VIRGINIA REGISTER OF REGULATIONS

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TABLE OF CONTENTS

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TABLE OF CONTENTS

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. **28:2 VA.R. 47-141 September 26, 2011,** refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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).

October 2011 through November 2012

Volume: Issue	Material Submitted By Noon*	Will Be Published On
28:4	October 5, 2011	October 24, 2011
28:5	October 19, 2011	November 7, 2011
28:6	November 2, 2011	November 21, 2011
28:7	November 15, 2011 **(Tuesday)**	December 5, 2011
28:8	November 30, 2011	December 19, 2011
28:9	December 13, 2011 **(Tuesday)**	January 2, 2012
28:10	December 27, 2011 **(Tuesday)**	January 16, 2012
28:11	January 11, 2012	January 30, 2012
28:12	January 25, 2012	February 13, 2012
28:13	February 8, 2012	February 27, 2012
28:14	February 22, 2012	March 12, 2012
28:15	March 7, 2012	March 26, 2012
28:16	March 21, 2012	April 9, 2012
28:17	April 4, 2012	April 23, 2012
28:18	April 18, 2012	May 7, 2012
28:19	May 2, 2012	May 21, 2012
28:20	May 16, 2012	June 4, 2012
28:21	May 30, 2012	June 18, 2012
28:22	June 13, 2012	July 2, 2012
28:23	June 27, 2012	July 16, 2012
28:24	July 11, 2012	July 30, 2012
28:25	July 25, 2012	August 13, 2012
28:26	August 8, 2012	August 27, 2012
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Agency Decision

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Statutory Authority: §§ 54.1-3300 and 54.1-3400 of the Code of Virginia.

Names of Petitioners: Karen Dunavant, Courtney Fuller, and Annette Reichenbaugh.

Nature of Petitioners' Requests: Amend requirement for monthly inspection of automated dispensing devices by pharmacy personnel to verify proper storage, location of drugs, expiration dates, drug security, and validity of access codes.

Agency Decision: Granted.

Statement of Reason for Decision: The Board of Pharmacy received three petitions for rulemaking from hospital pharmacists requesting an amendment to #5 of 18VAC110-20-490 in Chapter 20, which provides requirements for automated devices for dispensing and administration of drugs. The petitioners requested less burdensome requirements for verification of storage, location, expiration dates, drug security, and validity of access codes. While the board agreed that the petition was reasonable and the specific requirements in #5 may need to be modified for consistency with current technology, it concluded that all of 18VAC110-20-490 should be examined for possible amendments that would ensure drug security and integrity but would make compliance less burdensome.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R11-45; Filed September 29, 2011, 3:29 p.m.

BOARD OF SOCIAL WORK

Initial Agency Notice

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Name of Petitioner: Michael Hayter.

Nature of Petitioner's Request: To amend 18VAC140-20-50, relating to requirements for supervision, to clarify the status of an individual who has completed supervision but has not passed the examination for LCSW licensure. Such individual should not be in the status of a "supervisee in social work" and should be exempt from providing information to his previous clinical supervisor.

Agency's Plan for Disposition of Request: The petition was filed with the Register of Regulations and will be published on October 24, 2011, with a request for comment to be received until November 15, 2011. The petition will also be posted for comment on the Virginia Regulatory Townhall at www.townhall.virginia.gov. At the next meeting held after the close of the comment period, the board will consider the petition and any comment received to decide whether or not to initiate the rule-making process.

Public Comment Deadline: November 15, 2011.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R12-06; Filed September 21, 2011, 4:20 p.m.

Initial Agency Notice

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

Statutory Authority: § 54.1-3708 of the Code of Virginia.

Name of Petitioner: Grace K. Nozaki.

Nature of Petitioner's Request: Regulations should define real-time webinars as Category 1 continuing education.

Agency's Plan for Disposition of Request: The petition was filed with the Register of Regulations and will be published on October 24, 2011, with a request for comment to be received until November 15, 2011. At the next meeting held after the close of the comment period, the board will consider the petition and any comment received to decide whether or not to initiate the rule-making process.

Public Comment Deadline: November 15, 2011.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R12-09; Filed October 5, 2011, 8:56 a.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending **3VAC5-20, Advertising.** The purpose of the proposed action is to establish reasonable time, place, and manner restrictions on outdoor advertising of alcoholic beverages.

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

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public Comment Deadline: November 23, 2011.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

VA.R. Doc. No. R12-2956; Filed September 27, 2011, 10:01 a.m.

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Board has WITHDRAWN the Notice of Intended Regulatory Action for **3VAC5-50, Retail Operations,** which was published in 24:11 VA.R. 1341 February 4, 2008.

Agency Contact: W. Curtis Coleburn, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

VA.R. Doc. No. R08-925; Filed September 27, 2011, 10:03 a.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Notice of Effective Date

Title of Regulation: **1VAC20-40. Voter Registration (adding 1VAC20-40-10 through 1VAC20-40-60).**

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

Effective Date: October 13, 2011.

On November 22, 2010, the State Board of Elections adopted this regulation relating to requirements for residency for voter registration. The final regulation was published in Volume 27, Issue 9 of the January 3, 2011, edition of the Virginia Register of Regulations (27:9 VA.R. 765-768 January 3, 2011) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated March 7, 2011, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is October 13, 2011. Copies are available online at http://townhall.virginia.gov/L/ViewBoard.cfm?BoardID=151; by telephone toll-free 1-800-552-9745 or local (804) 864-8910; by written request to FOIA Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to foia@sbe.virginia.gov.

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

VA.R. Doc. No. R11-2351; Filed October 13, 2011, 8:02 a.m.

Notice of Effective Date

Title of Regulation: **1VAC20-40. Voter Registration (adding 1VAC20-40-80).**

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

Effective Date: September 30, 2011.

On July 6, 2011, the State Board of Elections adopted this regulation relating to requirements for registering to vote using the Federal Post Card Application (FPCA). The final regulation was published in Volume 27, Issue 24 of the August 1, 2011, edition of the Virginia Register of Regulations (27:24 VA.R. 2581 August 1, 2011) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations or September 1, 2011, whichever is later. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated September 23, 2011, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is September 30, 2011. Copies are available online at http://townhall.virginia.gov/L/ViewStage.cfm?stageid=5940; by telephone toll-free 1-800-552-9745 or local (804) 864-8910; by written request to FOIA Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to foia@sbe.virginia.gov.

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

VA.R. Doc. No. R11-2620; Filed September 30, 2011, 12:10 p.m.

Notice of Effective Date

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

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

Effective Date: October 5, 2011.

On January 31, 2011, the State Board of Elections adopted this regulation restating board policies relating to election administration. The final regulation was published in Volume 27, Issue 13 of the February 28, 2011, edition of the Virginia Register of Regulations (27:13 VA.R. 1485-1486 February 28, 2011) with an effective date upon filing a notice of the United States Attorney General's preclearance with the Registrar of Regulations. The State Board of Elections hereby notices the United States Attorney General's approval of this regulation via a letter dated September 29, 2011, from T. Christian Herren, Jr., Chief, Voting Section, to Joshua N. Lief, Esq., Senior Assistant Attorney General, Office of Attorney General of Virginia. The effective date of this regulation is October 5, 2011. Copies are available online at http://townhall.virginia.gov/L/ViewStage.cfm?stageid=5940; by telephone toll-free 1-800-552-9745 or local (804) 864-8910; by written request to FOIA Coordinator, 1100 Bank Street, Richmond, VA 23219; or by email request to foia@sbe.virginia.gov.

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

VA.R. Doc. No. R11-2692; Filed October 5, 2011, 8:47 a.m.

TITLE 8. EDUCATION

COLLEGE OF WILLIAM AND MARY

Proposed Regulation

REGISTRAR'S NOTICE: The College of William and Mary is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC115-20. Weapons on Campus (adding 8VAC115-20-10 through 8VAC115-20-30).**

Statutory Authority: § 23-44 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Agency Contact: Kiersten Boyce, Compliance & Policy Officer, College of William & Mary, P.O. Box 8795, Williamsburg, VA 23187, telephone (757) 221-2743 or email klboyc@wm.edu.

Summary:

The proposed regulation establishes the weapons limitation policy at the College of William & Mary.

CHAPTER 20
WEAPONS ON CAMPUS

8VAC115-20-10. Definitions.

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

"Police officer" means law-enforcement officials appointed pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 and Chapter 17 (§ 15.2-1700 et seq.) of Title 15.2, Chapter 17 (§ 23-232 et seq.) of Title 23, Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, or Chapter 1 (§ 52-1 et seq.) of Title 52 of the Code of Virginia or sworn federal law-enforcement officers.

"University property" means any property owned, leased, or controlled by the College of William & Mary in Virginia, including the Virginia Institute of Marine Science.

"Weapon" means any firearm or any other weapon listed in § 18.2-308 A of the Code of Virginia.

8VAC115-20-20. Possession of weapons prohibited.

Possession or carrying of any weapon by any person, except a police officer or an individual authorized pursuant to university policy, is prohibited on university property in academic buildings, administrative buildings, student residence and student life buildings, or dining or athletic facilities, or while attending an official university event, such as an athletic, academic, social, recreational or educational event, or on vessels that are university property. Entry upon such university property in violation of this prohibition is expressly forbidden.

8VAC115-20-30. Person lawfully in charge.

In addition to individuals authorized by university policy, College of William & Mary police officers are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property while possessing or carrying weapons in violation of this prohibition.

VA.R. Doc. No. R12-3015; Filed October 4, 2011, 4:27 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

Title of Regulation: **9VAC25-91. Facility and Aboveground Storage Tank (AST) Regulation.**

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, email melissa.porterfield@deq.virginia.gov.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available on the Department of Environmental Quality's website at http://www.deq.virginia.gov/tanks/fnf.html, from the agency contact above, or from the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-91)

~~Registration for Aboveground Storage Tank(s), DEQ Form 7540-AST (6/98).~~

~~Application for Approval of a Facility Contingency Plan, Form A (6/98).~~

Registration for Facility and Aboveground Storage Tank (AST), DEQ Form 7540-AST (rev. 10/08).

Approval Application for Facility Oil Discharge Contingency Plan (rev. 8/07).

VA.R. Doc. No. R12-3002; Filed September 29, 2011, 3:53 p.m.

Proposed Regulation

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

Titles of Regulations: **9VAC25-194. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Car Wash Facilities (amending 9VAC25-194-10, 9VAC25-194-20, 9VAC25-194-40 through 9VAC25-194-70).**

9VAC25-810. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Coin-Operated Laundry (repealing 9VAC25-810-10 through 9VAC25-810-70).

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

Public Hearing Information:

December 1, 2011 - 1:30 p.m. - Department of Environmental Quality, 629 East Main Street, 2nd Floor Conference Room, Richmond, VA

Public Comment Deadline: December 27, 2011.

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

Summary:

This rulemaking proposes to replace and update VAG75 (the VPDES car wash general permit) which expires October 16, 2012, and combine into this permit VAG72 (the VPDES coin-operated laundry general permit) which expires February 8, 2016. A secondary action associated with this rulemaking is the repeal of the VPDES coin-operated laundry general permit since the requirements of that permit (VAG72) are being incorporated into VAG75. The general permit will establish limitations and monitoring requirements for point source discharge of treated wastewaters from vehicle wash facilities and laundry facilities to surface waters. The general permit regulation is being reissued in order to continue making it available as a permitting option for these types of facilities.

This general permit covers vehicle wash wastewater generated from the fixed manual, automatic, or self-service washing of vehicles where the exterior washing of vehicles is conducted. During this rulemaking those allowed coverage under the regulation was expanded to include more types of vehicle washing activities. This was done because most vehicle washing produces similar quality effluent and permittees and DEQ staff have requested expanded coverage.

This general permit also covers laundry facility wastewater from any self-service facility where the washing of clothes is conducted, as designated by Standard Industrial Classification Code 7215. However, it does not include facilities that engage in dry cleaning.

Substantive proposed changes add: (i) three reasons authorization to discharge cannot be granted (if the discharge violates the antidegradation policy in the Water Quality Standards at 9VAC25-260-30, if an approved TMDL contains a WLA for the facility, or if central wastewater treatment facilities are reasonably available); (ii) language to allow for administrative continuances of coverage; (iii) effluent limits pages for laundries and combined laundry and vehicle wash facilities; and (iv) five new special conditions. These changes are made to make this general permit similar to other general permits issued recently and in response to staff requests to clarify and update permit limits and conditions.

CHAPTER 194
GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT FOR ~~CAR~~ VEHICLE WASH FACILITIES AND LAUNDRY FACILITIES

9VAC25-194-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9VAC25-31-10 et seq. (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Department" means the Department of Environmental Quality.

"Laundry" means any self-service facility where the washing of clothes is conducted as designated by SIC 7215. It does not include facilities that engage in dry cleaning.

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

"Vehicle Maintenance" means vehicle and equipment rehabilitation, mechanical repairs, painting, fueling, and lubrication.

"~~Car wash~~ Vehicle wash" means any fixed manual, automatic, or self-service facility where the exterior washing of vehicles ~~including cars, vans and pick up trucks~~ is conducted ~~as designated by SIC 7542~~. It includes ~~auto dealer preparation and detailing, and fleet vehicle washing,~~ but is not limited to, automobiles, trucks (except below), motor homes, buses, motorcycles, ambulances, fire trucks, tractor trailers, and other devices that convey passengers or goods on streets or highways. This definition also includes golf course equipment and lawn maintenance equipment. It also includes any incidental floor cleaning wash waters associated with facilities that wash vehicles where the floor wash water also passes through the vehicle wash water treatment system. ~~It does not mean facilities that wash or steam clean engines, buses, horse/cattle trailers, tankers or tractor trailers.~~ Vehicle wash does not mean engine, acid caustic metal brightener, or steam heated water washing. It does not include cleaning the interior of bulk carriers. It does not include tanker trucks, garbage trucks, logging trucks, livestock trucks, construction equipment, trains, boats, or aircraft. It does not include floor cleaning wash waters from vehicle maintenance areas.

9VAC25-194-20. Purpose.

This general permit regulation governs the discharge of wastewater from ~~car wash~~ vehicle wash facilities and laundry facilities to surface waters.

9VAC25-194-40. Effective date of the permit.

This general permit will become effective on October 16, ~~2007~~ 2012. This general permit will expire ~~five years after the effective date~~ on October 15, 2017. This general permit is effective for any covered owner upon compliance with all the provisions of 9VAC25-194-50 ~~and the receipt of this general permit~~.

9VAC25-194-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner ~~files~~ submits and receives acceptance by the board of the registration statement of 9VAC25-194-60, ~~files~~ submits the required permit fee, complies with the effluent limitations and other requirements of 9VAC25-194-70, and provided that~~:~~ the board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner ~~has not been~~ is required to obtain an individual permit ~~according to~~ in accordance with 9VAC25-31-170 B 3~~.~~ of the VPDES Permit Regulation;

2. Other board regulations prohibit such discharges;

3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30;

4. An approved TMDL contains a WLA for the facility, unless this general permit specifically addresses the TMDL pollutant of concern and meets the TMDL WLA; or

5. The discharge is to surface waters where there are central wastewater treatment facilities reasonably available, as determined by the board.

C. Mobile car washes may apply for coverage under this permit provided each discharge location is permitted separately.

~~2. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies which prohibit such discharges.~~

~~B. Receipt of~~ D. Compliance with this general permit constitutes compliance with the federal Clean Water Act, the State Water Control Law, and applicable regulations under either with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

E. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the car wash facilities general permit issued in 2007, and that submits a complete registration statement on or before October 16, 2012, is authorized to continue to discharge under the terms of the 2007 general permit until such time as the board either:

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

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

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

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

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

c. Issue an individual permit with appropriate conditions; or

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

9VAC25-194-60. Registration statement.

~~The owner shall file a complete VPDES general permit registration statement for car wash facilities. Any owner of an existing car wash that is covered by this general permit, who has discharge increases above a monthly average flow rate of 5,000 gallons per day, shall file an amended registration statement at least 30 days prior to commencing operation of the new process. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing car wash covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing car wash not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement. The required registration statement shall contain the following information:~~ A. Deadlines for submitting registration statements. The owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for vehicle wash facilities and launder facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge.

2. Existing facilities.

a. Any owner covered by an individual VPDES permit who is proposing to be covered by this general permit shall submit a complete registration statement at least 210 days prior to the expiration date of the individual VPDES permit.

b. Any owner that was authorized to discharge under the general VPDES permit for coin-operated laundries (9VAC25-810) that became effective on February 9, 2011, and who intends to continue coverage under this general permit, shall submit a complete registration statement to the board prior to September 16, 2012.

c. Any owner that was authorized to discharge under the general VPDES permit for car wash facilities (9VAC25-194) that became effective on October 16, 2007, and who intends to continue coverage under this general permit, shall submit a complete registration statement to the board prior to September 16, 2012.

d. Any owner of a vehicle wash facility covered under this permit who had a monthly average flow rate of less than 5,000 gallons per day, and the flow rate increases above a monthly average flow rate of 5,000 gallons per day, shall submit an amended registration statement within 30 days of the increased flow.

B. Late registration statements will be accepted, but authorization to discharge will not be retroactive.

C. The required registration statement shall contain the following information:

1. Facility name and mailing address, owner name and mailing address ~~and~~, telephone number, and email address (if available);

2. Facility ~~location~~ street address (if different from mailing address);

3. Facility operator (local contact) name, address ~~and~~, telephone number, and email address (if available) if different than owner;

4. Does the facility discharge to surface waters? ~~Name~~ If "yes," name of receiving stream; if ~~yes~~ "no," describe the discharge;

5. Does the facility discharge to a Municipal Separate Storm Sewer System (MS4)? If "yes," the facility owner must notify the owner of the municipal separate storm sewer system of the existence of the discharge within 30 days of coverage under the general permit and provide the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number;

~~5.~~ 6. Does the facility have a current VPDES Permit? ~~Permit Number if yes~~ If "yes," provide permit number;

7. Does your locality require connection to central wastewater facilities?

8. Are central wastewater treatment facilities available to serve the site? If "yes," the option of discharging to the

central wastewater facility must be evaluated and the result of that evaluation reported here;

~~6.~~ 9. A USGS 7.5 minute topographic map or equivalent computer generated map showing the facility ~~location~~ discharge location(s) and receiving stream;

~~7.~~ 10. Provide a brief description of the type of ~~car wash and~~ washing activity. Include (as applicable) the type of vehicles washed~~; 8. Number~~, number of ~~car wash~~ vehicle washing bays~~;~~, and the number of laundry machines;

~~9.~~ 11. Highest average monthly flow rate~~;~~ for each washing activity or combined washing activity, reported as gallons per day;

~~10.~~ 12. Facility line (water balance) drawing;

~~11.~~ 13. ~~Treatment information~~ Description of wastewater treatment;

~~12.~~ 14. Information on use of chemicals at the facility~~;~~. Include detergents, soaps, waxes and other chemicals; and

15. Will detergent used for washing vehicles contain more than 0.5% phosphorus by weight?

~~13.~~ 16. The following certification:

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

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

9VAC25-194-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of 9VAC25-31.

General Permit No.: VAG75
Effective Date: October 16, ~~2007~~ 2012
Expiration Date: October ~~16, 2012~~ 15, 2017

GENERAL PERMIT FOR ~~CAR WASH~~ VEHICLE WASH FACILITIES AND LAUNDRY FACILITIES

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of ~~car~~ vehicle wash facilities and laundry facilities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations ~~or policies~~ which prohibit such discharges.

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

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from ~~car~~ vehicle wash facilities that discharge a monthly average flow rate less than or equal to 5,000 gallons per day from outfall(s):

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency (3)	Sample Type
Flow (GPD)	NA	NL	1/Year	Estimate
pH (S.U.)	~~6.0*~~ 6.0 (1)	~~9.0*~~ 9.0 (1)	1/Year	Grab
TSS (mg/l)	NA	60 (2)	1/Year	5G/8HC
Oil and Grease (mg/l)	NA	15	1/Year	Grab

NL—No Limitation, monitoring requirement only

NA—Not applicable

5G/8HC—Eight Hour Composite—Consisting of five grab samples collected at hourly intervals until the discharge ceases, or until a minimum of five grab samples have been collected.

~~*~~ (1) Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

~~5G/8HC—Eight Hour Composite—Consisting of five grab samples collected at hourly intervals until the discharge ceases, or until a minimum of five grab samples have been collected.~~

(2) Limit given is expressed in two significant figures.

(3) Samples shall be collected by June 30 of each year and reported on the facility's Discharge Monitoring Report (DMR). DMRs shall be submitted by July 10 of each year.

~~2. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

~~1.~~ 2. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from ~~car~~ vehicle wash facilities that discharge a monthly average flow rate greater than 5,000 gallons per day from outfall(s):

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency (3)	Sample Type
Flow (GPD)	NA	NL	1/6 Months	Estimate
pH (S.U.)	~~6.0*~~ 6.0 (1)	~~9.0*~~ 9.0 (1)	1/6 Months	Grab
TSS (mg/l)	NA	60 (2)	1/6 Months	5G/8HC
Oil and Grease (mg/l)	NA	15	1/6 Months	Grab

NL—No Limitation, monitoring requirement only

NA—Not applicable

5G/8HC—Eight Hour Composite—Consisting of five grab samples collected at hourly intervals until the discharge ceases, or until a minimum of five grab samples have been collected.

~~*~~ (1) Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

~~5G/8HC—Eight Hour Composite—Consisting of five grab samples collected at hourly intervals until the discharge ceases, or until a minimum of five grab samples have been collected.~~

(2) Limit given is expressed in two significant figures.

(3) Samples shall be collected by December 31 and June 30 of each year and reported on the facility's Discharge Monitoring Report (DMR). DMRs shall be submitted by January 10 and July 10 of each year.

~~2. There shall be no discharge of floating solids or visible foam in other than trace amounts.~~

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from a laundry facility from outfall(s):

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency [3]	Sample Type
Flow (GPD)	NA	NL	1/Quarter	Estimate
pH (S.U.)	6.0 [1]	9.0 [1]	1/Quarter	Grab
TSS (mg/l)	NA	60 [2]	1/Quarter	Grab
BOD_5 (mg/l)	NA	60 [1],[2]	1/Quarter	Grab
Dissolved Oxygen (mg/l)	6.0 [1]	NA	1/Quarter	Grab
Temperature °C	NA	32 [4]	1/6 Months	Immersion Stabilization
Total Residual Chlorine (mg/l)	NA	.011 [1]	1/Quarter	Grab
E. Coli [5]	NA	235 CFU/100 ml	1/6 Months	Grab
Enterococci [6]	NA	104 CFU/100 ml	1/6 Months	Grab
Fecal Coliform [7]	NA	200 CFU/100 ml	1/6 Months	Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

CFU – Colony Forming Units

[1] Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, BOD_5, DO, TRC and temperature in waters receiving the discharge, those standards shall be, as appropriate, the maximum and minimum effluent limitations.

[2] Limit given is expressed in two significant figures.

[3] Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January. Reports of once per six months shall be submitted no later than the 10th day of January and the 10th day of July for samples collected by December 31 and June 30 of each year.

[4] The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C.

[5] Applies only when the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

[6] Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations).

[7] Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters).

PART I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

4. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from a combined vehicle wash and laundry facility from outfall(s):

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency [3]	Sample Type
Flow (GPD)	NA	NL	1/Quarter	Estimate
pH (S.U.)	6.0 [1]	9.0 [1]	1/Quarter	Grab
TSS (mg/l)	NA	60 [2]	1/Quarter	5G/8HC
BOD_5 (mg/l)	NA	60 [1],[2]	1/Quarter	Grab
Oil & Grease	NA	15	1/6 Months	Grab
Dissolved Oxygen (mg/l)	6.0 [1]	NA	1/Quarter	Grab
Temperature °C	NA	32 [4]	1/6 Months	Immersion Stabilization
Total Residual Chlorine (mg/l)	NA	.011 [1]	1/Quarter	Grab
E. Coli [5]	NA	235 CFU/100 ml	1/6 Months	Grab
Enterococci [6]	NA	104 CFU/100 ml	1/6 Months	Grab
Fecal Coliform [7]	NA	200 CFU/100 ml	1/6 Months	Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

CFU – Colony Forming Unit

[1] Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, BOD_5, DO, TRC and temperature in waters receiving the discharge, those standards shall be, as appropriate, the maximum and minimum effluent limitations.

[2] Limit given is expressed in two significant figures.

[3] Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January. Reports of once per six months shall be submitted no later than the 10th day of January and the 10th day of July for samples collected by December 31 and June 30 of each year.

[4] The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C.

[5] Applies only when the discharge is into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).

[6] Applies only when the discharge is into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations).

[7] Applies only when the discharge is into shellfish waters (see 9VAC25-260-160 for the description of what are shellfish waters).

B. Special conditions.

1. The permittee of a vehicle wash facility shall perform inspections of the effluent and maintenance of the

wastewater treatment facilities at least once per week and document activities on the operational log. This operational log shall be made available for review by the department personnel upon request.

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

~~2.~~ 3. No sewage shall be discharged from a point source to surface waters from this facility except under the provisions of another VPDES permit specifically issued for that purpose.

~~3.~~ 4. There shall be no chemicals added to the water or waste which may be discharged other than those listed on the owner's accepted registration statement, unless prior approval of the chemical(s) is granted by the board.

~~4.~~ 5. Wastewater should be reused or recycled whenever feasible.

~~5.~~ 6. The permittee of a vehicle wash facility shall comply with the following solids management plan:

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

~~b.~~ a. All settling basins shall be cleaned frequently in order to achieve effective treatment.

~~c.~~ b. All solids ~~resulting from the car wash facility covered under this general permit,~~ shall be handled, stored, and disposed of so as to prevent a discharge to state waters of such solids.

~~6.~~ 7. Washing of vehicles or containers bearing residue of animal manure or toxic chemicals (fertilizers, organic chemicals, etc.) into the wastewater treatment system is prohibited. If the facility is a self-service operation, the permittee shall post this prohibition on a sign prominently located and of sufficient size to be easily read by all patrons.

8. If the facility has a vehicle wash discharge with a monthly average flow rate of less than 5,000 gallons per day, and the flow rate increases above a monthly average flow rate of 5,000 gallons per day, an amended registration statement shall be filed within 30 days of the increased flow.

~~7.~~ 9. Any permittee discharging into a municipal separate storm sewer shall notify the owner of the municipal separate storm sewer system of the existence of the discharge within 30 days of coverage under the general permit and provide the following information: the name of the facility, a contact person and phone number, ~~and~~ the location of the discharge, the nature of the discharge and the facility's VPDES general permit number.

10. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state, or local statute, ordinance, or regulation.

~~8.~~ 11. The permittee shall notify the department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter;

(2) Two hundred micrograms per liter for acrolein and acrylonitrile; five hundred micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter;

(2) One milligram per liter for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

12. Operation and maintenance manual requirement. The permittee shall develop and maintain an accurate operations and maintenance (O&M) manual for the treatment works. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of this permit. The permittee shall operate the treatment works in accordance with the O&M manual. The O&M manual shall be reviewed and updated at least annually and shall be signed and certified in accordance with Part II K of this permit. The O&M manual shall be made available for review by the department personnel upon request. The O&M manual shall include, but not necessarily be limited to, the following items, as appropriate:

a. Techniques to be employed in the collection, preservation, and analysis of effluent samples;

b. Discussion of best management practices, if applicable;

c. Treatment system operation, routine preventive maintenance of units within the treatment system, critical spare parts inventory, and recordkeeping;

d. A sludge/solids disposal plan; and

e. Date(s) when the O&M manual was updated or reviewed and any changes that were made.

13. Compliance Reporting under Part I A 1- 4.

a. The quantification levels (QL) shall be as follows:

Effluent Characteristic	Quantification Level
BOD_5	2 mg/l
TSS	1.0 mg/l
Oil and Grease	5.0 mg/l
Chlorine	0.10 mg/l

b. Reporting. Any single datum required shall be reported as "<QL" if it is less than the QL in subdivision a of this subdivision. Otherwise, the numerical value shall be reported.

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

14. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

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

16. Notice of Termination

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer wastewater discharges from vehicle wash or laundry activities from the facility;

(2) A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted); or

(3) All discharges associated with this facility have been covered by an individual or an alternative VPDES permit.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES vehicle wash facilities and laundry facilities general permit number; and

(4) The basis for submitting the notice of termination, including:

i. A statement indicating that a new owner has assumed responsibility for the facility;

ii. A statement indicating that operations have ceased at the facility and there are no longer wastewater discharges from vehicle wash or laundry activities from the facility;

iii. A statement indicating that all wastewater discharges from vehicle wash facilities and laundry facilities have been covered by an individual VPDES permit; or

iv. A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification:

"I certify under penalty of law that all wastewater discharges from vehicle wash or laundry facilities from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge wastewater from vehicle wash facilities or laundry facilities in accordance with the general permit, and that discharging pollutants in wastewater from vehicle wash facilities or laundry facilities to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be signed in accordance with Part II K.

e. The notice of termination shall be submitted to the DEQ regional office serving the area where the vehicle wash or laundry facility is located.

PART II

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods

approved by the U.S. Environmental Protection Agency unless other procedures have been specified in this permit.

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

B. Records.

1. Records of monitoring information shall include:

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

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

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

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

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

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

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

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

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

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

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

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

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

a. Any unanticipated bypass; and

b. Any upset which causes a discharge to surface waters.

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

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone or by FAX. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

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

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

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

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

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

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

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

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-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 facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

c. The written authorization is submitted to the department.

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

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Article 11 (§ 62.1-44.34:14 et seq.) of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

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

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

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department ~~at least~~ within 30 days ~~in advance~~ of the ~~proposed~~ transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable, and, if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R11-2693; Filed September 28, 2011, 4:35 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 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State 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; 33 USC § 1313(e) of the federal Clean Water Act.

Effective Date: November 23, 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.

Summary:

The regulation is amended to conform with the federal Environmental Protection Agency's Chesapeake Bay total maximum daily load (approved December 29, 2010); specifically, the total nitrogen waste load allocation (WLA) for the Fauquier County Water & Sewer Authority - Vint Hill WWTP (VPDES VA0020460). The amendment increases the total nitrogen WLA from 8,680 to 11,573 lbs/yr. In conjunction with this revision, the associated Footnote #8, which conditioned the nutrient WLAs on securing a certificate to operate for an expanded design flow by December 31, 2011, was deleted.

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	Augusta	B14R	Sediment	145	T/YR

		Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA					
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
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, Clarke	B09R	Sediment	1,039	T/YR

		Frederick and Clarke counties, Virginia					
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
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	Prince William	A25E	PCBs	0.409	G/YR

		Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries					
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	$CBOD_5$	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)~~ (9)	VA0002178	43,835	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~~ 11,573	868
B08R	Opequon WRF ~~(11)~~ (10)	VA0065552	121,851	11,512
B08R	Parkins Mills STP ~~(9)~~ (8)	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)~~ (8) 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)~~ (9) Merck-Stonewall – (a) these waste load allocations will be 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; (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 (c) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause (b).

~~(11)~~ (10) 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. R12-2981; Filed September 26, 2011, 3:40 p.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.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia. (amending 9VAC25-820-10, 9VAC25-820-40, 9VAC25-820-70; adding 9VAC25-820-80).**

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

Effective Date: January 1, 2012.

Agency Contact: Allan Brockenbrough, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4147, FAX (804) 698-4032, or email allan.brockenbrough@deq.virginia.gov.

Summary:

This action amends and reissues the existing general permit for total nitrogen (TN) and total phosphorus (TP) discharges and nutrient trading in the Chesapeake Bay watershed in Virginia. The regulation provides for the permitting of TN and TP discharges in the Chesapeake Bay watershed and allows for trading of nutrient credits to minimize costs to the regulated facilities and allow for future growth. Changes to the existing regulation include new waste load allocations for some facilities as required by the December 29, 2010, Chesapeake Bay total maximum daily load (TMDL), a number of changes to the administration of the program, and implementation of several legislative changes.

Numerous changes have been made since publication of the proposed amendments. These changes are found in the definition section (9VAC25-820-10), the general permit section (9VAC25-820-70), and in the section addressing facilities subject to reduced individual total nitrogen and total phosphorus waste load allocations (9VAC25-820-80), as follows:

1. Deleted of the definition of "biological nutrient removal technology." This definition was an artifact from a previous draft version of the regulation and the term does not appear in the regulation.

2. Modified the definition of "Eastern Shore trading ratio" to clarify the intent.

3. Modified the definition of "expansion" or "expands" to clarify that industrial facilities that have an increase in the annual mass load of nutrients as a result of the use of a new chemical additive are not considered to have expanded unless the increase causes a facility to exceed its waste load allocation.

4. Corrected a grammatical error in the definition of "point source nitrogen credit."

5. Modified the definition of "waste load allocation" to clarify that the most limiting of the waste load allocations included in the Water Quality Management Planning Regulation (9VAC25-820) and the Chesapeake Bay TMDL is applicable in the general permit.

6. Replaced the delivered aggregate waste load allocations for the 39 significant dischargers in the James River Basin with discharged waste load allocations for consistency with the TMDL (Part I C 3).

7. Modified the required contents of the annual compliance plan update to reflect the shift in compliance planning from new WWTP upgrades to broader usage of now upgraded facilities and other load management strategies (Part I D).

8. Added a provision to allow approval of an alternative sample type on a case-by-case basis for facilities that demonstrate less than 10% variability in their effluent flow (Part I E 1).

9. Clarified the calculation procedures for monthly load to apply only to those days on which a discharge occurred (Part I E 4).

10. Added a provision to allow a case-by-case approval of a chemical usage report in lieu of effluent monitoring where the only source of nutrients in a discharge is the nutrients in the surface water intake and chemical additives typically used as anti-corrosive agents or biocides to condition cooling water (Part I E 5).

11. Modified the condition establishing a baseline requirement for storm water retention projects generating nutrient reductions to offset new point source loads. The condition was modified to apply to all urban source reduction controls (as opposed to retention ponds only) and delete the exception to allow projects included in previously approved trading programs after it was

determined that there were no previously approved programs by the Department of Conservation and Recreation (Part II B 1 b (6)).

12. Deleted references to the specific version (2006) of 40 CFR Part 136 requiring use of EPA approved monitoring methods (Parts III J 4 and III L 4). Registrants are required to use the version of 40 CFR Part 136 in place at the time this regulation is adopted.

13. Added waste load allocations reduced to the Chesapeake Bay TMDL to 9VAC25-820-80 to clarify the goals of the schedule of compliance included in 9VAC25-820-40. 9VAC25-820-80 was also modified to clarify what facilities are included in the aggregate registrations subject to the schedule of compliance in 9VAC25-820-40.

14. Updated the corporate name of Smurfit Stone to RockTenn CP LLC (9VAC25-820).

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.

9VAC25-820-10. Definitions.

Except as defined below, the words and terms used in this chapter shall have the meanings defined in the Virginia Pollution Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

"Annual mass load of total nitrogen" (expressed in pounds per year) means ~~the daily total nitrogen concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24 hour period (expressed as MGD to the nearest 0.01 MGD), multiplied by 8.3438 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units~~ the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Annual mass load of total phosphorus" (expressed in pounds per year) means ~~the daily total phosphorus concentration (expressed as mg/l to the nearest 0.01mg/l) multiplied by the flow volume of effluent discharged during the 24 hour period (expressed as MGD to the nearest 0.01 MGD) multiplied by 8.3438 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units~~ the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Association" means the Virginia Nutrient Credit Exchange Association authorized by § 62.1-44.19:17 of the Code of Virginia.

"Attenuation" means the rate at which nutrients are reduced through natural processes during transport in water.

[~~"Biological nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of eight milligrams per liter and an annual average total phosphorus effluent concentration of one milligram per liter, or (ii) equivalent reductions in loads of total nitrogen and total phosphorus through the recycle or reuse of wastewater as determined by the department.~~]

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

"Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source that is adjusted by the delivery factor for that point source.

"Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point source that is adjusted by the delivery factor for that point source.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a permitted facility, as determined by the specific geographic location of the permitted facility, to account for attenuation that occurs during riverine transport between the permitted facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model. For the purpose of this regulation, delivery factors with a value greater than 1.00 in the Chesapeake Bay Program watershed model shall be considered to be equal to 1.00.

"Department" means the Department of Environmental Quality.

"Eastern Shore trading ratio" means the number of point source credits from another tributary that can be [~~used to compensate for excessive loads from~~ acquired and applied by] a facility in the Eastern Shore Basin. Trading ratios are expressed in the form "credits supplied: credits received."

"Equivalent load" means:

2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.04 million gallons per day,

5,700 pounds per year of total nitrogen or 760 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of 0.1 million gallons per day, and

28,500 pounds per year of total nitrogen or 3,800 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from sewage treatment works with a design capacity of [~~0.05~~ 0.5] million gallons per day.

"Existing facility" means a facility holding a current individual VPDES permit that has either commenced discharge from, or has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) the treatment works used to derive its waste load allocation on or before July 1, 2005, or has a ~~wasteload~~ waste load allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. Existing facility shall also mean and include any facility, without an individual VPDES permit, which holds a separate waste load allocation in 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

"Expansion" or "expands" means (i) initiating construction at an existing treatment works after July 1, 2005, to increase design flow capacity, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued on or before July 1, 2005, or (ii) industrial production process changes or the use of new treatment products at industrial facilities that increase the annual mass load of total nitrogen or total phosphorus [above the waste load allocation].

"Facility" means a point source discharging or proposing to discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries. This term does not include confined animal feeding operations, discharges of storm water, return flows from irrigated agriculture, or vessels.

"General permit" means this general permit authorized by § 62.1-44.19:14 of the Code of Virginia.

"Industrial facility" means any facility (as defined above) other than sewage treatment works.

["Local water quality-based limitations" means limitations intended to protect local water quality including applicable total maximum daily load (TMDL) allocations, applicable Virginia Pollution Discharge Elimination System (VPDES) permit limits, applicable limitations set forth in water quality standards established under § 62.1-44.15 (3a) of the Code of Virginia, or other limitations as established by the State Water Control Board.]

"New discharge" means any discharge from a facility that did not commence the discharge of pollutants prior to July 1, 2005, except that the term does not apply in those cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) was issued to the facility on or before July 1, 2005.

[~~"Local water quality based limitations" means limitations intended to protect local water quality including applicable total maximum daily load (TMDL) allocations, applicable Virginia Pollution Discharge Elimination System (VPDES) permit limits, applicable limitations set forth in water quality standards established under § 62.1-44.15 (3a) of the Code of Virginia, or other limitations as established by the State Water Control Board.~~]

"Nonsignificant discharger" means (i) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of less than 0.1 million gallons per day, or less than an equivalent load discharged from industrial facilities, or (ii) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of less than 0.5 million gallons per day, or less than an equivalent load discharged from industrial facilities.

"Offset" means to acquire an annual waste load allocation of total nitrogen or total phosphorus by a new or expanding facility to ensure that there is no net increase of nutrients into the affected tributary of the Chesapeake Bay.

~~"Permitted facility" means a facility authorized by this general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.~~

"Permitted design capacity" or "permitted capacity" means the allowable load (pounds per year) assigned to an existing facility that is a nonsignificant discharger, that does not have a ~~wasteload~~ waste load allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation. The permitted design capacity is calculated based on the design flow and installed nutrient removal technology (for sewage treatment works, or equivalent discharge from industrial facilities) at a facility that has either commenced discharge, or has received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) prior to July 1, 2005. This mass load is used for (i) determining whether the expanding facility must offset additional mass loading of nitrogen and phosphorus and (ii) determining whether the facility must acquire credits at the end of a calendar year. For the purpose of this regulation, facilities that have installed secondary wastewater treatment (intended to achieve BOD and TSS monthly average concentrations equal to or less than 30 milligrams per liter) are assumed to achieve an annual average total nitrogen effluent concentration of 18.7 milligrams per liter and an annual average total phosphorus effluent concentration of 2.5 milligrams per liter. Permitted design capacities for facilities

that, before July 1, 2005, were required to comply with more stringent nutrient limits shall be calculated using the more stringent values.

"Permitted facility" means a facility authorized by this general permit to discharge total nitrogen or total phosphorus. For the sole purpose of generating point source nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority.

"Permittee" means a person authorized by this general permit to discharge total nitrogen or total phosphorus.

"Point source nitrogen credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total nitrogen and (ii) the monitored annual mass load of total nitrogen discharged by that facility, [~~that~~ where] clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total nitrogen load.

"Point source phosphorus credit" means the difference between (i) the waste load allocation for a permitted facility specified as an annual mass load of total phosphorus and (ii) the monitored annual mass load of total phosphorus discharged by that facility, where clause (ii) is less than clause (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered total phosphorus load.

"Quantification level (QL)" means the ~~lowest standard in the calibration curve for a given analyte. The QL must have a value greater than zero and be verified each day of analysis by analyzing a sample of known concentration at the selected QL with a recovery range of 70% – 130%~~ minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

"Registration list" means a list maintained by the department indicating all facilities that have registered for coverage under this general permit, by tributary, including their waste load allocations, permitted design capacities and delivery factors as appropriate.

"Significant discharger" means (i) a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line with a design capacity of 0.5 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (ii) a sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or greater, or an equivalent load discharged from industrial facilities; (iii) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall line that is expected to be in operation by December 31, 2010, with a permitted design of 0.5 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities; or (iv) a planned or newly expanding sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall line that is expected to be in operation by December 31, 2010, with a design capacity of 0.1 million gallons per day or greater, or an equivalent load to be discharged from industrial facilities.

"State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the department.

"Tributaries" means those river basins for which separate tributary strategies were prepared pursuant to § 2.2-218 of the Code of Virginia and includes the Potomac, Rappahannock, York, and James River Basins, and the Eastern Coastal Basin, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"Waste load allocation" means [the most limiting of] (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation or its successor, (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-44.19:15 of the Code of Virginia for new or expanded facilities, or (iii) applicable total nitrogen or total phosphorus total maximum daily loads to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

9VAC25-820-40. Compliance plans.

[A.] ~~Within nine months of the effective date of this regulation, every owner or operator of a facility required to submit a registration statement to the department by January 1, 2007,~~ By July 1, 2012, every owner or operator of a facility subject to reduced individual total nitrogen or total phosphorus waste load allocations in the Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment dated December 29, 2010, (as identified in 9VAC25-820-80) shall either individually or through the Virginia Nutrient Credit Exchange Association submit compliance plans to the department for approval.

1. The compliance plans shall contain any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined waste load allocations of

all the permittees in the tributary as soon as possible. Permittees submitting individual plans are not required to account for other facilities' activities.

2. As part of the compliance plan development, permittees ~~whose facilities would have complied with their individual waste load allocations for calendar year 2005, had the allocations been effective in that year,~~ shall either:

a. Demonstrate that the additional capital projects in subdivision 1 of this subsection are necessary to ensure continued compliance with these allocations through the applicable deadline for the tributary to which the facility discharges (Part I C of the permit), or

b. Request that their individual waste load allocations become effective on January 1, ~~2007~~ 2012. ~~Permittees selecting this option shall be entitled to trade nutrient credits generated by their facilities and to acquire nutrient credits.~~

3. The compliance plans may rely on the exchange of point source credits in accordance with this general permit, but not the acquisition of credits through payments into the Water Quality Improvement Fund (§ 10.1-2128 et seq. of the Code of Virginia), to achieve compliance with the individual and combined waste load allocations in each tributary.

B. Every owner or operator of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit annual compliance plan updates to the department for approval as required by Part I D of this general permit.

9VAC25-820-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein.

General Permit No.: VAN000000
Effective Date: January 1, ~~2007~~ 2012
Expiration Date: December 31, ~~2011~~ 2016

GENERAL PERMIT FOR TOTAL NITROGEN AND TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT TRADING IN THE CHESAPEAKE WATERSHED IN 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, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of facilities holding a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen and/or total phosphorus discharges to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen and/or total phosphorus.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special Conditions Applicable to New and Expanded Facilities, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

PART I

SPECIAL CONDITIONS APPLICABLE TO ALL FACILITIES

A. Authorized activities.

1. Authorization to discharge for facilities required to register.

a. Every owner or operator of a facility required to submit a registration statement to the department by ~~January 1, 2007~~ November 1, 2011, and thereafter upon the reissuance of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

b. Any owner or operator of a facility required to submit a registration statement with the department at the time he makes application with the department for a new discharge or expansion that is subject to an offset or technology-based requirement in Part II of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

c. Upon the department's approval of the registration statement, a facility will be included in the registration list maintained by the department.

2. Authorization to discharge for facilities not required to register. Any facility authorized by a Virginia Pollutant Discharge Elimination System permit and not required by this general permit to submit a registration statement shall be deemed to be authorized to discharge total nitrogen and total phosphorus under this general permit at the time it is issued. Owners or operators of facilities that are deemed to be permitted under this subsection shall have no obligation under this general permit prior to submitting a registration statement and securing coverage under this general permit based upon such registration statement.

3. Continuation of permit coverage.

a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, 2016, in accordance with Part III A or who is not

required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this general permit until such time as the board either:

(1) Issues coverage to the owner under the reissued general permit, or

(2) Notifies the owner that coverage under the reissued permit is denied.

b. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

(1) Initiate enforcement action based upon the general permit that has been continued,

(2) Issue a notice of intent to deny coverage under the amended general permit if the general permit coverage is denied the owner would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit, or

(3) Take other actions authorized by the State Water Control Law.

B. Waste load allocations.

1. Waste load allocations allocated to permitted facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, or applicable total maximum daily loads, or waste load allocations acquired by new and expanding facilities to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion under Part II B of this general permit, and existing loads calculated from the permitted design capacity of expanding facilities not previously covered by this general permit, shall be incorporated into the registration list maintained by the department. The waste load allocations contained in this list shall be enforceable as annual mass load limits in this general permit. Credits shall not be generated by facilities whose mass loads are derived from permitted design capacities, or from facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005.

2. Except as described in ~~subdivision~~ subdivisions 2 d and 2 e of this subsection, an owner or operator of two or more facilities covered by this general permit and located in the same tributary may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus reflecting the total of the water quality-based total nitrogen and total phosphorus waste load allocations or permitted design capacities established for such facilities individually.

a. The permittee (and all of the individual facilities covered under a single registration) shall be deemed to be in compliance when the aggregate mass load discharged by the facilities is less than the aggregate load limit.

b. The permittee will be eligible to generate credits only if the aggregate mass load discharged by the facilities is less than the total of the waste load allocations assigned to any of the affected facilities in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C and 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

c. Credits shall not be generated by permittees whose aggregated mass load limit is derived entirely from permitted design capacities.

d. The aggregation of mass load limits shall not affect any requirement to comply with local water quality-based limitations.

e. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, cannot be aggregated with other facilities under common ownership or operation.

f. Operation under an aggregated mass load limit in accordance with this section shall not be deemed credit acquisition as described in Part I J 2 of this general permit.

3. An owner who consolidates two or more facilities located in the same tributary into a single regional facility may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus, subject to the following conditions:

a. If all of the affected facilities have waste load allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the waste load allocations of the affected facilities. The regional facility shall be eligible to generate credits.

b. If any, but not all, of the affected facilities has a waste load allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding:

(1) Waste load allocations of those facilities that have ~~wasteload~~ waste load allocations in 9VAC25-720-50 C,

9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

(2) Permitted design capacities assigned to affected industrial facilities; and

(3) Loads from affected sewage treatment works that do not have a waste load allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, defined as the lesser of a previously calculated permitted design capacity, or the values calculated by the following formulae:

Nitrogen Load (lbs/day) = flow ~~(expressed as MGD to the nearest 0.01 MGD)~~ x 8.0 mg/l x ~~8.3438~~ 8.345 x 365 days/year

Phosphorus Load (lbs/day) = flow ~~(expressed as MGD to the nearest 0.01 MGD)~~ x 1.0 mg/l x ~~8.3438~~ 8.345 x 365 days/year

Flows used in the preceding formulae shall be the design flow of the treatment works from which the affected facility currently discharges.

The regional facility shall be eligible to generate credits.

c. If none of the affected facilities have a waste load allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the respective permitted design capacities for the affected facilities. The regional facility shall not be eligible to generate credits.

d. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, may be consolidated with other facilities under common ownership or operation, but their allocations cannot be transferred to the regional facility.

e. Facilities whose operations were previously authorized by a VPA permit that was issued before July 1, 2005, can become regional facilities, but they cannot receive additional allocations beyond those permitted in Part II B 1 d of this general permit.

4. Unless otherwise noted, the nitrogen and phosphorus waste load allocations assigned to permitted facilities are considered total loads including nutrients present in the intake water from the river, as applicable. On a case-by-case basis, an industrial discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load originates in its intake water. This demonstration shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the net nutrient load portion of the assigned waste load allocation.

5. Bioavailability. Unless otherwise noted, the entire nitrogen and phosphorus waste load allocations assigned to permitted facilities are considered to be bioavailable to organisms in the receiving stream. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load is not bioavailable; this demonstration shall not be based on the ability of the nutrient to resist degradation at the wastewater treatment plant, but instead, on the ability of the nutrient to resist degradation within a natural environment for the amount of time that it is expected to remain in the bay watershed. This demonstration shall also be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the bioavailable portion of the assigned waste load allocation.

C. Schedule of compliance.

1. The following schedule of compliance pertaining to the load allocations for total nitrogen and total phosphorus applies to the facilities listed in ~~each tributary, as listed~~ 9VAC25-820-80.

a. Compliance shall be achieved as soon as possible, but no later than the following dates, subject to any compliance plan-based adjustment by the board pursuant to subdivision 1 b of this subsection, for each parameter:

Tributary	Parameter	Final Effluent Limits Effective Date
James River	Nitrogen	~~January 1, 2011~~ January 1, 2017
	~~Phosphorus~~	~~January 1, 2011~~
~~Shenandoah and Potomac Rivers~~	~~Nitrogen~~	~~January 1, 2011~~
	~~Phosphorus~~	~~January 1, 2011~~
~~Rappahannock River~~	~~Nitrogen~~	~~January 1, 2011~~
	~~Phosphorus~~	~~January 1, 2011~~
York River	~~Nitrogen~~	~~January 1, 2011~~
	Phosphorus	~~January 1, 2011~~ January 1, 2016
~~Eastern Shore~~	~~Nitrogen~~	~~January 1, 2011~~
	~~Phosphorus~~	~~January 1, 2011~~

b. Following submission of compliance plans and compliance plan updates required by 9VAC25-820-40, the board shall reevaluate the schedule of compliance in

subdivision 1 a of this subsection, taking into account the information in the compliance plans and the factors in § 62.1-44.19:14 C 2 of the Code of Virginia. When warranted based on such information and factors, the board shall adjust the schedule in subdivision 1 a of this subsection as appropriate by modification or reissuance of this general permit.

2. The registration list shall contain individual dates for compliance (as defined in Part I J 1 a-b of this general permit) for dischargers, as follows:

a. Facilities ~~that were required to submit a registration statement with the department by January 1, 2007,~~ listed in 9VAC25-820-80 will have individual dates for compliance based on their respective compliance plans, that may be earlier than the basin schedule listed in subdivision 1 of this subsection.

b. Facilities listed in 9VAC25-820-70 that ~~have waived~~ waive their compliance schedules in accordance with 9VAC25-820-40 A 2 b shall have an individual compliance date of January 1, ~~2007~~ 2012.

c. Upon completion of the projects contained in their compliance plans, facilities listed in 9VAC25-820-80 may receive a revised individual compliance date of January 1 for the calendar year immediately following the year in which a Certificate to Operate was issued for the capital projects, but not later than the basin schedule listed in subdivision 1 of this subsection.

d. New and expanded facilities will have individual dates for compliance corresponding to the date that coverage under this general permit was extended to the facility.

3. The 39 significant dischargers in the James River Basin shall meet aggregate [~~delivered~~ discharged] waste load allocations of [~~8,163,209~~ 8,968,864] lbs/yr TN and [~~457,384~~ 545,558] lbs/yr TP by January 1, 2023.

D. Annual update of compliance plan. Every owner or operator of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit updated compliance plans to the department no later than February 1 of each year. The compliance plans shall contain [~~, at a minimum, any capital projects and implementation schedules needed to achieve~~ sufficient information to document a plan for the facility to achieve and maintain compliance with applicable] total nitrogen and phosphorus [~~reductions sufficient to comply with the~~] individual waste load allocations on the registration list and ~~combined~~ aggregate waste load allocations ~~of all the permittees~~ in ~~the tributary~~ Part I C 3. Compliance plans for facilities that were required to submit a registration statement with the department ~~by January 1, 2007,~~ under Part I G 1 a may rely on the acquisition of point source credits in accordance with Part I J of this general permit, but not the acquisition of credits through payments into the Water Quality Improvement Fund, to achieve compliance with the individual and combined waste load allocations in each tributary. Compliance plans for expansions or new discharges for facilities that are required to submit a registration statement with the department under Part I G 1 b and c may rely on the acquisition of allocation in accordance with Part II B of this general permit to achieve compliance with the individual and combined waste load allocations in each tributary.

E. Monitoring requirements.

1. Discharges shall be monitored by the permittee during weekdays as specified below unless the department determines that weekday only sampling results in a non-representative load. Weekend monitoring and/or alternative monthly load calculations to address production schedules or seasonal flows shall be submitted to the department for review and approval on a case-by-case basis [~~:~~. Facilities that exhibit instantaneous discharge flows that vary from the daily average discharge flow by less than 10% may submit a proposal to the department to use an alternative sample type; such proposals shall be reviewed and approved by the department on a case-by-case basis.]

Parameter	Sample Type and Collection Frequency			
STP design flow	~~>20.0~~ >20.0 MGD	1.0-19.999 MGD	0.040-0.999 MGD	< 0.040 MGD
Effluent TN load limit for industrial facilities		>100,000 lb/yr	487-99,999 lb/yr	< 487 lb/yr
Effluent TP load limit for industrial facilities		>10,000 lb/yr	37-9,999 lb/yr	< 37 lb/yr
~~Parameter~~	~~Sample Type and Collection Frequency~~			
Flow	Totalizing, Indicating and Recording			1/Day, see individual VPDES permit for sample type

Nitrogen Compounds (Total Nitrogen = TKN + NO_2- (as N) + NO_3- (as N))	24 HC 3 Days/Week	24 HC 1/Week	8 HC 2/Month, > 7 days apart	1/Month Grab
Total Phosphorus ~~Compounds (Total Phosphorus and Orthophosphate)~~	24 HC 3 Days/Week	24 HC 1/Week	8 HC 2/Month, > 7 days apart	1/Month Grab

2. Monitoring for compliance with effluent limitations shall be performed in a manner identical to that used to determine compliance with effluent limitations established in the individual VPDES permit ~~and monitoring.~~ Monitoring or sampling shall be conducted according to analytical laboratory methods approved under 40 CFR Part 136 ~~(2006)~~, unless other test or sample collection procedures have been requested by the permittee and approved by the department in writing. All analysis for compliance with effluent limitations shall be in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories. Monitoring may be performed by the permittee at frequencies more stringent than listed above; however, the permittee shall report all results of such monitoring.

3. Loading values greater than or equal to 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading values of less than 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to at least two significant digits with the exception that all complete calendar year annual loads shall be reported to the nearest pound.

4. Data shall be reported on a form provided by the department, by the same date each month as is required by the facility's individual permit. The total monthly load shall be calculated in accordance with the following formula:

~~$ML = ML_{avg} * d$~~

~~where:~~

~~ML = total monthly load (lb/mo)~~

~~ML_{avg} = monthly average load as reported on DMR (lb/d)~~

~~d = number of discharge days in the calendar month~~

~~$ML_{avg} = \sum DL / s$~~

$$ML = \left(\frac{\sum DL}{s} \right) \times d$$

where:

ML = total monthly load (lb/mo) = average daily load for the calendar month multiplied by the number of days of the calendar month [on which a discharge occurred]

DL = daily load = daily concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to at least the nearest 0.01 ~~MGD)~~ MGD and in no case less than two significant digits), multiplied by ~~8.3438 and~~ 8.345. Daily loads greater than or equal to 10 pounds may be rounded to the nearest whole number to convert to pounds per day (lbs/day). Daily loads less than or equal to 10 pounds may be rounded to no fewer than two significant fiqures.

s = number of days in the calendar month in which a sample was collected and analyzed

d = number of discharge days in the calendar month

~~All~~ For total phosphorus, all daily concentration data below the quantification level (QL) for the analytical method used should be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported. If all data are below the QL, then the average shall be reported as half the QL.

For total nitrogen (TN), if none of the daily concentration data for the respective species (i.e., TKN, nitrates/nitrites) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point as reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

The total year-to-date mass load shall be calculated in accordance with the following formula:

~~AL-YTD = $\sum_{(Jan-current month)} ML$~~

$$AL_{YTD} = \sum_{(Jan-present)} ML$$

where:

AL-YTD = calendar year-to-date annual load (lb/yr)

ML = total monthly load (lb/mo) ~~as reported on DMR~~

[5. The department may authorize a chemical usage evaluation as an alternative means of determining nutrient loading for outfalls where the only source of nutrients is those found in the surface water intake and chemical additives used by the facility. Such an evaluation shall be submitted to the department for review and approval on a case-by-case basis. Implementation of approved chemical usage evaluations shall satisfy the requirements specified under Part I E 1 and 2.]

F. Annual reporting.

1. Annually, on or before February 1, the permittee shall either individually or through the Virginia Nutrient Credit Exchange Association file a report with the department, using a reporting form supplied by the department. The report shall identify:

a. The annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by each of its permitted facilities during the previous calendar year;

b. The delivered total nitrogen load and delivered total phosphorus load discharged by each of its permitted facilities during the previous year; and

c. The number of total nitrogen and total phosphorus credits for the previous calendar year to be acquired or eligible for exchange by the permittee.

The total annual mass load shall be calculated in accordance with the following formula:

~~$AL = \sum_{(Jan-Dec)} ML$~~

$$AL = \sum_{(Jan-Dec)} ML$$

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo) ~~as reported on DMR~~

G. Requirement to register; exclusions.

1. The following owners or operators are required to register for coverage under this general permit:

a. Every owner or operator of an existing facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 100,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal waters, or 500,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into nontidal waters, shall submit a registration statement to the department by ~~January 1, 2007~~ November 1, 2011, and thereafter upon the reissuance of this general permit in accordance with Part III B. The conditions of this general permit will apply to such owner and operator upon approval of a registration statement.

b. Any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal or nontidal waters shall submit a registration statement with the department at the time he makes application for an individual permit with the department for a new discharge or expansion that is subject to an offset requirement in Part II of this general permit or technology-based requirement in ~~Part II of this general permit~~ 9VAC25-40-70, and thereafter upon the reissuance of this general permit in accordance with Part III B. The conditions of this general permit will apply to such owner or operator beginning on the start of the calendar year immediately following ~~submittal~~ approval of a registration statement and issuance or modification of the individual permit.

c. Any owner or operator of a facility treating domestic sewage authorized by a Virginia Pollutant Discharge Elimination System permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that has not commenced the discharge of pollutants prior to January 1, 2011, shall submit a registration statement with the department at the time he makes application for an individual permit with the department or prior to commencing a discharge, which ever occurs first, and thereafter upon the reissuance of this general permit in accordance with Part III B.

2. All other categories of discharges are excluded from registration under this general permit.

H. Registration statement.

1. The registration statement shall contain the following information:

a. Name, mailing address and telephone number, e-mail address and fax number of the owner (and facility operator, if different from the owner) applying for permit coverage;

b. Name (or other identifier), address, city or county, contact name, phone number, e-mail address and fax number for the facility for which the registration statement is submitted;

c. VPDES permit numbers for all permits assigned to the facility, or pursuant to which the discharge is authorized;

d. If applying for an aggregated waste load allocation in accordance with Part I B 2 of this permit, list all affected facilities and the VPDES permit numbers assigned to these facilities;

e. For new and expanded facilities, a plan to offset new or increased delivered total nitrogen and delivered total phosphorus loads, including the amount of waste load allocation acquired. Waste load allocations sufficient to offset projected nutrient loads must be provided for period of at least five years; and

f. For existing facilities, the amount of a facility's waste load allocation transferred to or from another facility to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

2. The registration statement shall be submitted to the DEQ Central Office, Office of Water ~~Permit Programs~~ Permits and Compliance Assistance.

3. An amended registration statement shall be submitted upon the acquisition or transfer of a facility's waste load allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

I. Public notice for registration statements proposing modifications or incorporations of new waste load allocations or delivery factors.

1. All public notices issued pursuant to a proposed modification or incorporation of a (i) new waste load allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion, or (ii) delivery factor, shall be published once a week for two consecutive weeks in a major local newspaper of general circulation serving the locality where the facility is located informing the public that the facility intends to apply for coverage under this general permit. At a minimum, the notice shall include:

a. A statement of the owner or operator's intent to register for coverage under this general permit;

b. A brief description of the facility and its location;

c. The amount of waste load allocation that will be acquired or transferred if applicable;

d. The delivery factor for a new discharge or expansion;

e. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication and to establish a dialogue between the owner or operator and persons who may be affected by the facility;

f. An announcement of a 30-day comment period~~, in accordance with 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation,~~ and the name, telephone number, and address of the owner's or operator's representative who can be contacted by the interested persons to answer questions;

g. The name, telephone number, and address of the DEQ representative who can be contacted by the interested persons to answer questions, or where comments shall be sent; and

h. The location where copies of the documentation to be submitted to the department in support of this general permit notification and any supporting documents can be viewed and copied.

2. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the notice is published in the local newspaper.

J. Compliance with waste load allocations.

1. Methods of compliance. The permitted facility shall comply with its waste load allocation contained in the registration list maintained by the department. The permitted facility shall be in compliance with its waste load allocation if:

a. The annual mass load is less than or equal to the applicable waste load allocation assigned to the facility in this general permit (or permitted design capacity for expanded facilities without allocations);

b. The permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 2 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility; or

c. In the event it is unable to meet the individual waste load allocation pursuant to subdivision 1 a or 1 b of this subsection, the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made into the Water Quality Improvement Fund pursuant to subdivision 3 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility.

2. Credit acquisition from permitted facilities. A permittee may acquire point source nitrogen credits or point source phosphorus credits from one or more permitted facilities with waste load allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110

C and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, including the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority, only if:

a. The credits are generated and applied to a compliance obligation in the same calendar year;

b. The credits are generated by one or more permitted facilities in the same tributary, except that permitted facilities in the Eastern Shore basin may also acquire credits from permitted facilities in the Potomac and Rappahannock tributaries. Eastern shore facilities may acquire credits from the Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the Rappahannock tributary by an Eastern Shore facility;

c. The exchange or acquisition of credits does not affect any requirement to comply with local water quality-based limitations as determined by the board;

d. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

e. The credits are generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's waste load allocations (until a facility is constructed and has commenced operation, such credits are held, and may be sold, by the Water Quality Improvement Fund; and

f. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that he has acquired sufficient credits to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the credit exchange notification form submitted to the department.

3. Credit acquisitions from the Water Quality Improvement Fund. Until such time as the board finds that no allocations are reasonably available in an individual tributary, permittees that cannot meet their total nitrogen or total phosphorus effluent limit may acquire nitrogen or phosphorus credits through payments made into the Virginia Water Quality Improvement Fund established in § 10.1-2128 of the Code of Virginia only if, no later than June 1 immediately following the calendar year in which the credits are to be applied, the permittee certifies on a form supplied by the department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities ~~in the same tributary~~, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of this general permit. Such certification may include, but not be limited to, providing a record of solicitation or demonstration that point source allocations are not available for sale in the tributary in which the permittee is located. Payments to the Water Quality Improvement Fund shall be in the amount of ~~$11.06~~ $6.04 for each pound of nitrogen and ~~$5.04~~ $15.08 for each pound of phosphorus and shall be subject to the following requirements:

a. The credits are generated and applied to a compliance obligation in the same calendar year~~;~~.

b. The credits are generated in the same tributary, except that permitted facilities in the Eastern Shore basin may also acquire credits from the Potomac and Rappahannock tributaries. Eastern shore facilities may acquire credits from the Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the Rappahannock tributary by an Eastern Shore facility.

c. The acquisition of credits does not affect any requirement to comply with local water quality-based limitations, as determined by the board.

4. This general permit neither requires, nor prohibits a municipality or regional sewerage authority's development and implementation of trading programs among industrial users, which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's individual VPDES permit.

PART II

SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

A. Offsetting mass loads discharged by new and expanded facilities.

1. An owner or operator of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under this general permit.

a. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

b. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued on or after July 1, 2005, to discharge 40,000

gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.

c. An owner or operator of a facility treating domestic sewage authorized by a Virginia Pollutant Discharge Elimination System permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that has not commenced the discharge of pollutants prior to January 1, 2011, shall demonstrate to the department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered phosphorus loads prior to commencing the discharge, except when the facility is for short-term temporary use only or when treatment of domestic sewage is not the primary purpose of the facility.

2. Offset calculations shall address the proposed discharge that exceeds:

a. The applicable waste load allocation assigned to the facility in this general permit, for expanding significant dischargers with a ~~wasteload~~ waste load allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

b. The permitted design capacity, for all other expanding dischargers; and

c. Zero, for facilities with a new discharge.

3. An owner or operator of multiple facilities located in the same tributary, and assigned an aggregate mass load limit in accordance with Part I B 2 of this general permit, that undertakes construction of new or expanded facilities, shall be required to acquire waste load allocations sufficient to offset any increase in delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond the aggregate mass load limit assigned these facilities.

B. Acquisition of waste load allocations. Waste load allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the waste load allocations from one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;

b. Acquisition of nonpoint source load allocations, using a trading ratio of two pounds reduced for every pound to be discharged, through the use of best management practices that are:

(1) Acquired through a public or private entity acting on behalf of the land owner;

(2) Calculated using best management practices efficiency rates and attenuation rates, as established by the latest science and relevant technical information, and approved by the board;

(3) Based on appropriate delivery factors, as established by the latest science and relevant technical information, and approved by the board;

(4) Demonstrated to have achieved reductions beyond those already required by or funded under federal or state law, or by the Virginia tributaries strategies plans; ~~and~~

(5) Included as conditions of the facility's individual Virginia Pollutant Discharge Elimination System permit; and

(6) In the case of allocations generated by land use conversions and [~~stormwater retention projects, represent controls~~ urban source reduction controls (BMPs),] beyond those in place as of July 1, 2005 [~~unless the project was specifically designed and approved for use in a stormwater trading program prior to July 1, 2005~~];

c. Until such time as the board finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the Virginia Water Quality Improvement Fund established in § 10.1-2128 of the Code of Virginia; or

d. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis. This includes allocations granted by the board to an owner or operator of a facility that is authorized by a VPA permit to land apply domestic sewage if:

(1) The VPA permit was issued before July 1, 2005;

(2) The allocation does not exceed the facility's permitted design capacity as of July 1, 2005;

(3) The waste treated by the facility that is covered under the VPA permit will be treated and discharged pursuant to a VPDES permit for a new discharge; and

(4) The owner or operator installs state-of-the-art nutrient removal technology at such a facility.

2. Acquisition of allocations is subject to the following conditions:

a. The allocations shall be generated and applied to an offset obligation in the same calendar year;

b. The allocations shall be generated in the same tributary;

c. Such acquisition does not affect any requirement to comply with local water quality-based limitations, as determined by the board;

d. The allocations are authenticated (i.e., verified to have been generated) by the permittee as required by the facility's individual Virginia Pollutant Discharge Elimination permit, utilizing procedures approved by the board, no later than February 1 immediately following the calendar year in which the allocations are applied; and

e. If obtained from a permitted point source, the allocations shall be generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's waste load allocations; and.

~~f. No later than June 1 in the year prior to the calendar year in which the allocations are to be applied, the permittee shall certify on an exchange notification form supplied by the department that he has acquired sufficient allocations to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the exchange notification form submitted to the department.~~

3. Priority of options. The board shall give priority to allocations acquired in accordance with subdivisions 1 a and 1 b of this subsection. The board shall approve allocations acquired in accordance with subdivisions 1 c and 1 d of this subsection only after the owner or operator has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this subsection, and that such allocations are not reasonably available taking into account timing, cost and other relevant factors. Such demonstration may include, but not be limited to, providing a record of solicitation, or other demonstration that point source allocations or nonpoint source allocations are not available for sale in the tributary in which the permittee is located.

4. Annual allocation acquisitions from the Water Quality Improvement Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the WQIF, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the Department of Conservation and Recreation on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.

PART III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the law and the Clean Water Act, except that noncompliance with certain provisions of the permit may constitute a violation of the 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.

B. Duty to register for reissued general permit. If the permittee wishes to continue an activity regulated by the general permit after its expiration date, the permittee must register for coverage under the new general permit, when it is reissued by the department.

C. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

D. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. Property rights. Permits do not convey any property rights of any sort, or any exclusive privilege.

H. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his

discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the law. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit, pertaining to activities related to the permitted facility.

I. Inspection and entry. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

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

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the 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 law, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

3. 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) 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.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 [~~(2006)~~] or alternative EPA-approved methods, unless other test procedures have been specified in the permit.

K. Signatory requirements. All applications, reports, or information submitted to the department shall be signed and certified as required by 9VAC25-31-110.

L. Reporting requirements.

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

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-31-180 A; or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under 9VAC25-31-200 A 1.

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

3. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the law or the Clean Water Act.

4. Monitoring results shall be reported at the intervals specified in the permit.

a. Monitoring results must be reported on a Discharge Monitoring Report (DMR).

b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 [~~(2006)~~], or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR specified by the department.

c. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall

be submitted no later than 14 days following each schedule date.

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of the treatment work or auxiliary facilities (such as sewer lines or wastewater pump stations); and

d. Flooding or other acts of nature.

7. Twenty-four-hour reporting.

a. The permittee shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

b. The following shall be included as information that must be reported within 24 hours under this subdivision.

(1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(2) Any upset that exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The board may waive the written report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

M. Bypass.

1. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section (24-hour notice).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of

subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and

d. The permittee complied with any remedial measures required under subsection D of this section.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

9VAC25-820-80. Facilities subject to reduced individual total nitrogen and total phosphorus waste load allocations.

The facilities identified in this section are subject to reduced individual total nitrogen and total phosphorus waste load allocations as indicated.

Facility	Registration No.	Basin	[~~Parameter~~ Reduced Waste Load Allocation]
Caroline Co. Regional STP	VAN030045	York	[609 lbs/yr] TP
Gordonsville STP	VAN030046	York	[1,145 lbs/yr] TP
Hanover County Aggregate [1]	VAN030051	York	[11,390 lbs/yr] TP [(delivered)]
White Birch Paper - Bear Island LLC Division	VAN030133	York	[10,233 lbs/yr] TP
Western Refinery - Yorktown	VAN030047	York	[17,689 lbs/yr] TP
HRSD York River Aggregate [2]	VAN030052	York	[19,315 lbs/yr] TP [(delivered)]
Parham Landing WWTP	VAN030048	York	[2,436 lbs/yr] TP
[~~Smurfit Stone~~ RockTenn CP LLC - West Point]	VAN030049	York	[56,038 lbs/yr] TP
HRSD James River Aggregate [3]	VAN040090	James	[4,400,000 lbs/yr] TN [(delivered)]

[[1] Hanover County Aggregate includes Ashland STP (VA0024899), Doswell WWTP (VA0029521), and Totopotomoy WWTP (VA0089915)

[2] HRSD York River Aggregate includes York River STP (VA0081311), West Point STP (VA0075434), and King William STP (VA0028819).

[3] HRSD James River Aggregate includes Boat Harbor STP (VA0081256), James River STP (VA0081272), Williamsburg STP (VA0081302), Nansemond STP (VA0081299), Army Base STP (VA0081230), Virginia Initiative STP (VA0081281), and Chesapeake Elizabeth STP (VA0081264).]

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

FORMS (9VAC25-820)

~~Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia (eff. 11/06).~~

Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Watershed in Virginia (rev. 10/11).

VA.R. Doc. No. R10-2123; Filed September 28, 2011, 3:16 p.m.

◆ ◆

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 by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-220. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations (repealing 12VAC5-220-500).**

Statutory Authority: § 32.1-102.2 of the Code of Virginia.

Effective Date: November 23, 2011.

Agency Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, or email carrie.eddy@vdh.virginia.gov.

Summary:

Chapters 92 and 150 of the 2011 Acts of Assembly amended § 32.1-102.1 of the Code of Virginia related to the Certificate of Public Need (COPN) program by adding the Department of Veterans Services to the listing of state medical care facilities exempted from obtaining a COPN prior to constructing or renovating any of Virginia's veteran care centers. The Department of Veterans Services operates several skilled nursing facilities for veterans in Virginia, each having obtained a special legislative exemption to COPN. Such exemptions are already allowed for the Virginia Department of Behavioral Health and Developmental Services, the Woodrow Wilson Rehabilitation Center, and the Department of Corrections. Because the exemption is now statutory, the applicable section of the COPN regulation is being repealed.

~~Part XI~~
~~Other~~

12VAC5-220-500. ~~Exemption of Virginia Veterans Care Center~~ (Repealed).

~~Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, the Virginia Veterans Care Center authorized by Chapter 668, 1989 Acts of Assembly, shall be exempt from all certificate of public need review requirements as a medical care facility.~~

VA.R. Doc. No. R12-2816; Filed September 28, 2011, 11:58 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health has claimed 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 or the appropriation act where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-391. Regulations for the Licensure of Hospice (amending 12VAC5-391-350, 12VAC5-391-430).**

Statutory Authority: §§ 32.1-12 and 32.1-162.5 of the Code of Virginia.

Effective Date: November 23, 2011.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA, telephone (804) 367-5100, or email carrie.eddy@vdh.virginia.gov.

Summary:

The amendment replaces language allowing home attendants to assist with or administer only topical and oral medications that a patient would normally self administer with language allowing the home attendant to assist with or administer normally self-administered drugs in the patient's private residence as allowed by the Virginia Drug Control Act, § 54.1-3408 of the Code of Virginia.

12VAC5-391-350. Home attendant services.

A. Services of the home attendants may include, but are not limited to:

1. Assisting patients with (i) activities of daily living; (ii) ambulation and prescribed exercise; (iii) other special duties with appropriate training and demonstrated competency;

2. ~~Assisting with oral or topical medications that the patient can normally self-administer~~ Administration of normally self-administered drugs in a patient's private residence 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. Taking and recording vital signs as indicated in the plan of care;

4. Measuring and recording fluid intake and output;

5. Recording and reporting to the health care professional changes in the patient's physical condition, behavior or appearance;

6. Documenting services and observations in the medical record; and

7. Performing any other duties that the attendant is qualified to do by additional training and demonstrated competency, within state guidelines.

B. Prior to the initial delivery of services, the home attendant shall receive specific written instructions for the patient'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 patient's care.

D. The nurse responsible for supervising the home attendant shall make visits to the patient's home as frequently as necessary, but not less than every two weeks. The results of each visit shall be documented in the medical record.

E. 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.

F. Home attendants shall be able to speak, read and write English and shall meet one of the following qualifications:

1. Have satisfactorily completed a nursing education hospice program preparing for registered nurse licensure or practical nurse licensure;

2. Have satisfactorily completed a nurse aide education hospice program approved by the Virginia Board of Nursing;

3. Have certification as a nurse aide issued by the Virginia Board of Nursing;

4. Be successfully enrolled in a nursing education hospice program preparing for registered nurse or practical nurse licensure and have currently completed at least one nursing course that includes clinical experience involving patient care;

5. Have satisfactorily passed a competency evaluation that meets the criteria of 42 CFR 484.36 (b); or

6. Have satisfactorily completed training using the "Personal Care Aide Training Curriculum," dated 2003, of the Department of Medical Assistance Services. However, the training is permissible for volunteers only.

12VAC5-391-430. Pharmacy services.

A. All prescription drugs shall be prescribed and properly dispensed to the patient according to the provisions of 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 patient would normally self~~ administer normally self-administered drugs in the patient's private residence 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 hospice program shall develop written policies and procedures for the administration of infusion therapy medications that include, but are not limited to:

1. Developing a plan of care;

2. Initiation of medication administration based on a prescriber's order and monitoring of the patient 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 patient's response to therapy, any other patient specific needs, any significant change in the patient's condition;

5. Communication with the patient's provider pharmacy concerning problems or needed changes in a patient's medication;

6. Maintaining a complete and accurate record of medications prescribed, medication administration data, patient 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 patient, 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 patient, and actions to take in an emergency; and

8. Initial training and retraining of all hospice program staff providing infusion therapy.

D. The hospice program shall employ a registered nurse who holds a current active license with the Virginia Board of Nursing, 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.

VA.R. Doc. No. R12-2949; Filed October 5, 2011, 11:56 a.m.

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 by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-408. Certificate of Quality Assurance of Managed Care Health Insurance Plan Licensees (amending 12VAC5-408-10).**

Statutory Authority: § 32.1-137.3 of the Code of Virginia.

Effective Date: November 23, 2011.

Agency Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-2102, or email carrie.eddy@vdh.virginia.gov.

Summary:

Chapter 882 of the 2011 Acts of Assembly conforms inconsistent and conflicting requirements of Virginia's health insurance laws to corresponding provisions of the federal Patient Protection and Affordable Care Act that became law in March 2010. The amendments assure that the regulations pertaining to certification of managed care health insurance providers do not conflict with federal or state law or the regulations of the Bureau of Insurance of the State Corporation Commission.

Part I
Definitions and General Information

12VAC5-408-10. Definitions.

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

"Adverse decision" means a utilization review determination by the utilization review entity that a health service rendered or proposed to be rendered was not or is not medically necessary, when such determination may result in noncoverage of the health service or health services. When the policy, contract, plan, certificate, or evidence of coverage includes coverage for prescription drugs and the health service rendered or proposed to be rendered is a prescription for the alleviation of cancer pain, any adverse decision shall be made within 24 hours of the request for coverage.

"Appeal" means a formal request by a covered person or a provider on behalf of a covered person for reconsideration of a decision, such as a final adverse decision, a benefit payment, a denial of coverage, or a reimbursement for service.

"Basic health care services" means those health care services, as applicable to the type of managed care health insurance plan, described in § 38.2-5800 of the Code of Virginia which are required to be provided, arranged, paid for, or reimbursed by the managed care health insurance plan licensee for its covered persons.

"Board" means the Board of Health.

"Bureau of Insurance" means the State Corporation Commission acting pursuant to Title 38.2 of the Code of Virginia.

"Center" means the Center for Quality Health Care Services and Consumer Protection of the Virginia Department of Health.

"Certificate" means a certificate of quality assurance.

"Complaint" means a written communication from a covered person primarily expressing a grievance. A complaint may pertain to the availability, delivery, or quality of health care services including claims payments, the handling or reimbursement for such services, or any other matter pertaining to the covered person's contractual relationship with the MCHIP.

"Covered person" means an individual residing in the Commonwealth, whether a subscriber, policyholder, enrollee, or member, of a managed care health insurance plan (MCHIP), who is entitled to health services or benefits provided, arranged for, paid for, or reimbursed pursuant to an MCHIP.

"Delegated service entity" means the entity with which an MCHIP licensee contracts to provide one or more of the services listed in 12VAC5-408-320 A for one or more of its MCHIPs, pursuant to and in accordance with the provisions of Part VI (12VAC5-408-320 et seq.) of this chapter, inclusive.

"Department" means the Virginia Department of Health.

"Emergency services" means those health care services ~~that are rendered by affiliated or nonaffiliated providers after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus. Emergency services provided within an MCHIP's service area shall include covered health services from nonaffiliated providers only when delay in receiving care from a provider affiliated with the MCHIP could reasonably be expected to cause the covered person's condition to worsen if left unattended~~ as defined in § 38.2-3438 of the Code of Virginia.

"Evidence of coverage" means any certificate, individual or group agreement or contract, or identification card or related document issued in conjunction with the certificate, agreement or contract, issued to a covered person setting out the coverage and other rights to which a covered person is entitled.

"Final adverse decision" means a utilization review determination made by a physician advisor or peer of the treating health care provider in a reconsideration of an adverse decision, and upon which a provider or patient may base an appeal.

"Health care data reporting system" means the state contracted integrated system for the collection and analysis of data used by consumers, employers, providers, and purchasers of health care to continuously assess and improve the quality of health care in the Commonwealth.

"Health care services" means services as defined in § 38.2-3438 of the Code of Virginia.

"Health carrier" means an entity as defined in § 38.2-3438 of the Code of Virginia.

"Managed care health insurance plan" or "MCHIP" means an arrangement for the delivery of health care in which a health carrier, as defined in § 38.2-5800 of the Code of Virginia, undertakes to provide, arrange for, pay for, or reimburse any of the costs of health care services for a covered person on a prepaid or insured basis which (i) contains one or more incentive arrangements, including any credentialing requirements intended to influence the cost or level of health care services between the health carrier and one or more providers with respect to the delivery of health care services and (ii) requires or creates benefit payment differential incentives for covered persons to use providers that are directly or indirectly managed, owned, under contract with or employed by the health carrier. Any health maintenance organization as defined in § 38.2-4300 of the Code of Virginia or health carrier that offers preferred provider contracts or policies as defined in § 38.2-3407 of the Code of Virginia or preferred provider subscription contracts as defined in § 38.2-4209 of the Code of Virginia shall be deemed to be offering one or more managed care health insurance plans. For the purposes of this definition, the prohibition of balance billing by a provider shall not be deemed a benefit payment differential incentive for covered persons to use providers who are directly or indirectly managed, owned, under contract with or employed by the health carrier. A single managed care health insurance plan may encompass multiple products and multiple types of benefit payment differentials; however, a single managed care health insurance plan shall encompass only one provider network or set of provider networks.

"Managed care health insurance plan licensee" or "MCHIP licensee" means a health carrier subject to licensure by the Bureau of Insurance and to quality assurance certification by the department under Title 38.2 of the Code of Virginia who is responsible for a managed care health insurance plan in accordance with Chapter 58 (§ 38.2-5800 et seq.) of Title 38.2 of the Code of Virginia.

"Material" means that which has an effective influence or bearing on, or is pertinent to, the issue in question.

"Medical necessity" or "medically necessary" means appropriate and necessary health care services which are rendered for any condition which, according to generally accepted principles of good medical practice, requires the diagnosis or direct care and treatment of an illness, injury, or pregnancy-related condition, and are not provided only as a convenience.

"Nationally recognized accrediting body" means an organization that sets national standards specifically governing healthcare quality assurance processes, utilization review, provider credentialing, as well as other areas covered by this chapter and provides accreditation to managed care health insurance plans pursuant to national standards. The following entities shall be considered nationally recognized accrediting bodies:

1. The American Accreditation HealthCare Commission/URAC;

2. The National Committee for Quality Assurance (NCQA);

3. The Joint Commission on Accreditation of Healthcare Organizations, (JCAHO); and

4. Other nationally recognized accrediting bodies with national standards as described above that are accepted by the department.

"Network" means a group of providers as defined in § 38.2-3438 of the Code of Virginia.

"Person" means any individual, aggregate of individuals, association, business, company, corporation, joint-stock company, Lloyds type of organization, other organization, partnership, receiver, reciprocal or inter-insurance exchange, trustee or society.

"Plan of correction" means an MCHIP'S written plan that outlines the action the MCHIP will take to address compliance issues identified during an administrative review or on-site examination conducted by the department.

"Preferred provider organization" or "PPO" means an arrangement in which a health carrier, as defined in § 38.2-5800 of the Code of Virginia, undertakes to provide, arrange for, pay for, or reimburse any of the costs of health care services, on an insured basis, which creates incentives, including financial incentives, for a covered person to use health care providers directly or indirectly managed, owned, under contract with, or employed by the health carrier, but shall not include a health maintenance organization as defined in § 38.2-4300 of the Code of Virginia.

"Quality assurance program" means the systems, standards and processes including, but not limited to, reasonable and adequate systems to assess, measure, and improve the health

status of covered persons, necessary to obtain a certificate of quality assurance from the department in accordance with this chapter and in accordance with § 32.1-137.2 C of the Code of Virginia.

"Service area" means a geographic area as defined in § 38.2-5800 of the Code of Virginia.

"Timely" means the provision of services so as not to impair or jeopardize the integrity of the covered persons' diagnosis or outcomes of illness.

"Treating health care provider" means a licensed health care provider who renders or proposes to render health care services to a covered person.

"Utilization review" means a system for reviewing the necessity, appropriateness, and efficiency of hospital, medical or other health care services rendered or proposed to be rendered to a patient or group of patients for the purpose of determining whether such services should be covered or provided by an insurer, health services plan, managed care health insurance plan licensee, or other entity or person. For purposes of this chapter, "utilization review" shall include, but not be limited to, preadmission, concurrent and retrospective medical necessity determination, and review related to the appropriateness of the site at which services were or are to be delivered. "Utilization review" shall not include (i) review of issues concerning insurance contract coverage or contractual restrictions on facilities to be used for the provision of services, (ii) any review of patient information by an employee of or consultant to any licensed hospital for patients of such hospital, or (iii) any determination by an insurer as to the reasonableness and necessity of services for the treatment and care of an injury suffered by an insured for which reimbursement is claimed under a contract of insurance covering any classes of insurance defined in §§ 38.2-117 through 38.2-119, 38.2-124 through 38.2-126, 38.2-130 through 38.2-132 and 38.2-134 of the Code of Virginia.

"Utilization review entity" means a person or entity performing utilization review.

"Utilization review plan" means a written procedure for performing a utilization review.

VA.R. Doc. No. R12-2862; Filed September 28, 2011, 9:02 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services has claimed 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 or the appropriation act where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: January 1, 2012.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

The amendment adds reimbursement for incontinence supplies to the list of Durable Medical Equipment.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public). The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care

routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.

b. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

c. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services/devices shall be available under such arrangements.

~~d.~~ e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all

subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

d. Payment will not be made to the extent that this would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia

freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation for Type I physician services subject to the following reduction. Final payments shall be reduced on a pro-rated basis so that total payments for freestanding children's hospital physician services are $400,000 less annually than would be calculated based on the formula in the previous sentence. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 18 d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 18 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 18 b (2) by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 18 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

19. Personal Assistance Services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the Single State Agency Website.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

VA.R. Doc. No. R12-2982; Filed October 5, 2011, 11:12 a.m.

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TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **14VAC5-215. Rules Governing Independent External Review of Final Adverse Utilization Review Decisions (repealing 14VAC5-215-10 through 14VAC5-215-130).**

14VAC5-216. Rules Governing Internal Appeal and External Review (amending 14VAC5-216-20, 14VAC5-216-40, 14VAC5-216-70; adding 14VAC5-216-45).

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: November 21, 2011.

Agency Contact: Julie Blauvelt, Senior Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9865, FAX (804) 371-9944, or email julie.blauvelt@scc.virginia.gov.

Summary:

The proposed action repeals 14VAC5-215 because § 38.2-5900 and §§ 38.2-5901 through 38.2-5905 of the Code of Virginia were repealed by the General Assembly in 2011, and the external review process was replaced with a new process found in Chapter 35.1 (§§ 38.2-3556 through 38.2-3571) of Title 38.2 of the Code of Virginia. External review under 14VAC5-215 will not be available after May 15, 2012. Amendments and an added section to Chapter 216 are proposed because on June 22, 2011, the federal government issued amendments to its "Rules Relating to Internal Claims and Appeals and External Review Process," (amending 26 CFR Part 54, 29 CFR Part 2590, and 45 CFR Part 147), addressing exhaustion and notice issues. The amendments and added section to Chapter 216 conform to these federal requirements. These amendments are required to be effective by January 1, 2012.

AT RICHMOND, SEPTEMBER 27, 2011

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2011-00200

Ex Parte: In the matter of Repealing the
Rules Governing Independent External Review
of Final Adverse Utilization Review Decisions
and Amending the Rules Governing
Internal Appeal and External Review

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission a proposal to repeal the Rules Governing Independent External Review of Final Adverse Utilization Review Decisions at Chapter 215 of Title 14 of the Virginia Administrative Code (14 VAC 5-215-10 through 14 VAC 5-215-130 and Forms), to be effective on May 16, 2012, and amend certain sections in Chapter 216 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Internal Appeal and External Review," specifically set forth at 14 VAC 5-216-20, 14 VAC 5-216-40 and 14 VAC 5-216-70, as well as add a new section at 14 VAC 5-216-45.

The repeal of Chapter 215 is necessary because pertinent provisions of the Code of Virginia § 38.2-5900 and §§ 38.2-5901 through 38.2-5905 were repealed by the General Assembly in 2011, and the external review process was replaced with a new process found in Chapter 35.1 (§§ 38.2-3556 through 38.2-3571) of the Code. External review under Chapter 215 will not be available after May 15, 2012. Amendments and an added section to Chapter 216 are necessary because the federal government has issued amendments to its regulations relating to internal appeal and external review, addressing exhaustion and notice issues. The amendments and added section to Chapter 216 conform to the federal requirements. These amendments are required to be effective by January 1, 2012.

The Commission is of the opinion that Chapter 215 of Title 14 of the Virginia Administrative Code should be repealed effective May 16, 2012; that 14 VAC 5-216-20, 14 VAC 5-216-40 and 14 VAC 5-216-70 should be amended, and that 14 VAC 5-216-45 should be added and considered for adoption to be effective January 1, 2012.

THEREFORE, IT IS ORDERED THAT:

(1) The proposal that Chapter 215 of Title 14 of the Virginia Administrative Code be repealed, that 14 VAC 5-216-20, 14 VAC 5-216-40 and 14 VAC 5-216-70 be amended, and 14 VAC 5-216-45 be added, is attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose repealing Chapter 215, amending sections 20, 40 and 70 and adding section 45 in Chapter 216 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before November 21, 2011, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2011-00200. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: http://www.scc.virginia.gov/caseinfo.htm.

(3) If there is no written request for a hearing on the proposal to repeal Chapter 215 or to amend Chapter 216 on or before November 21, 2011, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may repeal Chapter 215 and amend Chapter 216 of Title 14 of the Virginia Administrative Code as proposed by the Bureau of Insurance.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to repeal and amend rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Althelia P. Battle, who forthwith shall give further notice of the proposal to repeal and amend rules by mailing a copy of this Order, together with the proposal, to all companies, HMOs and health service plans licensed by the Commission to write accident and sickness insurance in the Commonwealth of Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to repeal and amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposal to repeal and amend the rules on the Commission's website, http://www.scc.virginia.gov/case.

(7) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

14VAC5-216-20. Definitions.

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

"Adverse benefit determination" in the context of the internal appeals process means (i) a determination by a health carrier or its designee utilization review entity that, based on the information provided, a request for, a benefit under the health carrier's health benefit plan upon application of any utilization review technique does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part, for the requested benefit; (ii) the denial, reduction, or termination of, or failure to provide or make payment in whole or in part for, a benefit based on a determination by a health carrier or its designee utilization review entity of a covered person's eligibility to participate in the health carrier's health benefit plan; (iii) any review determination that denies, reduces, or terminates or fails to provide or make payment, in whole or in part, for a benefit; (iv) a rescission of coverage determination as defined in § 38.2-3438 of the Code of Virginia; or (v) any decision to deny individual coverage in an initial eligibility determination.

"Adverse determination" in the context of external review means a determination by a health carrier or its designee utilization review entity that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested service or payment for the service is therefore denied, reduced, or terminated.

"Authorized representative" means (i) a person to whom a covered person has given express written consent to represent the covered person; (ii) a person authorized by law to provide substituted consent for a covered person; (iii) a family member of a covered person or the covered person's treating health care professional when the covered person is unable to provide consent; (iv) a health care professional when the covered person's health benefit plan requires that a request for a benefit under the plan be initiated by the health care professional; or (v) in the case of an urgent care internal appeal, a health care professional with knowledge of the covered person's medical condition.

"Clinical peer reviewer" means a practicing health care professional who holds a nonrestricted license in a state, district, or territory of the United States and in the same or similar specialty as typically manages the medical condition, procedure, or treatment under appeal.

"Commission" means the State Corporation Commission.

"Concurrent review" means utilization review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional, or other inpatient or outpatient health care setting.

"Covered person" means a policyholder, subscriber, enrollee, or other individual participating in a health benefit plan. For purposes of this chapter with respect to the administration of appeals, references to a covered person include a covered person's authorized representative, if any.

"Emergency services" means those health care services that are rendered after the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in

the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Final adverse determination" means an adverse determination involving a covered benefit that has been upheld by a health carrier, or its designee utilization review entity, at the completion of the health carrier's internal appeal process.

"Group health plan" means an employee welfare benefit plan (as defined in the Employee Retirement Income Security Act of 1974 (29 USC § 1002(1)), to the extent that the plan provides medical care and including items and services paid for as medical care to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise.

"Health benefit plan" means a policy, contract, certificate, or agreement offered or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services. "Health benefit plan" does not include accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans pursuant to contracts with the United States government; Medicare supplement or long-term care insurance; Medicaid coverage; dental only or vision only insurance; specified disease insurance; hospital indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance; insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified health care services consistent with the laws of the Commonwealth.

"Health carrier" means an entity, subject to the insurance laws and regulations of the Commonwealth or subject to the jurisdiction of the commission, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an accident and sickness insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or a nonstock corporation offering or administering a health services plan, a hospital services plan, or a medical or surgical services plan, or any other entity providing a plan of health insurance, health benefits, or health care services except as excluded under § 38.2-3557 of the Code of Virginia.

"Independent review organization" means an entity that conducts independent external reviews of adverse determinations and final adverse determinations, as well as alleged violations of 14VAC5-216-30 through 14VAC5-216-70 pertaining to internal appeal.

"PPACA" means the Patient Protection and Affordable Care Act (P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

"Pre-service claim" means a claim for a benefit under a health benefit plan that requires approval of the benefit in whole or in part, in advance of obtaining the service or treatment.

"Post-service claim" means a claim for a benefit under a health benefit plan that is not a pre-service claim, or the service or treatment has been provided to the covered person.

"Self-insured plan" means an "employee welfare benefit plan" that has the meaning set forth in the Employee Retirement Income Security Act of 1974, 29 USC § 1002(1).

"Urgent care appeal" means an appeal for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations (i) could seriously jeopardize the life or health of the covered person or the ability of the covered person to regain maximum function; or (ii) in the opinion of the treating health care professional with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the appeal. An urgent care appeal shall not be available for any post-service claim or retrospective adverse benefit determination.

"Utilization review" means a set of formal techniques designed to monitor the use of or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services, procedures or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review.

14VAC5-216-40. Minimum appeal requirements.

A. Each covered person shall be entitled to a full and fair review of an adverse benefit determination. Within 180 days after the date of receipt of a notice of an adverse benefit determination, a covered person may file an appeal with the health carrier. A health carrier may designate a utilization review entity to coordinate the review. For purposes of this chapter, "health carrier" may also mean its designated utilization review entity.

B. The health carrier shall conduct the appeal in a manner to ensure the independence and impartiality of the individuals involved in reviewing the appeal. In ensuring the independence and impartiality of such individuals, the health carrier shall not make decisions regarding hiring, compensation, termination, promotion, or other similar matters based upon the likelihood that an individual will support the denial of benefits.

C. 1. In deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other service is experimental, investigational, or not medically necessary or appropriate, the health carrier shall designate a clinical peer reviewer to review the appeal. The clinical peer reviewer shall not have been involved in any previous adverse benefit determination with respect to the claim.

2. A reviewer of any other type of adverse benefit determination shall be an appropriate person designated by the health carrier. The reviewer of the appeal shall not be the individual who made any previous adverse benefit determination of the subject appeal nor the subordinate of such individual and shall not defer to any prior adverse benefit determination.

D. A full and fair review shall also provide for:

1. The covered person to have an opportunity to submit written comments, documents, records, and other information relating to the appeal for the reviewer or reviewers to consider when reviewing the appeal~~;~~.

2. Upon request to the health carrier, the covered person to have reasonable access to and free of charge copies of all documents, records, and other information relevant to the covered person's request for benefits ~~(note that any request for diagnosis and treatment codes, in itself, should not be considered to be a request for an internal appeal);~~ This information shall be provided to the covered person as soon as practicable.

3. An appeal process that takes into account all comments, documents, records, and other information submitted by the covered person relating to the appeal, without regard to whether such information was submitted or considered in the initial benefit determination.

4. The identification of medical or vocational experts whose advice was obtained on behalf of the health benefit plan in connection with a covered person's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination.

5. An urgent care appeal process.

6. Prior to issuing a final adverse benefit determination, the health carrier to provide free of charge to the covered person any new or additional evidence relied upon or generated by the health carrier or at the direction of the health carrier, in connection with the internal appeal sufficiently in advance of the date the determination is required to be provided to permit the covered person a reasonable opportunity to respond prior to that date.

E. A health carrier shall notify the covered person of the final benefit determination within a reasonable period of time appropriate to the medical circumstances, but not later than the timeframes established in subdivisions 1 and 2 of this subsection.

1. If an internal appeal involves a pre-service claim review request, the health carrier shall notify the covered person of its decision within 30 days after receipt of the appeal. A health carrier may provide a second level of internal appeal for group health plans only, provided that a maximum of 15 days is allowed for a benefit determination and notification from each level of the appeal.

2. If an internal appeal involves a post-service claim review request, the health carrier shall notify the covered person of its decision within 60 days after receipt of the appeal. A health carrier may provide a second level of internal appeal for group health plans only, provided that a maximum of 30 days is allowed for a benefit determination and notification from each level of the appeal.

14VAC5-216-45. Exhaustion.

A. In addition to the provisions of § 38.2-3560 of the Code of Virginia, the internal appeal process may be deemed exhausted based on a violation of any of the provisions of 14VAC5-216-30 through 14VAC5-216-70. The internal appeal process shall not be deemed exhausted based on a de minimis violation that does not cause, and is not likely to cause, prejudice or harm to the covered person so long as the health carrier demonstrates that the violation was for good cause or due to matters beyond the control of the health carrier and that the violation occurred in the context of an ongoing, good faith exchange of information between the health carrier and the covered person. If the violation is part of a pattern or practice of violations by the health carrier, the violation shall not be considered de minimis.

B. The covered person may request a written explanation of the violation from the health carrier, and the health carrier shall provide the written explanation within 10 days, including a specific description of its basis, if any, for asserting that the violation should not cause the internal appeal process to be deemed exhausted, along with a notification of the right to review this matter by an independent review organization. A review by an independent review organization may be requested by the covered person to the commission to determine if the health carrier has met the standard under this section. The covered person must include, as part of the request for review, the written explanation of the violation by the health carrier. The independent review organization shall have a maximum of 10 days to conduct this review and provide a written response to the covered person, the health carrier, and the commission. If rejected, within five days the health carrier shall provide the covered person with a notice of the opportunity to resubmit and pursue an internal appeal of the claim.

C. The health carrier shall pay the independent review organization costs incurred for this review.

14VAC5-216-70. Notification requirements.

A. A health carrier shall provide a covered person with written or electronic notification of its benefit determination on appeal. The notification of an adverse benefit determination shall be written in easily understandable language and shall set forth the following:

1. Information sufficient to identify the claim involved with respect to the appeal, including the date of service, the health care provider, ~~and~~ the claim amount, and a statement describing the availability, upon request, of the diagnosis code and its corresponding meaning, and the treatment code and its corresponding meaning. The health carrier may not consider a request for diagnosis or treatment information, in itself, to be a request for internal appeal;

2. The specific reason or reasons for the adverse benefit determination;

3. Reference to the specific plan provisions on which the adverse benefit determination is made;

4. A statement that the covered person is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the covered person's claim for benefits;

5. A statement indicating whether any additional internal appeals are available or whether the covered person has received a final adverse determination. If internal appeals are available, contact information on where to submit the appeal;

6. A statement describing the external review procedures offered by the health carrier and the covered person's right to obtain information about such procedures and the covered person's right to bring a civil action under § 502(a) of ERISA (29 USC § 1001 et seq.), if applicable; and

7. A statement indicating that the covered person has the right to request an external review if the covered person has not received a final benefit determination within the timeframes provided in 14VAC5-216-40 E, unless the covered person requests or agrees to a delay.

B. In the case of a group health plan, the required notification shall also set forth the following:

1. If an internal rule, guideline, protocol, or other similar criterion (collectively "rule") was relied upon in making the adverse benefit determination, either the specific rule or a statement that such rule was relied upon in making the adverse benefit determination and that a copy of the rule will be provided free of charge to the covered person upon request;

2. If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the covered person's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and

3. Include a statement indicating that the covered person may have other voluntary alternative dispute resolution options, such as mediation. The covered person should be referred to the appropriate federal or state agency, his plan administrator, or the health carrier, as appropriate.

C. All notices shall be provided in a culturally and linguistically appropriate manner. The health carrier shall:

1. Provide oral language services, such as a telephone customer hotline, that include answering questions and providing assistance with filing claims, benefit requests, internal appeals, and external review in any applicable non-English language;

2. Provide, upon request, any notice in any applicable non-English language; and

3. Include in the English versions of all notices, a statement prominently displayed in any applicable non-English language clearly indicating how to access the language services provided by the health carrier.

With respect to any address in this Commonwealth to which a notice is sent, a non-English language is an applicable non-English language if 10% or more of the population residing in the city or county is literate only in the same non-English language, as determined by the American Community Survey data published by the United States Census Bureau.

~~C.~~ D. Electronic notification shall be in accordance with the provisions of the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).

VA.R. Doc. No. R12-2990; Filed September 27, 2011, 1:39 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE APPRAISER BOARD

Final Regulation

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

interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-90, 18VAC130-20-130).**

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Effective Date: January 1, 2012.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Summary:

The amendments increase the application, renewal, and reinstatement fees for certified and licensed real estate appraiser applicants and licensees by $30 due to an increase in the biennial National Registry fee assessment.

18VAC130-20-90. Application and registration fees.

There will be no pro rata refund of these fees to licensees who resign or upgrade to a higher license or to licensees whose licenses are revoked or surrendered for other causes. All application fees for licenses and registrations are nonrefundable.

1. Application fees for registrations, certificates and licenses are as follows:

Registration of business entity	$100
Certified General Real Estate Appraiser	$141
Temporary Certified General Real Estate Appraiser	$45
Certified Residential Real Estate Appraiser	$141
Temporary Certified Residential Real Estate Appraiser	$45
Licensed Residential Real Estate Appraiser	$141
Temporary Licensed Residential Real Estate Appraiser	$45
Appraiser Trainee	$96
Upgrade of license	$65
Instructor Certification	$135

Application fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a $21 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

2. Examination fees. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

3. ~~A $50~~ An $80 National Registry ~~Fee Assessment~~ fee assessment for all permanent license applicants is to be assessed of each applicant in accordance with § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 USC §§ 3331-3351). This fee may be adjusted and charged to the applicant in accordance with the Act. If the applicant fails to qualify for licensure, then this assessment fee will be refunded.

18VAC130-20-130. Fees for renewal and reinstatement.

A. All fees are nonrefundable.

B. National ~~registry~~ Registry fee assessment. In accordance with the requirements of § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, ~~$50~~ $80 of the biennial renewal or reinstatement fee assessed for all certified general real estate appraisers, certified residential and licensed residential real estate appraisers shall be submitted to the Appraisal Subcommittee. The registry fee may be adjusted in accordance with the Act and charged to the licensee.

Renewal and reinstatement fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a $21 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

C. Renewal fees are as follows:

Certified general real estate appraiser	~~$111~~ $141
Certified residential real estate appraiser	~~$111~~ $141
Licensed residential real estate appraiser	~~$111~~ $141
Appraiser trainee	$61
Registered business entity	$60
Certified instructor	$125

D. Reinstatement fees are as follows:

Certified general real estate appraiser	~~$171~~ $201
Certified residential real estate appraiser	~~$171~~ $201
Licensed residential real estate appraiser	~~$171~~ $201
Appraiser trainee	$121
Registered business entity	$100
Certified instructor	$230

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

FORMS (18VAC130-20)

~~Real Estate Appraiser Board License Application, 40LIC (rev. 5/09).~~

~~Real Estate Appraiser Board Experience Log, 40EXP (rev. 7/09).~~

Real Estate Appraiser Board License Application, 40LIC (rev. 1/12).

Real Estate Appraiser Board Experience Log, 40EXP (rev. 7/10).

Real Estate Appraiser Board Experience Verification Form, 40EXPVER (rev. 4/09).

~~Real Estate Appraiser Board Experience Requirements, 40EXPREQ (rev. 4/09).~~

~~Real Estate Appraiser Board Trainee License Application, 40TRLIC (rev. 5/09).~~

Real Estate Appraiser Board Experience Requirements, 40EXPREQ (rev. 4/10).

Real Estate Appraiser Board Appraiser Trainee License Application, 40TRLIC (rev. 6/10).

Real Estate Appraiser Board Trainee Supervisor Verification Form, 40TRSUP (rev. 4/09).

~~Real Estate Appraiser Business Registration Application, 40BUS (rev. 4/09).~~

Real Estate Appraiser Business Registration Application, 40BUS (rev. 12/09).

Real Estate Appraiser Board Pre-License Course Application, 40CRS (rev. 4/09).

Real Estate Appraiser Board Instructor Certificate Application, 40INSTR (rev. 5/09).

Real Estate Appraiser Board Pre-License Renewal Course Application, 40RENCRS (rev. 2/09).

Real Estate Appraiser Board Activate Application, 40ACT (rev. 4/09).

~~Real Estate Appraiser Board Temporary License Application, 40TLIC (rev. 4/09).~~

Real Estate Appraiser Board Temporary Appraiser License Application, 40TLIC (rev. 6/10).

VA.R. Doc. No. R12-2959; Filed October 5, 2011, 9:51 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMONWEALTH TRANSPORTATION BOARD

Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation 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 Commonwealth Transportation Board will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **24VAC30-11. Public Participation Guidelines (amending 24VAC30-11-10, 24VAC30-11-20).**

24VAC30-21. General Rules and Regulations of the Commonwealth Transportation Board (amending 24VAC30-21-10).

24VAC30-41. Rules and Regulations Governing Relocation Assistance (amending 24VAC30-41-90).

24VAC30-61. Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities (amending 24VAC30-61-30).

24VAC30-72. Access Management Regulations: Principal Arterials (amending 24VAC30-72-10).

24VAC30-73. Access Management Regulations: Minor Arterials, Collectors, and Local Streets (amending 24VAC30-73-10).

24VAC30-120. Rules and Regulations Controlling Outdoor Advertising and Directional and other Signs and Notices (amending 24VAC30-120-140).

24VAC30-151. Land Use Permit Regulations (amending 24VAC30-151-10, 24VAC30-151-30, 24VAC30-151-40, 24VAC30-151-100, 24VAC30-151-110, 24VAC30-151-220, 24VAC30-151-230, 24VAC30-151-280, 24VAC30-151-310, 24VAC30-151-340, 24VAC30-151-350, 24VAC30-151-550, 24VAC30-151-600, 24VAC30-151-660, 24VAC30-151-700, 24VAC30-151-730).

24VAC30-155. Traffic Impact Analysis Regulations (amending 24VAC30-155-10).

24VAC30-200. Vegetation Control Regulations on State Rights-Of-Way (amending 24VAC30-200-10, 24VAC30-200-20, 24VAC30-200-30, 24VAC30-200-35).

24VAC30-271. Economic Development Access Fund Policy (amending 24VAC30-271-20).

24VAC30-325. Urban Maintenance and Construction Policy (amending 24VAC30-325-10).

24VAC30-340. Debarment or Suspension of Contractors (amending 24VAC30-340-10).

24VAC30-380. Public Hearings for Location and Design of Highway Construction Projects (amending 24VAC30-380-10).

24VAC30-520. Classifying and Marking State Highways (amending 24VAC30-520-10).

24VAC30-540. Conveyance of Land and Disposal of Improvements (amending 24VAC30-540-30, 24VAC30-540-40).

24VAC30-551. Integrated Directional Signing Program (IDSP) Participation Criteria (amending 24VAC30-551-40).

24VAC30-561. Adoption of the Federal Manual on Uniform Traffic Control Devices (amending 24VAC30-561-10).

24VAC30-610. List of Differentiated Speed Limits (amending 24VAC30-610-10).

24VAC30-620. Rules, Regulations, and Rates Concerning Toll and Bridge Facilities (amending 24VAC30-620-20, 24VAC30-620-30).

Statutory Authority: § 33.1-12 of the Code of Virginia.

Effective Date: November 23, 2011.

Agency Contact: David Roberts, Program Manager, Department of Transportation, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 786-3620, FAX (804) 225-4700, or email david.roberts@vdot.virginia.gov.

Summary:

Chapters 36 and 152 of the 2011 Acts of Assembly amended the Code of Virginia by replacing the formal title used for VDOT's chief executive officer from Commonwealth Transportation Commissioner to the new title of Commissioner of Highways. Reference to the commissioner's title is amended in these regulations.

Part I
Purpose and Definitions

24VAC30-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Commonwealth Transportation Board, the ~~Commonwealth Transportation~~ Commissioner of Highways, or the Virginia Department of Transportation. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

24VAC30-11-20. Definitions.

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

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

"Agency" means the entity of state government empowered by the agency's basic law to make regulations or decide cases. This term includes the Commonwealth Transportation Board, the ~~Commonwealth Transportation~~ Commissioner of Highways, or the Virginia Department of Transportation. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

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

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

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

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to

make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

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

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

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

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

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

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

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

24VAC30-21-10. Definitions.

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

"Board" means the Commonwealth Transportation Board.

"Commissioner" means the ~~Commonwealth Transportation~~ Commissioner of Highways, the individual who serves as the chief executive officer of the Virginia Department of Transportation (VDOT) or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Right of way" means that property within the entire area of every way or place of whatever nature within the system of state highways under the ownership, control, or jurisdiction of the board or VDOT that is open or is to be opened within the future for the use of the public for purposes of travel in the Commonwealth. The area set out above includes not only the traveled portion but the entire area within and without the traveled portion, from boundary line to boundary line, and also all parking and recreation areas that are under the ownership, control, or jurisdiction of the board or VDOT.

"System of state highways" means all highways and roads under the ownership, control, or jurisdiction of the board including, but not limited to, the primary, secondary, and interstate systems.

"VDOT" means the Virginia Department of Transportation, the ~~Commonwealth Transportation~~ Commissioner of Highways, or a designee.

24VAC30-41-90. Appeals.

A. It is anticipated that from time to time persons affected by VDOT's relocation program will be dissatisfied with VDOT's determination as to their eligibility or with the amount of payments or services offered. It is the policy of VDOT to provide an opportunity to all persons to have their dissatisfactions heard and considered on an administrative level, without the expense, delay or inconvenience of court adjudication. VDOT's appeal procedure is promulgated to all potentially interested persons through the right of way brochure distributed at public hearings and provided to all displacees.

Persons making the appeal may be represented by legal counsel or any other representative at their expense. However, professional representation is not necessary for an appeal to be heard. The appellant will be permitted to inspect and copy all materials relevant to the matter appealed, except materials which are classified as confidential by VDOT or where disclosure is prohibited by law.

The appeal process consists of two levels. An interim appeal is heard in the district office. If the appellant is not satisfied on completion of the interim appeal, a final appeal may be addressed to the ~~Commonwealth Transportation~~ Commissioner of Highways.

B. Interim appeal. When displacees are dissatisfied with VDOT's determination of eligibility, or the amount offered under the relocation assistance and payments statutes, they may appeal in writing. The appeal must be submitted to the district manager within 90 days after receipt of VDOT's written determination. The district manager will schedule an informal hearing. A decision will be made following the hearing. A written copy of the decision, also stating the basis for the decision, will be provided to the appellant. A copy of such decision, along with all pertinent information involving the case, is to be submitted to the director of the right of way and utilities division. The central office relocation manager, or a designated representative, will be present at all interim appeals to provide technical program advice.

C. Final appeal. Upon notification of the district manager's decision, if the displacee is still dissatisfied, an appeal in writing may be submitted to the ~~Commonwealth Transportation~~ Commissioner of Highways within 10 days.

Upon receipt by the commissioner, the appeal will be referred to a review board consisting of the director of the right of way and utilities division or a designated representative as chairman, a district manager selected by the chairman and not functioning in the area where the displacee resides, and a district administrator or a designated representative. The district administrator serving on this board will be the one functioning in the area where the appellant resides. Legal counsel for VDOT may also be present. The review board will schedule a hearing at a time and place reasonably convenient to the appellant. At the hearing all parties will be afforded an opportunity to express their respective positions and submit any supporting information or documents. A Court Reporter will be present to record and provide a transcript of all information presented at the hearing. Upon conclusion of the hearing, the review board will furnish the commissioner a written report of its findings. The commissioner or a designated representative will review the report and render a decision, which shall be final. The appellant and his attorney, if applicable, will be advised of the decision in writing, by certified mail, and will be provided a summary of the basis for the board's decision. If the full relief requested is not granted, the displacee shall be advised of the right to seek judicial review, which must be filed with the court within 30 days after receipt of the final appeal determination.

24VAC30-61-30. Restrictions on hazardous material transportation across rural and distanced-from-water facilities.

The two rural and distanced-from-water tunnel facilities are: the Big Walker Mountain Tunnel and the East River Mountain Tunnel. For these two tunnels, and these two only, no restrictions apply on the transport of hazardous materials, so long as transporters and shippers are in compliance with 49 CFR 100 through 180, and any present and future state regulations which may become in force to implement the federal regulations. In addition, the ~~Commonwealth Transportation~~ Commissioner of Highways may, at any time, impose emergency or temporary restrictions on the transport of hazardous materials through these facilities, so long as sufficient advanced signage is positioned to allow for a reasonable detour.

Questions on this section of the regulation should be directed to the VDOT Emergency Operations Center, contact information for which is available from the following website: http://www.virginiadot.org/info/hazmat.asp. Copies of the regulation will be provided free of charge. For copies, please write to:

Virginia Department of Transportation
ATTN: Emergency Operations Center
1221 East Broad Street
Richmond, Virginia 23219

24VAC30-72-10. Definitions.

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median openings, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system.

"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences. (See "private entrance.")

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" or "median opening" means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing and turning traffic.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the state-maintained highways, bridges and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made

by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Intersection" means any at-grade connection with a highway including two highways or an entrance and a highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or in the absence of such signs the speed limit established by Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual (see 24VAC30-72-170 I).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that their property abuts upon the limited access highway.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in § 15.2-2260 of the Code of Virginia.

"Principal arterial" means the functional classification for a major highway intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Stopping sight distance" means the distance required by a driver of a vehicle, traveling at a given speed, to bring the vehicle to a stop after an object on the highway becomes visible, including the distance traveled during the driver's perception and reaction times and the vehicle braking distance.

"Systems of state highways" means all highways and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate highway.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and turn lanes.

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; acceleration and deceleration lanes.

"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC § 101).

"VDOT" means the Virginia Department of Transportation, its successor, the ~~Commonwealth Transportation~~ Commissioner of Highways, or his designees.

24VAC30-73-10. Definitions.

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median openings/crossovers, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the transportation system.

"Collectors" means the functional classification of highways that provide land access service and traffic circulation within residential, commercial, and industrial areas. The collector system distributes trips from principal and minor arterials through the area to the ultimate destination. Conversely, collectors also collect traffic and channel it into the arterial system.

"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences. (See "private entrance.")

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing movements and left and right turning movements.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the state-maintained highways, bridges and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic, including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property and to other streets.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Intersection" means (i) a crossing of two or more highways at grade, (ii) a crossover, or (iii) any at-grade connection with a highway such as a commercial entrance.

"Intersection sight distance" means the sight distance required at an intersection to allow the driver of a stopped

vehicle a sufficient view of the intersecting highway to decide when to enter, or cross, the intersecting highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or, in the absence of such signs, the speed limit established by Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual (see 24VAC30-73-170 I).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that those properties abut upon the limited access highway.

"Local streets" means the functional classification for highways that comprise all facilities that are not collectors or arterials. Local streets serve primarily to provide direct access to abutting land and to other streets.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Median opening" means a crossover or a directional opening in a nontraversable median (such as a concrete barrier or raised island) that physically restricts movements to specific turns such as left turns and U-turns.

"Minor arterials" means the functional classification for highways that interconnect with and augment the principal arterial system. Minor arterials distribute traffic to smaller geographic areas providing service between and within communities.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in § 15.2-2260 of the Code of Virginia.

"Principal arterials" means the functional classification for major highways intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Roundabout" means a circular intersection with yield control of all entering traffic, right-of-way assigned to traffic within the circular roadway, and channelized approaches and a central island that deflect entering traffic to the right.

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Systems of state highways" means all highways and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate highways.

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; an acceleration or deceleration lane.

"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC § 101).

"VDOT" means the Virginia Department of Transportation, its successor, the ~~Commonwealth Transportation~~ Commissioner of Highways, or his designees.

24VAC30-120-140. Administration of regulations.

The ~~Commonwealth Transportation~~ Commissioner of Highways, under § 33.1-352 of the Code of Virginia, has the duty to administer and enforce provisions of Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 of the Code of Virginia. The board and the ~~Commonwealth Transportation~~ Commissioner of Highways recognize that there are other state agencies which have as their primary purpose the control and administration of the type of specific unique phenomena or site, for which a directional sign application may be made, that have valuable experience and knowledge in the matters contained in the definition of "directional signs." Therefore, the following state agencies are hereby recognized for the purpose of making recommendations whether a site, area, agency, or phenomena falls within the definition of "directional signs" set forth in 24VAC30-120-80:

Department of Conservation and Recreation

Department of Historic Resources

The Library of Virginia

The recommendations must be based upon criteria presently utilized or hereinafter adopted by one of these agencies.

After the recommendation is received the commissioner must employ the following standards in addition to those which appear elsewhere to ascertain whether a site, area, agency, or phenomena is eligible for directional signs.

1. That publicly or privately owned activities or attractions eligible for directional signing are limited to the following: natural phenomena; scenic attractions; historic, educational, cultural, scientific, and religious sites; and areas naturally suited for outdoor recreation.

2. Any of the above must be nationally or regionally known as determined by the commissioner.

3. Any of the above must be of outstanding interest to the traveling public as determined by the ~~Commonwealth Transportation~~ Commissioner of Highways.

The area, site, agency, or phenomena seeking to qualify for "directional signs" shall be the principal area, site, agency, or phenomena which would appear on proposed sign and not ancillary to the message which would appear on the sign.

Part I
Definitions

24VAC30-151-10. Definitions.

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

"Backfill" means replacement of suitable material compacted as specified around and over a pipe, conduit, casing, or gallery.

"Boring" means a method of installation that is done underground and by which a carrier or casing is jacked through an oversize bore. The bore is carved progressively ahead of the leading edge of the advancing pipe as soil is forced back through the pipe. Directional drilling, coring, jacking, etc., are also considered boring.

"Carrier" means a pipe directly enclosing a transmitted liquid or gas.

"Casing" means a larger pipe enclosing a carrier.

"Central Office Permit Manager" means the VDOT employee assigned to provide management, oversight, and technical support for the state-wide land use permit program.

"Clear zone" means the total border area of a roadway, including, if any, parking lanes or planting strips, that is sufficiently wide for an errant vehicle to avoid a serious accident. Details on the clear zone are in VDOT's Road Design Manual (see 24VAC30-151-760).

"Code of Federal Regulations" or "CFR" means the regulations promulgated by the administrative and regulatory agencies of the federal government.

"Commercial entrance" means any entrance serving land uses other than two or fewer individual private residences, agricultural operations to obtain access to fields, or civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins. (See "private entrance.")

"Commissioner of Highways" means the individual serving as the chief executive officer of the Virginia Department of Transportation or a designee.

"Commonwealth" means the Commonwealth of Virginia.

~~"Commonwealth Transportation Commissioner" means the individual serving as the chief executive officer of the Virginia Department of Transportation or a designee.~~

"Conduit" means an enclosed tubular runway for carrying wires, cable or fiber optics.

"Cover" means the depth of the top of a pipe, conduit, or casing below the grade of the roadway, ditch, or natural ground.

"Crossing" means any utility facility that is installed across the roadway, either perpendicular to the longitudinal axis of the roadways or at a skew of no less than 60 degrees to the roadway centerline.

"District administrator" means the VDOT employee assigned the overall supervision of the departmental operations in one of the Commonwealth's nine construction districts.

"District administrator's designee" means the VDOT employee assigned to supervise land use permit activities by the district administrator.

"District roadside manager" means the VDOT employee assigned to provide management, oversight and technical support for district-wide vegetation program activities.

"Drain" means an appurtenance to discharge liquid contaminants from casings.

"Encasement" means a structural element surrounding a pipe.

"Erosion and sediment control" means the control of soil erosion or the transport of sediments caused by the natural forces of wind or water.

"Grounded" means connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Limited access highway" means a highway especially designed for through traffic over which abutters have no easement or right of light, air, or access by reason of the fact that their property abuts upon such limited access highway.

"Longitudinal installations" means any utility facility that is installed parallel to the centerline of the roadway or at a skew of less than 60 degrees to the roadway centerline.

"Manhole" means an opening in an underground system that workers or others may enter for the purpose of making installations, inspections, repairs, connections and tests.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Nonbetterment cost" means the cost to relocate an existing facility as is with no improvements.

"Permit" means a document that sets the conditions under which VDOT allows its right-of-way to be used or changed.

"Permittee" means the person or persons, firm, corporation or government entity that has been issued a land use permit.

"Pipe" means a tubular product or hollow cylinder made for conveying materials.

"Pole line" means poles or a series or line of supporting structures such as towers, cross arms, guys, racks (conductors), ground wires, insulators and other materials assembled and in place for the purpose of transmitting or distributing electric power or communication, signaling and control. It includes appurtenances such as transformers, fuses, switches, grounds, regulators, instrument transformers, meters, equipment platforms and other devices supported by poles.

"Power line" means a line for electric power or communication services.

"Pressure" means relative internal pressure in pounds per square inch gauge (psig).

"Private entrance" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Relocate" means to move or reestablish existing facilities.

"Right-of-way" means that property within the system of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel. The property includes the travel way and associated boundary lines, parking and recreation areas and other permanent easements for a specific purpose.

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Service connections" means any utility facility installed overhead or underground between a distribution main, pipelines, or other sources of supply and the premises of the individual customer.

"Site plan" means the engineered or surveyed drawings depicting proposed development of land.

"Storm sewer" means the system containing and conveying roadway drainage.

"Stormwater management" means the engineering practices and principles used to intercept stormwater runoff, remove pollutants and slowly release the runoff into natural channels to prevent downstream flooding.

"Structure" means that portion of the transportation facility that spans space, supports the roadway, or retains soil. This definition includes, but is not limited to, bridges, tunnels, drainage structures, retaining walls, sound walls, signs, traffic signals, etc.

"System of state highways" means all highways and roads under the ownership, control, or jurisdiction of VDOT, including but not limited to, the primary, secondary and interstate systems.

"Telecommunication service" means the offering of telecommunications for a fee directly to the public or to privately, investor- or cooperatively owned entities.

"Transportation project" means a public project in development or under construction to provide a new transportation facility or to improve or maintain the existing system of state highways.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

"Trenched" means installed in a narrow, open excavation.

"Underground utility facilities" means any item of public or private property placed below ground or submerged for use by the utility.

"Utility" means a privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing telecommunications, cable television, electricity, gas, oil, petroleum products, water, steam, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system.

"VDOT" means the Virginia Department of Transportation or the ~~Commonwealth Transportation~~ Commissioner <u>of Highways</u>.

"Vent" means an appurtenance to discharge gaseous contaminants from a casing or carrier pipe.

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

24VAC30-151-30. Permits and agreements.

A. The following shall apply to all authorized use or occupancy of the right-of-way:

1. A permit is required for any type of utility activity occurring within the right-of-way.

2. A permit is required to install any entrance onto a state highway.

3. A permit is required to perform surveying operations within the right-of-way.

4. A permit is required for any agricultural and commercial use and occupancy of the right-of-way.

5. A permit is required for any miscellaneous activity or use of the right-of-way except for mailboxes and newspaper boxes (see 24VAC30-151-560) and public service signs (see 24VAC30-151-570).

B. Single use permits. A single use permit allows the permittee to perform any approved activities not covered by a districtwide permit held by the permittee within limited access and nonlimited access rights-of-way at a specific location.

The district administrator's designee shall be responsible for the issuance of all single use permits, except that those requests for tree trimming and tree removal may be issued by the district roadside manager in consultation with the district administrator's designee. The size of the specific location covered by a single use permit shall be at the discretion of the district administrator's designee and may cover work up to two miles along the right-of-way (see 24VAC30-151-40). The land use permit issued for the original installation allows the permittee to repair or perform routine maintenance operations to existing facilities. A single use permit shall be required when the following actions are proposed, even if the activities being conducted are normally allowed under a districtwide permit:

1. Stopping or impeding highway travel in excess of 15 minutes or implementing traffic control that varies from the standard, or any combination of these, as outlined in the Virginia Work Area Protection Manual (see 24VAC30-151-760).

2. Performing work within limited access right-of-way.

3. Trimming or cutting any trees located within the right-of-way.

4. Applying any pesticide or landscaping within the right-of-way.

5. Construction of a permanent entrance to a state highway.

C. Districtwide permits. A districtwide permit allows the permittee to perform multiple occurrences of certain activities on nonlimited access right-of-way without obtaining a single use permit for each occurrence. The central office permit manager shall be responsible for the issuance of all districtwide permits. VDOT may authorize districtwide permits covering multiple districts (see 24VAC30-151-710).

The following is a list of acceptable activities under the jurisdiction of districtwide permits:

1. Utilities.

a. Districtwide permits may be issued granting cities, towns, counties, public agencies, or utility companies the authority to install and maintain service connections to their existing main line facilities. Work under a districtwide permit will allow the permittee to install a service connection across a nonlimited access primary or secondary highway above or below ground, provided the installation can be made from the side of the roadway without impeding travel for more than 15 minutes to pull or drop a service line across a highway, and provided no part of the roadway pavement, shoulders and ditch lines will be disturbed. The installation of parallel utility service connections, not to exceed 500 feet in length, shall be placed along the outer edge of the right-of-way with a minimum of 36 inches of cover. Telecommunications and cable television service connections may be placed with a minimum of 18 inches of cover; however the permittee assumes full responsibility for any and all damages caused by VDOT or VDOT contractors resulting from a service connection buried with less than 30 inches of cover within the right-of-way.

A districtwide permit allows for the overlashing of telecommunication lines onto existing lines or strand.

b. A separate single use permit will be required when the following activities associated with the installation and maintenance of utility service connections are proposed:

(1) Cutting highway pavement or shoulders, or both, to locate underground utilities.

(2) Working within the highway travel lane on a nonemergency basis.

(3) Constructing a permanent entrance.

(4) Installing electrical lines that exceed 34.5 KV.

(5) Installing telecommunication services that exceed 100 pair copper cable or the fiber optic cable diameter equivalent.

(6) Installing new pole, anchors, parallel lines, or casing pipe extensions to existing utilities where such installation necessitates disturbance to the pavement, shoulder, or ditch line.

(7) Installing underground telephone, power, cable television, water, sewer, gas, or other service connections or laterals where the roadway or ditch lines are to be disturbed.

c. The installation of parallel utility service connections, not to exceed 500 feet in length, shall be placed along the outer edge of the right-of-way with a minimum of 36 inches of cover. Telecommunications and cable television service connections may be placed with a minimum of 18 inches of cover; however the permittee assumes full responsibility for any and all damages caused by VDOT or VDOT contractors resulting from a service connection buried with less than 30 inches of cover within the right-of-way.

d. A districtwide permit allowing the installation and maintenance of utility service connections may be revoked for a minimum of 30 calendar days upon written finding that the permittee violated the terms of the permit or any of the requirements of this chapter, including but not limited to any, all, or a combination of the following:

(1) The permittee shall implement all necessary traffic control in accordance with the Virginia Work Area Protection Manual (see 24VAC30-151-760). When warranted, the appropriate Regional Traffic Engineer should be consulted to select or tailor the proper traffic control devices. Each flag-person must be certified by VDOT and carry a certification card when flagging traffic and have it readily available for inspection when requested by authorized personnel.

(2) The permittee shall not perform any activity under the jurisdiction of a districtwide permit that requires the issuance of a single use permit.

e. The permittee must obtain single use permits from the district administrator's designee to continue the installation and maintenance of utility service connections during this revocation period.

2. Temporary logging entrances.

a. Districtwide permits may be issued for the installation, maintenance, and removal of temporary entrances onto nonlimited access primary and secondary highways for the purpose of harvesting timber.

b. A separate single use permit is required when the following activities associated with timber harvesting operations are proposed:

(1) Installing a permanent entrance.

(2) Making permanent upgrades to an existing entrance. Improvements to existing entrances that are not permanent upgrades will not require a separate single use permit.

(3) Cutting pavement.

(4) Grading within the right-of-way beyond the immediate area of the temporary entrance.

c. A logging entrance permit may be revoked for a minimum of 30 calendar days upon written finding that the permittee violated the terms of the permit or any of the requirements of this chapter, including but not limited to any, all, or a combination of the following:

(1) The permittee shall implement all necessary traffic control in accordance with the Virginia Work Area Protection Manual (see 24VAC30-151-760). When warranted, the appropriate district traffic engineer should be consulted to select or tailor the proper traffic control measures. Each flag-person must be certified by VDOT and carry a certification card and have it available for inspection upon request by authorized VDOT personnel.

(2) The permittee shall contact the appropriate district administrator's designee prior to installing a new logging entrance or initiating the use of an existing entrance for logging access.

(3) The permittee shall contact the appropriate district administrator's designee for final inspection upon completion of logging activities and closure of the temporary entrance.

(4) The permittee shall restore all disturbed right-of-way at the temporary entrance, including but not limited to ditches, shoulders, and pavement, to pre-activity condition subject to acceptance by the appropriate district administrator's designee.

(5) The permittee shall remove excessive mud and any debris that constitutes a hazardous condition from the highway pursuant to a request from the appropriate district administrator's designee. Noncompliance may also result in the issuance of a separate citation from the Virginia State Police or a local law-enforcement authority.

(6) The permittee shall not perform any activity under the jurisdiction of a districtwide permit that requires the issuance of a single use permit.

d. The permittee must obtain single use permits from the appropriate district administrator's designee to continue accessing state maintained highways for the purpose of harvesting timber during this revocation period.

3. Surveying.

a. Districtwide permits may be issued for surveying operations on nonlimited access primary and secondary highways subject to the following:

(1) No trees are to be trimmed or cut within the right-of-way.

(2) No pins, stakes, or other survey markers that may interfere with mowing operations or other maintenance activities are to be placed within the right-of-way.

(3) No vehicles shall be parked so as to create a traffic hazard. Parking on through lanes is strictly prohibited.

b. A separate single use permit is required when the following surveying activities are proposed:

(1) Entering onto limited access right-of-way. Consideration for the issuance of such permits will be granted only when the necessary data cannot be obtained from highway plans, monuments, triangulation, or any combination of these, and the applicant provides justification for entry onto the limited access right-of-way.

(2) Stopping or impeding highway travel in excess of 15 minutes or varying the implementation of standard traffic control, or any combination of these, as outlined in the Virginia Work Area Protection Manual (see 24VAC30-151-760).

(3) Trimming or cutting any trees located within the right-of-way.

(4) Cutting highway pavement or shoulders to locate underground utilities.

c. A districtwide permit for surveying activities may be revoked for a minimum of 30 calendar days upon written finding that the permittee violated the terms of the permit or any of the requirements of this chapter, including but not limited to any, all, or a combination of the following:

(1) The permittee shall implement all necessary traffic control in accordance with the Virginia Work Area Protection Manual (see 24VAC30-151-760). When warranted, the appropriate Regional Traffic Engineer should be consulted to select or tailor the proper traffic control devices. Each flag-person must be certified by VDOT and carry a certification card when flagging traffic and have it readily available for inspection when requested by authorized personnel.

(2) The permittee shall not perform any activity under the jurisdiction of a districtwide permit that requires the issuance of a single use permit.

d. The permittee must obtain single use permits from the district administrator's designee to continue surveying activities during this revocation period.

D. In-place permits. In-place permits allow utilities to remain within the right-of-way of newly constructed secondary streets. These utilities shall be installed according to VDOT approved street plans and shall be in place prior to VDOT street acceptance.

E. Prior-rights permits. Prior-rights permits allow existing utilities to remain in place that are not in conflict with transportation improvements authorized under the auspices of a land use permit.

F. As-built permits. Agreements for the relocation of utilities found to be in conflict with a transportation project may stipulate that an as-built permit will be issued upon completion of the project.

G. Agreements. In addition to obtaining a single use permit, a utility may be required to enter an agreement with VDOT allowing the utility to use the limited access right-of-way in exchange for monetary compensation, the mutually agreeable exchange of goods or services, or both.

1. Permit agreement. A permit agreement is required for:

a. Any new longitudinal occupancy of the limited access right-of-way where none have existed before, as allowed for in 24VAC30-151-300 and 24VAC30-151-310.

b. Any new communication tower or small site facilities installed within the right-of-way, as allowed for in 24VAC30-151-350.

c. Any perpendicular crossing of limited access right-of-way, as allowed for in 24VAC30-151-310.

All permit agreements shall specify the terms and conditions required in conjunction with work performed within the right-of-way. If appropriate, all agreements shall provide for the payment of monetary compensation as may be deemed proper by the ~~Commonwealth Transportation~~ Commissioner of Highways for the privilege of utilizing the right-of-way.

2. Shared resource agreement. A shared resource agreement allows the utility to occupy the limited access right-of-way in exchange for the utility providing the needed VDOT facility or services. VDOT and the utility will agree upon the appropriate facilities or services to be provided and will establish the length of the term that will be compensated through the infrastructure needs or monetary compensation, or both. Any shared resource agreement shall also provide for compensation as may be deemed proper by the ~~Commonwealth Transportation~~ Commissioner of Highways in any renewal term. The shared resource agreement shall specify the initial and renewal terms of the lease.

24VAC30-151-40. General rules, regulations and requirements.

A. A land use permit is valid only on highways and rights-of-way under VDOT's jurisdiction. This permit neither implies nor grants otherwise. County and city permits must be secured for work on roads and streets under their jurisdictions. A land use permit covers the actual performance of work within highway rights-of-way and the subsequent maintenance, adjustments or removal of the work as approved by the central office permit manager or the district administrator's designee. Permits for communications facility towers may only be issued by the ~~Commonwealth Transportation~~ Commissioner of Highways. The ~~Commonwealth Transportation~~ Commissioner of Highways shall approve all activities within limited access right-of-way prior to permit issuance. All permits shall be issued to the owner of the facility within highway rights-of-way or adjacent property owner in the case of entrance permits. Permits may be issued jointly to the owner and his contractor as agent. The applicant shall comply with all applicable federal, state, county and municipal requirements.

B. Application shall be made for a district-wide permit through the central office permit manager and for single use permits from the district administrator's designee responsible for the county where the work is to be performed. The applicant shall submit site plans or sketches for proposed installations within the right-of-way to VDOT for review, with studies necessary for approval. VDOT may require electronic submission of these documents. Where work is of a continuous nature along one route, or on several routes within one jurisdiction, it may be consolidated into one permit application. For single use permits, such consolidation shall not be for a length greater than two miles. The applicant shall also submit any required certifications for staff performing or supervising the work, and certification that applicable stormwater management requirements are being met. The plans shall include the ultimate development and also any applicable engineering design requirements. VDOT retains the authority to deny an application for or revoke a land use permit to ensure the safety, use, or maintenance of the highway right-of-way, or in cases where a law has been violated relative to the permitted activity.

C. The proposed installation granted by this permit shall be constructed exactly as shown on the permit or accompanying sketch. Distances from edge of pavement, existing and proposed right-of-way line, depths below existing and proposed grades, depths below ditch line or underground drainage structures, or other features shall be shown. Any existing utilities within close proximity of the permittee's work shall be shown. Location of poles, guys, pedestals, relief valves, vent pipes, etc. shall be shown. Height of wires or cables above the crown of the roadway shall be shown.

D. In the event of an emergency situation that requires immediate action to protect persons or property, work may proceed within the right-of-way without authorization from the district administrator's designee; however, the permittee must contact the VDOT Emergency Operations Center as soon as reasonably possible but no later than 48 hours after the end of the emergency situation.

E. The land use permit is not valid unless signed by the central office permit manager or the district administrator's designee.

F. The permittee shall secure and carry sufficient insurance to protect against liability for personal injury and property damage that may arise from the work performed under the authority of a land use permit and from the operation of the permitted activity. Insurance must be obtained prior to start of permitted work and shall remain valid through the permit completion date. The central office permit manager or the district administrator's designee may require a valid certificate or letter of insurance from the issuing insurance agent or agency prior to issuing the land use permit.

G. VDOT and the Commonwealth shall be absolved from all responsibilities, damages and liabilities associated with granting the permit. All facilities shall be placed and maintained in a manner to preclude the possibility of damage to VDOT owned facilities or other facilities placed within the highway right-of-way by permit.

H. A copy of the land use permit and approved site plans or sketches shall be maintained at every job site and such items made readily available for inspection when requested by authorized personnel. Strict adherence to the permit is required at all times. Any activity other than that described in the permit shall render the permit null and void. Any changes to the permit shall be coordinated and approved by the district administrator's designee prior to construction.

I. For permit work within the limits of a VDOT construction project, the permittee must obtain the contractor's consent in writing before the permit will be issued. The permittee shall coordinate and schedule all permitted work within the limits of a VDOT construction project to avoid conflicts with contracted work.

J. Disturbances within the right-of-way shall be kept to a minimum during permitted activities. Permit applications for proposed disturbances within the right-of-way that include disturbance on property directly adjacent to the right-of-way, in which the combined area of disturbance constitutes a land-disturbing activity as defined in § 10.1-560 of the Code of Virginia and the Virginia Stormwater Management Program (VSMP) Permit Regulations (see 24VAC30-151-760), must be accompanied by documented approval of erosion and sediment control plans and stormwater management plans, if applicable, from the corresponding jurisdictional local or state government plan approving authority.

K. Restoration shall be made in accordance with VDOT Road and Bridge Specifications; VDOT Road and Bridge Standards; Virginia Erosion and Sediment Control Handbook, 3rd Edition, a technical guide to the Erosion and Sediment Control Regulations; and the Virginia Stormwater Management Handbook, 1st edition, Volumes 1 and 2, a technical guide to the Virginia Stormwater Management Program (VSMP) Permit Regulations (see 24VAC30-151-760).

Additionally, the permittee shall:

1. Ensure compliance with the Erosion and Sediment Control Regulations and the Virginia Stormwater Management Program (VSMP) Permit Regulations (see 24VAC30-151-760).

2. Ensure copies of approved erosion and sediment control plans, stormwater management plans, if applicable, and all related non-VDOT issued permits are available for review and posted at every job site at all times.

3. Take all necessary precautions to ensure against siltation of adjacent properties, streams, etc. in accordance with VDOT's policies and standards and the Virginia Erosion and Sediment Control Handbook, 3rd edition, and the Virginia Stormwater Management Manual (see 24VAC30-151-760).

4. Keep dusty conditions to a minimum by using VDOT-approved methods.

5. Cut pavement only as approved by the district administrator's designee. Pavement cuts, restoration and compaction efforts, to include all materials, shall be accomplished in accordance with VDOT Road and Bridge Specifications (see 24VAC30-151-760).

6. Ensure that an individual certified by VDOT in erosion and sediment control is present whenever any land-disturbing activity governed by the permit is performed. All land disturbance activities performed under a VDOT land use permit shall be in accordance with all local, state, and federal regulations. The installation of underground facilities by a boring method shall only be deemed as a land-disturbing activity at the entrance and exit of the bore hole and not the entire length of the installation.

7. Stabilize all disturbed areas immediately upon the end of each day's work and reseed in accordance with VDOT Road and Bridge Specifications (see 24VAC30-151-760). Temporary erosion and sediment control measures shall be installed in areas not ready for permanent stabilization.

8. Ensure that no debris, mud, water, or other material is allowed on the highways. Permission, documented in writing or electronic communication, must be obtained from VDOT prior to placing excavated materials on the pavement. When so permitted, the pavement shall be cleaned only by approved VDOT methods.

L. Accurate "as built" plans and profiles of work completed under permit shall be furnished to VDOT upon request, unless waived by the district administrator's designee. For utility permits, the owner shall maintain records for the life of the facility that describe the utility usage, size, configuration, material, location, height or depth and special features such as encasement.

M. All work shall be performed in accordance with the Underground Utility Damage Prevention Act (Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia) and the Rules for Enforcement of the Underground Utility Damage Prevention Act (see 24VAC30-151-760). For work within 1,000 feet of traffic signals or adjacent to other VDOT utilities, the permittee shall contact the district administrator's designee prior to excavation. The permittee shall notify VDOT on the business day preceding 48 hours before excavation.

N. Permission, documented in writing or electronic communication, must be obtained from the district administrator's designee prior to blocking or detouring traffic. Additionally, the permittee shall:

1. Employ safety measures including, but not limited to, certified flaggers, adequate lights and signs.

2. Conduct all permitted activities in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) and related special provisions (see 24VAC30-151-760) and the typical traffic control figures from the Virginia Work Area Protection Manual (see 24VAC30-151-760).

3. Plan construction and maintenance operations with regard to safety and minimum traffic interference.

4. Coordinate notification with all county or municipal officials.

5. Ensure that permitted work does not interfere with traffic during periods of peak flow on heavily traveled highways.

6. Plan work so that closure of intersecting streets, road approaches and other access points is held to a minimum and as noted and approved in the permit documents.

7. Maintain safe access to all entrances and normal shoulder slope of the roadway across the entire width of the entrance.

O. All construction activities shall conform to Occupational Safety & Health Administration (OSHA) requirements.

P. The permittee shall be responsible for any settlement in the backfill or pavement for a period of two years after the completion date of permit, and for the continuing maintenance of the facilities placed within the highway right-of-way. A one-year restoration warranty period may be considered, provided the permittee adheres to the following criteria:

1. The permittee retains the services of a professional engineer (or certified technician under the direction of the professional engineer) to observe the placement of all fill embankments, pavement, and storm sewer and utility trench backfill.

2. The professional engineer (or certified technician under the direction of the professional engineer) performs any required inspection and testing in accordance with all applicable sections of VDOT's Road and Bridge Specifications (see 24VAC30-151-760).

3. The professional engineer submits all testing reports for review and approval, and provides written certification that all restoration procedures have been completed in accordance with all applicable sections of VDOT's Road and Bridge Specifications (see 24VAC30-151-760) prior to completion of the work authorized by the permit.

Q. The permittee shall immediately notify the nearest VDOT official who approved the land use permit of involvement in any personal or vehicular accident at the work site.

R. Stormwater management facilities or wetland mitigation sites shall not be located within VDOT rights-of-way unless the Commonwealth Transportation Board has agreed to participate in the use of a regional facility authorized by the local government. Stormwater management facilities or wetlands mitigation sites shall be designed and constructed to minimize impact within VDOT right-of-way. VDOT's share of participation in a regional facility will be the use of the right-of-way where the stormwater management facility or wetland mitigation site is located.

S. The permittee shall notify, by telephone, voice mail message, or email, the VDOT office where the land use permit was obtained prior to commencement of the permitted activity or any nonemergency excavation within the right-of-way.

T. Upon completion of the work under permit, the permittee shall provide notification, documented in writing or electronic communication, to the district administrator's designee requesting final inspection. This request shall include the permit number, county name, route number, and name of the party or parties to whom the permit was issued. The district administrator's designee shall promptly schedule an inspection of the work covered under the permit and advise the permittee of any necessary corrections.

24VAC30-151-100. Appeal.

The district administrator is authorized to consider and rule on unresolved differences of opinion between the applicant or permittee and the district administrator's designee that pertain to the interpretation and application of the requirements of

this chapter as they relate to single use permits within nonlimited access highways.

To initiate an appeal with the district administrator, the applicant or permittee must provide the district administrator and the district administrator's designee with a written request for such action within 30 calendar days of receipt of written notification of denial or revocation and must set forth the grounds for the appeal. The written request shall describe any unresolved issue or issues. After reviewing all pertinent information, the district administrator will advise the applicant or permittee in writing within 60 calendar days upon receipt of the appeal regarding the decision of the appeal, with a copy to the district administrator's designee. The applicant or permittee may further appeal the district administrator's decision to the ~~Commonwealth Transportation~~ Commissioner of Highways. All correspondence requesting an appeal should include copies of all prior correspondence regarding the issue or issues with VDOT representatives.

The central office division administrator responsible for overseeing the statewide land use permit program is authorized to consider and rule on unresolved differences of opinion that pertain to the interpretation and application of the requirements of this chapter as they relate to districtwide permits. To initiate an appeal, the applicant or permittee must provide the division administrator with a written request for such action within 30 calendar days of receipt of written notification of denial or revocation and must set forth the grounds for the appeal. The written request shall describe any unresolved issue or issues. After reviewing all pertinent information, the division administrator will advise the applicant or permittee in writing within 60 calendar days upon receipt of the appeal regarding the decision of the appeal. The applicant or permittee may further appeal the division administrator's decision to the ~~Commonwealth Transportation~~ Commissioner of Highways. All correspondence requesting an appeal should include copies of all prior correspondence regarding the issue or issues with VDOT representatives.

Appeals involving permit requests within limited access rights-of-way and appeals of decisions of the district administrator and the division administrator shall be made to the ~~Commonwealth Transportation~~ Commissioner of Highways for resolution. To initiate an appeal, the applicant or permittee must provide the ~~Commonwealth Transportation~~ Commissioner of Highways with a written request for such action within 30 calendar days of receipt of written notification of denial or revocation and must set forth the grounds for the appeal. The written request shall describe any unresolved issue or issues. After reviewing all pertinent information, the ~~Commonwealth Transportation~~ Commissioner of Highways will advise the applicant or permittee in writing within 60 calendar days upon receipt of the appeal regarding the decision of the appeal.

Part III
Denial or Revocation of Permits

24VAC30-151-110. Denial; revocation; refusal to renew.

A. A land use permit may be revoked upon written finding that the permittee violated the terms of the permit, which shall incorporate by reference these rules, as well as state and local laws and ordinances regulating activities within the right-of-way. Repeated violations may result in a permanent denial of the right to work within the right-of-way. A permit may also be revoked for misrepresentation of information on the application, fraud in obtaining a permit, alteration of a permit, unauthorized use of a permit, or violation of a water quality permit. Upon revocation, the permit shall be surrendered without consideration for refund of fees. Upon restoration of permit privileges a new land use permit shall be obtained prior to performing any work within the right-of-way.

B. Land use permits may be denied to any applicant or company, or both, for a period not to exceed six months when the applicant or company, or both, has been notified in writing by the ~~Commonwealth Transportation~~ Commissioner of Highways, the central office permit manager, district administrator, or district administrator's designee that violations have occurred under the jurisdiction of a districtwide or previously issued single use permit. Any person, firm, or corporation violating a water quality permit shall permanently be denied a land use permit. Furthermore, these violators may be subject to criminal prosecution as provided for by § 33.1-19 of the Code of Virginia.

Part V
Occupancy of Right-of-Way

24VAC30-151-220. Commercial use agreements.

A. Where wider rights-of-way are acquired by VDOT for the ultimate development of a highway at such time as adequate funds are available for the construction of the highway, including such preliminary features as tree planting, the correction of existing drainage conditions, etc., the ~~Commonwealth Transportation~~ Commissioner of Highways does not consider it advisable to lease, rent, or otherwise grant permission for the use of any of the land so acquired except in extreme or emergency cases, and then only for a limited period.

When the land adjoining the highway is used for commercial purposes and where the existing road is located on the opposite side of the right-of-way, thereby placing the business from 65 feet (in the case of 110 feet right-of-way) to 100 feet or more (in the case of 160 feet right-of-way) away from the main traveled road, the owner of the business may continue to locate his driveways and pumps, in the case of a filling station, within the state right-of-way, provided that the driveways and pumps are at least as far from the edge of the existing pavement as existing driveways and pumps in evidence on the road are from the nearest edge of the

pavement to their similar structures. No additional driveways or pumps may be constructed within the right-of-way. In such cases, agreements for "commercial uses" may be entered into for use of portions of the right-of-way for temporary or limited periods under the following policies and conditions:

1. Until such time as the ~~Commonwealth Transportation~~ Commissioner of Highways deems it necessary to use right-of-way acquired for future construction on a project for road purposes, agreements may be made with adjoining property owners for the temporary use of sections thereof. The use of this land shall be limited to provisions as set forth in the agreement, which shall cover commercial pursuits consistent with similar operations common to the highway. These operations and special conditions may include gasoline pumps, but not gasoline tanks.

2. The area of right-of-way designated for use of the landowner must not be used for the storing of vehicles, except while the vehicles are being serviced at the gasoline pumps. The area must be kept in a clean and orderly condition at all times.

B. Agreements may be revoked for cause or as outlined in subdivision A 1 of this section, either in whole or for any portion of the prescribed area that may be required for highway purposes, which may include one or more of the following:

1. The storage of road materials when other nearby suitable areas are not available;

2. The planting of trees and shrubs for permanent roadside effects;

3. The correction or improvement of drainage;

4. Development of wayside, parking or turnout areas; or

5. For other purposes as may be deemed necessary by the ~~Commonwealth Transportation~~ Commissioner of Highways.

C. Applications for agreements for commercial uses shall be made to the district administrator's designee. Agreements must be accompanied by a sketch showing the location of the roadway, shoulders, ditches and conditions existing within the right-of-way, together with description and plat of the area to be covered by it. The text of the application should describe the specific use for the site.

D. Agreements shall be issued only to owners of property adjoining the area to be used. Agreements may be made for terms not to exceed one year, subject to the cancellation terms in subsection C of this section. VDOT shall not be responsible in any way for the policing of areas subject to commercial agreements. No structures are to be erected on areas subject to commercial agreements without written approval of the ~~Commonwealth Transportation~~ Commissioner of Highways.

24VAC30-151-230. Agriculture use agreements.

A. In cases where wider rights-of-way are acquired by VDOT for the ultimate development of a highway at such time as adequate funds are available for the construction of the same, including such preliminary features as tree planting, the correction of existing drainage conditions, etc., the ~~Commonwealth Transportation~~ Commissioner of Highways does not consider it advisable to lease, rent, or otherwise grant permission for the use of any of the land so acquired except in extreme or emergency cases, and then only for a limited period.

When this land is being used for agricultural purposes, which would necessitate the owner preparing other areas for the same use, agreements for agricultural uses may be entered into for use of portions of the right-of-way for temporary or limited periods.

B. Agreements for agricultural uses may be made with adjoining property owners, until such time as the ~~Commonwealth Transportation~~ Commissioner of Highways deems it necessary to use right-of-way acquired for future construction on a project for road purposes. Agricultural use is not permitted on limited access highways. The use of this land will be limited to provisions as set forth in the agreement, which, in general, will cover agricultural pursuits the same as those carried out on adjoining lands and thereby made an integral part of the agreement. Operations and special conditions covering such operations may include one or more of the following:

1. Grazing of cattle and other livestock is permitted provided the area is securely enclosed by appropriate fence to eliminate any possibility of animals getting outside of the enclosure.

2. Forage crops such as hay, cereals, etc. are permitted provided that their growth will not interfere with the safe and orderly movement of traffic on the highway, and that, after crops are harvested, the land is cleared, graded and seeded with cover crop in such a manner as to prevent erosion and present a neat and pleasing appearance.

3. Vegetable crops are permitted provided that its growth will not interfere with the safe and orderly movement of traffic on the highway, and that all plants will be removed promptly after crops are harvested and the land cleared, graded and seeded with cover crop in such a manner as to prevent erosion and present a neat and pleasing appearance.

4. Fruit trees are permitted to maintain existing fruit trees, provided that they are sprayed to control insects and diseases; fertilized and the area is kept generally clear of weeds, etc., but no guarantee of longevity may be expected.

5. Small fruits are permitted, but no guarantee of longevity may be expected.

6. Other uses as may be specifically approved.

C. Agricultural use agreements will be subject to revocation for cause or as outlined in subsection B of this section, either in whole or for any portion of the prescribed area that may be required for highway purposes, which may include one or more of the following:

1. Storage of road materials when other nearby suitable areas are not available;

2. The planting of trees and shrubs for permanent roadside effects;

3. The correction or improvement of drainage;

4. The development of wayside, parking or turnout areas; or

5. For other purposes as may be deemed necessary by the ~~Commonwealth Transportation~~ Commissioner of Highways.

D. Applications for agreements for agricultural uses shall be made to the district administrator's designee. Agreements must be accompanied by a sketch showing the location of the roadway, shoulders, ditches and conditions existing within the right-of-way, together with a description and plat of the area to be covered by it. The text of the application should describe in detail the specific use for which the area is to be utilized.

Agreements shall be issued only to owners of property adjoining the area to be used. Agreements may be made for terms not to exceed one year, subject to the cancellation terms in subsection C of this section. VDOT shall not be held responsible in any way for the policing of areas subject to agricultural use agreements. No structures are to be erected on areas subject to agricultural use agreements without written approval of the ~~Commonwealth Transportation~~ Commissioner of Highways.

24VAC30-151-280. Springs and wells.

In the acquiring of right-of-way, it is often necessary for VDOT to acquire lands where springs, wells and their facilities are located. It is the policy of VDOT to acquire these springs, wells and their facilities along with the land on which they are located. When so acquired, the landowner having previous use of these springs, wells and their facilities may be granted a permit to use these springs, wells and their facilities until the ~~Commonwealth Transportation~~ Commissioner of Highways shall, by written notice, advise that the permit is terminated. The issuing of the permit shall in no way obligate VDOT to maintain the springs, wells or facilities.

24VAC30-151-310. Utility installations within limited access highways.

Utility installations on all limited access highways shall comply with the following provisions:

1. Requests for all utility installations within limited access right-of-way shall be reviewed and, if appropriate, be approved by the ~~Commonwealth Transportation~~ Commissioner of Highways prior to permit issuance.

2. New utilities will not be permitted to be installed parallel to the roadway longitudinally within the controlled or limited access right-of-way lines of any highway, except that in special cases or under resource sharing agreements such installations may be permitted under strictly controlled conditions and then only with approval from the ~~Commonwealth Transportation~~ Commissioner of Highways. However, in each such case the utility owner must show the following:

a. That the installation will not adversely affect the safety, design, construction, operation, maintenance or stability of the highway.

b. That the accommodation will not interfere with or impair the present use or future expansion of the highway.

c. That any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility.

d. In no case will parallel installations within limited access right-of-way be permitted that involve tree removal or severe tree trimming.

3. Overhead and underground utilities may be installed within limited access right-of-way by a utility company under an agreement that provides for a shared resource arrangement subject to VDOT's need for the shared resource.

4. All authorized longitudinal utility installations within limited access right-of-way, excluding communication tower facilities, shall be located in a utility area established along the outer edge of the right-of-way. Special exceptions must be approved by the ~~Commonwealth Transportation~~ Commissioner of Highways.

5. Authorized overhead utility installations within limited access right-of-way shall maintain a minimum of 21 feet of vertical clearance.

6. Authorized underground utility installations within limited access right-of-way shall have a minimum of 36 inches of cover.

7. Service connections to adjacent properties shall not be permitted from authorized utility installations within limited access right-of-way.

8. Overhead crossings shall be located on a line that is perpendicular to the highway alignment.

9. A utility access control line will be established between the proposed utility installation, the through lanes, and ramps.

24VAC30-151-340. Underground utility installations within nonlimited access highways.

Underground longitudinal utilities may be installed under permit on all nonlimited access highways, except in scenic areas, as follows:

1. Underground utilities may be installed within nonlimited access right-of-way by a utility company under permit, including a districtwide permit as allowed under 24VAC30-151-30 C 1.

2. All underground utilities within VDOT rights-of-way will require a minimum of 36 inches of cover, except underground cables that provide cable or telecommunications services shall be at a minimum of 30 inches of cover. The district administrator's designee has the discretion to grant an exception to depth of cover requirements if the permittee encounters obstacles preventing the installation of main line facilities at the minimum depth of cover, as long as installation at the minimum depth of cover is resumed when the installation passes by the obstacle.

3. An underground utility shall not be attached to a bridge or other structure unless the utility owner can demonstrate that the installation and maintenance methods will not interfere with VDOT's ability to maintain the bridge or other structure, will not impact the durability and operational characteristics of the bridge or other structure, and will not require access from the roadway or interfere with roadway traffic. The attachment method must be approved by VDOT (see 24VAC30-151-430).

4. The proposed method for placing an underground facility requires approval from the district administrator's designee. All underground facilities shall be designed to support the load of the highway and any superimposed loads. All pipelines and encasements shall be installed in accordance with 24VAC30-151-360 and 24VAC30-151-370.

5. Underground utilities shall not be installed within the median area except, in special cases or under shared resource agreements, with approval from the ~~Commonwealth Transportation~~ Commissioner of Highways.

6. Underground utilities may be installed under sidewalk areas with approval from the district administrator's designee.

24VAC30-151-350. Nonlimited access highways: communication towers and site installations.

Communication tower structures and other types of surface mounted or underground utility facilities may be installed by a utility company under an agreement providing for a shared resource arrangement or the payment of appropriate compensation, or both. The ~~Commonwealth Transportation~~ Commissioner of Highways may grant an exception for a nonshared resource arrangement, under strictly controlled conditions. The utility owner must show that any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility. Communication pedestals, nodes, and amplifiers may be installed in the right-of-way pursuant to permit unless the district administrator's designee reasonably concludes that safety concerns at a specific location require placement of communication pedestals, nodes, or amplifiers elsewhere in the right-of-way. The placement of communication pedestals, nodes, or amplifiers between the edge of pavement or back of curb and the sidewalk shall not be permitted.

24VAC30-151-550. Roadside memorials.

A. Section 33.1-206.1 of the Code of Virginia directs the Commonwealth Transportation Board to establish regulations regarding the authorized location and removal of roadside memorials. Roadside memorials shall not be placed on state right-of-way without first obtaining a permit. At the site of fatal crashes or other fatal incidents, grieving families or friends often wish for a roadside memorial to be placed within the highway right-of-way. The following rules shall be followed in processing applications to place roadside memorials within the highway right-of-way:

1. Applications for a memorial shall be submitted to the district administrator's designee. The district administrator's designee will review, and if necessary, amend or reject any application.

2. If construction or major maintenance work is scheduled in the vicinity of the proposed memorial's location, the district administrator's designee may identify an acceptable location for the memorial beyond the limits of work, or the applicant may agree to postpone installation.

3. If the applicant requests an appeal to the district administrator's designee's decision regarding amendment or rejection of an application, this appeal will be forwarded to the district administrator.

4. Criteria used to review applications shall include, but not be limited to, the following factors:

a. Potential hazard of the proposed memorial to travelers, the bereaved, VDOT personnel, or others;

b. The effect on the proposed site's land use or aesthetics; installation or maintenance concerns; and

c. Circumstances surrounding the accident or incident.

5. Approval of a memorial does not give the applicant, family, or friends of the victim permission to park, stand, or loiter at the memorial site. It is illegal to park along the interstate system, and because of safety reasons and concerns for the public and friends and family of the deceased, parking, stopping, and standing of persons along any highway is not encouraged.

B. The following rules will be followed concerning roadside memorial participation:

1. Any human fatality that occurs on the state highway system is eligible for a memorial. Deaths of animals or pets are not eligible.

2. The applicant must provide a copy of the accident report or other form of information to the district administrator's designee so that the victim's name, date of fatality, and location of the accident can be verified. This information may be obtained by contacting the local or state police. The district administrator's designee may also require that the applicant supply a copy of the death certificate.

3. Only family members of the victim may apply for a memorial.

4. The applicant will confirm on the application that approval has been obtained from the immediate family of the victim and the adjacent property owner or owners to locate the memorial in the designated location. If any member of the immediate family objects in writing to the memorial, the application will be denied or the memorial will be removed if it has already been installed.

5. If the adjacent property owner objects in writing, the memorial will be relocated and the applicant will be notified.

6. Memorials will remain in place for two years from the date of installation, at which time the permit shall expire. The ~~Commonwealth Transportation~~ Commissioner of Highways may, upon receipt of a written request, grant an extension of the permit. An extension may be granted for a period of one year, and requests for further extensions must be submitted for each subsequent year. The applicant or the family of the victim may request that the memorial be removed less than two years after installation.

7. The applicant shall be responsible for the fabrication of the memorial. VDOT will install, maintain, and remove the memorial, but the cost of these activities shall be paid by the applicant to VDOT.

C. Roadside memorial physical requirements.

1. The memorial shall be designed in accordance with Chapter 7 (§ 33.1-351 et seq.) of Title 33.1 and § 46.2-831 of the Code of Virginia and the Rules and Regulations Controlling Outdoor Advertising and Directional and Other Signs and Notices and Vegetation Control Regulations on State Rights-Of-Way (see 24VAC30-151-760). The use of symbols, photographs, drawings, logos, advertising, or similar forms of medium is prohibited on or near the memorial.

2. Only one memorial per fatality shall be allowed.

3. VDOT reserves the right to install a group memorial in lieu of individual memorials to commemorate a major incident where multiple deaths have occurred.

4. The memorial shall be located as close as possible to the crash site, but location of the memorial may vary depending on the site and safety conditions.

a. Memorials shall be installed outside of the mowing limits and ditch line and as close to the right-of-way line as reasonably possible.

b. Memorials shall be located in such a manner as to avoid distractions to motorists or pose safety hazards to the traveling public.

c. Memorials shall not be installed in the median of any highway, on a bridge, or within 500 feet of any bridge approach.

d. Memorials shall not be permitted in a construction or maintenance work zone. VDOT reserves the right to temporarily remove or relocate a memorial at any time for highway maintenance or construction operations or activities.

e. If VDOT's right-of-way is insufficient for a memorial to be installed at the crash site, the district administrator's designee will locate a suitable location as close as possible to the incident vicinity to locate the memorial where sufficient right-of-way exists.

D. Removal. After the two-year term or any extension of the term approved in accordance with this section, the memorial shall be removed by VDOT personnel. The memorial nameplate will be returned to the applicant or the designated family member, if specified on the application. If the applicant does not wish to retain the nameplate, the nameplate will be reused, recycled, or disposed at VDOT's discretion.

24VAC30-151-600. Pedestrian and bicycle facilities.

The installation of sidewalks, steps, curb ramps, shared use paths, pedestrian underpasses and overpasses within right-of-way may be authorized under the auspices of a single use

permit. VDOT shall maintain those facilities that meet the requirements of the Commonwealth Transportation Board's Policy for Integrating Bicycle and Pedestrian Accommodations (see 24VAC30-151-760). The maintenance of sidewalks, steps, curb ramps, shared use paths, pedestrian underpasses and overpasses not meeting these requirements shall be subject to permit requirements, and the permittee shall be responsible for maintenance of these facilities.

The installation of pedestrian or bicycle facilities within limited access right-of-way shall be considered a change in limited access control and requires approval of the Commonwealth Transportation Board prior to permit issuance (see Change of Limited Access Control, 24VAC30-151-760). The installation of pedestrian or bicycle facilities parallel to and within the right-of-way of nonlimited access highways crossing limited access highways by way of an existing bridge or underpass shall not be considered a change in limited access but shall require the approval of the ~~Commonwealth Transportation~~ Commissioner of Highways prior to issuance of a permit for such activity.

24VAC30-151-660. Special requests and other installations.

Any special requests may be permitted upon review and approval by the ~~Commonwealth Transportation~~ Commissioner of Highways.

Part IX
Fees and Surety

24VAC30-151-700. General provisions for fees, surety, and other compensation.

Except as otherwise provided in this part, the applicant shall pay an application fee to cover the cost of permit processing, pay additive fees to offset the cost of plan review and inspection, and provide surety to guarantee the satisfactory performance of the work under permit. For locally administered VDOT projects, the permit fees are waived and in lieu of a surety, the locality may (i) provide a letter that commits to using the surety in place or (ii) have the contractor execute a dual obligation rider that adds VDOT as an additional obligee to the surety bond provided to the locality, with either of these options guaranteeing the work performed within state maintained right-of-way under the terms of the land use permit for that purpose. A copy of the original surety and letter or rider shall be attached to the land use permit. Except as provided in 24VAC30-151-740, utilities within the right-of-way shall pay an annual accommodation fee as described in 24VAC30-151-730. In the event of extenuating circumstances, the ~~Commonwealth Transportation~~ Commissioner of Highways may waive all or a portion of any of the fees or surety.

24VAC30-151-730. Accommodation fees.

After initial installation, the ~~Commonwealth Transportation~~ Commissioner of Highways or a designee shall determine the annual compensation for the use of the right-of-way by a utility, except as provided in 24VAC30-151-740. The rates shall be established on the following basis:

1. Limited Access Crossings - $50 per crossing.

2. Limited Access Longitudinal Installation - $250 per mile annual use payment.

3. Communication Tower Sites (limited and nonlimited access):

a. $24,000 annual use payment for a communication tower site, and

b. $14,000 annual use payment for colocation on a tower site. This payment does not include equipment mounted to an existing wooden utility pole.

24VAC30-155-10. Definitions.

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

"Connectivity index" means the number of street segments divided by the number of intersections. Only street segments and intersections within a network addition as well as any street segment or intersection outside of the network addition that is connected to street segments within the network addition or that has been connected or will be connected pursuant to 24VAC30-92-60 C 7 to the network addition through the extension of an existing stub out shall be used to calculate a network addition's connectivity index.

"Floor area ratio" means the ratio of the total floor area of a building or buildings on a parcel to the size of the parcel where the building or buildings are located.

"Intersection" means, only for the purposes of calculating connectivity index, a juncture of three or more street segments or the terminus of a street segment such as a cul-de-sac or other dead end. The terminus of a stub out shall not constitute an intersection for the purposes of this chapter. The juncture of a street with only a stub out, and the juncture of a street with only a connection to the end of an existing stub out, shall not constitute an intersection for the purposes of this chapter, unless such stub out is the only facility providing service to one or more lots within the development.

"Locality" means any local government, pursuant to § 15.2-2223 of the Code of Virginia, that must prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction.

"Network addition" means a group of interconnected street segments and intersections shown in a plan of development that is connected to the state highway system and meets the

requirements of the Secondary Street Acceptance Requirements (24VAC30-92).

"Pedestrian facility coverage" means the ratio of: (length of pedestrian facilities, such as sidewalks, foot paths, and multiuse trails, along both sides of a roadway) divided by (length of roadway multiplied by two).

"Redevelopment site" means any existing use that generates traffic and is intended to be developed as a different or more dense land use.

"Service level" means a measure of the quality, level or comfort of a service calculated using methodologies approved by VDOT.

"Small area plan" means a plan of development for multiple contiguous properties that guides land use, zoning, transportation, urban design, open space, and capital improvements at a high level of detail within an urban development area or for a transit-oriented development that is at least 1/2 square mile in size unless otherwise approved by VDOT due to proximity to existing moderate to high density developments. A small area plan shall include the following: (i) densities of at least four residential units per acre and at least a floor area ratio of 0.4 or some proportional combination thereof; (ii) mixed-use neighborhoods, including mixed housing types and integration of residential, office, and retail development; (iii) reduction of front and side yard building setbacks; and (iv) pedestrian-friendly road design and connectivity of road and pedestrian networks.

"State-controlled highway" means a highway in Virginia that is part of the interstate, primary, or secondary systems of state highways and that is maintained by the state under the direction and supervision of the ~~Commonwealth Transportation~~ Commissioner of Highways. Highways for which localities receive maintenance payments pursuant to §§ 33.1-23.5:1 and 33.1-41.1 of the Code of Virginia and highways maintained by VDOT in accordance with §§ 33.1-31, 33.1-32, 33.1-33, and 33.1-68 of the Code of Virginia are not considered state-controlled highways for the purposes of determining whether a specific land development proposal package must be submitted to meet the requirements of this regulation.

"Street segment" means (i) a section of roadway or alley that is between two intersections or (ii) a stub out or connection to the end of an existing stub out.

"Stub out" means a transportation facility (i) whose right-of-way terminates at a parcel abutting the development, (ii) that consists of a short segment that is intended to serve current and future development by providing continuity and connectivity of the public street network, (iii) that based on the spacing between the stub out and other streets or stub outs, and the current terrain there is a reasonable expectation that connection with a future street is possible, and (iv) that is constructed to the property line.

"Traffic impact statement" means the document showing how a proposed development will relate to existing and future transportation facilities.

"Transit-oriented development" means an area of commercial and residential development at moderate to high densities within 1/2 mile of a station for heavy rail, light rail, commuter rail, or bus rapid transit transportation and includes the following: (i) densities of at least four residential units per acre and at least a floor area ratio of 0.4 or some proportional combination thereof; (ii) mixed-use neighborhoods, including mixed housing types and integration of residential, office, and retail development; (iii) reduction of front and side yard building setbacks; and (iv) pedestrian-friendly road design and connectivity of road and pedestrian networks.

"Transportation demand management" means a combination of measures that reduce vehicle trip generation and improve transportation system efficiency by altering demand, including but not limited to the following: expanded transit service, employer-provided transit benefits, bicycle and pedestrian investments, ridesharing, staggered work hours, telecommuting, and parking management including parking pricing.

"Urban development area" means an area designated on a local comprehensive plan pursuant to § 15.2-2223.1 of the Code of Virginia that includes the following: (i) densities of at least four residential units per acre and at least a floor area ratio of 0.4 or some proportional combination thereof; (ii) mixed-use neighborhoods, including mixed housing types and integration of residential, office, and retail development; (iii) reduction of front and side yard building setbacks; and (iv) pedestrian-friendly road design and connectivity of road and pedestrian networks.

"VDOT" means the Virginia Department of Transportation, the ~~Commonwealth Transportation~~ Commissioner of Highways, or a designee.

24VAC30-200-10. Definitions.

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

"Agent" means the person, firm, or corporation representing the permittee.

"Board" means the Commonwealth Transportation Board as defined in § 33.1-1 of the Code of Virginia.

"Certified arborist" means an individual who has taken and passed the certification examination sponsored by the International Society of Arboriculture and who maintains a valid certification status.

"Cutting" means to completely remove at ground level.

"Daylighting" means to prune or remove vegetation to improve the motorists' view of an outdoor advertising structure or business.

"Department" means the Virginia Department of Transportation (VDOT) and its employees.

"Federal-aid primary highway" means any highway as defined in § 33.1-351 of the Code of Virginia.

"Inspector" means any employee designated by the ~~Commonwealth Transportation~~ Commissioner of Highways or local government official, to review and approve or deny the permit application and landscape plan, inspect the work performed under authority of this chapter, and make a final approval concerning the work performed.

"Interstate system" means any highway as defined in § 33.1-48 of the Code of Virginia.

"Land Use Permit Regulations" means the regulations (24VAC30-151) promulgated by the board for the purpose of authorizing activities within the limits of state rights-of-way.

"Limited access highway" means any highway as defined in § 33.1-57 of the Code of Virginia.

"Local beautification project" means any project in a locality that includes installation of plant materials, using public or other funds, in any public right-of-way within a city or town, or on a highway or street in a county with the county manager form of government.

"Local government official" means an employee of a local government delegated authority by the city or town council or county board of supervisors where the public right-of-way is within the jurisdictional limits of a city or town on a highway or street not within the jurisdiction of the ~~Commonwealth Transportation~~ Commissioner of Highways under § 33.1-353 of the Code of Virginia, or on a highway or street in a county with the county manager form of government.

"Permittee" means the person, firm, or corporation owning the outdoor advertising sign, advertisement, or advertising structure or the business for whom the vegetation control work is being performed.

"Pruning" means to remove branches from healthy vegetation in a manner that is acceptable using the natural method under the standards and guidelines listed in 24VAC30-200-40 published by the American National Standards Institute, the American Association of Nurserymen, and the International Society of Arboriculture.

"Specifications" means the current Virginia Department of Transportation's Road and Bridge Specifications (effective January 2002).

"Unsightly" means vegetation to be selectively removed at VDOT's or the local government official's discretion.

24VAC30-200-20. General provisions.

A. Permits will be issued by the department to control vegetation in front of a sign/structure that is not exempt from the provisions of § 33.1-355 of the Code of Virginia or business that is visible from any highway as defined in § 33.1-351 of the Code of Virginia and regulated by the territorial limitations as defined in § 33.1-353 of the Code of Virginia provided the vegetation control work meets the criteria set forth in § 33.1-371.1 and this chapter. An application may be filed with the ~~Commonwealth Transportation~~ Commissioner of Highways by an agent, including but not limited to companies that trim trees. In all other areas the local government official shall issue the permits.

B. All cutting to make an outdoor advertising structure more visible from the roadway shall be limited to vegetation with trunk base diameters of less than six inches. All cutting to make a business more visible from the roadway shall be limited to vegetation with trunk base diameters of less than two inches. All stumps shall be treated with a cut-stump pesticide applied by a licensed pesticide applicator with a license issued by the Virginia Department of Agriculture and Consumer Services in Category 6. All pesticides shall be approved by the department or local government official prior to use. Selective thinning in accordance with specifications or removal of unsightly vegetation will be allowed on an individual basis to enhance the health and growth of the best trees or to eliminate roadway hazards if recommended by the certified arborist supervising the work and agreed to by the department or local government official. Trees that are diseased, damaged by insects, unsightly, or that pose a safety hazard may be removed when recommended by the certified arborist supervising the work and approved by the department or local government official. When tree removal is recommended by the certified arborist and approved by this permit, the permittee shall provide a list of suitable trees and shrubs and a landscape plan to replace vegetation removed to the inspector or local government official for review and approval prior to issuance of the permit. The certified arborist and the department or local government official shall agree on size and species of replacement vegetation. The permittee shall plant, at his expense, all replacement vegetation at the locations shown on the landscape plan in accordance with the specifications. The establishment period for replacement vegetation shall be in accordance with § 605.05 of the specifications. No pruning of vegetation to make an outdoor advertising sign more visible from the roadway will be permitted if the cut at the point of pruning will exceed four inches in diameter. No pruning of vegetation to make a business more visible from the roadway will be permitted if the cut at the point of pruning will exceed two inches in diameter. No leader branches shall be cut off in such a manner as to retard the normal upright growth of the tree unless recommended by the certified arborist and approved

by the department or local government official. All trees and brush removed shall be cut at ground level. Dogwood or other small flowering trees on the site shall not be removed. The use of climbing irons or spurs is positively forbidden in any tree.

C. When daylighting signs, every effort shall be made to form a picture frame around the sign with remaining vegetation so as to accent the beauty of the surrounding roadside. A picture frame effect shall be achieved by leaving vegetation in place that will cover the sign structure supports below the face as seen from the main-traveled way.

D. A permit must be obtained from the department or local government official prior to any vegetation control work on the state's rights-of-way. All work shall be performed by the permittee at his expense, including permit and inspection fees.

E. A violation of this chapter shall, in addition to penalties provided in § 33.1-377 of the Code of Virginia, result in a permittee or its agent or both losing its vegetation control permit privilege for five years. Additionally, the bond amount used to secure the permit will be used for any reparations to the site. Inadvertent violations of this permit will require replacement on a four-to-one basis with other suitable small trees approved by the department or local government official to enhance the roadside beauty. The department or local government official shall have full authority to determine specie and size of all replacement vegetation if inadvertent cutting occurs.

24VAC30-200-30. Special provisions.

A. The permittee shall attach two each 8" x 10" color glossy photographs (a closeup and a distant view) with the permit application showing the vegetation to be controlled, the highway, and the sign or business.

The permit for selective pruning or tree cutting, or both, will be inspected by the department or local government official and approval or denial given.

A permit may be denied any applicant, and all permits issued by the board or local government official may be revoked whenever, in the opinion of the inspector, the safety, use, or maintenance of the highway so requires or the integrity of the permit system so dictates.

If, during or before work begins, it is deemed necessary by the department or local government official to assign inspectors to the work, the permittee shall pay the department or local government issuing the permit an additional inspection fee in an amount that will cover the salary, expense and mileage allowance, equipment rental, etc., of the inspector or inspectors assigned by the department or local government for handling work covered by this chapter. Said inspection fee to be paid promptly each month on bills rendered by the department or local government.

The absence of a state or local government inspector does not in any way relieve the permittee of his responsibility to perform the work in accordance with provisions of § 33.1-371.1 of the Code of Virginia, this chapter, or permit.

B. The inspector or local government official shall be notified at least seven days in advance of the date any work is to be performed and when completed, in order than an inspection may be made.

C. No trees, shrubs, vines, or plant material, except as covered by this chapter, shall be cut or disturbed. Stubs and dead wood in trees covered by this chapter must be removed, whether occasioned by present requirements or not.

Pruning of trees shall only be performed by qualified tree workers who, through related training or experience or both, are familiar with the techniques and hazards of arboricultural work including trimming, maintaining, repairing or removing trees, and the equipment used in such operations. The supervisor, a certified arborist, and tree workers shall be approved by the inspector or local government official, prior to issuance of a permit to perform work under this chapter. The certified arborist supervising the work shall remain on-site whenever work is underway.

All brush, wood, etc., shall be chipped and beneficially used or removed immediately and disposed of in accordance with the Solid Waste Management Regulations (9VAC20-81) of the Virginia Waste Management Board.

D. All access and work shall be accomplished from the abutting property side of rights-of-way on interstate and other limited access highways, except where a local beautification project has allowed landscape plant material to be planted within a median area. Plant material in median areas may be relocated to other areas within the local beautification project limits in accordance with an approved landscape plan. All work performed on VDOT rights-of-way shall comply with the Virginia Work Area Protection Manual (part of 24VAC30-310-10 et seq.). Any damage caused to property owned by the Commonwealth shall be repaired or replaced in kind when work is complete.

All work done under this chapter on the right-of-way shall in all respects be subject to department or local government official directions and shall be completed to the satisfaction of the inspector or local government official, or his representative.

E. The department or local government official reserves the right to stop the work at any time the terms of this chapter are not satisfactorily complied with, and the department or local government official may, at its discretion, complete any of the work covered in the permit at the expense of the permittee. If it is in the best interest of traffic safety, the department or local government official may complete or have completed at the expense of the permittee any of the work that must be done to properly protect the traveling public.

F. The permittee shall immediately have corrected any condition that may arise as a result of this work that the department or local government official deems hazardous to the traveling public or state maintenance forces even though such conditions may not be specifically covered in this chapter or in the Land Use Permit Regulations (24VAC30-151).

G. Permittees and their agents to whom permits are issued shall at all times indemnify and save harmless the Commonwealth Transportation Board, local city or town councils, local boards of supervisors, and the Commonwealth of Virginia and its employees, agents, and officers from responsibility, damage, or liability arising from the exercise of the privilege granted in such permit except if political subdivisions are the applicants. Then special arrangements will be made whereby the agent of the political subdivision performing the work will indemnify and save harmless the board and others. All work shall be performed by the permittee at his expense. All permit and inspection fees shall be paid to the department or local government official by the permittee.

H. The permittee agrees that if the work authorized by this chapter including any work necessary to restore shoulders, ditches, and drainage structures to their original condition, is not completed by the permittee to the satisfaction of the department or local government official, the department or local government official will do whatever is required to restore the area within the right-of-way to department standards, and the permittee will pay to the Commonwealth or local government official the actual cost of completing the work. When the permittee is a political subdivision, this requirement will be satisfied by a sum certain that will appear in the permit.

I. Road and street connections and private and commercial entrances are to be kept in a satisfactory condition. Entrances shall not be blocked. Ample provisions must be made for safe ingress and egress to adjacent property at all times. Where entrances are disturbed, they shall be restored to the satisfaction of the department or local government official.

J. Road drainage shall not be blocked. The pavement, shoulders, ditches, roadside and drainage facilities, shall be kept in an operable condition satisfactory to the department or local government official. Necessary precautions shall be taken by the permittee to ensure against siltation of adjacent properties, streams, etc., in accordance with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Regulations (4VAC50-30).

K. Any conflicts with existing utility facilities shall be resolved between the permittee and the utility owners involved. The permittee shall notify and receive clearance from the utility owner or owners and comply with the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq. of the Code of Virginia) before proceeding with work in the vicinity of utilities.

L. Where landscape is disturbed on state rights-of-way or local street and roads not under the jurisdiction of the ~~Commonwealth Transportation~~ Commissioner of Highways in accordance with § 33.1-353 of the Code of Virginia, it shall be replaced with a minimum of two inches of topsoil and reseeded according to department specifications.

24VAC30-200-35. Appeal to the ~~Commonwealth Transportation~~ Commissioner of Highways.

A. Appeals by the local government official.

1. The local government official appeal of a landscape plan shall be in writing within 60 days of the permittee submitting a permit application and accompanied by a $400 fee.

2. The appeal shall specify reasons why the local government official is dissatisfied with the landscape plan and why it does not meet the intent of § 33.1-371.1 of the Code of Virginia. It shall include any motorist or worker safety concerns, selection of plant material, placement of plant material, method or time-of-year for planting or relocating plant material, and any other pertinent information.

B. Appeals by the permittee.

1. The permittee appeal of a landscape plan shall be in writing within 10 days after final action of the local government official and shall be accompanied by a $400 fee.

2. The appeal shall specify reasons why the permittee is dissatisfied with the action or stipulations placed on the permittee by the local government official including all pertinent information to help the ~~Commonwealth Transportation~~ Commissioner of Highways make a final determination.

C. ~~Commonwealth Transportation Commissioner's~~ Commissioner of Highway's determination of appeal.

The ~~Commonwealth Transportation~~ Commissioner of Highways shall consult department personnel with expertise in horticulture and landscape architecture in making a final determination on the merits of the landscape plan presented by the permittee, weigh objections by both the local government official and the permittee, and shall provide a final determination within 30 days of receipt of the appeal request.

24VAC30-271-20. General provisions.

A. The use of economic development access funds shall be limited to:

1. Providing adequate access to economic development sites on which new or substantially expanding

manufacturing, processing and, research and development facilities; distribution centers; regional service centers; corporate headquarters or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Business Assistance; and

2. Improving existing roads that may not be adequate to serve the establishments as described in subdivision 1 of this subsection.

B. Economic development access funds shall not be used for the acquisition of rights of way or adjustment of utilities. These funds are to be used only for the actual construction and engineering of a road facility adequate to serve the traffic generated by the new or expanding eligible establishments.

C. Economic development access funds may not be used for the construction of access roads to schools, hospitals, libraries, airports, armories, speculative office buildings, shopping centers, apartment buildings, professional offices, residential developments, churches, hotels, motels, government installations, or similar facilities, whether public or private. (Access roads to licensed, public-use airports, while provided for in § 33.1-221 of the Code of Virginia, are funded and administered separately through 24VAC30-450, Airport Access Funding.)

D. No cost incurred prior to the board's approval of an allocation from the economic development access funds may be reimbursed by such funds. Economic development access funds shall be authorized only after certification that the economic development establishment as listed or meeting the criteria as described will be built under firm contract, or is already constructed, or upon presentation of acceptable surety in accordance with § 33.1-221 A of the Code of Virginia.

E. When an eligible establishment is not yet constructed or under firm contract and a local governing body guarantees by bond or other acceptable surety that such will occur, the maximum time limit for such bond shall be five years, beginning on the date of the allocation of the economic development access funds by the Commonwealth Transportation Board. At the end of the five-year period, the amount of economic development access funds expended on the project and not justified by eligible capital outlay of one or more establishments acceptable to the board shall be reimbursed to the Virginia Department of Transportation (VDOT) voluntarily by the locality or by forfeiture of the surety. In the event that, after VDOT has been reimbursed, but still within 24 months immediately following the end of the five-year period, the access funds expended come to be justified by eligible capital outlay of one or more eligible establishments, then the locality may request a refund of one-half of the sum reimbursed to VDOT, which request may be granted if funds are available, on a first-come, first-served basis in competition with applications for access funds from other localities.

F. Economic development access funds shall not be used to construct or improve roads on a privately owned economic development site. Nor shall the construction of a new access road to serve any economic development site on a parcel of land that abuts a road constituting a part of the systems of state highways or the road system of the locality in which it is located be eligible for economic development access funds, unless the existing road is a limited access highway and no other access exists. Further, where the existing road is part of the road system of the locality in which it is located, or the secondary system of state highways, economic development access funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by the new or expanding eligible establishment.

In the event an economic development site has access according to the foregoing provisions of this chapter, but it can be determined that such access is not adequate in that it does not provide for safe and efficient movement of the traffic generated by the eligible establishment on the site or that the site's traffic conflicts with the surrounding road network to the extent that it poses a safety hazard to the general public, consideration will be given to funding additional improvements. Such projects shall be evaluated on a case-by-case basis upon request, by resolution, from the local governing body. Localities are encouraged to establish planning policies that will discourage incompatible mixes such as industrial and residential traffic.

G. Not more than $500,000 of unmatched economic development access funds may be allocated in any fiscal year for use in any county, city or town that receives highway maintenance payments under § 33.1-41.1 of the Code of Virginia. A town whose streets are maintained under either § 33.1-79 or § 33.1-82 of the Code of Virginia shall be considered as part of the county in which it is located. The maximum eligibility of unmatched funds shall be limited to 20% of the capital outlay of the designated eligible establishments. The unmatched eligibility may be supplemented with additional economic development access funds, in which case the supplemental access funds shall be not more than $150,000, to be matched dollar-for-dollar from funds other than those administered by the board. The supplemental economic development access funds over and above the unmatched eligibility shall be limited to 20% of the capital outlay of the designated eligible establishments as previously described. Such supplemental funds shall be considered only if the total estimated cost of eligible items for the economic development access improvement exceeds $500,000.

If an eligible site is owned by a regional industrial facility authority, as defined in § 15.2-6400 of the Code of Virginia, funds may be allocated for construction of an access road project to that site without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction with the

same funding limitations as prescribed for other individual projects.

H. Eligible items of construction and engineering shall be limited to those that are essential to providing an adequate facility to serve the anticipated traffic while meeting all appropriate Commonwealth Transportation Board and state policies and standards. However, additional pavement width or other features may be eligible where necessary to qualify the road facility in a city or town for maintenance payments under § 33.1-41.1 of the Code of Virginia.

I. It is the intent of the board that economic development access funds not be anticipated from year to year. Unused eligibility cannot be allowed to accumulate and be carried forward from one fiscal year to another.

J. The Commonwealth Transportation Board will consult and work closely with the Virginia Economic Development Partnership (VEDP) and the Department of Business Assistance (DBA) in determining the use of economic development access funds and will rely on the recommendations of the VEDP and the DBA in making decisions as to the allocation of these funds. In making its recommendations to the board, the VEDP and DBA will take into consideration the impact of the proposed facility on the employment and tax base of both the area in which the facility is to be located and the Commonwealth of Virginia.

K. Prior to the formal request for the use of economic development access funds to provide access to new or expanding eligible establishments, the location of the access road shall be submitted for approval by VDOT. VDOT shall take into consideration the cost of the facility as it relates to the location and as it relates to the possibility of the future extension of the road to serve other possible eligible establishments, as well as the future development of the area traversed.

L. Prior to the board's allocation of funds for such construction or road improvements to an eligible economic development establishment proposing to locate or expand in a county, city or town, the governing body shall by resolution request the access funds and shall be responsible for the preliminary negotiations with the eligible establishment and others who may be interested. Engineers of VDOT will be available for consultation with the governing bodies and others, and may prepare surveys, plans, engineering studies, and cost estimates.

M. The ~~Commonwealth Transportation~~ Commissioner of Highways is directed to establish administrative procedures to assure adherence to and compliance with the provisions of this chapter and legislative directives.

24VAC30-325-10. Eligibility criteria and conditions governing receipt and use of urban maintenance and construction funds.

A. In addition to the eligibility requirements identified in § 33.1-41.1 of the Code of Virginia, the road and street eligibility criteria for urban maintenance payments shall also include the following:

1. The basic right-of-way width for cul-de-sacs eligible for payment will be 40 feet, with consideration of requests for pavement widths less than 30 feet. For the purpose of making this assessment, a cul-de-sac will be defined as a dead-end street, open only at one end.

2. If a municipality has jurisdiction over and operates a toll facility, such facility is eligible for street payments.

3. Local one-way streets, loop roads, and school bus entrances will be eligible for payment provided that they are constructed to a width of 16 feet with a right-of-way width of not less than 40 feet. This includes service and frontage roads where contiguous to an interstate, primary, or urban system route.

4. VDOT can consider a waiver of standards on a site-specific basis with appropriate supporting information. Each case will be considered on its own merits.

B. In determining lane mileage eligibility, the following conditions will apply:

1. Turning lanes and ramps will not be considered for street payments. This includes center turn lanes unless they serve as moving through lanes during peak hours.

2. Parking must be restricted and enforced by towing during peak traffic periods.

3. Each road or street with more than two moving lanes must have pavement markings in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways, 2003 Edition, including Revision 1 dated November 2004, published by the U.S. Department of Transportation, Federal Highway Administration.

4. Pavement widths of less than 14 feet qualify for only one moving lane even if it carries traffic in two directions.

5. Nonhard surfaced streets do not qualify for street payments.

C. Mileage adjustments, including the results of annexations, mergers, or incorporations, will be made on an annual basis as part of the board's approval of the annual maintenance payments. All adjustments submitted to the department by February 1 will be eligible for payment effective July 1 of the following fiscal year.

D. For the purpose of calculating maintenance payments, streets will be functionally classified based on the Federal

Functional Classification system, except where the federal system is not parallel with the state system.

E. Bridge safety and regular inspection is of utmost importance. The Federal Highway Administration and the department require strict compliance with the National Bridge Inspection Standards (23 CFR Part 650) regarding the frequency of inspection and load posting requirements. The ~~Commonwealth Transportation~~ Commissioner of Highways may elect to withhold street payments from a municipality for delinquent or inadequate bridge inspection reports.

F. Municipalities, by resolution of their governing body and agreement with the department, may elect to utilize up to one-third of their urban construction allocation for reimbursement of debt incurred for eligible project costs on approved projects. The payback is limited to a maximum 20-year timeframe.

G. Landscaping is important to enhance the safety and visual quality of roads and to maintain quality of life for communities. It is the intent of the board that a maximum of 3.0% of the construction budget for individual urban construction projects may be allocated for landscape improvements. Pavers and stamped asphalt for crosswalks are considered a pedestrian safety and traffic calming measure for project participation and are not subject to this limitation. Elements of streetscape can also be constructed at project expense if the project is an identified gateway project or located within a historic or cultural district.

H. The ~~Commonwealth Transportation~~ Commissioner of Highways is directed to establish administrative procedures to assure the provisions of this chapter and legislative directives are adhered to and complied with.

24VAC30-340-10. Debarment or Suspension of Contractors (filed by description with the Registrar of Regulations).

Description: This regulation sets forth the policy, criteria, and procedures the Commonwealth Transportation Board (CTB) will use in making decisions to debar, suspend, or reinstate a contractor seeking to bid on public contracts it awards. The CTB, under authority granted it by § 33.1-12 (2) and (7) of the Code of Virginia, has established other rules concerning the establishment of proof of competency and responsibility of those wishing to submit bids pursuant to Title 11, Chapter 7 of the Code of Virginia, known as the Virginia Public Procurement Act, which public bodies must follow in awarding public contracts. Should these rules be violated, this regulation permits the CTB to take remedial action.

The regulation specifies the types of activities or omissions of actions which it will consider in making decisions to debar, suspend, or reinstate contractors, including limitations, where applicable, on the length of such sanctions. The regulation also includes a means whereby contractors may appeal a decision before the ~~Commonwealth Transportation~~ Commissioner of Highways.

Document available for inspection at the following location:

Virginia Department of Transportation
Construction Division
1401 E. Broad St., 12th Floor
Richmond, VA 23219

24VAC30-380-10. General provisions.

A. In the development of highway construction projects, VDOT shall consider a wide range of factors and opportunity shall be allowed for consideration and participation by public and private interests before final approval of highway locations or designs, or both. A public hearing is a well-publicized opportunity for VDOT to present studies and projects while receiving and documenting comments from affected or interested citizens.

B. These are the rules that apply to the implementation of this regulation:

1. A notice to hold a public hearing or the willingness to hold a public hearing must be stated in public advertisement.

2. All public hearings should be scheduled approximately 60 days in advance. Advertisements must appear 30 days prior to the hearing.

3. The public involvement process must be held in accordance with applicable federal and state statutes and regulations, including §§ 33.1-18, 33.1-70.2 and 51.5-40 of the Code of Virginia, 23 USC § 128, 23 CFR Part 771, and 40 CFR Parts 1500-1508.

4. The publication of a notice of willingness to hold a public hearing, with no public request for such a hearing by the established expiration date in the notice, or conducting a public hearing pursuant to subsection C of this section will satisfy any public hearing requirements.

C. If the system is interstate, primary, urban, or secondary, the following types of hearings will be held for the following project categories:

1. Projects on proposed roadway corridors, which are completely on new location, require a location public hearing followed by a design public hearing.

2. Projects within the existing roadway corridor with a predominant portion of the work on new location require a combined location and design public hearing.

3. Projects within the existing roadway corridor that have a significant social, economic or environmental impact require a design public hearing.

4. Projects within the existing roadway corridor where insignificant public interest or environmental impacts, or both, are anticipated require publication of a notice of

willingness to hold a design public hearing. VDOT will hold a design public hearing if a request for such a hearing is made, and the issues raised in relation to the request cannot be resolved through any other means.

D. Exceptions from the public hearing process. Hearing processes are not required for emergency projects, as well as those that are solely for highway maintenance or operational improvements, or both, except when they:

1. Involve emergency paving of unpaved secondary roads pursuant to § 33.1-70.2 of the Code of Virginia;

2. Require the acquisition of additional right of way;

3. Would have an unfavorable effect upon abutting real property; or

4. Would change the layout or function of connecting roadways or of the facility being improved.

E. The ~~Commonwealth Transportation~~ Commissioner of Highways or his designee shall establish administrative procedures to assure the adherence to and compliance with the provisions of this regulation.

24VAC30-520-10. Authority.

The ~~Commonwealth Transportation~~ Commissioner of Highways is authorized to act for and on behalf of the Commonwealth Transportation Board in matters relating to classifying, designating, and marking state highways and the installation of signs and markings.

24VAC30-540-30. Land assembled with adjacent properties.

A. Certain surplus land is unsuitable for independent development and therefore is only usable for assemblage with adjacent property.

B. Whenever VDOT conveys land or an interest in land to owners of record of adjoining land, one of the following actions is required to verify and confirm adjacent ownership:

STEP	ACTION
1	Owners of record must furnish the Right of Way and Utilities Division with an affidavit signed by one or more of the owners. This affidavit must certify the exact manner and names in which title to adjoining land stands in the local courthouse records.
2	Certification of title from the adjacent landowner's attorney may be required by the Chief Engineer or Director of Right of Way and Utilities if: substantial road frontage is involved and liens or deeds of trust exist on the adjacent property.

Upon satisfying the above, the ~~Commonwealth Transportation~~ Commissioner of Highways will execute the deeds in accordance with §§ 33.1-93, 33.1-149, and 33.1-154 of the Code of Virginia.

24VAC30-540-40. Disposal of improvements.

The Commonwealth Transportation Board (CTB) grants to the ~~Commonwealth Transportation~~ Commissioner of Highways the power to dispose of improvements located on and acquired with any right-of-way in such manner as he may deem most expedient and in the best interest of the Commonwealth.

24VAC30-551-40. General criteria for the Supplemental Guide Signs Program.

A. The following requirements shall apply to signs in the Supplemental Guide Signs Program:

1. Supplemental guide signs shall be limited to two structures per interchange or intersection per direction with no more than two destinations per sign structure, except as noted in subdivision 2 of this subsection. When there is excessive demand over available space for new supplemental guide signing, VDOT, in consultation with the affected jurisdiction, shall determine which facilities will be listed on the signs.

2. All supplemental guide signs in place as of September 15, 2004, will be "grandfathered" into the program and may be repaired or replaced as necessary, except if the facility closes, relocates, or fails to comply with the criteria under which it originally qualified, the signs will be removed.

3. Additional structures over the two-structure limit may only be installed when the ~~Commonwealth Transportation~~ Commissioner of Highways or his designee determines that such installation is in the public interest.

B. To qualify for supplemental guide signing, a facility shall:

1. Be open to the general public on a continuous basis either year-round or during the normal operating season for the type of facility. Closings for the observance of official state holidays are allowed;

2. Comply with all applicable laws concerning the provision of public accommodations without regard to age, race, religion, color, sex, national origin, or accessibility by the physically handicapped;

3. Agree to abide by all rules, regulations, policies, procedures and criteria associated with the program; and

4. Agree that in any cases of dispute or other disagreement with the rules, regulations, policies, procedures and criteria or applications of the program, the decision of the State Traffic Engineer shall be final and binding.

C. All facilities shall be located within 15 miles of the initial supplemental guide sign.

D. Additional criteria and considerations apply to wineries participating in the Winery Signage Program (24VAC30-551-80).

E. The following table lists acceptable sites for supplemental guide signs:

SUPPLEMENTAL GUIDE SIGNS PROGRAM Acceptable Sites[3]		
Cultural	Historic building[1, 2]	
	Historic site[1, 2]	
	Historic district[1, 2]	
Governmental	Correction facility	Regional jail
	Courthouse	Prison
	Department of Game and Inland Fisheries facility	Local police/sheriff's office[1]
	Department of Motor Vehicles facility	State Police facility[1]
	Landfill/transfer station Government office	Recycling facility
Military [1]	Military facility	
Recreational	Boat landing (public)	Park - municipal[1]
	Natural attraction	Park - regional[1]
	Park - national[1]	Park - state[1]
Schools	Colleges and universities[1] (main campus only)	Virginia educational institution[1]
	High school	Middle school
	Junior high school	Elementary school
Miscellaneous[1]	Arlington National Cemetery	Tourist information center
	Virginia Veterans Cemetery	Welcome center
	Special events	

(1) Permitted on Interstate and limited access highways.

(2) If supplemental guide signs are installed for a historic district, separate signs for individual historic sites within the historic district shall not be allowed.

(3) VDOT shall waive requirements and conditions of participation in the supplemental signage program as may be necessary to provide adequate signage for facilities maintained by the agencies within Virginia's Natural Resources Secretariat.

F. The following sites are excluded from being displayed on official supplemental guide signs. The exclusion only relates to qualification under these categories. These facilities may participate if qualifying under another acceptable category.

SUPPLEMENTAL GUIDE SIGNS PROGRAM Excluded Sites		
Business/ Commercial	Adult entertainment facility	Radio station
	Funeral home	Shopping center
	Industrial park or plant	Television station
	Landfill – private	Transfer station – private
	Media facility	Tree nursery
	Movie theater	Truck terminal
	Office park	
Colleges and Universities	Satellite campus and individual on-campus facilities of main campuses on limited access highways	
Governmental	Fairgrounds	
	Local jail	
	Post office	
Medical	Drug rehabilitation facility	Mental healthcare facility
	Extended care facility	Nursing home
	Fraternal home	Retirement home
	Hospital	Sanitarium
	Humane facility	Treatment center
	Infirmary	Veterans facility
Recreational	Arcade	
	Boat landing - private	
	Camp - church, civic, 4-H, Scout, YMCA/YWCA, other	
Religious	Cathedral	Shrine
	Chapel	Synagogue
	Church	Temple
	Mosque	Other religious sites
Miscellaneous	Animal shelter	Subdivision
	Cemetery/columbarium (except those noted as acceptable)	Veterinary facility
	Mobile home park	Museum

24VAC30-561-10. Adoption of the federal Manual on Uniform Traffic Control Devices.

Effective November 16, 1989, the Commonwealth Transportation Board adopted the 1988 edition of the federal Manual on Uniform Traffic Control Devices for Streets and

Highways (MUTCD), along with any revisions or associated rulings, when effective, as the standard for all highways under the jurisdiction of the Virginia Department of Transportation. The board also authorized the ~~Commonwealth Transportation~~ Commissioner of Highways, at his discretion, to publish changes in the MUTCD appearing in the Code of Federal Regulations in advance of receiving the published revisions. The Traffic Engineering Division, on behalf of the commissioner, is authorized to distribute changes in the MUTCD as published in the Code of Federal Regulations.

24VAC30-610-10. List of differentiated speed limits (filed by description with the Registrar of Regulations).

Description: The ~~Commonwealth Transportation~~ Commissioner of Highways or other authority may increase or decrease speed limits and may differentiate speed limits for daytime and nighttime driving effective only when prescribed after a traffic engineering investigation and when indicated on the highway by signs. These limits shall be effective only when prescribed in writing by the ~~Transportation~~ Commissioner of Highways and kept on file in the Central Office of the Department of Transportation. The regulations listing the differentiated speed limits comply with the above requirements.

The document is available to businesses and citizens for public review and is available for inspection at the following location:

Virginia Department of Transportation
Administrative Services Division
Central Files
Basement, Old Highway Building
1221 E. Broad Street
Richmond, VA 23219

24VAC30-620-20. General conditions and criteria concerning suspension of toll collection.

A. Tolls may be temporarily suspended on any toll facility subject to this chapter, under the following conditions:

1. The ~~Commonwealth Transportation~~ Commissioner of Highways or his designee has investigated or assessed a threat to public safety on or in the vicinity of the toll facility; and

2. As a result of the investigation or assessment, the ~~Commonwealth Transportation~~ Commissioner of Highways or his designee believes that a temporary suspension of toll collection will alleviate an actual or potential threat or risk to the public's safety, or facilitate the flow of traffic on or within the vicinity of the toll facility.

B. Incidents which may justify the temporary suspension of toll collection operations include, but are not limited to, the following: natural disasters, such as hurricanes, tornadoes, fires, and floods; accidental releases of hazardous materials, such as chemical spills; major traffic accidents, such as multi-vehicle collisions; and any other incidents deemed to present a risk to public safety.

C. Judicial proceedings arising from any incident resulting in the suspension of toll collection will be conducted as provided for by § 33.1-252 of the Code of Virginia.

24VAC30-620-30. Rates and delegation of authority to suspend toll collection.

A. The ~~Commonwealth Transportation~~ Commissioner of Highways delegates the authority to suspend toll collection operations on the Dulles Toll Road to the Dulles Toll Road's Toll Facilities Administrative Director, subject to consultation with the Northern Virginia District Administrator and to the conditions and criteria outlined in 24VAC30-620-20 A and B. At his discretion, the Dulles Toll Road's Toll Facilities Administrative Director may delegate this authority to others within the toll facility's organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

B. The following are the toll rate schedules for the Dulles Toll Road.

DULLES TOLL ROAD RATE STRUCTURE		
VEHICLE CLASS	MAIN PLAZA	ALL RAMPS
Two axles[1]	$0.75	$0.50
Three axles[2]	$1.00	$0.75
Four axles	$1.25	$1.00
Five axles	$1.50	$1.25
Six axles or more	$1.75	$1.50

[1]Includes passenger cars, motorcycles, motorcycles equipped with a sidecar, towing a trailer or equipped with a sidecar and towing a trailer, and 2-axle trucks (4 and 6 tires).

[2]Includes trucks, buses, and passenger cars with trailers.

C. The ~~Commonwealth Transportation~~ Commissioner of Highways delegates the authority to suspend toll collection operations on the Powhite Parkway Extension Toll Road to the Richmond Toll Facilities' Toll Facilities Administrative Director, subject to consultation with the Richmond District Administrator and to the conditions and criteria outlined in 24VAC30-620-20 A and B. At his discretion, the Richmond Toll Facilities' Toll Facilities Administrative Director may

delegate this authority to others within the toll facility's organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

D. The following are the toll rate schedules for the Powhite Parkway Extension Toll Road.

POWHITE PARKWAY EXTENSION TOLL ROAD MAXIMUM RATE STRUCTURE

VEHICLE CLASS	MAIN LINE PLAZA	MAIN LINE PLAZA - EAST & WEST RAMP	RAMP - ROUTE 60	RAMP – COURT-HOUSE ROAD
Two axle vehicles[1]	$0.75	$0.25	$0.25	$0.50
Three axle vehicles	$1.00	$0.35	$0.35	$0.60
Four axle vehicles	$1.25	$0.45	$0.45	$0.70
Five axle vehicles	$1.50	$0.55	$0.55	$0.80
Six axle vehicles	$1.50	$0.55	$0.55	$0.80

[1]Includes passenger cars, motorcycles, motorcycles equipped with a sidecar, towing a trailer or equipped with a sidecar and towing a trailer, and 2-axle trucks (4 and 6 tires).

E. The ~~Commonwealth Transportation~~ Commissioner of Highways delegates the authority to suspend toll collection operations on the George P. Coleman Bridge to the George P. Coleman Bridge Facility's Toll Facilities Administrative Director, subject to consultation with the Hampton Roads District Administrator and to the conditions and criteria outlined in 24VAC30-620-20 A and B. At his discretion, the George P. Coleman Bridge Facility's Toll Facilities Administrative Director may delegate this authority to others within the toll facility's organization. This delegation of authority includes establishing policies and procedures specific to the toll facility governing the investigation and decision-making processes associated with the possible suspension of toll collections. These policies and procedures shall become part of the toll facility's operating plan.

F. The following are the toll rate schedules for the George P. Coleman Bridge.

GEORGE P. COLEMAN BRIDGE TOLL RATE STRUCTURE

VEHICLE CLASS[1]	ONE-WAY RATE
Motorcycles, pedestrians and bicyclists[2]	$0.85
Commuter ETC cars, vans, pick-ups	$0.85
Commuter ETC two-axle commercial vans/trucks	$0.85
Cars, vans, pick-ups	$2.00
Two-axle, six-tire trucks and buses	$2.00
Three-axle vehicles and buses	$3.00
Four or more-axle vehicles	$4.00

[1]Commuter toll rates will be available only via the Smart Tag/E-Pass electronic toll collection (ETC) system to two-axle vehicles making three round-trip crossings within a 90-day period on the George P. Coleman Bridge.

[2]Includes motorcycles equipped with a sidecar, towing a trailer, or equipped with a sidecar and towing a trailer. Motorcyclists requesting this rate must use the manual toll collection lanes because the Automatic Vehicle Identification system cannot accommodate the $0.85 rate.

VA.R. Doc. No. R12-2988; Filed September 28, 2011, 10:08 a.m.

EXECUTIVE ORDER NUMBER 40 (2011)

Declaration of a State of Emergency for the Commonwealth of Virginia due to the Threat of Significant Flooding, Heavy Rains, and Wind Damage caused by Hurricane Irene

Importance of the Issue

On August 25, 2011, I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on National Hurricane Center and National Weather Service forecasts projecting impacts from Hurricane Irene could cause damaging high winds, periods of heavy rainfall, and coastal and lowland flooding throughout the eastern portion of the Commonwealth.

The health and general welfare of the citizens require that state action be taken to help alleviate the conditions caused by this situation. The effects of this storm constitute a disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued on August 25, 2011, whereby I proclaimed that a state of emergency exists and I directed that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of the storm, alleviate any conditions resulting from significant storm events, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far as possible. Pursuant to § 44-75.1(A)(3) and (A)(4) of the Code of Virginia, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to be prepared to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I hereby order the following protective and restoration measures:

A. Implementation by agencies of the state and local governments of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to local governments. I am directing that the VEOC and VERT coordinate state actions in support of affected localities, other mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP), and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence, and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by effects of the storm. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response, or recovery, pursuant to § 44-146.17(1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of

the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation, and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination.

All over width loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes vehicles in route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

Authorization of the State Coordinator of Emergency Management to grant limited exemption of hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials, and other critical supplies to or from any portion of the Commonwealth for purpose of providing direct relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia and Title 49 Code of Federal Regulations, Section 390.23 and Section 395.3.

The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by § 52-8.4(A) of the Code of Virginia, and implemented in 19VAC30-20-40(B) of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. The authorization of a maximum of $250,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

I. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

J. Designation of members and personnel of volunteer, auxiliary, and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs), Citizen Emergency Response Teams (CERTs), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(A) and (F) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

K. The authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill sitting, and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

L. The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a natural disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials.

M. The grant of authorization pursuant to § 44-146.17 of the Code of Virginia for localities to control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein, provided such locality has issued a declaration of emergency related to Hurricane Irene. This authority is granted as necessary for such locality to ensure the safety and security of its residents and may be exercised only for a period of up to 48 hours, or

until 12:00 p.m. on August 29, 2011, whichever occurs first. This authority may be extended only upon specific request to the Governor.

N. The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations for this event and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Military vehicles of the Virginia National Guard and Virginia Defense Force are authorized to obtain fuel at Virginia Department of Transportation fueling facilities and pass through Virginia Department of Transportation operated toll facilities, all without charge.

5. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

a. Workers' Compensation benefits provided to members of the National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

b. The same benefits, or their equivalent, for injury, disability, and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

6. The following conditions apply to service by the Virginia Defense Force:

a. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

b. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

c. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia; and

d. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in paragraph 5 (a) above pertaining to the Virginia National Guard and in paragraph 6 (d) above pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds and/or federal funds. In addition, up to $250,000 shall be made available for state response and

recovery operations and incident documentation with the Department of Planning and Budget overseeing the release of these funds.

Effective Date of this Executive Order

This Executive Order shall be effective retroactively to August 25, 2011, and shall remain in full force and effect until June 30, 2012, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this the 28th day of September, 2011.

/s/ Robert F. McDonnell
Governor

EXECUTIVE ORDER NUMBER 41 (2011)

Continuing Preparedness Initiatives In State Government and Affirmation of the Commonwealth of Virginia Emergency Operations Plan

Importance of the Issue

The state government agencies and institutions of higher education of the Commonwealth of Virginia must continue to be prepared for all disasters. It is the responsibility of state government to provide for the well being of the citizens of the Commonwealth and to ensure the continuity of state government operations, including the delivery of essential state governmental services.

It continues to be vitally important that preparedness for all disasters be considered an essential common responsibility that each agency of the Commonwealth, including institutions of higher education, diligently maintains. The continued development and coordination of preparedness initiatives within state government will equip the Commonwealth with the tools necessary to help prevent, respond to, and recover from any disaster. I, therefore, direct that appropriate preparedness initiatives, as prescribed in this executive order, continue to be an essential component of the mission of each executive branch agency, including institutions of higher education, with priority being placed in the following areas:

Preparedness as an Agency Mission

With the obligation to protect the citizens of the Commonwealth as my primary duty, and by the virtue of authority vested in me by Article 5, Sections 1 and 7 of the Constitution of Virginia and by § 44-146.17 of the Code of Virginia, as Governor and Director of Emergency Management, I direct each executive branch agency of the Commonwealth, including institutions of higher education, to continue to include emergency preparedness planning and training as a core competence of their mission. This order affirms the continuing responsibility of each agency including institutions of higher education, to appoint an Emergency Coordination Officer (ECO) and at least one alternate. Under the guidance of the Emergency Coordination Officer, each agency shall maintain a current Continuity of Operations Plan as well as written Emergency Action Plans so that agencies are well prepared to respond to any disaster with full consideration given to the best interests of the protection of the citizens of the Commonwealth and its infrastructure. The Emergency Coordination Officer shall coordinate with the Department of Emergency Management with regard to Continuity of Operations Plan as well as training, testing and exercising the plan.

Preparedness Planning

Each executive branch agency, including institutions of higher education, shall continue to include emergency preparedness in its strategic planning and performance management process, pursuant to guidelines promulgated by, and posted on the web site of, the Secretary of Veterans Affairs and Homeland Security. These guidelines will be formulated in collaboration with the Governor's Cabinet, Homeland Security Working Group, the Department of Planning and Budget, and the Department of Emergency Management.

Preparedness as an Individual Responsibility

Preparedness, as a common good, continues to require executive branch agencies, including institutions of higher education, and their employees, to actively participate in the creation and promotion of a "Culture of Preparedness" within the Commonwealth. Consequently, I continue the directive that all state employees shall complete the prescribed Terrorism and Security Awareness Orientation course within ninety days after commencing state service. I further direct that all executive branch agencies including institutions of higher education ensure that individual training in DHRM-HR Policy - Preventing Workplace Violence is successfully completed by all new employees within ninety days after commencing state service. Both courses are offered online through the Commonwealth of Virginia Knowledge Center website. Additionally, any state employee including institutions of higher education, as authorized by their agency head, shall be permitted to participate in either the "State Safe" Community Emergency Response Team (CERT) training program offered by the Department of Emergency Management or any local CERT training program and participation shall be considered work time up to twenty two hours.

Emergency Coordination Officers

Under the leadership of the Secretary of Veterans Affairs and Homeland Security, in collaboration with the Virginia Department of Emergency Management and the Department

of Human Resources Management, each agency and institution of higher education shall certify that their primary and alternate Emergency Coordination Officers, and any other appropriate personnel specifically designated by the agency head, have completed the appropriate preparedness courses. These courses include FEMA independent study training courses IS-100.b (ICS100), IS-700.a (NIMS) and IS-800 (NRF) and are available through the Secretary of Veterans Affairs and Homeland Security website.

Emergency Coordination Officers shall be responsible for the following duties as they relate to Emergency Operations Planning:

1. Be familiar with the contents of the Commonwealth of Virginia Emergency Operations Plan (COVEOP or "the Plan") available on the VDEM web site;

2. Prepare and maintain designated parts of the Plan for which the agency is responsible;

3. Prepare and maintain a written internal agency or institution of higher education plan and procedures to fulfill the responsibilities designated in the Plan;

4. Maintain a current roster of agency personnel designated to assist in disaster operations and ensure that personnel on the roster are accessible and available for training, exercises, and activations of the Plan;

5. Develop, adopt, and keep current a written Emergency Action Plan (consisting of building evacuation, shelter in place, active shooter and any other emergency response plans) with respect to executive branch agencies or a Crisis and Emergency Management Plan with respect to institutions of higher education;

6. Ensure that the Emergency Action Plan or Crisis and Emergency Management plan is coordinated with the appropriate local emergency management agency;

7. Coordinate with the Department of Emergency Management and local jurisdiction regarding emergency preparedness, response and recovery plans. Executive branch agencies and institutions of higher education shall be National Incident Management System (NIMS) compliant;

8. Successfully complete either the "State Safe" CERT training program offered by VDEM or a CERT training program offered locally for the purpose of attaining basic emergency response skills and team development; and

9. Monitor the Secretary of Veterans Affairs & Homeland Security web site and comply with changes and updates to defined ECO preparedness requirements.

A Continuity of Operations Plan describes how an agency or institution of higher education will continue to provide essential services or perform mission essential functions during a disaster or other event that disrupts normal operations. Continuity of Operation planning is critical to the ability of the Commonwealth to continue to deliver valuable and essential services to its citizens during and immediately after a disaster. Therefore, to provide for consistent and uniform continuity planning, I continue the direction that Emergency Coordination Officers for each executive branch agency, including institutions of higher education, coordinate the following:

1. Utilize the resources available from the Virginia Department of Emergency Management for creating or updating Continuity of Operations Plans;

2. Annually create or update Continuity of Operation Plans to include relevant information and to conform to the most recent template produced by the Virginia Department of Emergency Management;

3. Conduct continuity awareness briefings (or other means of orientation) for all applicable personnel (including host or contractor personnel) on the agency Continuity of Operations Plan within sixty days of hire or placement;

4. Conduct annual training for agency leadership and all key personnel, including host or contractor personnel assigned to activate, support and sustain the Continuity Plan. The training must minimally include individual Continuity Plan duties, mission essential functions, and orders of succession;

5. Maintain a roster of agency personnel consistent with their Continuity of Operations Plan;

6. Executive branch agencies shall conduct an annual test or exercise of the Continuity of Operations Plan that includes alert, notification, and activation procedures for key personnel. Institutions of higher education shall conduct an annual functional exercise in accordance with Virginia Code § 23-9.2:9; and

7. Complete an After Action Report (AAR) within three months of a Continuity Plan test, exercise, or actual event, and monitor the correction of identified deficiencies. These deficiencies shall also be corrected in a reasonable time frame as resources allow.

Assessing Continuity of Operations Plans

The process of creating or updating Continuity of Operations Plans shall be completed by each agency including institutions of higher education by April 1st of each year, with an electronic copy sent to the Virginia Department of Emergency Management. The Secretary of Veterans Affairs and Homeland Security, in consultation with the Virginia Department of Emergency Management, is authorized to review executive branch agencies' including institutions of higher education's Continuity of Operations Plans by October 31st each year.

A report on the status of the Commonwealth's executive branch agency's Continuity of Operations Plans, prepared by the Secretary of Veterans Affairs and Homeland Security in collaboration with the Virginia Department of Emergency Management, will be due to me annually by no later than December 31st of each year.

Annual Preparedness Assessment

I continue to authorize the Secretary of Veterans Affairs and Homeland Security in collaboration with any other executive branch agency deemed to be appropriate, to create, devise, and disseminate an annual preparedness assessment for executive branch agencies as well as an assessment for institutions of higher education in order gauge the overall level of preparedness in the following major areas of emphasis; physical security, continuity of operations planning, information technology security, document protection, human resources preparedness, training, and interoperable communications. The purpose of conducting such assessments shall be to identify deficiencies in these major preparedness areas of emphasis and to devise solutions to address those areas of needed improvement.

All executive branch agencies and institutions of higher education, through their Emergency Coordination Officer, shall complete their respective annual preparedness assessment by October 31st of each year. The Secretary of Veterans Affairs and Homeland Security will provide a report summarizing the results of the assessments to include areas of strength as well as areas in need of improvement to me by December 31st of each year.

Governor's Certification Program

The Secretary of Veterans Affairs and Homeland Security is to continue to certify whether or not each agency, through their Emergency Coordination Officer, has annually updated all of its emergency plans and procedures in all appropriate respects. I continue the authorization to the Secretary of Veterans Affairs and Homeland Security, in collaboration with any other executive branch agency deemed to be appropriate, to design, modify and administer the criteria for a Governor's Preparedness Certification Program designed to recognize those agencies and institutions of higher education that represent exemplary preparedness initiatives among state government.

Commonwealth of Virginia Emergency Operations Plan

Furthermore, by virtue of the authority vested in me by Section 44-146.17 of the Code of Virginia as Governor and as Director of Emergency Management, I hereby affirm the Commonwealth of Virginia Emergency Operations Plan ("the Plan") 2007 as updated by the Department of Emergency Management in April of 2011. The Plan provides for state government's response to emergencies and disaster wherein assistance is needed by affected local governments in order to save lives; to protect public health, safety, and property; to restore essential services; and to enable and assist with economic recovery.

The Plan is developed in accordance with the Commonwealth of Virginia Emergency Services and Disaster Law of 2000 (Chapter 3.2, Title 44 of the Code of Virginia, as amended), the National Incident Management System as implemented in the National Response Framework (2008), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended) along with its implementing regulations.

The State Coordinator of Emergency Management, on behalf of the Governor, is hereby authorized to activate the Commonwealth of Virginia Emergency Operations Center ("Virginia EOC") in order to direct and control state government emergency operations. Augmentation of the Virginia EOC shall constitute implementation of the Plan.

Furthermore, the State Coordinator of Emergency Management is hereby authorized, in coordination with the Governor's Office, to amend the Plan as necessary in order to achieve the Preparedness Goals and Initiatives of the Nation and this Commonwealth and in accordance with the Commonwealth of Virginia Emergency Services and Disaster Law of 2000 (Chapter 3.2, Title 44 of the Code of Virginia, as amended).

Effective Date of the Executive Order

This Executive Order rescinds and replaces Executive Order Number Forty-Four (44) issued on January 12, 2007, by Governor Tim Kaine. Additionally, Executive Order Number Sixty (60) issued on December 21, 2007, by Governor Tim Kaine is also rescinded to the extent it establishes and assigns duties to agencies and colleges and universities related to the emergency coordination officer.

This Executive Order shall be effective upon its signing and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and the Seal of the Commonwealth of Virginia this 30th day of September, 2011.

/s/ Robert F. McDonnell
Governor

AIR POLLUTION CONTROL BOARD

Proposed State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation of the board affected by this action is as follows: 9VAC5-85-50 of Part III of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: October 24, 2011, to November 23, 2011.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: On July 20, 2011 (76 FR 43490), EPA promulgated final amendments to its regulations for permitting of greenhouse gases (GHGs). The purpose of the amendments is to defer, for a three year period, the application of the prevention of significant deterioration (PSD) and federal operating (Title V) permitting requirements to carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources in order for EPA to conduct a detailed examination of the science associated with biogenic CO_2. The amendments affect the PSD NSR regulations in 40 CFR 51.166 by revising the definition of "subject to regulation." Because Virginia has the authority to directly implement federal PSD regulations as long as its rules are at least as protective as the federal, the corresponding Virginia regulation must be revised accordingly when a final federal rule is promulgated.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP with the exception of Part II, which contains federal operating permit program provisions not germane to the SIP, and is provided in the submittal for information only.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (http://www.deq.state.va.us/air/permitting/planotes.html). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,

2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,

3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL BOARD

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 of the Code of Virginia, the Alcoholic Beverage Control Board is currently reviewing each of the regulations listed below to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Each regulation will be reviewed to determine 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. Public comment is sought on the review of any issue relating to the regulations.

3VAC5-10, Procedural Rules for the Conduct of Hearings Before the Board and Its Hearing Officers and the Adoption or Amendment of Regulations

3VAC 5-11, Public Participation Guidelines

3VAC5-20, Advertising

3VAC5-30, Tied-House

3VAC5-40, Requirements for Product Approval

3VAC5-50, Retail Operations

3VAC5-60, Manufacturers and Wholesalers Operations

3VAC5-70, Other Provisions

The comment period begins October 24, 2011, and ends on March 30, 2012.

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 W. Curtis Coleburn, Chief Operating Officer, Alcoholic Beverage Control Board, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4409, FAX (804) 213-4411, or email curtis.coleburn@abc.virginia.gov. Comments must include the commenter's name and address information (physical or email) 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.

COMMON INTEREST COMMUNITY BOARD

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 Common Interest Community Board is currently reviewing each of the regulations listed below to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Each regulation will be reviewed to determine 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. Public comment is sought on the review of any issue relating to the regulations.

18VAC48-10, Public Participation Guidelines

18VAC48-20, Condominium Regulations

18VAC48-40, Virginia Time-Share Regulations

18VAC48-50, Common Interest Community Manager Regulations

18VAC48-60, Common Interest Community Management Information Fund Regulations

The comment period begins October 24, 2011, and ends on November 14, 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 Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupation Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov. Comments must include the commenter's name and address information (physical or email) 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.

BOARD FOR CONTRACTORS

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 Board for Contractors is currently reviewing each of the regulations listed below to determine whether the regulations should be terminated, amended, or retained in their current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the review is to determine whether the regulations should be terminated, amended, or retained in their current form.

Each regulation will be reviewed to determine 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. Public comment is sought on the review of any issue relating to the regulations.

18VAC50-11, Public Participation Guidelines

18VAC50-22, Board for Contractors Regulations

18VAC50-30, Individual License and Certification Regulations

The comment period begins October 24, 2011, and ends on November 14, 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 Eric L. Olson, Executive Director, Board for Contractors, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, FAX (866) 430-1033, or email contractor@dpor.virginia.gov. Comments must include the commenter's name and address information (physical or email) 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.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Special Order for DuPont Teijin Films U.S. Limited Partnership

An enforcement action has been proposed for DuPont Teijin Films U.S. Limited Partnership for alleged violations at DuPont Teijin Films, Hopewell Site at 3600 Discovery Drive, Chesterfield, VA. The State Water Control Board proposes to issue a consent special order to DuPont Teijin Films U.S. Limited Partnership to address noncompliance with State Water Control Board law. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Gina Pisoni will accept comments by email at gina.pisoni@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 24, 2011, to November 24, 2011.

Notice of Public Meeting and Public Comment for Upper Banister River

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of an Implementation Plan (IP) for bacteria total maximum daily loads (TMDLs) on a 11.67 miles segment of the Upper Banister River, 9.31 miles of Bearskin Creek, 8.44 miles of Cherrystone Creek, 8.99 miles of Stinking Creek, and 0.82 miles of Whitethorn Creek in Pittsylvania County and the Towns of Chatham and Gretna. The TMDLs for these stream impairments were completed in November 2007, and can be found in the Banister River Report on DEQ's website at http://www.deq.virginia.gov/tmdl/apptmdls/rapprvr/urappaec.pdf.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The second public meeting on the development of the IP for the bacteria TMDLs will be held on Tuesday, October 25, 2011, at 7 p.m. at the Old Dominion Agricultural Complex and Farm Services Agency office at 19783 U.S. Hwy 29, Chatham, Virginia. At this meeting, the draft implementation plan to restore water quality in the Upper Banister River and tributaries will be presented to the public.

The 30-day public comment period on the draft implementation plan presented at this meeting will end on November 25, 2011. A fact sheet on the development of the IP for the Upper Banister River and tributaries is available upon request. Questions or information requests should be addressed to Charlie Lunsford with the Virginia Department of Conservation and Recreation. Written comments and inquiries should include the name, address, and telephone

number of the person submitting the comments and should be sent to Charlie Lunsford, Department of Conservation and Recreation, telephone (804) 786-3199, or email charles.lunsford@dcr.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Supplemental Payments for Certain Private Hospitals -- Notice of Intent to Amend the Virginia State Plan for Medical Assistance (pursuant to § 1902(a)(13) of the Act (USC 1396a(a)(13))

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to make supplemental payments for certain private hospitals for inpatient and outpatient services and for certain nursing facilities for specialized care services.

Effective the day after publication of this notice, Virginia plans to make supplemental payments for eligible private hospitals for inpatient and outpatient services and for eligible nursing facilities for nursing facility services. Eligible facilities are those that have signed a collaborative agreement with a state or local government entity or who have partnered with a state-owned teaching hospital. Supplemental payments shall be calculated by subtracting regular payments from total charges. Payments will be subject to upper payment limits for all private facilities as a class for each of the service categories as described in 42 CFR 447.272 and 42 CFR 447.321. Payments to DSH hospitals will be subject to the DSH limit described in Section 1923(g)(1)(A) of the Social Security Act. DMAS estimates making annual supplemental payments of $20 million to hospitals who have signed a collaborative agreement with a state or local government entity and $9 million to hospitals and nursing facilities who have partnered with a state-owned teaching hospital. Comments can be mailed to or copies of proposed changes can be requested from William Lessard, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Please forward your written request to the Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219. Further information is also available at http://dmasva.dmas.virginia.gov/.

Contact Information: William Lessard, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-4593, FAX (804) 786-1680, or email william.lessard@dmas.virginia.gov.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

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 Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals is conducting a periodic review of 18VAC160-11, Public Participation Guidelines, and 18VAC160-20, Board for Waterworks and Wastewater Works Operators Regulations. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of the 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 October 24, 2011, and ends on November 14, 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 David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, email waterwasteoper@dpor.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.