 112 | G/YR |
| 64. | Shenandoah River | Total Maximum Daily Load Development for Mercury in the South River, South Fork Shenandoah River, and Shenandoah River, Virginia | Augusta, Rockingham, Page, and Warren | B32R, B33R | Mercury | 112 | G/YR |
| 65. | Spout Run | Total Maximum Daily Load Development to Address Bacteria and Benthic Impairments in the Spout Run Watershed, Clarke County, Virginia | Clarke | B57R | Sediment | 7.44 | T/YR |
| 66. | West Strait Creek | Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek | Highland | B02R | Sediment | 0.02 | T/D |
| 67. | West Strait Creek | Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek | Highland | B02R | CBOD5 | 11 | KG/D |
| 68. | West Strait Creek | Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek | Highland | B02R | Dry season (June – December) ammonia as N | 1.6 | KG/D |
| 69. | West Strait Creek | Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek | Highland | B02R | Wet season (January – May) ammonia as N | 2.9 | KG/D |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 70. | Strait Creek | Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek | Highland | B02R | Sediment | 0.08 | T/D |

B. Non-TMDL waste load allocations.

| Water Body | Permit No. | Facility Name | Outfall No. | Receiving Stream | River Mile | Parameter Description | WLA | Units WLA |
|---|---|---|---|---|---|---|---|---|
| VAV-B02R | VA0023281 | Monterey STP | 001 | West Strait Creek | 3.85 | $CBOD_5$ | 11.4 | KG/D |
| VAV-B08R | VA0065552 | Opequon Water Reclamation Facility | 001 | Opequon Creek | 32.66 | $BOD_5$, JUN-NOV | 207 | KG/D |
| | | AKA Winchester - Frederick Regional | | | | $CBOD_5$, DEC-MAY | 1514 | KG/D |
| VAV-B14R | VA0025291 | Fishersville Regional STP | 001 | Christians Creek | 12.36 | $BOD_5$ | 182 | KG/D |
| VAV-B23R | VA0060640 | North River WWTF | 001 | North River | 15.01 | $CBOD_5$, JAN-MAY | 700 | KG/D |
| | 7.23.04 | AKA Harrisonburg - Rockingham Reg. Sewer Auth. | | | | $CBOD_5$, JUN-DEC | 800 | KG/D |
| | | | | | | TKN, JUN-DEC | 420 | KG/D |
| | | | | | | TKN, JAN-MAY | 850 | KG/D |
| VAV-B32R | VA0002160 | INVISTA - Waynesboro Formerly Dupont - Waynesboro | 001 | South River | 25.3 | $BOD_5$ | 272 | KG/D |
| VAV-B32R | VA0025151 | Waynesboro STP | 001 | South River | 23.54 | $CBOD_5$ | 227 | KG/D |
| | | | | | | $CBOD_5$, JUN-OCT | 113.6 | KG/D |
| VAV-B32R | VA0028037 | Skyline Swannanoa STP | 001 | South River UT | 2.96 | $BOD_5$ | 8.5 | KG/D |
| VAV-B35R | VA0024732 | Massanutten Public Service STP | 001 | Quail Run | 5.07 | $BOD_5$ | 75.7 | KG/D |
| VAV-B37R | VA0002178 | Merck & Company | 001 | S.F. Shenandoah River | 88.09 | $BOD_5$ | 1570 | KG/D |
| | | | | | | AMMONIA, AS N | 645.9 | KG/D |
| VAV-B49R | VA0028380 | Stoney Creek Sanitary District STP | 001 | Stoney Creek | 19.87 | $BOD_5$, JUN-NOV | 29.5 | KG/D |
| VAV-B53R | VA0020982 | Middletown STP | 001 | Meadow Brook | 2.19 | $CBOD_5$ | 24.0 | KG/D |
| VAV-B58R | VA0020532 | Berryville STP | 001 | Shenandoah River | 24.23 | $CBOD_5$ | 42.6 | KG/D |

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

| Virginia Waterbody ID | Discharger Name | VPDES Permit No. | Total Nitrogen (TN) Waste Load Allocation (lbs/yr) | Total Phosphorus (TP) Waste Load Allocation (lbs/yr) |
|---|---|---|---|---|
| B37R | Coors Brewing Company | VA0073245 | 54,820 | 4,112 |
| B14R | Fishersville Regional STP | VA0025291 | 48,729 | 3,655 |
| B32R | INVISTA - Waynesboro (Outfall 101) | VA0002160 | 78,941 | 1,009 |
| B39R | Luray STP | VA0062642 | 19,492 | 1,462 |
| B35R | Massanutten PSA STP | VA0024732 | 18,273 | 1,371 |
| B37R | Merck - Stonewall WWTP (Outfall 101) (10) | VA0002178 | ~~14,619~~ 43,835 | ~~1,096~~ 4,384 |
| B12R | Middle River Regional STP | VA0064793 | 82,839 | 6,213 |
| B23R | North River WWTF (2) | VA0060640 | 253,391 | 19,004 |
| B22R | VA Poultry Growers - Hinton | VA0002313 | 27,410 | 1,371 |
| B38R | Pilgrims Pride - Alma | VA0001961 | 18,273 | 914 |
| B31R | Stuarts Draft WWTP | VA0066877 | 48,729 | 3,655 |
| B32R | Waynesboro STP | VA0025151 | 48,729 | 3,655 |
| B23R | Weyers Cave STP | VA0022349 | 6,091 | 457 |
| B58R | Berryville STP | VA0020532 | 8,528 | 640 |
| B55R | Front Royal STP | VA0062812 | 48,729 | 3,655 |
| B49R | Georges Chicken LLC | VA0077402 | 31,065 | 1,553 |
| B48R | Mt. Jackson STP (3) | VA0026441 | 8,528 | 640 |
| B45R | New Market STP | VA0022853 | 6,091 | 457 |
| B45R | North Fork (SIL) WWTF | VA0090263 | 23,390 | 1,754 |
| B49R | Stoney Creek SD STP | VA0028380 | 7,309 | 548 |
| B50R | North Fork Regional WWTP (1) | VA0090328 | 9,137 | 685 |
| B51R | Strasburg STP | VA0020311 | 11,939 | 895 |
| B50R | Woodstock STP | VA0026468 | 24,364 | 1,827 |
| A06R | Basham Simms WWTF (4) | VA0022802 | 18,273 | 1,371 |
| A09R | Broad Run WRF (5) | VA0091383 | 134,005 | 3,350 |

| | | | | |
|---|---|---|---|---|
| A08R | Leesburg WPCF | MD0066184 | 121,822 | 9,137 |
| A06R | Round Hill Town WWTF | VA0026212 | 9,137 | 685 |
| A25R | DSC - Section 1 WWTF (6) | VA0024724 | 42,029 | 2,522 |
| A25R | DSC - Section 8 WWTF (7) | VA0024678 | 42,029 | 2,522 |
| A25E | H L Mooney WWTF | VA0025101 | 219,280 | 13,157 |
| A22R | UOSA - Centreville | VA0024988 | 1,315,682 | 16,446 |
| A19R | Vint Hill WWTF (8) | VA0020460 | 8,680 | 868 |
| B08R | Opequon WRF (11) | VA0065552 | 121,851 | 11,512 |
| B08R | Parkins Mills STP (9) | VA0075191 | 60,911 | 4,568 |
| A13E | Alexandria SA WWTF | VA0025160 | 493,381 | 29,603 |
| A12E | Arlington County Water PCF | VA0025143 | 365,467 | 21,928 |
| A16R | Noman M Cole Jr PCF | VA0025364 | 612,158 | 36,729 |
| A12R | Blue Plains (VA Share) | DC0021199 | 581,458 | 26,166 |
| A26R | Quantico WWTF | VA0028363 | 20,101 | 1,206 |
| A28R | Aquia WWTF | VA0060968 | 73,093 | 4,386 |
| A31E | Colonial Beach STP | VA0026409 | 18,273 | 1,827 |
| A30E | Dahlgren WWTF | VA0026514 | 9,137 | 914 |
| A29E | Fairview Beach | MD0056464 | 1,827 | 183 |
| A30E | US NSWC-Dahlgren WWTF | VA0021067 | 6,578 | 658 |
| A31R | Purkins Corner STP | VA0070106 | 1,096 | 110 |
| | TOTALS: | | 5,156,169 | 246,635 |

NOTE: (1) Shenandoah Co. - North Fork Regional WWTP waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2010, the WLAs will be deleted and facility removed from Significant Discharger List.

(2) Harrisonburg-Rockingham Regional S.A.-North River STP: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 194,916 lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.

(3) Mount Jackson STP: waste load allocations (WLAs) based on a design flow capacity of 0.7 million gallons per day (MGD). If plant is not certified to operate at 0.7 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(4) Purcellville-Basham Simms STP: waste load allocations (WLAs) based on a design flow capacity of 1.5 million gallons per day (MGD). If plant is not certified to operate at 1.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 12,182 lbs/yr; TP = 914lbs/yr, based on a design flow capacity of 1.0 MGD.

(5) Loudoun Co. S.A.-Broad Run WRF: waste load allocations (WLAs) based on a design flow capacity of 11.0 million gallons per day (MGD). If plant is not certified to operate at 11.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 121,822 lbs/yr; TP = 3,046 lbs/yr, based on a design flow capacity of 10.0 MGD.

(6) Dale Service Corp.-Section 1 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(7) Dale Service Corp.-Section 8 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(8) Fauquier Co. W&SA-Vint Hill STP: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 5,482 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(9) Parkins Mill STP: waste load allocations (WLAs) based on a design flow capacity of 5.0 million gallons per day (MGD). If plant is not certified to operate at 5.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.

(10) Merck-Stonewall – (a) ~~on January 1, 2011, the following waste load allocations (WLAs) are effective and supersede the existing WLAs: total nitrogen of 43,835 lbs/yr and total phosphorus of 4,384 lbs/yr; (b)~~ these waste load allocations will be ~~reviewed and possibly reduced based on~~ subject to further consideration, consistent with the Chesapeake Bay TMDL, as it may be amended, and possible reduction upon "full-scale" results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility consistent with the level of effort by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; ~~(c)~~ (b) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and ~~(d)~~ (c) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause ~~(c)~~ (b).

(11) Opequon WRF: (a) the TN WLA is derived based on 3 mg/l of TN and 12.6 MGD; (b) the TN WLA includes an additional allocation for TN in the amount of 6,729 lbs/yr by means of a landfill leachate consolidation and treatment project; and (c) the TP WLA is derived based on 0.3 mg/l of TP and 12.6 MGD.

VA.R. Doc. No. R11-2740; Filed August 10, 2011, 8:26 a.m.

## Final Regulation

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

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act.

Effective Date: October 31, 2011.

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

Summary:

*This final action readopts and amends a Virginia Pollutant Discharge Elimination System (VPDES) general permit for discharges from pesticides applied directly to surface waters to control pests or applied to control pests that are present in or over, including near, surface waters. The general permit regulation is needed in order to comply*

*with court-ordered requirements for the Environmental Protection Agency and states to issue National Pollutant Discharge Elimination System permits for both chemical pesticide applications that leave a residue or excess in water and all biological pesticide applications that are made in or over, including near, waters of the United States.*

*This regulation was initially adopted by the State Water Control Board on February 4, 2011, with an effective date of April 10, 2011, and published in the Virginia Register on February 28, 2011. The effective date was suspended on April 4, 2011. The State Water Control Board amended the regulation to revise the effective and expiration dates of the general permit and readopted the regulation on April 14, 2011.*

*At its meeting on April 14, 2011, the board (i) amended and readopted the VPDES General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (9VAC25-800) to change the effective date to October 31, 2011, and the expiration date to December 31, 2013; (ii) affirmed that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act; (iii) directed the Director of the Department of Environmental Quality to suspend the effective date of the general permit regulation should the 6th Circuit Court of Appeals further delay implementation of its decision; and (iv) directed the director to withdraw the general permit regulation if congressional action repeals or negates authority for the rule.*

## CHAPTER 800
## VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT FOR DISCHARGES RESULTING FROM THE APPLICATION OF PESTICIDES TO SURFACE WATERS

### 9VAC25-800-10. Definitions.

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

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

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

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

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

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

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

1. Distressed or dead juvenile and small fishes;

2. Washed up or floating fish;

3. Fish swimming abnormally or erratically;

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

5. Fish that are listless or nonresponsive to disturbance;

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

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

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

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

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

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

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

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

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

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

2. "Biochemical pesticide" means a pesticide that:

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

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

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

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

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

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

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

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

1. Significant risk to human health;

2. Significant economic loss; or

3. Significant risk to:

a. Endangered species;

b. Threatened species;

c. Beneficial organisms; or

d. The environment.

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

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

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

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

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

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

economical means, and with the least possible hazard to people, property, and the environment.

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

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

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

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

3. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Virginia Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.

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

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

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

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

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

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

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

"Pest" means any deleterious organism that is:

1. Any vertebrate animal other than man;

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

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

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

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

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

"Pesticide" means:

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

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

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

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

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

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

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

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

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

"Surface waters" means:

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

2. All interstate waters, including interstate wetlands;

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

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

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

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

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

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

6. The territorial sea; and

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

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

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

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

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

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

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

"VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.

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

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

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

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

C. This general VPDES permit will become effective on [ ~~April 10, 2011~~ October 31, 2011 ], and expire on [ ~~June 30, 2013~~ December 31, 2013 ].

**9VAC25-800-30. Authorization to discharge.**

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

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

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

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

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

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

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

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

Table 1. Annual Treatment Area Thresholds

| Pesticide Use | Annual Threshold |
|---|---|
| Mosquitoes and Other Flying Insect Pests | ~~640~~ 6400 acres of treatment area |
| ~~Aquatic Weed and Algae~~ Weed, Algae, and Pathogen Control: | |
| - In Water | ~~20~~ 80 acres of treatment area[1] |
| - At Water's Edge | 20 linear miles of treatment area at water's edge[2] |
| ~~Aquatic~~ Animal Pest Control: | |
| - In Water | ~~20~~ 80 acres of treatment area[1] |
| - At Water's Edge | 20 linear miles of treatment area at water's edge[2] |
| Forest Canopy Pest Control | ~~640~~ 6400 acres of treatment area |

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

~~[2]Calculation~~ [2]Calculations include the linear extent of the application made along the water's edge adjacent to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity ~~and each side of a linear water body as a separate activity~~ or area only once. For example, treating both sides of a 10-mile ditch twice a year is equal to ~~20~~ 10 miles of water treatment area.

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

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

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

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

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

E. Discharge authorization date. Operators are not required to submit a registration statement and are authorized to discharge under this permit immediately upon the permit's effective date of [ ~~April 10, 2011~~ October 31, 2011 ].

F. Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general VPDES permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation. For example, this permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling.

G. Continuation of permit coverage.

1. This general permit shall expire on [ ~~June 30, 2013~~ December 31, 2013 ], except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.

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

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

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

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

c. Issue an individual permit with appropriate conditions; or

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

**9VAC25-800-40. Registration statement.**

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

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

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

**9VAC25-800-60. General permit.**

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

General Permit No.: ~~VAGxx~~ VAG87
Effective Date: [ ~~April 10, 2011~~ October 31, 2011 ]
Expiration Date: [ ~~June 30, 2013~~ December 31, 2013 ]

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

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

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, operators that apply pesticides that result in a discharge to surface waters are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements, and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth herein. Coverage under this general VPDES permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation, including the pesticide product label.

Part I
Effluent Limitations, Monitoring Requirements, and Special Conditions

A. Effluent limitations.

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

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

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

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

(3) All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over non-target areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are not required for separate water storage tanks used to fill pesticide application equipment by gravity systems when the fill spout, tube, or pipe is not allowed to contact or fall below the water level of the application equipment being filled, and no other possible means of establishing a back siphon or backflow exists.

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

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

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

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

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target mosquito or flying insect pests;

(ii) Establish densities for larval and adult mosquito or flying insect pest populations to serve as action thresholds for implementing pest management strategies;

(iii) Identify known breeding sites for source reduction, larval control program, and habitat management; and

(iv) Analyze existing surveillance data to identify new or unidentified sources of mosquito or flying insect pest problems as well as sites that have recurring pest problems.

(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control mosquitoes or other flying insect pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage mosquitoes or flying insect pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct larval or adult surveillance or assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects prior to each pesticide application to assess the pest management area and to determine when action thresholds are met that necessitate the need for pest management;

(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area prior to each pesticide application to identify whether existing environmental conditions support development of pest populations and are suitable for control activities;

(iii) Reduce the impact on the environment and on nontarget organisms by applying the pesticide only when the action threshold has been met;

(iv) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when larval action thresholds have been met; and

(v) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when adult action thresholds have been met.

(2) ~~Aquatic weed and~~ Weed, algae, and pathogen control. This subpart applies to discharges resulting from the application of pesticides to control invasive or other ~~aquatic (emergent, floating, or submerged)~~ nuisance weeds ~~and~~, algae, and pathogens in surface waters. ~~Aquatic nuisance weeds include, but are not limited to, cattails, hydrilla, and watermeal.~~

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target weed and algae;

(ii) Identify areas with ~~aquatic~~ weed ~~or~~, algae, or pathogen problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

(iii) Identify possible factors causing or contributing to the weed or algae problem (e.g., nutrients, invasive species, etc); and

(iv) Establish past or present ~~aquatic~~ weed ~~or~~, algae, or pathogen densities to serve as action thresholds for implementing pest management strategies.

(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control ~~aquatic~~ weeds ~~or~~, algae, or pathogens. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage ~~aquatic~~ weeds ~~or~~, algae, or pathogens and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each pesticide application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and

(ii) Reduce the impact on the environment and nontarget organisms by applying the pesticide only when the action threshold has been met.

(3) ~~Aquatic animal~~ Animal pest control. This subpart applies to discharges resulting from the application of pesticides to control ~~aquatic~~ invasive or other ~~aquatic~~ animal pests in surface waters. ~~Aquatic animal pests in this use category include, but are not limited to, fish (e.g., snakehead) and zebra mussels.~~

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a

discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target ~~aquatic~~ animal pests;

(ii) Identify areas with ~~aquatic~~ animal pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

(iii) Identify possible factors causing or contributing to the problem; and

(iv) Establish past or present ~~aquatic~~ animal pest densities to serve as action thresholds for implementing pest management strategies.

(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, the operator shall select and implement, for each pest management area, efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control ~~aquatic~~ animal pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Biological control; and

(v) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage ~~aquatic~~ animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and

(ii) Reduce the impact on the environment and nontarget organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold has been met.

(4) Forest canopy pest control. This subpart applies to discharges resulting from the ~~aerial~~ application of pesticides to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively a portion of the pesticide unavoidably will be applied over and deposited to surface water.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Establish target pest densities to serve as action thresholds for implementing pest management strategies; and

(iii) Identify current distribution of the target pest and assess potential distribution in the absence of control measures.

(b) Pest management. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective means of pest management that minimize discharges resulting from application of pesticides to control forestry pests. In developing these pest management strategies, the operator shall evaluate the following management options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage forestry pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the pest action threshold is met that necessitates the need for pest management;

(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to identify conditions that support target pest development and are conducive for treatment activities;

(iii) Reduce the impact on the environment and nontarget organisms by evaluating the restrictions, application

timing, and application methods in addition to applying the pesticide only when the action thresholds have been met; and

(iv) Evaluate using pesticides against the most susceptible developmental stage.

2. Water quality-based effluent limitations. The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards.

If at any time the operator become aware, or the board determines, that the operator's discharge of pollutants causes or contributes to an excursion of applicable water quality standards, corrective action must be taken as required in Part I D 1 of this permit.

B. Monitoring requirements.

1. Monitoring requirements for pesticide applicators.

a. The amount of pesticide applied shall be monitored to ensure that the lowest effective amount is used to control the pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label.

b. Pesticide application activities shall be monitored to ensure that regular maintenance activities are being performed and that application equipment is in proper operating condition to reduce the potential for leaks, spills, or other unintended discharge of pesticides to surface waters.

c. Pesticide application activities shall also be monitored to ensure that the application equipment is in proper operating condition by adhering to any manufacturer's conditions and industry practices and by calibrating, cleaning, and repairing equipment on a regular basis.

2. Visual monitoring assessment requirements for all operators. All operators covered under this permit must conduct a visual monitoring assessment (i.e., spot checks in the area to and around where pesticides are applied) for possible and observable adverse incidents caused by application of pesticides, including but not limited to the unanticipated death or distress of nontarget organisms and disruption of wildlife habitat, recreational, or municipal water use.

A visual monitoring assessment is only required during the pesticide application when feasibility and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances. Visual monitoring assessments of the application site must be performed:

a. During any post-application surveillance or efficacy check that the operator conducts, if surveillance or an efficacy check is conducted.

b. During any pesticide application, when considerations for safety and feasibility allow.

C. Pesticide discharge management plan (PDMP). Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must prepare a PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration of coverage under this general permit, even if discharges subsequently fall below the annual application threshold levels. The operator applying pesticides shall develop a PDMP consistent with the deadline outlined in Table I-1 below.

Table I-1. Pesticide Discharge Management Plan Deadline

| Category | PDMP Deadline |
|---|---|
| Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year. | Prior to first pesticide application covered under this permit. |
| Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year. | Prior to exceeding an annual treatment area threshold. |
| Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold. | No later than 90 days after responding to declared pest emergency situation. |

The PDMP does not contain effluent limitations; the limitations are contained in Parts I A 1 and I A 2 of the permit. The PDMP documents how the operator will implement the effluent limitations in Parts I A 1 and I A 2 of the permit, including the evaluation and selection of control measures to meet those effluent limitations and minimize discharges. In the PDMP, the operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If other documents are being relied upon by the operator to describe how compliance with the effluent limitations in this permit will be achieved, such as a pre-existing integrated pest management (IPM)

plan, a copy of any portions of any documents that are being used to document the implementation of the effluent limitations shall be attached to the PDMP. The control measures implemented must be documented and the documentation must be kept up to date.

1. Contents of the pesticide discharge management plan. The PDMP must include the following elements:

a. Pesticide discharge management team.

b. Pest management area description.

c. Control measure description.

d. Schedules and procedures.

(1) Pertaining to control measures used to comply with the effluent limitations in Part I A 1:

(a) Application rate and frequency procedures.

(b) Spill prevention procedures.

(c) Pesticide application equipment procedures.

(d) Pest surveillance procedures.

(e) Assessing environmental conditions procedures.

(2) Pertaining to other actions necessary to minimize discharges:

(a) Spill response procedures.

(b) Adverse incident response procedures.

(c) Pesticide monitoring schedules and procedures.

e. Documentation to support eligibility considerations under other federal laws.

f. Signature requirements.

2. PDMP team. The operator shall identify all the persons (by name and contact information) who compose the team as well as each person's individual responsibilities, including:

a. Persons responsible for managing pests in relation to the pest management area;

b. Persons responsible for developing and revising the PDMP;

c. Persons responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements; and

d. Persons responsible for pesticide applications.

3. Pest management area description. The operator shall document the following:

a. Pest problem description. A description of the pest problem at the pest management area shall be documented to include identification of the target pests, source of the pest problem, and source of data used to identify the problem in Parts I A 1 b (1), I A 1 b (2), I A 1 b (3), and I A 1 b (4).

b. Action thresholds. The action thresholds for the pest management area shall be described, including a description of how they were determined.

c. General service area map. The plan shall include a general service area map that identifies the geographic boundaries of the service area to which the plan applies and location of major surface waters.

4. Control measure description. The operator shall document an evaluation of control measures for the pest management area. The documentation shall include the control measures that will be implemented to comply with the effluent limitations required in Parts I A 1 and I A 2. The operator shall include in the description the active ingredients evaluated.

5. Schedules and procedures. The operator shall document the following schedules and procedures in the PDMP:

a. Pertaining to control measures used to comply with the effluent limitations in Part I A 1. The following must be documented in the PDMP:

(1) Application rate and frequency (see Part I A 1 a (1)). Procedures for determining the lowest effective amount of pesticide product per application (without exceeding the maximum allowable rate of the product label) and the optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance.

(2) Spill prevention (see Part I A 1 a (2)). Procedures and schedule of maintenance activities for preventing spills and leaks of pesticides associated with the application of pesticides covered under this permit.

(3) Pesticide application equipment (see Part I A 1 a (3)). Schedules and procedures for maintaining the pesticide application equipment in proper operating condition, including calibrating, cleaning, and repairing the equipment in accordance with 2VAC20-20-170.

(4) Pest surveillance (see Parts I A 1 b (1) (c), I A 1 b (2) (c), I A 1 b (3) (c), and I A 1 b (4) (c)). Procedures and methods for conducting preapplication pest surveillance.

(5) Assessing environmental condition (Parts I A 1 b (1) (c) (ii) and I A 1 b (4) (c) (ii)). Procedures and methods for assessing environmental conditions in the treatment area.

b. Pertaining to other actions necessary to minimize discharges resulting from pesticide application. The following must be documented in the PDMP:

(1) Spill response procedures. At a minimum the PDMP must have:

(a) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

(b) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

(2) Adverse incident response procedures. At a minimum the PDMP must have:

(a) Procedures for responding to any incident resulting from pesticide applications; and

(b) Procedures for notification of the incident, both internal to the operator's agency or organization and external. Contact information for DEQ, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

(3) Pesticide monitoring schedules and procedures. The operator shall document procedures for monitoring consistent with the requirements in Part I B including:

(a) The process for determining the location of any monitoring;

(b) A schedule for monitoring;

(c) The person or position responsible for conducting monitoring; and

(d) Procedures for documenting any observed impacts to nontarget organisms resulting from your pesticide discharge.

6. Signature requirements.

a. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in this subsection or by a duly authorized representative of that person described in Part I C 6 b.

(1) For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency.

b. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in Part I C 6 a;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(3) The signed and dated written authorization is included in the PDMP. A copy of this authorization must be submitted to the department if requested.

c. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

d. Any person signing documents in accordance with Part I C 6 a or Part I C 6 b must include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering

the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

7. PDMP modifications and availability.

a. PDMP modifications. The operator shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part I D 1 a, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with Part I C 6.

The operator shall review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area.

b. PDMP availability. The operator shall retain a copy of the current PDMP, along with all supporting maps and documents. The operator shall make the PDMP and supporting information available to the department upon request. The PDMP is subject to the provisions and exclusions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

D. Special conditions.

1. Corrective action.

a. Situations requiring revision of control measures. If any of the following situations occur, the operator shall review and, as necessary, revise the evaluation and selection of control measures to ensure that the situation is eliminated and will not be repeated in the future:

(1) An unauthorized release or discharge associated with the application of pesticides occurs (e.g., spill, leak, or discharge not authorized by this or another VPDES permit);

(2) The operator becomes aware, or the board concludes, that the control measures are not adequate or sufficient for the discharge of pollutants to meet applicable water quality standards;

(3) Any monitoring activities indicate that the operator failed to meet the requirements of Part 1 A 1 a of this permit;

(4) An inspection or evaluation of the operator's activities by DEQ, VDACS, EPA, or a locality reveals that modifications to the control measures are necessary to meet the non-numeric effluent limits in this permit, or

(5) The operator observes (e.g., during visual monitoring that is required in Part I B 2) or is otherwise made aware of an adverse incident.

b. Corrective action deadlines. If the operator determines that changes to the control measures are necessary to eliminate any situation identified in Part I D 1 a, such changes must be made before the next pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.

c. Corrective action documentation. For situations identified in Part I D 1 a, other than for adverse incidents (see Part I D 2), or reportable spills or leaks (see Part I D 3), the operator shall document the situation triggering corrective action and the planned corrective action within five days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:

(1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;

(2) Brief description of the situation;

(3) Date the problem was identified;

(4) Brief description of how the problem was identified, how the operator learned of the situation, and the date the operator learned of the situation;

(5) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and

(6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.

2. Adverse incident documentation and reporting.

a. Twenty-four hour adverse incident notification. If the operator observes or is otherwise made aware of an adverse incident that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the department (see Part I D 5). This notification must be made by telephone within 24 hours of when the operator becomes aware of the adverse incident and must include at least the following information:

(1) The caller's name and telephone number;

(2) Operator's name and mailing address;

(3) The name and telephone number of a contact person if different than the person providing the 24-hour notice;

(4) How and when the operator became aware of the adverse incident;

(5) Description of the location of the adverse incident;

(6) Description of the adverse incident identified and the EPA pesticide registration number for each product that was applied in the area of the adverse incident; and

(7) Description of any steps the operator has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If the operator is unable to notify the department within 24 hours, notification shall be made as soon as possible and the rationale for why the notification was not possible within 24 hours shall be provided.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA § 6(a)(2) and its implementing regulations at 40 CFR Part 159.

b. Reporting of adverse incidents is not required under this permit in the following situations:

(1) The operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application.

(2) The operator has been notified in writing by the board that the reporting requirement has been waived for this incident or category of incidents.

(3) The operator receives notification of an adverse incident but that notification and supporting information are clearly erroneous.

(4) An adverse incident occurs to pests that are similar in kind to pests identified as potential targets.

c. Five-day adverse incident written report. Within five days of a reportable adverse incident pursuant to Part I D 2 a, the operator shall provide a written report of the adverse incident to the appropriate DEQ regional office at the address listed in Part I D 5. The adverse incident report must include at least the following information:

(1) Information required to be provided in Part I D 2 a;

(2) Date and time the operator contacted DEQ notifying the department of the adverse incident, and whom the operator spoke with at DEQ, and any instructions the operator received from DEQ;

(3) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);

(4) A description of the circumstances of the adverse incident including species affected, estimated number of individuals, and approximate size of dead or distressed organisms;

(5) Magnitude and scope of the effected area (e.g., aquatic square area or total stream distance affected);

(6) Pesticide application rate, intended use site, method of application, and name of pesticide product, description of pesticide ingredients, and EPA registration number;

(7) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);

(8) If laboratory tests were performed, indicate what tests were performed, and when, and provide a summary of the test results within five days after they become available;

(9) If applicable, explain why it is believed the adverse incident could not have been caused by exposure to the pesticide;

(10) Actions to be taken to prevent recurrence of adverse incidents; and

(11) Signed and dated in accordance with Part I C 6.

The operator shall report adverse incidents even for those instances when the pesticide labeling states that adverse effects may occur.

d. Adverse incident to threatened or endangered species or critical habitat.

(1) Notwithstanding any of the other adverse incident notification requirements of this section, if the operator becomes aware of an adverse incident to threatened or endangered species or critical habitat that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the:

(a) National Marine Fisheries Service (NMFS) and the Virginia Department of Game and Inland Fisheries (DGIF) in the case of an anadromous or marine species;

(b) U.S. Fish and Wildlife Service (FWS) and the DGIF in the case of an animal or invertebrate species; or

(c) FWS and the Virginia Department of Agriculture and Consumer Services in the case of plants or insects.

(2) Threatened or endangered species or critical habitats include the following:

(a) Federally listed threatened or endangered species;

(b) Federally designated critical habitat;

(c) State-listed threatened or endangered species;

(d) Tier I (critical conservation need), or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia's Wildlife Action Plan (www.bewildvirginia.org).

(3) This notification must be made by telephone immediately upon the operator becoming aware of the adverse incident and must include at least the following information:

(a) The caller's name and telephone number;

(b) Operator's name and mailing address;

(c) The name of the affected species, size of area impacted, and if applicable, the approximate number of animals affected;

(d) How and when the operator became aware of the adverse incident;

(e) Description of the location of the adverse incident;

(f) Description of the adverse incident, including the EPA pesticide registration number for each product the operator applied in the area of the adverse incident;

(g) Description of any steps the operator has taken or will take to alleviate the adverse impact to the species; and

(h) Date and time of application.

Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS (www.nmfs.noaa.gov) for anadromous or marine species or FWS (www.fws.gov) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service (www.dgif.virginia.gov). Listing of state threatened or endangered plants and insects can be found in §§ 3.2-1000 through 3.2-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code (both the Code of Virginia and the Virginia Administrative Code must be referenced in order to obtain the complete plant and insect list). (Contact information for these agencies can be found on the contact information form or through the DEQ website.)

3. Reportable spills and leaks.

a. Spill, leak, or other unauthorized discharge notification. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 117, or 302 occurs in any 24-hour period, the operator shall notify the department (see Part I D 2) as soon as the operator has knowledge of the release. Department contact information must be kept in locations that are readily accessible and available in the area where a spill, leak, or other unpermitted discharge may occur.

b. Five-day spill, leak, or other unauthorized discharge report. Within five days of the operator becoming aware of a spill, leak, or other unauthorized discharge triggering the notification in subdivision 3 of this subsection, the operator shall submit a written report to the appropriate DEQ regional office at the address listed in Part I D 5. The report shall contain the following information:

(1) A description of the nature and location of the spill, leak, or discharge;

(2) The cause of the spill, leak, or discharge;

(3) The date on which the spill, leak, or discharge occurred;

(4) The length of time that the spill, leak, or discharge continued;

(5) The volume of the spill, leak, or discharge;

(6) If the discharge is continuing, how long it is expected to continue and what the expected total volume of the discharge will be;

(7) A summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and

(8) Any steps planned or taken to prevent recurrence of such a spill, leak, or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

The board may waive the written report on a case-by-case basis for reports of noncompliance if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

4. Recordkeeping and annual reporting. The operator shall keep records as required in this permit. These records must be accurate, complete, and sufficient to demonstrate compliance with the conditions of this permit. The operator can rely on records and documents developed for other obligations, such as requirements under FIFRA and state or local pesticide programs, provided all requirements of this permit are satisfied. The board recommends that all operators covered under this permit keep records of acres or linear miles treated for all applicable use patterns covered under this general permit.

a. All operators must keep the following records:

(1) A copy of any adverse incident reports (see Part I D 2 c).

(2) The operator's rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part I D 2 a.

(3) Any corrective action documentation (see Part I D 1 c).

b. Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must also maintain a record of each pesticide

applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

(1) Name, address, and telephone number of customer and address or location, if different, of site of application;

(2) Name and VDACS certification number of the person making the application or certification number of the supervising certified applicator;

(3) Day, month, and year of application;

(4) Type of plants, crop, animals, or sites treated and principal pests to be controlled;

(5) Acreage, area, or number of plants or animals treated;

(6) Brand name or common product name;

(7) EPA registration number;

(8) Amount of pesticide concentrate and amount of diluting used, by weight or volume, in mixture applied; and

(9) Type of application equipment used.

c. All required records must be assembled as soon as possible but no later than 30 days following completion of such activity. The operator shall retain any records required under this permit for at least three years from the date that coverage under this permit expires. The operator shall make available to the board, including an authorized representative of the board, all records kept under this permit upon request and provide copies of such records, upon request.

d. Annual reporting.

(1) Any operator applying pesticides that reports an adverse incident as described in Part I D 2 must submit an annual report to the department no later than February 10 of the following year (and retain a copy for the operator's records).

(2) The annual report must contain the following information:

(a) Operator's name;

(b) Contact person name, title, email address (where available), and phone number;

(c) A summary report of all adverse incidents that occurred during the previous calendar year; and

(d) A summary of any corrective actions, including spill responses, in response to adverse incidents, and the rationale for such actions.

5. DEQ contact information and mailing addresses.

a. All incident reports under Part I D 2 must be sent to the appropriate DEQ regional office within five days of the operator becoming aware of the adverse incident.

b. All other written correspondence concerning discharges must be sent to the address of the appropriate DEQ regional office listed in Part I D 5 c.

NOTE: The immediate (within 24-hours) reports required in Part I D 2 may be made to the department's regional office. Reports may be made by telephone, fax, or online (http://www.deq.virginia.gov/prep/h2rpt.html). For reports outside normal working hours, leave a message, and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

c. DEQ regional office addresses.

(1) Blue Ridge Regional Office - Lynchburg (BRRO-L)
7705 Timberlake Road
Lynchburg, VA 24502
(434) 582-5120

(2) Blue Ridge Regional Office - Roanoke (BRRO-R)
3019 Peters Creek Road
Roanoke, VA 24019
(540) 562-6700

(3) Northern Virginia Regional Office (NVRO)
13901 Crown Court
Woodbridge, VA 22193
(703) 583-3800

(4) Piedmont Regional Office (PRO)
4949-A Cox Road
Glen Allen, VA 23060
(804) 527-5020

(5) Southwest Regional Office (SWRO)
355 Deadmore St.
P.O. Box 1688
Abingdon, VA 24212
(276) 676-4800

(6) Tidewater Regional Office (TRO)
5636 Southern Blvd.
Virginia Beach, VA 23462
(757) 518-2000

(7) Valley Regional Office (VRO)
4411 Early Road
Mailing address: P.O. Box 3000
Harrisonburg, VA 22801
(540) 574-7800

Part II
Conditions Applicable to all VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and copies of all reports required by this permit for a period of at least three years from the date that coverage under this permit expires. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the department request that the operator submit monitoring results, the following subdivisions would apply.

1. The operator shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved, or specified by the department.

3. If the operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The operator shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The operator shall also furnish to the department, upon request, copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, recreation, or other uses.

G. Duty to comply. The operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

H. Duty to reapply.

1. If the operator wishes to continue an activity regulated by this permit after the expiration date of this permit, and the operator does not qualify for automatic permit coverage renewal, the operator shall submit a registration statement at least 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

2. An operator qualifies for automatic permit coverage renewal and is not required to submit a registration statement if:

a. The operator information has not changed since this general permit went into effect on [ ~~April 10, 2011~~ October 31, 2011 ]; and

b. The board has no objection to the automatic permit coverage renewal for this operator based on performance issues or enforcement issues. If the board objects to the automatic renewal, the operator will be notified in writing.

Any operator that does not qualify for automatic permit coverage renewal shall submit a new registration statement in accordance with Part II H 1.

I. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state, or local law or regulations.

J. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Nothing in this permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

K. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

L. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the operator to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this permit.

M. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

N. Duty to mitigate. The operator shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

O. Need to halt or reduce activity not a defense. It shall not be a defense for a operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

P. Inspection and entry. The operator shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the operator premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

Q. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

R. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II R 2,

a permit may be transferred by the operator to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II R 1, this permit may be automatically transferred to a new operator if:

a. The current operator notifies the department within 30 days of the transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new operator's containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II R 2 b.

S. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R10-2390; Filed August 9, 2011, 2:33 p.m.

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# TITLE 12. HEALTH

## STATE BOARD OF HEALTH

### Final Regulation

REGISTRAR'S NOTICE: The State Board of Health 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 Health will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-381. Regulations for the Licensure of Home Care Organizations (amending 12VAC5-381-330, 12VAC5-381-350, 12VAC5-381-360).**

Statutory Authority: §§ 32.1-12 and 32.1-162.12 of the Code of Virginia.

Effective Date: September 29, 2011.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230-4920, telephone (804) 367-2102, FAX (804) 367-2149, or email carrie.eddy@vdh.virginia.gov.

Summary:

*In conformance with Chapter 245 of the 2010 Acts of Assembly, the amendment allows home attendants to assist with administering normally self-administered drugs as allowed by § 54.1-3408 of the Virginia Drug Control Act, including nonoral or nontopical drugs.*

**12VAC5-381-330. Home attendants assisting with skilled services.**

A. Home attendants assisting with providing skilled services may:

1. Assist clients with (i) activities of daily living, (ii) ambulation and prescribed exercise, and (iii) other special duties with appropriate training and demonstrated competency;

2. ~~Assist with oral or topical medications that the client can normally self-administer~~ Administer normally self-administered drugs as allowed by § 54.1-3408 of the Virginia Drug Control Act (Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia);

3. Measure and record fluid intake and output;

4. Take and record blood pressure, pulse and respiration;

5. Record and report to the appropriate health care professional changes in the client's condition;

6. Document services and observations in the client's record; and

7. Perform any other duties that the attendant is qualified to do by additional training and demonstrated competency as allowed by state or federal guidelines.

B. Prior to the initial delivery of services, the home attendant shall receive specific written instructions for the client's care from the appropriate health care professional responsible for the care.

C. Home attendants shall work under the supervision of the appropriate health care professional responsible for the client's care.

D. Relevant in-service education or training for home attendants shall consist of at least 12 hours annually. In-service training may be in conjunction with on-site supervision.

Part IV
Pharmaceutical Services

**12VAC5-381-350. Pharmacy services.**

A. All prescription drugs shall be prescribed and properly dispensed to the client according to the provisions of the Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.)

of Title 54.1 of the Code of Virginia and the regulations of the Virginia Board of Pharmacy, except for prescription drugs authorized by § 54.1-3408 of the Drug Control Act, such as epinephrine for emergency administration, normal saline and heparin flushes for the maintenance of IV lines, and adult immunizations, which may be given by a nurse pursuant to established protocol.

B. Home attendants may ~~assist only with those topical and oral medications that the client would normally self-administer~~ administer normally self-administered drugs as allowed by § 54.1-3408 of the Virginia Drug Control Act (Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia). Any other drug shall be administered only by a licensed nurse or physician assistant.

C. The organization shall develop written policies and procedures for the administration of home infusion therapy medications that include, but are not limited to:

1. Developing a plan of care or service;

2. Initiation of medication administration based on a prescriber's order and monitoring of the client for response to the treatment and any adverse reactions or side effects;

3. Assessment of any factors related to the home environment that may affect the prescriber's decisions for initiating, modifying, or discontinuing medications;

4. Communication with the prescriber concerning assessment of the client's response to therapy, any other client specific needs, and any significant change in the client's condition;

5. Communication with the client's provider pharmacy concerning problems or needed changes in a client's medication;

6. Maintaining a complete and accurate record of medications prescribed, medication administration data, client assessments, any laboratory tests ordered to monitor response to drug therapy and results, and communications with the prescriber and pharmacy provider;

7. Educating or instructing the client, family members, or other caregivers involved in the administration of infusion therapy in the proper storage of medication, in the proper handling of supplies and equipment, in any applicable safety precautions, in recognizing potential problems with the client, and actions to take in an emergency; and

8. Initial and retraining of all organization staff providing infusion therapy.

D. The organization shall employ a registered nurse, who has completed training in infusion therapy, and has the knowledge, skills, and competencies to safely administer infusion therapy, to supervise medication administration by staff. This person shall be responsible for ensuring compliance with applicable laws and regulations, adherence to the policies and procedures related to administration of medications, and conducting periodic assessments of staff competency in performing infusion therapy.

## Part V
## Personal Care Services

**12VAC5-381-360. Personal care services.**

A. An organization may provide personal care services in support of the client's health and safety in his home. The organization shall designate a registered nurse responsible for the supervision of personal care services.

B. The personal care services shall include:

1. Assistance with the activities of daily living. A need for assistance exists when the client is unable to complete an activity due to cognitive impairment, functional disability, physical health problems, or safety. The client's functional level is based on the client's need for assistance most or all of the time to perform the tasks of daily living in order to live independently;

2. Administration of normally self-administered drugs as allowed in § 54.1-3408 of the Virginia Drug Control Act (Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia);

3. Taking and recording vital signs, if specified in the plan of service;

~~3.~~ 4. Recording and reporting to the supervisor any changes regarding the client's condition, behavior or appearance; and

~~4.~~ 5. Documenting the services delivered in the client's record.

Personal care services may also include the instrumental activities of daily living related to the needs of the client.

C. Such services shall be delivered based on a written plan of services developed by a registered nurse, in collaboration with the client and client's family. The plan shall include at least the following:

1. Assessment of the client's needs;

2. Functional limitations of the client;

3. Activities permitted;

4. Special dietary needs;

5. Specific personal care services to be performed; and

6. Frequency of service.

D. The plan shall be retained in the client's record. Copies of the plan shall be provided to the client receiving services and reviewed with the assigned home attendant prior to delivering services.

E. Supervision of services shall be provided as often as necessary as determined by the client's needs, the assessment of the registered nurse, and the organization's written policies not to exceed 90 days.

F. A registered nurse or licensed practical nurse shall be available during all hours that personal care services are being provided.

G. Home attendants providing personal care services shall receive at least 12 hours annually of inservice training and education. Inservice training may be in conjunction with on-site supervision.

VA.R. Doc. No. R11-2858; Filed August 3, 2011, 2:02 p.m.

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# TITLE 13. HOUSING

## BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

### Final Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Housing and Community Development will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **13VAC5-31. Virginia Amusement Device Regulations (amending 13VAC5-31-20).**

Statutory Authority: § 36-98.3 of the Code of Virginia.

Effective Date: September 28, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

*The amendment modifies the definition of "amusement device" to exclude snow tubing parks and rides, ski terrain parks, ski slopes, and ski trails.*

**13VAC5-31-20. Definitions.**

A. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Amusement device" means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion, but excluding snow tubing parks and rides, ski terrain parks, ski slopes, and ski trails, and (ii) passenger tramways.

"Bungee cord" means the elastic rope to which the jumper is attached which lengthens and shortens to produce a bouncing action.

"Carabineer" means a shaped metal device with a gate used to connect sections of a bungee cord, jump rigging, equipment, or safety gear.

"DHCD" means the Virginia Department of Housing and Community Development.

"Gravity ride" means a ride that is installed on an inclined surface, which depends on gravity for its operation to convey a passenger from the top of the incline to the bottom, and which conveys a passenger in or on a carrier tube, bag, bathing suit, or clothes.

"Ground operator" means a person who assists the jump master to prepare a jumper for jumping.

"Harness" means an assembly to be worn by a bungee jumper to be attached to a bungee cord. It is designed to prevent the wearer from becoming detached from the bungee system.

"Jump master" means a person who has responsibility for the bungee jumper and who takes the jumper through the final stages to the actual jump.

"Jump zone" means the space bounded by the maximum designed movements of the bungee jumper.

"Jumper" means the person who departs from a height attached to a bungee system.

"Kiddie ride" means an amusement device where the passenger or patron height is limited to 54 inches or less, the design capacity of passengers or patrons is 12 or less, and the assembly time for the device is two hours or less.

"Landing area" means the surface area of ground or water directly under the jump zone, the area where the lowering device moves the bungee jumper to be landed away from the jump space and the area covered by the movement of the lowering device.

"Local building department" means the agency or agencies of the governing body of any city, county or town in this Commonwealth charged with the enforcement of the USBC.

"Operating manual" means the document that contains the procedures and forms for the operation of bungee jumping equipment and activity at a site.

"Passenger tramway" means a device used to transport passengers uphill, and suspended in the air by the use of steel

cables, chains or belts, or ropes, and usually supported by trestles or towers with one or more spans.

"Platform" means the equipment attached to the structure from which the bungee jumper departs.

"Private inspector" means a person performing inspections who is independent of the company, individual or organization owning, operating or having any vested interest in an amusement device being inspected.

"Ultimate tensile strength" means the greatest amount of load applied to a bungee cord prior to failure.

"USBC" means the Virginia Uniform Statewide Building Code (13VAC5-63).

B. Words and terms used in this chapter which are defined in the USBC shall have the meaning ascribed to them in that regulation unless the context clearly indicates otherwise.

C. Words and terms used in this chapter which are defined in the standards incorporated by reference in this chapter shall have the meaning ascribed to them in those standards unless the context clearly indicates otherwise.

VA.R. Doc. No. R11-2914; Filed July 28, 2011, 9:30 a.m.

## Final Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption from the Administrative Process Act pursuant to § 36-99 of the Code of Virginia, which states that the board, upon finding that (i) the current technical or code provisions allow use of or result in defective or deficient building materials, methods, or designs, and (ii) immediate action is necessary to protect the health, safety, and welfare of the citizens of the Commonwealth, may issue amended regulations establishing interim performance standards and code provisions for the installation, application, and use of such building materials, methods, or designs in the Commonwealth. Any amendments to regulations adopted pursuant to § 36-99 D of the Code of Virginia shall become effective upon publication in the Virginia Register of Regulations and shall be effective for a period of 24 months or until adopted, modified, or repealed by the board.

Title of Regulation: **13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-120).**

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

Effective Date: August 29, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

*The amendments establish interim performance standards and code provisions addressing the installation, application, and use of gypsum wallboard, which may contain defects from the manufacturing process resulting in the off-gassing of corrosive chemicals affecting the electrical and mechanical systems of buildings.*

*The amendments to the USBC are summarized as follows:*

*13VAC5-63-120 F: Establishes a general section on defective products that supersedes other provisions of the USBC.*

*13VAC5-63-120 G: Prohibits the use of defective drywall in new construction.*

*13VAC5-63-120 H: Establishes a remediation standard for the removal of defective drywall and the rebuilding of buildings affected by the installation of defective drywall.*

*13VAC5-63-120 I: Defines defective drywall for the purposes of applying the interim performance and remediation standards.*

*13VAC5-63-120 J: Requires a permit to be obtained under the USBC for the remediation of defective drywall.*

*13VAC5-63-120 K: Requires the remediation standards to be used when defective drywall is replaced and clarifies that the local building official has authority to consider modifications to the standards.*

*13VAC5-63-120 L: Requires the removal of defective drywall when remediation is undertaken and permits nondefective drywall to remain in place under certain conditions where not affected by the defective drywall.*

*13VAC5-63-120 M: Addresses the conditions under which insulation and floor materials are to be removed and replaced.*

*13VAC5-63-120 N through P: Addresses the conditions under which electrical wiring and plumbing and mechanical system components and equipment are to be removed and replaced.*

*13VAC5-63-120 Q through S: Establishes cleaning, airing out, and clearance testing criteria to apply after remediation and prior to rebuilding the building.*

*13VAC5-63-120 T: Establishes standards for testing agencies conducting pre-rebuilding or post-rebuilding clearance testing.*

*13VAC5-63-120 U: Clarifies that rebuilding is subject to the code under which the building was originally constructed.*

*13VAC5-63-120 V: Establishes standards for post-rebuilding clearance testing.*

*13VAC5-63-120 W: Addresses final approval by the local building official.*

*13VAC5-63-120 X: Addresses the approval of remediation work undertaken prior to the approval of remediation standards*.

**13VAC5-63-120. Section 112 Workmanship, materials and equipment.**

A. Section 112.1 General. It shall be the duty of any person performing work covered by this code to comply with all applicable provisions of this code and to perform and complete such work so as to secure the results intended by the USBC.

B. Section 112.2 Alternative methods or materials. In accordance with § 36-99 of the Code of Virginia, where practical, the provisions of this code are stated in terms of required level of performance so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, this section and other applicable requirements of this code provide for acceptance of materials and methods whose performance is substantially equal in safety to those specified on the basis of reliable test and evaluation data presented by the proponent. In addition, as a requirement of this code, the building official shall require that sufficient technical data be submitted to substantiate the proposed use of any material, equipment, device, assembly or method of construction.

C. Section 112.3 Documentation and approval. In determining whether any material, equipment, device, assembly or method of construction complies with this code, the building official shall approve items listed by nationally recognized testing laboratories (NRTL), when such items are listed for the intended use and application, and in addition, may consider the recommendations of RDPs. Approval shall be issued when the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code and that the material, equipment, device, assembly or method of construction offered is, for the purpose intended, at least the equivalent of that prescribed by the code. Such approval is subject to all applicable requirements of this code and the material, equipment, device, assembly or method of construction shall be installed in accordance with the conditions of the approval and their listings. In addition, the building official may revoke such approval whenever it is discovered that such approval was issued in error or on the basis of incorrect information, or where there are repeated violations of the USBC.

D. Section 112.3.1 Conditions of listings. Where conflicts between this code and conditions of the listing or the manufacturer's installation instructions occur, the provisions of this code shall apply.

Exception: Where a code provision is less restrictive than the conditions of the listing of the equipment or appliance or the manufacturer's installation instructions, the conditions of the listing and the manufacturer's installation instructions shall apply.

E. Section 112.4 Used material and equipment. Used materials, equipment and devices may be approved provided they have been reconditioned, tested or examined and found to be in good and proper working condition and acceptable for use by the building official.

F. Section 112.5 Defective materials. Notwithstanding any provision of this code to the contrary, where action has been taken and completed by the BHCD under § 36-99 D of the Code of Virginia establishing new performance standards for identified defective materials, this section sets forth the new performance standards addressing the prospective use of such materials and establishes remediation standards for the removal of any defective materials already installed, which, when complied with, enables the building official to certify that the building is deemed to comply with the edition of the USBC under which the building was originally constructed with respect to the remediation of the defective materials. Subsections F through X of this section expire on August 29, 2013.

G. Section 112.5.1 Drywall, performance standard. All newly installed gypsum wallboard shall not be defective drywall as defined in Section 112.5.1.1.1.

H. Section 112.5.1.1 Remediation standards. The following provisions establish remediation standards where defective drywall was installed in buildings.

I. Section 112.5.1.1.1 Definition. For the purposes of this section the term "defective drywall" shall mean gypsum wallboard that (i) contains elemental sulfur exceeding 10 parts per million that when exposed to heat or humidity, or both, emits volatile sulfur compounds in quantities that cause observable corrosion on electrical wiring, plumbing pipes, fuel gas lines, or HVAC equipment, or any components of the foregoing or (ii) has been designated by the U.S. Consumer Product Safety Commission as a product with a product defect that constitutes a substantial product hazard within the meaning of § 15(a)(2) of the Consumer Product Safety Act (15 USC § 2064(a)(2)).

J. Section 112.5.1.1.2 Permit. Application for a permit shall be made to the building official and a permit shall be obtained prior to the commencement of remediation work undertaken to remove defective drywall from a building and for the removal, replacement, or repair of corroded electrical, plumbing, mechanical, or fuel gas equipment and components.

K. Section 112.5.1.1.3 Protocol. Where remediation of defective drywall is undertaken, the following standards shall be met. The building official shall be permitted to consider

and approve modifications to these standards in accordance with Section 106.3.

L. Section 112.5.1.1.3.1 Drywall. Drywall in the building, whether defective or nondefective, shall be removed and discarded, including fasteners that held any defective drywall to prevent small pieces of drywall from remaining under fasteners.

Exceptions:

1. Nondefective drywall not subject to the corrosive effects of any defective drywall shall be permitted to be left in place in buildings where the defective drywall is limited to a defined room or space or isolated from the rest of the building and the defective drywall can be positively identified. If the room or space containing the defective drywall also contains any nondefective drywall, the nondefective drywall in that room or space shall also be removed.

2. In multi-family buildings where defective drywall was not used in the firewalls between units and there are no affected building systems behind the firewalls, the firewalls shall be permitted to be left in place.

M. Section 112.5.1.1.3.2 Insulation and other building components. Insulation in walls and ceilings shall be removed and discarded. Carpet and vinyl flooring shall be removed and discarded. Woodwork, trim, cabinets, and tile or wood floors may be left in place or may be reused.

Exceptions:

1. Closed-cell foam insulation is permitted to be left in place if testing for off-gassing from defective drywall is negative, unless its removal is required to gain access.

2. Insulation, carpet, or vinyl flooring in areas not exposed to defective drywall or to the effects of defective drywall, may be left in place or reused.

N. Section 112.5.1.1.3.3 Electrical wiring, equipment, devices, and components. All electrical wiring regulated by this code shall be permitted to be left in place, but removal or cleaning of exposed ends of the wiring to reveal clean or uncorroded surfaces is required. All electrical equipment, devices, and components of the electrical system of the building regulated by this code shall be removed and discarded. This shall include all smoke detectors.

Exceptions:

1. Electrical equipment, devices, or components in areas not exposed to the corrosive effects of defective drywall shall be permitted to be left in place or reused. Electrical equipment, devices, or components in areas exposed to the corrosive effects of defective drywall shall be cleaned, repaired, or replaced.

2. Cord and plug connected appliances are not subject to this code and, therefore, cannot be required to be removed or replaced.

Note: All low voltage wiring associated with security systems, door bells, elevator controls, and other such components shall be removed and replaced or repaired.

O. Section 112.5.1.1.3.4 Plumbing and fuel gas piping, fittings, fixtures, and equipment. All copper fuel gas piping and all equipment utilizing fuel gas with copper, silver, or aluminum components shall be removed and discarded. All copper plumbing pipes and fittings shall be removed and discarded. Plumbing fixtures with copper, silver, or aluminum components shall be removed and discarded.

Exception: Plumbing or fuel gas piping, fittings, fixtures, equipment, or components in areas not exposed to the corrosive effects of defective drywall shall be permitted to be left in place or reused.

P. Section 112.5.1.1.3.5 Mechanical systems. All heating, air-conditioning, and ventilation system components, including, but not limited to, ductwork, air-handling units, furnaces, heat pumps, refrigerant lines, and thermostats and associated wiring, shall be removed and discarded.

Exception: Mechanical system components in areas not exposed to the corrosive effects of defective drywall shall be permitted to be left in place or reused.

Q. Section 112.5.1.1.3.6 Cleaning. Following the removal of all materials and components in accordance with Sections 112.5.1.1.3.1 through 112.5.1.1.3.5, the building shall be thoroughly cleaned to remove any particulate matter and dust.

R. Section 112.5.1.1.3.7 Airing out. Following cleaning in accordance with Section 112.5.1.1.3.6, the building shall be thoroughly aired out with the use of open windows and doors and fans.

S. Section 112.5.1.1.3.8 Pre-rebuilding clearance testing. Following the steps outlined above for removal of all materials and components, cleaning and airing out, a pre-rebuilding clearance test shall be conducted with the use of copper or silver coupons and the methodology outlined in the April 2, 2010, joint report by the Consumer Products Safety Commission and the Department of Housing and Urban Development entitled "Interim Remediation Guidance for Homes with Corrosion from Problem Drywall" or with the use of a copper probe and dosimeter. The clearance testing shall confirm that all airborne compounds associated with the defective drywall are at usual environmental background levels. The clearance testing report, certifying compliance, shall be submitted to the building official.

Notes:

1. Where the building is served by a well and prior to conducting clearance tests, all outlets in piping served by

the well should be capped or otherwise plugged to prevent contamination of the air sample.

2. To prevent siphoning and evaporation of the trap seals, fixtures should be capped or otherwise plugged to prevent sewer gases from contaminating the air sample.

T. Section 112.5.1.1.3.9 Testing agencies and personnel. Agencies and personnel performing pre-rebuilding or post-rebuilding clearance testing shall be independent of those responsible for all other remediation work and the agencies and personnel shall be appropriately certified or accredited by the Council of Engineering and Scientific Specialty Boards, the American Indoor Air Quality Council, or the World Safety Organization.

Exception: Testing agencies and personnel shall be accepted if certified by a Registered Design Professional (RDP) or if the agency employs an RDP to be in responsible charge of the work.

U. Section 112.5.1.1.3.10 Rebuilding standards. The rebuilding of the building shall comply with the edition of the USBC that was in effect when the building was originally built.

V. Section 112.5.1.1.3.11 Post-rebuilding clearance testing. A post-rebuilding clearance test prior to reoccupancy of the building or structure shall be conducted with the use of copper or silver coupons and the methodology outlined in the April 2, 2010, joint report by the Consumer Products Safety Commission and by the Department of Housing and Urban Development entitled "Interim Remediation Guidance for Homes with Corrosion from Problem Drywall" or with the use of a copper probe and dosimeter. The clearance testing shall confirm that all airborne compounds associated with the defective drywall are at usual environmental background levels. The clearance testing report certifying compliance shall be submitted to the building official.

Notes:

1. Where the building is served by a well and prior to conducting clearance tests, all outlets in piping served by the well should be capped or otherwise plugged to prevent contamination of the air sample.

2. To prevent siphoning and evaporation of the trap seals, fixtures should be capped or otherwise plugged to prevent sewer gases from contaminating the air sample.

W. Section 112.5.1.1.4 Final approval by the building official. Once remediation has been completed in accordance with this section, a certificate or letter of approval shall be issued by the building official. The certificate or letter shall state that the remediation and rebuilding is deemed to comply with this code.

X. Section 112.5.1.1.4.1 Approval of remediation occurring prior to these standards. The building official shall issue a certificate or letter of approval for remediation of defective drywall that occurred prior to the effective date of these standards provided post-rebuilding clearance testing has been performed in accordance with § 112.5.1.1.3.11, by agencies and personnel complying with Section 112.5.1.1.3.9, and the clearance testing confirms that all airborne compounds associated with the defective drywall are at usual environmental background levels. The clearance testing report certifying compliance shall be submitted to the building official.

DOCUMENTS INCORPORATED BY REFERENCE (13VAC5-63)

International Building Code - 2009 Edition, International Code Council, Inc., 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001-2070.

International Energy Conservation Code - 2009 Edition, International Code Council, Inc.

International Existing Building Code - 2009 Edition, International Code Council, Inc.

International Fire Code - 2009 Edition, International Code Council, Inc.

International Fuel Gas Code - 2009 Edition, International Code Council, Inc.

International Mechanical Code - 2009 Edition, International Code Council, Inc.

International Property Maintenance Code - 2009 Edition, International Code Council, Inc.

International Plumbing Code - 2009 Edition, International Code Council, Inc.

International Residential Code for One- and Two-Family Dwellings - 2009 Edition, International Code Council, Inc.

AISI S230-07 W/S2-08, Standard for Cold-Formed Steel Framing - Prescriptive Method for One and Two Family Dwellings, 2007 Edition with Supplement 2, American Iron and Steel Institute, 1140 Connecticut Avenue NW, Suite 705, Washington, DC 20036.

ANSI/AF&PA WCFM-2001, Wood Frame Construction Manual for One- and Two-Family Dwellings, 2001 Edition, Approved October 11, 2001, American Forest and Paper Association, 1111 19th St. NW, Suite 800, Washington, DC 20036.

ANSI/NSPI-1 2003, American National Standard for Public Swimming Pools, National Spa and Pool Institute, 2111 Eisenhower Avenue, Alexandria, VA 22314.

ANSI/NSPI-2 1999, American National Standard for Public Spas, National Spa and Pool Institute, 2111 Eisenhower Avenue, Alexandria, VA 22314.

API 650-09, Welded Tanks for Oil Storage, Eleventh Edition, June 2007 (Addendum 1, November 2008, Addendum 2, November 2009, effective May 1, 2010), American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005-4070.

API 653-09, Tank Inspection, Repair, Alteration, and Reconstruction, American Petroleum Institute.

ASTM E329-02, Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction, American Society of Testing Materials International, 100 Barr Harbor Dr., P.O. Box C700, West Conshocken, PA 19428-2959.

ASTM D1557-00, Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft$^3$(2,700 kN-m/m$^3$)), ASTM International.

ASTM E90-90, Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions, ASTM International.

CAN/CSA-B64.10-01, Manual for the Selection and Installation of Backflow Prevention Devices/Manual for the Maintenance and Field Testing of Backflow Prevention Devices, June 2003, National Standards of Canada.

ASME A17.1-2007 / CSA B44-07, Safety Code for Elevators and Escalators, American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.

ASME A17.1a-2008 / CSA B44a-08, Addenda to ASME A17.1-2007 / CSA B44-07, Safety Code for Elevators and Escalators, American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.

ASME A17.1b-2009 / CSA B44b-09, Addenda to ASME A17.1-2007 / CSA B44-07, Safety Code for Elevators and Escalators, American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.

ASME A90.1-97, Safety Standard for Belt Manlifts, American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.

ASME B20.1-00, Safety Standard for Conveyors and Related Equipment, American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990.

ASSE 1010-98, Performance Requirements for Water Hammer Arrestors, American Society of Sanitary Engineering, 901 Canterbury Road, Suite A, Westlake, OH 44145.

ASSE 5010-1013-1, Field Test Procedure for a Reduced Pressure Principle Assembly Using a Differential Pressure Gauge, 1991, American Society of Sanitary Engineering.

ASSE 5010-1015-1, Field Test Procedure for a Double Check Valve Assembly Using a Duplex Gauge, 1991, American Society of Sanitary Engineering.

ASSE 5010-1015-2, Field Test Procedure for a Double Check Valve Assembly Using a Differential Pressure Gauge - High- and Low-Pressure Hose Method, 1991, American Society of Sanitary Engineering.

ASSE 5010-1015-3, Field Test Procedure for a Double Check Valve Assembly Using a Differential Pressure Gauge - High Pressure Hose Method, 1991, American Society of Sanitary Engineering.

ASSE 5010-1015-4, Field Test Procedure for a Double Check Valve Assembly Using a Site Tube, 1991, American Society of Sanitary Engineering.

ASSE 5010-1020-1, Field Test Procedures for a Pressure Vacuum Breaker Assembly, 1991, American Society of Sanitary Engineering.

ASSE 5010-1047-1, Field Test Procedure for a Reduced Pressure Detector Assembly Using a Differential Pressure Gauge, 1991, American Society of Sanitary Engineering.

ASSE 5010-1048-1, Field Test Procedure for a Double Check Detector Assembly Using a Duplex Gauge, 1991, American Society of Sanitary Engineering.

ASSE 5010-1048-2, Field Test Procedure for a Double Check Detector Assembly Using a Differential Pressure Gauge - High- and Low-Pressure Hose Method, 1991, American Society of Sanitary Engineering.

ASSE 5010-1048-3, Field Test Procedure for a Double Check Detector Assembly Using a Differential Pressure Gauge - High-Pressure Hose Method, 1991, American Society of Sanitary Engineering.

ASSE 5010-1048-4, Field Test Procedure for a Double Check Detector Assembly Using a Site Tube, 1991, American Society of Sanitary Engineering.

ICC/ANSI A117.1-2003, Accessible and Usable Buildings and Facilities, Approved November 26, 2003, International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington, DC 20001-2070.

ICC 600-2008, Standard for Residential Construction in High-Wind Regions, Approved August 6, 2008, International Code Council, Inc.

SEI/ASCE 7-02, Minimum Design Loads for Buildings and Other Structures, American Society of Civil Engineers/Structural Engineering Institute, 1801 Alexander Bell Drive, Reston, VA 20191-4400.

NFPA 13D-07, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

NFPA 70-08, National Electrical Code, 2008 Edition, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

NFPA 495-01, Explosive Materials Code, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

NFPA 704-07, Standard System for the Identification of the Hazards of Materials for Emergency Response, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

TFI RMIP-09, Aboveground Storage Tanks Containing Liquid Fertilizer, Recommended Mechanical Integrity Practices, December 2009, The Fertilizer Institute, 820 First Street, NE, Suite 430, Washington, DC 20002.

UL 2034-08, Standard for Single and Multiple Station Carbon Monoxide Alarms, Third Edition, February 28, 2008, Underwriters Laboratories, Inc. 333 Pfingsten Road, Northbrook, IL 60062.

Interim Remediation Guidance for Homes with Corrosion from Problem Drywall, April 2, 2010, Joint Report, Consumer Products Safety Commission and Department of Housing and Urban Development.

VA.R. Doc. No. R11-2911; Filed August 1, 2011, 10:20 a.m.

## Final Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Housing and Community Development will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-260).**

Statutory Authority: § 36-98 of the Code of Virginia.

Effective Date: September 28, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

*In conformance with Chapter 135 of the 2011 Acts of Assembly, the amendment expands the noise attenuation provisions of the Virginia Uniform Statewide Building Code to include localities in whose jurisdiction, or adjacent jurisdiction, is located a licensed airport or United States government or military air facility.*

**13VAC5-63-260. Chapter 12 Interior environment.**

A. Add the following definitions to Section 1202.1 of the IBC:

Day-night average sound level (Ldn). A 24-hour energy average sound level expressed in dBA, with a 10 decibel penalty applied to noise occurring between 10 p.m. and 7 a.m.

Sound transmission class (STC) rating. A single number characterizing the sound reduction performance of a material tested in accordance with ASTM E90-90, "Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions."

B. Add Section 1203.4.4 to the IBC to read:

1203.4.4 Insect screens in occupancies other than Group R. Every door, window and other outside opening for natural ventilation serving structures classified as other than a residential group containing habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged, or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device.

Exception: Screen doors shall not be required for out swinging doors or other types of openings which make screening impractical, provided other approved means, such as air curtains or insect repellent fans are provided.

C. Add Section 1203.4.5 to the IBC to read:

1203.4.5 Insect screens in Group R occupancies. Every door, window and other outside opening required for natural ventilation purposes which serves a structure classified as a residential group shall be supplied with approved tightly fitted screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device.

D. Change Section 1207.1 of the IBC to read:

1207.1 Scope. Sections 1207.2 and 1207.3 shall apply to common interior walls, partitions and floor/ceiling assemblies between adjacent dwelling units or between dwelling units and adjacent public areas such as halls, corridors, stairs or service areas. Section 1207.4 applies to the construction of the exterior envelope of Group R occupancies within airport noise zones and to the exterior envelope of Group A, B, E, I and M occupancies in any locality in whose jurisdiction, or adjacent jurisdiction, is located a United States Master Jet Base ~~is located or any adjacent locality~~, a licensed airport or United States government or military air facility, when such

requirements are enforced by a locality pursuant to § 15.2-2295 of the Code of Virginia.

E. Add Section 1207.4 to the IBC to read:

1207.4 Airport noise attenuation standards. Where the Ldn is determined to be 65 dBA or greater, the minimum STC rating of structure components shall be provided in compliance with Table 1207.4. As an alternative to compliance with Table 1207.4, structures shall be permitted to be designed and constructed so as to limit the interior noise level to no greater than 45 Ldn. Exterior structures, terrain and permanent plantings shall be permitted to be included as part of the alternative design. The alternative design shall be certified by an RDP.

F. Add Table 1207.4 to the IBC to read:

Table 1207.4.
Airport Noise Attenuation Standards.

| Ldn | STC of exterior walls and roof/ceiling assemblies | STC of doors and windows |
|---|---|---|
| 65-69 | 39 | 25 |
| 70-74 | 44 | 33 |
| 75 or greater | 49 | 38 |

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## Final Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exclusion from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board of Housing and Community Development will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **13VAC5-112. Enterprise Zone Grant Program Regulation (amending 13VAC5-112-10, 13VAC5-112-290; adding 13VAC5-112-495).**

Statutory Authority: § 59.1-533 of the Code of Virginia.

Effective Date: September 28, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

*Pursuant to Chapter 320 of the 2011 Acts of Assembly, the amendments to 13VAC5-112-290 allow small business firms (business firms with base year employment of 100 or fewer permanent full-time positions and that create in a qualification year 25 or fewer grant eligible positions) to be exempt from the attestation requirement to qualify for grants. The permanent full-time positions, wage rates, and provision of health benefits of such business firms will be subject to verification by the Department of Housing and Community Development.*

*Also, pursuant to Chapter 310 of the 2011 Acts of Assembly, 13VAC5-112-495 is added to allow existing joint enterprise zones consisting of two localities to be redesignated for the purpose of expanding the zone. The requirements for redesignation are set forth in this section.*

Part I
Definitions

**13VAC5-112-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agreed-upon procedures engagement" means an engagement between an independent certified public accountant licensed by the Commonwealth and the business or zone investor seeking to qualify for Enterprise Zone incentive grants pursuant to § 59.1-549 of the Code of Virginia whereby the independent certified public accountant, using procedures specified by the department, will test and report on the assertion of the business or zone investor as to their qualification to receive the Enterprise Zone incentive.

"Assumption or acquisition" means, in connection with a trade or business, that the inventory, accounts receivable, liabilities, customer list and good will of an existing Virginia company has been assumed or acquired by another taxpayer, regardless of a change in federal identification number or employees.

"Average number of permanent full-time employees" means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal workdays during the payroll period. Paid leave time may be counted as work time.

2. For a business firm that uses different payroll periods for different classes of employees, the average number of

permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.

"Base taxable year" means either of two taxable years immediately preceding the first year of qualification, at the choice of the business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Building" means any construction meeting the common ordinarily accepted meaning of the term (building, a usually roofed and walled structure built for permanent use) where (i) areas separated by interior floors or other horizontal assemblies and (ii) areas separated by fire walls or vertical assemblies shall not be construed to constitute separate buildings, irrespective of having separate addresses, ownership or tax assessment configurations, unless there is a property line contiguous with the fire wall or vertical assembly.

"Business firm" means any corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of Virginia. This shall also include business and professional organizations and associations whose classification falls under sectors 813910 and 813920 of the North American Industry Classification Systems and that generate the majority of their revenue from customers outside the Commonwealth.

"Capital lease" means a lease that meets one or more of the following criteria and as such is classified as a purchase by the lessee: the lease term is greater than 75% of the property's estimated economic life; the lease contains an option to purchase the property for less than fair market value; ownership of the property is transferred to the lessee at the end of the lease term; or the present value of the lease payments exceed 90% of the fair market value of the property.

"Common control" means those firms as defined by Internal Revenue Code § 52(b).

"Department" means the Department of Housing and Community Development.

"Establishment" means a single physical location where business is conducted or where services or industrial operations are performed.

1. A central administrative office is an establishment primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.

2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Existing business firm" means one that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone. An existing business firm is also one that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Expansion" means an increase in square footage or the footprint of an existing nonresidential building via a shared wall, or enlargement of an existing room or floor plan. Pursuant to real property investment grants this shall include mixed-use buildings.

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction, as well as to the rehabilitation and expansion of existing structures.

"Federal minimum wage" means the minimum wage standard as currently defined by the United States Department of Labor in the Fair Labor Standards Act, 29 USC § 201 et seq. Such definition applies to permanent full-time employees paid on an hourly or wage basis.

"Food and beverage service" means a business whose classification falls under subsector 722 Food Services and Drinking Places of North American Industry Classification System.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the grant amount under 13VAC5-112-260. A full month is calculated by dividing the total number of days in calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant-eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, personal service or food and beverage service shall not be considered grant-eligible positions.

"Health benefits" means that at a minimum medical insurance is offered to employees and the employer shall

offer to pay at least 50% of the cost of the premium at the time of employment and annually thereafter.

"High unemployment area" means enterprise zone localities with unemployment rates one and one-half times or more than the state average based on the most recent annualized unemployment data published by the Virginia Employment Commission.

"Household" means all the persons who occupy a single housing unit. Occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Household income" means all income actually received by all household members over the age of 16 from the following sources. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. Gross wages, salaries, tips, commissions, etc. (before deductions);

2. Net self-employment income (gross receipts minus operating expenses);

3. Interest and dividend earnings; and

4. Other money income received from net rents, Old Age and Survivors Insurance, social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from household income:

1. Noncash benefits such as food stamps and housing assistance;

2. Public assistance payments;

3. Disability payments;

4. Unemployment and employment training benefits;

5. Capital gains and losses; and

6. One-time unearned income.

When computing household income, income of a household member shall be counted for the portion of the income determination period that the person was actually a part of the household.

"Household size" means the largest number of household members during the income determination period. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Housing unit" means a house, apartment, group of rooms, or single room that is occupied or intended for occupancy as separate living quarters. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Independent certified public accountant" means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking to qualify for state tax incentives and grants under this program.

"Job creation grant" means a grant provided under § 59.1-547 of the Code of Virginia.

"Joint enterprise zone" means an enterprise zone located in two or more adjacent localities.

"Jurisdiction" means the city or county which made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of $15 million when such zone investments result in the creation of at least 50 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of $100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Local zone administrator" means the chief executive of the city or county, in which an enterprise zone is located, or his designee. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Low-income" means household income was less than or equal to 80% of area median household income during the income determination period. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Median household income" means the dollar amount, adjusted for household size, as determined annually by the

department for the city or county in which the zone is located. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Mixed use" means a building incorporating residential uses in which a minimum of 30% of the useable floor space will be devoted to commercial, office or industrial use. Buildings where less than 30% of the useable floor space is devoted to commercial, office or industrial use shall be considered primarily residential in nature and shall not be eligible for a grant under 13VAC5-112-330. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Net loss" applies to firms that relocate or expand operations and means (i) after relocating into a zone, a business firm's gross permanent employment is less than it was before locating into the zone, or (ii) after a business firm locates or expands within a zone, its gross employment at its nonzone location or locations is less than it was before the zone location occurred.

"New business" means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"New construction" means a single, nonresidential facility built on previously undeveloped land of a nonresidential structure built on the site/parcel of a previously razed structure with no remnants of the prior structure or physical connection to existing structures or outbuildings on the property. Pursuant to real property investment grants this shall include mixed-use buildings.

"Number of eligible permanent full-time positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Payroll period" means the period of time for which a business firm normally pays its employees.

"Permanent full-time employee" means a person employed by a business firm who is normally scheduled to work either (i) a minimum of 35 hours per week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, (ii) a minimum of 35 hours per week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Permanent full-time employee also means two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. Seasonal, temporary, leased or contract labor employees or employees shifted from an existing location in the Commonwealth to a business firm location within an enterprise zone shall not qualify as permanent full-time employees. This definition only applies to business firms for the purpose of qualifying for enterprise zone incentives pursuant to 13VAC5-112-20.

"Permanent full-time position" (for the purpose of qualifying for grants pursuant to § 59.1-547 of the Code of Virginia) means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report to work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (a) seasonal, temporary or contract positions, (b) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located with an enterprise zone, (c) any position that previously existed in the Commonwealth, or (d) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Personal service" means such positions classified under NAICS 812.

"Placed in service" means the final certificate of occupancy has been issued or the final building inspection has been approved by the local jurisdiction for real property improvements or real property investments, or in cases where a project does not require permits, the licensed third party inspector's report that the project was complete; or pursuant to 13VAC5-112-110 the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or in the case of tools and equipment, the first moment they are used in the performance of duty or service.

"Qualification year" the calendar year for which a qualified business firm or qualified zone investor is applying for a grant pursuant to 13VAC5-112-260.

"Qualified business firm" means a business firm meeting the business firm requirements in 13VAC5-112-20 or 13VAC5-112-260 and designated a qualified business firm by the department.

"Qualified real property investment" (for purposes of qualifying for a real property investment grant) means the

amount properly chargeable to a capital account for improvements to rehabilitate, expand or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) $100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) $500,000 with respect to a single building or a facility in the case of new construction. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical or electrical improvements necessary to construct, expand or rehabilitate a building for commercial, industrial or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include, but not be limited to, costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.

2. Other costs including (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.

3. The basis of any property (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) that was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b); or (iv) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014(a).

"Qualified zone improvements" (for purposes of qualifying for an Investment Tax Credit) means the amount properly chargeable to a capital account for improvements to rehabilitate or expand depreciable nonresidential real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) $50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to construct, expand or rehabilitate a building for commercial or industrial use.

1. Qualified zone improvements include, but are not limited to, the costs associated with excavation, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements, demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning and clean-up.

2. Qualified zone improvements do not include (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering and interior design fees; (iii) loan fees, points or capitalized interest; (iv) legal, accounting, realtor, sales and marketing or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, inspection fees; (vi) bids insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; (ix) the cost of any well, septic, or sewer system; or (x) cost of acquiring land or an existing building.

3. In the case of new nonresidential construction, qualified zone improvements also do not include land, land improvements, paving, grading, driveway, and interest. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery, tools and equipment used in manufacturing tangible personal property and placed in service on or after July 1, 1995. Machinery, equipment, tools, and real property that are leased through a capital lease and that are being depreciated by the lessee or that are transferred from out-of-state to a zone location by a business firm may be included as qualified zone investment. Such leased or transferred machinery, equipment, tools, and real property shall be valued using the depreciable basis for federal income tax purposes. Machinery, tools and equipment shall not include the basis of any property: (i) for which a credit was previously granted under § 59.1-280.1 of the Code of Virginia; (ii) that was previously placed in service in Virginia by the taxpayer, a related party, as defined by Internal Revenue Code § 267(b), or a trade or business under common control, as defined by Internal Revenue Code § 52(b); or (iii) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person whom acquired it, or Internal Revenue Code § 1014(a). This definition applies only for the

purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates or constructs such real property for commercial, industrial or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of the building for which the owner holds title and not to common elements. Units of local, state and federal government or political subdivisions shall not be considered qualified zone investors.

"Qualified zone resident" means an owner or tenant of nonresidential real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such owner or tenant within the enterprise zone. In the case of a partnership, limited liability company or S corporation, the term "qualified zone resident" means the partnership, limited liability company or S corporation. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Real property investment grant" means a grant made under § 59.1-548 of the Code of Virginia. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Reduced wage rate threshold" means 150% of the federal minimum wage pursuant to 13VAC5-112-270, 13VAC5-112-280, and 13VAC5-112-285 and high unemployment areas.

"Rehabilitation" means the alteration or renovation of all or part of an existing nonresidential building without an increase in square footage. Pursuant to real property investment grants this shall include mixed-use buildings.

"Regular basis" means at least once a month. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Related party" means those as defined by Internal Revenue Code § 267(b).

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Retail" means a business whose classification falls under sectors 44-45 Retail Trade of North American Industry Classification System.

"Same trade or business" means the operations of a single company or related companies or companies under common control.

"Seasonal employee" means any employee who normally works on a full-time basis and whose customary annual employment is less than nine months. For example, individuals hired by a CPA firm during the tax return season in order to process returns and who work full-time over a three month period are seasonal employees.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-350 C.

"Subsequent base year" means the base year for calculating the number of grant-eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant-eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar-year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as subsequent base year, at the choice of the business firm.

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Tax year" means the year in which the assessment is made. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Taxable year" means the year in which the tax due on state taxable income, state taxable gross receipts or state taxable net capital is accrued. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

"Transferred employee" means an employee of a firm in the Commonwealth that is relocated to an enterprise zone facility owned or operated by that firm.

"Useable floor space" means all space in a building finished as appropriate to the use(s) of the building as represented in measured drawings. Unfinished basements, attics, and parking garages would not constitute useable floor space. Finished common areas such as stairwells and elevator shafts should be apportioned appropriately based on the majority use (51%) of that floor(s).

"Wage rate" means the hourly wage paid to an employee inclusive of shift premiums and commissions. In the case of salaried employees, the hourly wage rate shall be determined by dividing the annual salary, inclusive of shift premiums and commissions, by ~~1,680~~ 1,820 hours. Bonuses, overtime and tips are not to be included in the determination of wage rate.

"Zone" means an enterprise zone declared by the Governor to be eligible for the benefits of this program.

"Zone real property investment tax credit" means a credit provided to a large qualified zone resident pursuant to § 59.1-280.1 J of the Code of Virginia. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Zone resident" means a person whose principal place of residency is within the boundaries of any enterprise zone. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. Zone residency must be verified annually. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

**13VAC5-112-290. Application submittal and processing.**

A. In order to claim the grant, an application must be submitted to the department on prescribed form or forms. Applicants shall provide other documents as prescribed by the department.

B. Local zone administrators must verify that the location of the business is in the enterprise zone in a manner prescribed by the department.

C. The accuracy and validity of information provided in such applications, including that related to permanent full-time positions, wage rates and provision of health benefits are to be attested to by an independent certified public accountant licensed in Virginia through an agreed-upon procedures engagement conducted in accordance with current attestation standards established by the American Institute of Certified Public Accountants, using procedures provided by the department as assurance that the firm has met the criteria for qualification prescribed in this section.

D. ~~In order to request job creation grants, business firms shall submit the application form, final attestation report, and all required documentation to the department by no later than April 1 of the calendar year subsequent to the qualification year.~~ Business firms with base year employment of 100 or fewer permanent full-time positions and that create in a qualification year 25 or fewer grant eligible positions seeking to qualify for job creation grants as provided for in § 59.1-547 of the Code of Virginia shall be exempt from the attestation requirement for that qualification year. The permanent full-time positions, wage rates, and provision of health benefits of such business firms shall be subject to verification by the department.

E. In order to request job creation grants, business firms shall submit the application form, final attestation report, if an attestation is required, and all required documentation to the department by no later than April 1 of the calendar year subsequent to the qualification year.

~~E.~~ F. If the April 1 due date falls on a weekend or holiday, applications are due the next business day.

~~F.~~ G. Applications submitted by April 1 without the required attestation report shall be considered late applications and processed according to subsection H of this section.

~~G.~~ H. The department shall notify the business in writing of any incomplete or missing required documentation or request written clarification from the business firm on information provided by no later than May 15. Business firms must respond to any unresolved issues by no later than June 1. If the department does not meet its May 15 date for notification, then businesses must respond to any unresolved issues within 10 calendar days of the actual notification.

~~H.~~ I. Any applications with the required final attestation report and required documentation submitted after the April 1 due date but before May 15 of the calendar year subsequent to the qualification year will be held until the department determines that funds remain and it will not have to prorate grant awards. At such time, the department will review and process such applications and any applications pursuant to subsection F of this section on a first-come first served basis.

~~I.~~ J. The department shall award job creation grants and notify all applicants by June 30 as to the amount of the grant they shall receive.

~~J.~~ K. Applications must either be hand-delivered by the date specified in this section or sent by certified mail with a return receipt requested and postmarked no later than the date specified in this section.

~~K.~~ L. Applicants may only apply for grants that they are otherwise eligible to claim for such calendar year, subject to the limitations provided by 13VAC5-112-400.

**13VAC5-112-495. Redesignation of certain joint enterprise zones.**

Existing joint enterprise zones consisting of two localities may be redesignated for the purpose of expanding the zone provided (i) all of the local governing bodies of the localities

in which the proposed redesignated zone will be located have submitted resolutions to the department supporting the proposed redesignation and application for redesignation of the joint enterprise zone and (ii) the area of the locality added to the redesignated zone is contiguous to the existing joint enterprise zone and includes a revenue-sharing district that has experienced the loss of 900 permanent full-time positions within a 12-month period.

VA.R. Doc. No. R11-2365; Filed July 28, 2011, 9:32 a.m.

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# TITLE 15. JUDICIAL

## VIRGINIA STATE BAR

### Final Regulation

REGISTRAR'S NOTICE: The Virginia State Bar is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **15VAC5-20. Regulations for the Approval of Financial Institutions as a Depository for Attorney Trust Accounts in Virginia (repealing 15VAC5-20-10, 15VAC5-20-20, 15VAC5-20-30).**

Statutory Authority: Part 6, Section IV, Rules of the Virginia Supreme Court.

Effective Date: August 12, 2011.

Agency Contact: Stephanie G. Blanton, Executive Assistant, Virginia State Bar, 707 East Main Street, Richmond, VA 23219, telephone (804) 775-0576, or email blanton@vsb.org.

Summary:

*This regulation is replaced by Part 6, Section IV, Paragraph 20 of the Rules of the Virginia Supreme Court and is, therefore, repealed.*

VA.R. Doc. No. R11-2954; Filed August 12, 2011, 11:13 a.m.

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# TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

## STATE CORPORATION COMMISSION

### Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-417. Rules Governing the Certification and Regulation of Competitive Local Exchange Carriers (amending 20VAC5-417-10, 20VAC5-417-20, 20VAC5-417-50, 20VAC5-417-60, 20VAC5-417-70; repealing 20VAC5-417-30).**

Statutory Authority: § 12.1-13 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: September 26, 2011.

Agency Contact: Katie Cummings, Deputy Director, Division of Communications, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9101, FAX (804) 371-9069, or email katie.cummings@scc.virginia.gov.

Summary:

*The proposed amendments make modifications (i) necessitated by Chapters 738 and 740 of the 2011 Acts of Assembly, which eliminate certain requirements applicable to competitive telecommunications services and (ii) to account for certain competitive and technological changes in the telecommunications industry. Proposed amendments remove the price ceilings for retail services, provide more pricing flexibility, set forth requirements for tariffed and nontariffed services, and establish tariff requirements for nonretail services. Additionally, minor updates and revisions are proposed.*

AT RICHMOND, AUGUST 4, 2011

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

CASE NO. PUC-2011-00048

Ex Parte: In re: Amending the rules governing
the certification and regulation of
competitive local exchange carriers

ORDER FOR NOTICE AND COMMENT

This order initiates a proceeding to consider amending the State Corporation Commission's ("Commission") rules governing the certification and regulation of competitive local exchange carriers, 20 VAC 5-417-10 et seq. ("CLEC Rules"). Those rules were last revised on September 27, 2007, by a Final Order issued by the Commission in Case No. PUC-2007-00033. The Commission has concluded that it is appropriate to revisit the CLEC Rules to make modifications necessitated by changes in the law by the Virginia General Assembly enacted in Chapters 738 and 740 of the 2011 Virginia Acts of Assembly, and by competitive and technological changes that have occurred in the

telecommunications industry since our last review of the CLEC Rules.

To facilitate this review, the Staff of the Commission ("Staff") has prepared proposed revisions of the CLEC Rules ("Proposed Rules"), which are attached hereto.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the public should be afforded notice and an opportunity to comment on the Proposed Rules, to request a hearing thereon, or to suggest modifications or supplements to the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC-2011-00048.

(2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment, including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register.

(3) A downloadable version of this Order and the Proposed Rules shall be available for access by the public on the Commission's website: http://www.scc.virginia.gov/case. A copy of this Order and the Proposed Rules shall be available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m., excluding holidays.

(4) On or before August 29, 2011, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A PROCEEDING TO
AMEND THE RULES OF THE
STATE CORPORATION COMMISSION
GOVERNING THE CERTIFICATION AND
REGULATION
OF COMPETITIVE LOCAL EXCHANGE
TELECOMMUNICATIONS CARRIERS

The State Corporation Commission ("Commission") has initiated a proceeding to consider amending its rules governing the certification and regulation of competitive local exchange telecommunications carriers in accordance with changes in Virginia law enacted by the Virginia General Assembly in Chapters 738 and 740 of the 2011 Virginia Acts of Assembly, and to account for certain competitive and technological changes in the telecommunications industry. The Staff of the Commission has prepared proposed revisions to the rules, which were last revised in 2007 ("Proposed Rules"). The Commission has issued an Order for Notice and Comment that provides that notice be given to the public and that interested persons be given an opportunity to file written comments on, to propose modifications or supplements to, or to request a hearing on these Proposed Rules.

Copies of the Commission's Order and the Proposed Rules are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m., excluding holidays. Interested persons may also download unofficial copies from the Commission's website: http://www.scc.virginia.gov/case.

On or before September 26, 2011, any person may file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing such comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P. O. Box 2118, Richmond, Virginia 23218-2118. Any person desiring to submit comments electronically may do so by following the instructions on the Commission's website: http://www.scc.virginia.gov/case. All correspondence shall refer to Case No. PUC-2011-00048.

STATE CORPORATION COMMISSION

(5) On or before September 26, 2011, any interested person or entity may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Interested persons desiring to submit comments electronically may do so by following the instructions on the Commission's website: http://www.scc.virginia.gov/case. All correspondence shall refer to Case No. PUC-2011-00048.

(6) The Staff may file a response with the Clerk of the Commission on or before October 28, 2011, to the comments submitted to the Commission addressing the Proposed Rules.

(7) This matter is continued pending further order of the Commission.

AN ATTESTED COPY hereby shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter, all local exchange carriers certificated in Virginia as set out in Appendix A, and all interexchange carriers certificated in Virginia as set out in Appendix B. The Service List is available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First

Floor, Tyler Building, Richmond, Virginia 23219. A copy hereof shall be delivered to the Commission's Office of General Counsel and Division of Communications.

**20VAC5-417-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Attestation" means a written statement regarding compliance with a requirement or condition contained in this chapter, signed by an officer, director, or comparable official of the applicant or new entrant.

"Basic telephone service" means the customer's dial tone line and local usage. Local usage can be purchased on a flat rate, measured, or on a per message basis, or some combination thereof.

"Bundled service" means a designated group of services or products offered to customers at a package or set price. A bundled service may consist of regulated and nonregulated services or products.

"Casual user service" means a local exchange telecommunications service of a competitive local exchange carrier or municipal local exchange carrier that does not require a customer to actively subscribe or contract with the competitive local exchange carrier or municipal local exchange carrier to use the service. For example, these services may require alternate billing arrangements such as a calling card to use the service.

"Commission" means the State Corporation Commission.

"Competitive local exchange carrier" ("CLEC") means an entity, other than a locality, certificated to provide local exchange telecommunications services in Virginia after January 1, 1996, pursuant to § 56-265.4:4 of the Code of Virginia. An incumbent local exchange carrier shall be considered a CLEC in any territory that is outside the territory it was certificated to serve as of December 31, 1995, for which it obtains a certificate to provide local exchange telecommunications services on or after January 1, 1996.

"Customer" means any person, firm, partnership, corporation, or lawful entity that purchases local exchange telecommunications services.

"Incumbent local exchange carrier" or "incumbent" ("ILEC") means a public service company providing local exchange telecommunications services in Virginia on December 31, 1995, pursuant to a certificate of public convenience and necessity, or the successors to any such company.

"Individual customer pricing" means the offering of service or services to a specific customer at rates, terms, or conditions provided through an agreement instead of pursuant to tariff.

"Interconnection" means the point of interface between local exchange carriers' networks. Interconnection can be achieved at different points of the network.

~~"Interexchange carrier" ("IXC") means a carrier that provides intrastate interexchange long distance telephone service.~~

"Interstate service" means service that originates in one state and terminates in another state.

"Intrastate service" means service that originates and terminates within a state.

"Local exchange carrier" ("LEC") means a certificated provider of local exchange telecommunications services, whether an incumbent or new entrant.

"Local exchange telecommunications services" means local exchange telephone service as defined by § 56-1 of the Code of Virginia.

"Locality" means a city, town, or county that operates an electric distribution system in Virginia.

"Municipal local exchange carrier" ("MLEC") means a locality certificated to provide local exchange telecommunications services pursuant to § 56-265.4:4 of the Code of Virginia.

"New entrant" means a CLEC or an MLEC.

"Promotion or promotional rates" means an offering of limited duration that reduces, waives, or otherwise modifies applicable tariffed rates, terms, or conditions.

"Retail telecommunications service or services" means telecommunications service or services that are offered for sale directly to the public.

"Service charges" means charges associated with work activities performed by the LEC in conjunction with providing service. These include, but are not limited to, charges for installation, activation, order processing, line restoration, maintenance visits, or changes in service.

"Switched access charges" means the per minute rates billed by LECs to IXCs or other LECs for the use of the LEC's network when an end user makes or receives a long distance call.

"Tariff" means schedules on file with the commission that are open to public inspection that detail a local exchange carrier's services, rates, charges, terms, and conditions of service.

**20VAC5-417-20. Application requirements for certification.**

A. An original and 15 copies of an application for a certificate of public convenience and necessity shall be filed with the Clerk of the Commission.

1. The applicant shall deliver a copy of the application to the Division of Communications and a copy to the Division of Economics and Finance at the same time it is filed with the Clerk of the Commission.

2. A copy of all confidential information filed under seal with the Clerk of the Commission in connection with the application shall be provided by the applicant, at the time of filing, to the Division of Communications, the Division of Economics and Finance, and the Office of General Counsel pursuant to 5VAC5-20-170.

3. Any amendment or supplement to the application shall be filed in compliance with this section.

B. Notice of the application shall be given to all certificated local exchange carriers and other interested parties in Virginia in a form to be prescribed by the commission pursuant to an order.

C. The application shall identify the applicant including: (i) its name, address, telephone number, fax number, and website address, if any; (ii) the name, address, telephone number, fax number, type of entity (e.g., corporation, limited liability company), and website address of its parent or parents, if any; (iii) a list of its officers and directors or, if the applicant is not a corporation, a list of its principals or comparable officials; (iv) a toll-free telephone number for customer complaints and inquiries, if available; and (v) the name, address, telephone number, fax number, and e-mail address of the primary in-house regulatory contact.

D. An incorporated CLEC applicant shall demonstrate that it is organized under the laws of Virginia as a public service company by providing (i) a true and correct copy of its articles of incorporation and all amendments thereto, and (ii) a copy of the certificate and order issued by the commission.

E. An unincorporated CLEC applicant shall demonstrate that it is authorized to do business in the Commonwealth of Virginia by providing the following:

1. In the case of an unincorporated entity formed under the laws of Virginia: (i) a true and correct copy of its articles of organization, certificate of limited partnership, or other organizational document or documents, and all amendments thereto; and (ii) a copy of the certificate and order issued by the commission.

2. In the case of an unincorporated entity formed under the laws of a jurisdiction other than Virginia: (i) a copy of the certificate or statement of registration to do business in Virginia issued to it by the commission, and (ii) a true and correct copy of its articles of organization, certificate of limited partnership, or other organizational document or documents, and all amendments thereto.

F. An MLEC applicant shall include a copy of its applicable city, town, or county charter.

G. An applicant shall be required to show its financial, managerial, and technical ability to render local exchange telecommunications services.

1. To demonstrate financial ability, each CLEC applicant shall, at a minimum, provide the following:

a. The per books balance sheet, income statement, and statement of changes in financial position of the applicant or the entity responsible for the financing of the applicant, for the two most recent annual periods. Audited financial statements shall be provided, if available, including notes to the financial statements and auditor's letter. Published financial information that includes Securities and Exchange Commission forms 10K and 10Q shall be provided, if available.

b. A continuous performance or surety bond in a minimum amount of $50,000, in a form to be prescribed by the commission staff. The bond shall be provided to the Division of Economics and Finance within 30 days of the issuance of the Order for Notice and Comment.

2. To demonstrate financial ability, each MLEC applicant shall, at a minimum, provide the following information:

a. The two most recent annual financial statements for the entity responsible for financing. Financial statements shall include a balance sheet, income statement, statement of changes in financial position, notes to the financial statements, and auditor's letter.

b. Proof of a minimum bond (or other senior debt) rating of "BB" or an equivalent rating by a major rating agency, or a guarantee by a guarantor possessing a credit rating of "BB" or higher from a major rating agency. In lieu of such minimum bond rating or guarantee, the applicant shall submit other evidence that will demonstrate financial responsibility. This evidence may include, but not necessarily be limited to, letters of credit, irrevocable lines of credit, and surety or performance bonds.

3. To demonstrate managerial and technical ability, each CLEC applicant shall, at a minimum, provide the following information:

a. A description of its or its parent's history and experience of providing telecommunications or other relevant services, if any; and

~~b. Any documentation that supports its technical abilities; and~~

~~c.~~ b. The managerial and technical experience of each principal officer or member and appropriate senior management and technical personnel.

4. To demonstrate managerial and technical ability, each MLEC applicant shall, at a minimum, provide the following information:

a. A description of the locality's history of providing electric distribution services and other utility services, if any;

b. A description of its experience in providing telecommunications or other relevant services, if any;

c. A list of the geographic areas in which it has provided and is currently providing utility, telecommunications, or other relevant services; and

d. The managerial and technical experience of senior management and technical personnel.

5. The applicant shall provide a list of the states where the applicant, parent, or any affiliate holds authority to provide local exchange telecommunications services~~, interexchange telecommunications services, or both,~~ and where service is actually being provided, including the date service was commenced for each.

6. The applicant shall also provide a list of any state where authorization was previously held or service was provided and subsequently discontinued and the applicable dates.

7. The applicant shall provide a list of the states where applicant, parent, or any affiliate has had certification or authorization denied, suspended, terminated, or revoked. The list shall include the reason for such denial, suspension, or revocation and copies of any orders issued by a state commission or regulatory authority addressing such action.

~~H. Each application shall include an illustrative tariff or tariffs, which shall include, at a minimum, the applicant's proposed terms and conditions of service. Applicants that desire to have any of their services deregulated or detariffed shall file such a proposal in accordance with 20VAC5-417-50.~~

~~I.~~ H. Each application shall include the applicant's proposed form of regulation for its services if such form of regulation differs from that set forth in 20VAC5-417-50.

~~J.~~ I. A CLEC application shall be for statewide authority unless otherwise requested by the CLEC. If less than statewide authority is being requested, the CLEC shall identify the geographic area or areas for which the CLEC is requesting authority to provide service.

~~K.~~ J. An MLEC application shall identify the geographic area or areas for which the MLEC is requesting authority to provide service. The applicant should consult § 15.2-2160 A of the Code of Virginia for determining the limits of its proposed service area.

~~L. An MLEC applicant shall provide an attestation that it will comply with the requirements in 20VAC5-417-40, MLEC requirements.~~

~~M. All applicants shall provide an attestation that they will comply with the requirements in 20VAC5-417-30, conditions for new entrants.~~

~~N.~~ K. The MLEC applicant shall provide a map of its electric distribution facilities in place as of March 1, 2002. The map should be in sufficient detail to identify the city, town, and county boundaries.

~~O.~~ L. Upon request of the commission staff, an applicant shall provide such information with respect to any of its services or practices as may be relevant to the review of the application.

**20VAC5-417-30. ~~Conditions for new entrants.~~ (Repealed.)**

~~A. A new entrant shall, either directly or through arrangements with others, provide the following:~~

~~1. Access to 911 and E911 services;~~

~~2. White page directory listings;~~

~~3. Access to telephone relay services;~~

~~4. Access to directory assistance;~~

~~5. Access to operator services;~~

~~6. Equal access to interLATA long distance carriers;~~

~~7. Free blocking of 900 and 700 type services so long as the same requirement applies to incumbent local exchange companies; and~~

~~8. Interconnection on a nondiscriminatory basis with other local exchange carriers.~~

~~B. To the extent economically and technically feasible, the new entrant shall provide service to all customers in the same service classification in its designated geographic service areas in accordance with its tariff offerings.~~

~~C. The new entrant shall have procedures to prevent deceptive and unfair marketing practices.~~

~~D. The new entrant shall be subject to applicable commission rules and regulations, including but not limited to, service quality and billing standards or rules, the rules governing disconnection of local exchange telephone service (i.e., 20VAC5-413), and rules governing the discontinuance of local exchange telecommunications services (i.e., 20VAC5-423).~~

~~E. The new entrant shall comply with the applicable intraLATA toll dialing parity requirements of local exchange carriers as determined in Case No. PUC 1997-00009, Commonwealth of Virginia, ex rel. State Corporation Commission Ex Parte: Implementation of IntraLATA Toll Dialing Parity pursuant to the provisions of 47 USC § 251 (b) (3).~~

~~F. A new entrant shall, prior to collecting any customer deposits, establish and maintain an escrow account for such~~

~~funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union, which is unaffiliated with the applicant. The Division of Economics and Finance shall be notified of this arrangement at its inception and any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the staff or commission determines it is no longer necessary.~~

**20VAC5-417-50. Regulation of new entrants providing local exchange telecommunications services.**

A. ~~Unless otherwise allowed by the commission, tariffs~~ Tariffs are permitted but not required for any or all ~~local exchange telecommunications service offerings except those that are comparable to offerings of any ILEC that does not require tariffs~~ terms, conditions, or rates of a new entrant's retail local exchange telecommunications service offerings. Unless otherwise allowed by the commission, tariffs are required for nonretail telecommunications services, i.e., access charges.

1. A new entrant electing not to tariff any or all of its retail service or services shall provide customers with access to adequate and complete information regarding the applicable terms, conditions, and rates of its nontariffed retail service or services. The form of such information is not limited to, but may be provided through, individual contracts, online website access to service guides, or other user documents. A new entrant shall provide the Division of Communications with link information to any online website information.

2. A new entrant shall advise the Division of Communications in writing if it elects not to submit tariffs for any of its retail services. The notification shall include the extent of the nontariffing, i.e., whether all retail services will not be tariffed or only some services or some terms, conditions, or rates will not be tariffed.

3. A new entrant that has tariffs on file with the Division of Communications may elect to eliminate the tariff of any or all terms, conditions, or rates of its retail services as an administrative or nonprice tariff change as prescribed by subdivision F 4 of this section.

B. A new entrant that has received certification to provide local exchange telecommunications services shall~~, prior to offering such services, submit its proposed initial tariffs to the Division of Communications. A new entrant shall~~ not offer any local exchange telecommunications services until ~~its tariffs have been accepted by the Division of Communications and are effective.~~ such time as:

1. The new entrant has complied with notifying the Division of Communications pursuant to subdivision A 2 of this section, for terms, conditions, or rates of retail services it elects not to tariff.

2. The new entrant has submitted initial tariffs to the Division of Communications for nonretail services and for any retail services that it elects to tariff, and the tariffs have been reviewed and accepted by the Division of Communications.

C. A new entrant ~~may petition the commission to consider deregulation or detariffing treatment for any of its specific service offerings. Any deregulatory or detariffing treatment for any comparable service, class of customers, or geographic area granted to an ILEC shall be applicable to a new entrant under like conditions~~ that elects not to tariff any or all terms, conditions, or rates of its retail local exchange telecommunications service offerings may determine subsequently to submit tariffs to the Division of Communications for any such retail local exchange telecommunications services. Any subsequent filings shall be submitted to the Division of Communications for review and acceptance. A new entrant shall continue offering its retail services on a nontariffed basis until such time as the tariffs are reviewed and accepted by the Division of Communications, and on a tariffed basis thereafter.

~~D. Unless otherwise allowed by the commission, prices for basic telephone service and associated service charges, not purchased as part of a bundled service, shall not exceed the highest of the comparable tariffed or applicable ceiling rates, as determined by the commission, of an incumbent local exchange carrier or carriers in the same service territory.~~

~~E.~~ D. 1. ~~Beginning December 1, 2007, unless~~ Unless otherwise allowed by the commission, prices for a new entrant's intrastate access services shall not exceed the highest of the following:

a. The new entrant's comparable interstate switched access charge rates.

b. The aggregate intrastate switched access charge rates of the ILEC in whose service territory the new entrant is providing service. A new entrant may utilize a blended or composite rate to reflect applicable price ceilings of more than one ILEC or to reflect an alternative rate structure to the ILEC.

~~c. An intrastate switched access charge benchmark rate of $.029 per minute for a transition period from December 1, 2007, through March 30, 2008. Effective April 1, 2008, this subdivision no longer applies.~~

2. A new entrant may be required to submit supporting documentation to justify its switched access rates, structure, and appropriate functions to the Division of Communications.

3. Unless otherwise ordered by the commission, if an ILEC lowers its switched access charges on its own, such reductions shall not be reflected in applicable price ceilings

and a new entrant is not required to adjust its rates in such circumstances.

4. If an ILEC lowers switched access charges pursuant to a commission order, a new entrant shall have 90 days to adjust and implement its switched access rates to correspond to the new applicable price ceiling. Applicable access tariffs shall be filed with the Division of Communications at least 10 days prior to the effective date. The commission may approve an alternative implementation schedule for a new entrant or new entrants to adjust their switched access rates.

~~F. Tariff changes~~ E. Any price increase for retail local exchange telecommunications services of new entrants shall ~~be implemented as follows:~~

~~1. Price decreases shall be noticed to the Division of Communications no later than three days after the effective date.~~

~~2. Price increases shall~~ become effective after at least 30 days' written notice is provided to affected customers ~~and at least seven business days' written notice to the Division of Communications~~.

~~a.~~ 1. Written notice to affected customers shall be provided through bill inserts, bill messages, ~~or~~ direct mail, or electronic mail or other forms of electronic communications when the customer has requested or authorized electronic bill delivery or other electronic communications.

~~b.~~ 2. Notice for price increases for a casual user or nonsubscriber service shall be provided through publication once as display advertising in newspapers having general circulation in the areas served by the new entrant. Display advertising shall only be used for notice for casual user or nonsubscriber services unless otherwise authorized by the commission.

F. Tariff changes for local exchange telecommunications services of new entrants shall be implemented as follows:

1. Price increases, in addition to the requirements in subsection E of this section, shall be submitted to the Division of Communications at least seven business days prior to the effective date.

~~c.~~ a. A copy of the customer notice, the date or dates of such notification, and proof of publication, if applicable, shall be included with the ~~notice~~ submission to the Division of Communications.

~~d. An allowable~~ b. A rate increase, if there are no current customers, shall not require customer notice. The ~~notice~~ submission to the Division of Communications shall include an attestation by the new entrant that it has no customers.

2. Price decreases shall be submitted to the Division of Communications no later than three days after the effective date.

3. New service tariff offerings shall become effective after at least three business days' ~~written notice~~ submission to the Division of Communications.

4. Administrative or nonprice tariff changes shall become effective after at least three business days' ~~written notice~~ submission to the Division of Communications.

5. A new entrant, subject to prior approval of the Division of Communications, may seek to file ~~tariff~~ price changes in less than the prescribed timeframe stated above.

G. A new entrant may petition the commission for approval of pricing structures or rates that do not conform with access price ceiling requirements in ~~subsections~~ subsection D ~~and E~~ of this section. The new entrant shall provide appropriate documentation and rationale to support any request. The commission may permit such alternative pricing structures and rates if the public interest will not be harmed.

~~H. Unless otherwise ordered by the commission, price ceiling requirements shall not apply to a new entrant's services other than those specified in subsections D and E of this section.~~

~~I.~~ H. Tariff filings and revisions shall be submitted to the Director of the Division of Communications and shall include an original and two copies.

~~J.~~ I. A new entrant may, for a specified period of time, offer promotional rates, terms, or conditions for its local exchange telecommunications services offerings that differ from the rates, terms, or conditions in its tariffs. Promotions may be submitted by letter and become effective after at least three business days' written notice to the Director of the Division of Communications.

~~K.~~ J. A new entrant may offer individual customer pricing for local exchange telecommunications services to a customer that may differ from those in its tariffs in a competitive bid or procurement situation. The new entrant shall retain records of any such agreements and make same available to the Division of Communications upon request.

~~L.~~ K. A new entrant may, pursuant to § 56-481.2 of the Code of Virginia, submit for the commission's consideration an alternative regulatory plan ~~for the commission's consideration~~ or seek other deregulatory treatment or detariffing for nonretail services in the applicant's certification proceeding or at a later date if it desires regulation different from that specified in this section.

~~M.~~ L. A new entrant providing local exchange telecommunications services shall not abandon or discontinue such services except as prescribed in 20VAC5-423, Rules Governing the Discontinuance of Local Exchange

Telecommunications Services Provided by Competitive Local Exchange Carriers.

~~N.~~ M. An MLEC may petition the commission for authority to include a subsidy in any of its local exchange services. The commission may approve such a subsidy if it is deemed to be in the public interest. Any subsidy approved by the commission may not result in a price for the service lower than the price for the same service charged by the ILEC provider in the area.

~~O.~~ N. A new entrant requesting authority to expand its geographic service territory not covered by its existing certificate shall file a petition with the commission.

O. A new entrant shall, prior to collecting any customer deposits, establish and maintain an escrow account for such funds, held in a Virginia office of a duly chartered state or national bank, savings and loan association, savings bank, or credit union, which is unaffiliated with the applicant. The Division of Economics and Finance shall be notified of this arrangement at its inception and of any subsequent change to the arrangement. Any escrow arrangement established pursuant to this requirement shall be maintained until such time as the staff or commission determines it is no longer necessary.

P. The new entrant shall be subject to applicable commission rules and regulations.

Q. The new entrant shall provide interconnection on a nondiscriminatory basis with other local exchange carriers.

**20VAC5-417-60. Reporting requirements for new entrants.**

A. A new entrant shall provide the name, address, telephone number, fax number, and e-mail address of the person designated to receive all official mailings or notices from the Divisions of Economics and Finance, Communications, and Public Service Taxation. Updates to this information shall be provided to each division within 30 days of any change.

B. A new entrant shall comply with the following economic reporting requirements:

1. At a minimum annually, or as deemed necessary by the staff or the commission, a new entrant shall be required to provide information to the Division of Economics and Finance that includes the number of access lines served, reported by residential lines and business lines, number of customers, reported by residential customers and business customers, and Virginia intrastate revenue.

2. A new entrant shall, on an annual basis or upon request of the staff or the commission, specify to the Division of Economics and Finance the geographic areas served within Virginia. Such information shall include the identification of specific exchanges where service is provided or offered and the wire centers associated with all collocation arrangements.

C. A new entrant shall ~~comply with the following tax reporting requirements: 1. A new entrant shall~~ file all reports and provide all information required for the administration of tax statutes by the Division of Public Service Taxation. Information filed with the Division of Public Service Taxation shall include financial statements and other statements showing Virginia revenues. If available, audited financial statements shall be filed. A new entrant shall maintain records of all its real property and tangible personal property located in Virginia. Such records shall include the property's original cost and location by city, county, or town and district.

~~2. A new entrant shall remit the telecommunications relay surcharge prescribed by the commission pursuant to § 56-484.6 of the Code of Virginia and 20VAC5-415. The new entrant shall file all reports and make all payments as directed by the Division of Public Service Taxation.~~

D. If a new entrant establishes exchange boundaries that are not in conformance with the exchange boundaries of the incumbent local exchange carriers, maps depicting the new entrant's exchange boundaries shall be filed with the Division of Communications.

E. Should the commission determine that a new entrant has a monopoly over any of its services, whether or not those services are telephone services, it may order the new entrant to file annually with the Division of Communications data to demonstrate that its revenues from local exchange telecommunications services cover the long run incremental costs of such services in the aggregate.

F. A new entrant shall, upon request of the commission staff, file additional information with respect to any of its services or practices.

**20VAC5-417-70. Name changes and use of assumed and fictitious names by a new entrant.**

A. A new entrant shall comply with all provisions of Virginia law that regulate the change of name of a business entity. Within 30 days of the acceptance by the Clerk of the Commission of all documents required for the change of name of a business entity not related to the merger or reorganization of a new entrant, the new entrant shall file with the Clerk of the Commission an application to amend and reissue its certificate of public convenience and necessity to provide local exchange telecommunications services in its new name. The application shall conform to the commission's Rules of Practice and Procedure, 5VAC5-20.

B. A new entrant shall, before using an assumed or fictitious name in Virginia, comply with §§ 59.1-69 and 59.1-70 of Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of

Virginia, Transacting Business Under Assumed Name. In addition, a new entrant shall:

1. File with the Division of Communications a copy of all certificates and related correspondence required by §§ 59.1-69 and 59.1-70 of the Code of Virginia. A new entrant shall identify all its fictitious and assumed names in ~~its~~ any tariffs on file with the Division of Communications.

2. File with the Division of Public Service Taxation a copy of all certificates and related correspondence required by §§ 59.1-69 and 59.1-70 of the Code of Virginia.

DOCUMENTS INCORPORATED BY REFERENCE (20VAC5-417)

Form 10Q, General Instructions, United States Securities and Exchange Commission.

Form 10K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

~~Case No. PUC970009, Implementation of IntraLATA Toll Dialing Parity Pursuant to 47 USC § 251(b)(3).~~

VA.R. Doc. No. R11-2926; Filed August 8, 2011, 11:58 a.m.

## STATE CORPORATION COMMISSION

AT RICHMOND, JULY 28, 2011

APPLICATION OF
NATIONAL COUNCIL ON COMPENSATION
INSURANCE, INC.

CASE NO. INS-2011-00163

For revisions of advisory loss costs and assigned risk workers' compensation insurance rates

ORDER SCHEDULING HEARING

On July 15, 2011, the National Council on Compensation Insurance, Inc. ("Applicant") filed on behalf of its members, comprising all the insurance companies licensed to write workers' compensation insurance in the Commonwealth, advisory loss costs that Applicant's members may use together with their own expenses and profit and contingency factors in determining the members' rates for policies written in the voluntary market and revised rates and rating values for assigned risk policies. Included in Applicant's filings are advisory loss costs and revised assigned risk rates for the coal classifications (1005 and 1016). Together with its advisory loss costs and assigned risk rate filings, Applicant submitted testimony and exhibits in support of its proposed advisory loss costs, assigned risk rates and rating values. Applicant has proposed to make the requested changes for policies effective on and after April 1, 2012, on all new and renewal business.

NOW THE COMMISSION, having considered Applicant's request, finds that a hearing will be necessary before acting upon the requested revision of workers' compensation assigned risk insurance rates and advisory lost costs, and that notice of the time and place of such hearing should be given to the public. We further find that interested persons and Commission Staff should be given an opportunity to participate in this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed as Case No. INS-2011-00163, and a proceeding shall be instituted pursuant to 5 VAC 5-20-80 A of the Commission's Rules of Practice and Procedure to investigate and determine: (a) whether the advisory loss costs and assigned risk rates as set forth in the filings are excessive, inadequate, or unfairly discriminatory; and (b) any other matter which may be the proper subject of investigation;

(2) This case be set for hearing commencing at 10:00 a.m. on October 27, 2011, in the Courtroom of the State Corporation Commission, Second Floor, Tyler Building, Richmond, Virginia;

(3) On or before August 19, 2011, all persons who expect to participate in the hearing as respondents, as provided by 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure, shall file a notice of participation and deliver a copy of the notice of participation to counsel for Applicant;

(4) On or before September 16, 2011, the Commission's Staff, the Office of the Attorney General, and all persons previously filing a notice of participation who wish to participate in the hearing as respondents, shall file with the Clerk of the Commission fifteen (15) copies of the testimony and exhibits of each witness expecting to present direct testimony, and shall simultaneously deliver three (3) copies thereof to counsel for Applicant and any respondent requesting same;

(5) On or before October 7, 2011, Applicant shall file fifteen (15) copies of the rebuttal testimony and exhibits of each witness it intends to offer at the hearing and shall simultaneously deliver three (3) copies of same to counsel for each respondent, the Commission's Staff and the Office of Attorney General;

(6) All interested persons who desire to comment in support of or in opposition to the application shall file such comments on or before October 14, 2011, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2011-00163. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/caseinfo.htm; and

(7) Applicant shall publish a notice of the time and place of such hearing, setting forth the substance of the proposed advisory loss costs and assigned risk rates and the place or places where the aforesaid documents and the testimony and exhibits of Applicant in support of its filings may be seen by any person in interest, in a newspaper of general circulation published in each of the following cities: Richmond, Norfolk, Newport News, Roanoke, Winchester, Lynchburg, Danville, Bristol, Fredericksburg, and Alexandria once a week for two (2) consecutive weeks beginning not later than the week beginning August 8, 2011, and that proof of such publication be made and filed herein, which notice shall be substantively as follows:

NOTICE TO THE PUBLIC

Notice is hereby given to employers providing workers' compensation insurance under the Workers' Compensation Act and to the public that National Council on Compensation Insurance, Inc. ("Applicant"), on behalf of its member insurers, has applied to the State Corporation Commission ("Commission") for approval of certain changes applicable to voluntary market advisory loss costs and assigned risk rates and rating values for new and renewal workers' compensation insurance policies becoming effective on and after April 1, 2012.

Applicant proposes advisory loss costs that Applicant's members may use along with their own expenses and profit and contingency factors in establishing the members' rates for policies written in the voluntary market. The proposed advisory loss costs would produce an increase in the overall average pure premium level for the voluntary market industrial classifications of 10.5%.

Applicant proposes changes to the advisory loss costs for "F" (Federal) classifications in the voluntary market that would produce an overall pure premium level increase of 2.8%.

Applicant proposes advisory loss costs for coal classifications 1005 and 1016 in the voluntary market that would produce an overall pure premium level increase of 16.8% and an overall pure premium level increase of 13.4%, respectively.

Applicant proposes a 8.8% increase in the overall average rate level for industrial classifications in the assigned risk plan. Applicant proposes a 0% change in the overall average rate level for "F" classifications in the assigned risk plan and a 15.7% increase and a 10.1% increase in the overall average rate level for coal classifications 1005 and 1016, respectively, in the assigned risk plan.

Applicant has submitted filings and testimony and exhibits in support of the proposed changes in advisory loss costs, assigned risk rates and rating values to the Commission. That information and other information filed by Applicant in support of its proposals, including the exact assigned risk rates and advisory loss costs for individual classifications, which will vary by classification and may be higher or lower than the overall decreases stated above, may be seen at the Bureau of Insurance, Tyler Building, Richmond, Virginia, and at the Document Control Center of the Office of the Clerk of the Commission, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia.

The Commission has instituted an investigation into the changes proposed by Applicant and has set a public hearing thereon in Case No. INS-2011-00163 in its Courtroom, Second Floor, Tyler Building, Richmond, Virginia, at 10:00 a.m. on October 27, 2011.

On or before August 19, 2011, all persons who expect to participate at the public hearing as a party respondent must file a notice of participation in conformity with the Commission's Rules of Practice and Procedure and deliver a copy to Applicant's counsel, Charles H. Tenser, Esquire, 2120 Galloway Terrace, Midlothian, Virginia 23113.

Prepared testimony and exhibits of the witnesses to be offered at the hearing on behalf of each respondent, the Commission's Staff, and the Office of the Attorney General, shall be filed on or before September 16, 2011, in accordance with the Commission order setting the hearing.

On or before October 7, 2011, Applicant shall file fifteen (15) copies of the rebuttal testimony and exhibits of each witness it intends to offer at the hearing and shall simultaneously deliver three (3) copies of same to counsel for each respondent, the Commission's Staff and the Office of Attorney General.

All interested persons who desire to comment in support of or in opposition to the application shall file such comments on or before October 14, 2011, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2011-00163. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/caseinfo.htm.

Any interested person who desires to make a statement at the hearing in his/her own behalf, either for or against the proposed revisions, but not otherwise participate in the hearing, need only appear in the Commission's Courtroom at 9:45 a.m. on October 27, 2011, and complete a notice of appearance form which will be provided by the Commission. Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

NATIONAL COUNCIL ON
COMPENSATION INSURANCE, INC.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Richmond, Virginia 23219. A copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Mary M. Bannister.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Total Maximum Daily Load for North Fork Rockfish River, South Fork Rockfish River, Rockfish River, and Taylor Creek Watersheds

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) and implementation plans (IPs) for the North Fork Rockfish River, South Fork Rockfish River, Rockfish River, and Taylor Creek watersheds in Nelson County. The tributaries of the Rockfish River were listed on the 2004 and 2006 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria; in addition, Taylor Creek was listed in 2008 as impaired due to violations of the state's general water quality standard (benthic) for aquatic life. The bacteria impairment on the North Fork Rockfish begins in the headwaters and extends 7.2 miles to its confluence with the Rockfish River. The South Fork Rockfish bacterial impairment extends 11.6 miles from its headwaters to its confluence with the mainstem Rockfish River. The bacteria impairment on the Rockfish River extends from the confluence of its North and South Forks to its confluence with Davis Creek, which is a total of 6.5 miles. The benthic impairment on Taylor's Creek extends 5 miles from its headwaters to the confluence with North Fork Perry Creek.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The second public meeting on the development of these TMDLs and IPs will be held on Wednesday, September 7, 2011, 7 p.m. at Rockfish River Elementary School, 200 Chapel Hollow Road, Afton, VA 22920. The TMDL document will be available on the DEQ website the day of the meeting for public comment and review: https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.jspx

The public comment period for the second public meeting will end on October 7, 2011. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

## STATE LOTTERY DEPARTMENT

### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 3, 2011, August 4, 2011, August 5, 2011, August 8, 2011, and August 9, 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 Sixty-One (11)

Virginia's Instant Game Lottery 1276; "Money-Tree" Final Rules for Game Operation (effective on August 3, 2011)

Director's Order Number Sixty-Two (11)

Virginia's Instant Game Lottery 1278; "Hail To The Redskins" Final Rules for Game Operation (effective on August 3, 2011)

Director's Order Number Sixty-Three (11)

Virginia Lottery's; "Hail To The Redskins Sweepstakes" Final Rules for Game Operation (effective on August 9, 2011)

Director's Order Number Sixty-Five (11)

Virginia Lottery's; "World Poker Tour Sweepstakes" Final Rules for Game Operation (effective on August 9, 2011)

Director's Order Number Sixty-Six (11)

Virginia's Instant Game Lottery 1243; "Wild Cherry Crossword" Final Rules for Game Operation (effective nunc pro tunc to August 1, 2011)

Director's Order Number Sixty-Seven (11)

Virginia's Instant Game Lottery 1260; "Diamond 7S" Final Rules for Game Operation (effective on August 3, 2011)

Director's Order Number Sixty-Eight (11)

Virginia's Instant Game Lottery 1288; "10X The Money" Final Rules for Game Operation (effective on August 3, 2011)

Director's Order Number Sixty-Nine (11)

Virginia's Instant Game Lottery 1295; "Cash Line Bingo" Final Rules for Game Operation (effective on August 3, 2011)

Director's Order Number Seventy (11)

Virginia's Instant Game Lottery 1256; "Diamond Doubler" Final Rules for Game Operation (effective on August 3, 2011)

Director's Order Number Seventy-One (11)

"Hess Double Play Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Rules; (effective on August 5, 2011, and remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

Director's Order Number Seventy-Two (11)

Virginia's Instant Game Lottery 1272; "Winning In Spades" Final Rules for Game Operation (effective on August 3, 2011)

Director's Order Number Seventy-Three (11)

Virginia's Instant Game Lottery 1277; "Turkey Tripler" Final Rules for Game Operation (effective on August 3, 2011)

Director's Order Number Seventy-Four (11)

Virginia's Instant Game Lottery 1185; "WPT® World Poker Tour" Final Rules for Game Operation (effective on August 3, 2011)

Director's Order Number Seventy-Six (11)

Virginia Lottery's "2 Ways 2 Win Sweepstakes" Final Rules for Game Operation (effective on August 8, 2011, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "2 Ways 2 Win Sweepstakes" game rules)

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy is conducting a periodic review of **4VAC25-20, Board of Coal Mining Examiners Certification Requirements.**

The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins August 29, 2011, and ends on September 20, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to Michael A. Skiffington, Program Support Manager, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237, or email mike.skiffington@dmme.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## 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.

# ERRATA

## STATE CORPORATION COMMISSION

Title of Regulation: **10VAC5-200. Payday Lending (amending 10VAC5-200-90).**

Publication: 27:24 VA.R. 2601-2603 August 1, 2011.

Correction to Proposed Regulation:

Page 2603, first column, 10VAC5-200-90, second paragraph, line 8, remove "62.1-1800 et seq." and insert "6.2-1800 et seq."

VA.R. Doc. No. R11-2918; Filed August 15, 2011, 10:05 a.m.