



VIRGINIA

REGISTER OF REGULATIONS

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Virginia Code Commission

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **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.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Wesley G. Russell, Jr.**; **Charles S. Sharp**; **Robert L. Tavenner**; **Patricia L. West**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

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

January 2012 through January 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
29:7	November 13, 2012	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

VA.R. Doc. No. R12-2970; Filed December 29, 2011, 4:36 p.m.

TITLE 9. ENVIRONMENT

STATE WATER 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 State Water Control Board intends to consider amending **9VAC25-193, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities**. The purpose of the proposed action is to reissue the existing VPDES general permit, which expires on September 30, 2013. The general permit establishes limitations and monitoring requirements for point source discharges to state waters from concrete products facilities.

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

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

Public Comment Deadline: February 15, 2012.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, or email emdaub@deq.virginia.gov.

VA.R. Doc. No. R12-3072; Filed December 16, 2011, 1:52 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-410, Rules and Regulations for the Licensure of Hospitals in Virginia**, and promulgating **12VAC5-412, Regulations for Licensure of Abortion Facilities**. The purpose of the proposed action is to establish minimum standards for the licensure of facilities that perform five or more first trimester abortions per month.

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

Statutory Authority: § 32.1-127 of the Code of Virginia.

Public Comment Deadline: February 15, 2012.

Agency Contact: Joe Hilbert, Director of Governmental and Regulatory Affairs, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7006, FAX (804) 864-7022, or email joe.hilbert@vdh.virginia.gov.

REGULATIONS

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

Symbol Key

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

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **3VAC5-70. Other Provisions (adding 3VAC5-70-250).**

Statutory Authority: §§ 4.1-103, 4.1-111, and 4.1-227 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 16, 2012.

Effective Date: March 3, 2012.

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.

Basis: Section 4.1-227 E 4 of the Code of Virginia provides that the Alcoholic Beverage Control Board shall, by regulation, "establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years immediately preceding the date of the violation." The choice of offenses to be included in the schedule is discretionary with the board, except that the statute prohibits the granting of a waiver for a licensee's willful and knowing violation.

Purpose: The board has determined that this action promotes the public safety and welfare by encouraging licensees with a long record of compliance with laws and regulations to obtain appropriate training and give renewed attention to compliance when they commit a first violation within five years. The opportunity to avoid suspension or monetary penalty should be a compelling influence toward voluntary compliance with laws and regulations, which is the primary goal of the disciplinary process.

Rationale for Using Fast Track Process: The board expects this rulemaking to be noncontroversial because it has adopted the broadest possible application of the statutory mandate. There should be no controversy as to which offenses have been placed in the schedule of eligible offenses and which have not, since the probation portion of the proposed regulation applies to all offenses. On the other hand, each situation will be reviewed by the board to determine the appropriate application of the policy.

Substance: This action creates a new section 3VAC5-70-250, which provides a schedule of violations for which punishment is waived for a first offense within five years. It also allows for deferral of disciplinary proceedings against a licensee and ultimate dismissal of charges for any other first offense within five years. If the board finds that a violation was not willful and knowing, it will be able to defer further proceedings and place the licensee on probation. Probation will include a requirement of appropriate seller/server or manager training, and compliance with alcoholic beverage laws and regulations. Upon successful completion of probation, the charge will be dismissed.

Issues: The primary advantage to licensed businesses of implementing the new provision is the opportunity to avoid license suspension or monetary penalty in a case of a nonwillful violation when the business has a long history of compliance with the law and regulation. The primary disadvantage to the agency is a possible reduction in revenue from civil monetary penalties.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes a new section 3VAC5-70-250, providing a process whereby licensees charged with a violation of statute or board regulation may be placed on probation and have proceedings deferred and ultimately dismissed in lieu of license suspension or monetary penalty, in cases where the charge represents the first violation by the licensee within five years.

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

Estimated Economic Impact. Chapters 135 and 279 of the 2009 Acts of Assembly, which are now codified in Virginia Code 4.1-227, require the board to promulgate a regulation that would "establish a schedule of offenses for which any penalty may be waived upon a showing that the licensee has had no prior violations within five years immediately preceding the date of the violation." The proposed action would implement this Code section.

The proposed changes would allow the Board to waive disciplinary proceedings in situations in which the violation was not willful and knowing, so long as it is the first offense in five years. All offenses would be eligible for consideration. In these cases, the licensee would be placed on probation, which would include mandated seller/server or manager training, and further compliance with Alcoholic Beverage

Control laws and regulations. The Board would then dismiss the charges upon successful completion of the probation.

According to the Department of Alcoholic Beverage Control (Department), the Board currently on occasion suspends punishment conditioned upon training or other conditions. The proposed new section would essentially just formalize the current practice. Since the proposal clarifies current practice and does not practically change any requirements, it creates a net benefit. Additional clarity is beneficial for affected entities and the public; and no new costs are introduced.

Businesses and Entities Affected. The proposed amendments potentially affect all holders of licenses issued by the Department. According to the Department, there are approximately 16,000, of which an estimated 90% are small businesses.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation,

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

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendment adds a new section that provides a process whereby licensees charged with a violation of statute or board regulation may have all penalties waived, or may be placed upon probation and have proceedings deferred and ultimately dismissed in lieu of license suspension or monetary penalty, in cases where the charge represents the first violation by the licensee within five years.

3VAC5-70-250. Waiver of penalty for certain first-time violations.

A. In accordance with subdivision E 4 of § 4.1-227 of the Code of Virginia, whenever the board finds that a charge against a licensee for a violation listed in this subsection is substantiated, the licensee has had no prior violations within five years immediately preceding the date of the subject violation, and the subject violation was not willful and knowing, the board shall enter an order substantiating the violation without imposing a penalty. The provisions of this subsection shall apply to the following violations:

1. Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid;
2. Allowing an intoxicated person to loiter on the premises;
3. After hours sales or consumption of alcoholic beverages;
4. No designated manager on premises;
5. Invalid check to wholesaler or board;
6. Inadequate illumination;
7. Not timely submitting a report required by statute or regulation;
8. Designated manager not posted;
9. Person less than 18 years of age serving alcoholic beverages; less than 21 years of age acting as bartender;
10. Sale of alcoholic beverages in unauthorized place or manner;
11. Consumption of alcoholic beverages in unauthorized area;

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12. Removal of alcoholic beverages from authorized area:
13. Failure to obliterate mixed beverage stamps:
14. Employee on duty consuming alcoholic beverages:
15. Conducting illegal happy hour:
16. Illegally advertising happy hour:
17. Unauthorized advertising:
18. Failure to remit state beer/wine tax (if deficiency has been corrected):
19. Wholesaler sale of wine/beer in unauthorized manner: and
20. Wholesaler sale of wine/beer to unauthorized person.

B. Whenever any licensee who has not had any substantiated violations of regulation or statute within the previous five years is charged with a violation, the board, if the facts found by the board would justify a finding that the charge is substantiated but is not a willful and knowing violation, with the consent of the licensee, may defer further proceedings and place the licensee on probation upon terms and conditions.

As a term or condition, the board shall require the licensee to participate in or provide employees such board-approved seller/server or manager training as, in the opinion of the board, may be best suited to the needs of the licensee based upon consideration of the nature of the violation.

As a condition of probation, the board shall require the licensee to (i) successfully complete the required training program and (ii) comply with all alcoholic beverage laws and regulations during the period of probation.

Upon violation of a term or condition, the board may enter an adjudication that the charge is substantiated and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the board shall dismiss the proceedings against the licensee. Dismissal under this section shall be without adjudication of the charge and is a substantiated violation only for the purposes of applying this section in subsequent proceedings.

VA.R. Doc. No. R12-2494; Filed December 16, 2011, 10:47 a.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when

promulgating regulations regarding the management of wildlife. The department is required by § 2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: in General (amending 4VAC15-20-65).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2012.

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

Summary:

The amendments establish licenses for Virginia resident hunting, trapping, and freshwater fishing for two-year, three-year, and four-year terms, in addition to the existing annual licenses for one-year terms, with license fees as follows: (i) for licenses with two year terms, fees of two times the fee for the annual license, minus one dollar; (ii) for licenses of three-year terms, fees of three times the fee for the annual license, minus two dollars; and (iii) for licenses of four-year terms, fees of four times the fee for the annual license, minus three dollars.

4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.

In accordance with the authority of the board under § 29.1-103 (16) of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
<u>1-year Resident License to Hunt, for licensees 16 years of age or older</u>	\$22.00
<u>2-year Resident License to Hunt, for licensees 16 years of age or older</u>	<u>\$43.00</u>
<u>3-year Resident License to Hunt, for licensees 16 years of age or older</u>	<u>\$64.00</u>
<u>4-year Resident License to Hunt, for licensees 16 years of age or older</u>	<u>\$85.00</u>
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	\$15.00

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Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	\$8.00	Resident Junior Bear, Deer, and Turkey Hunting License, for licensees under 16 years of age	\$7.50
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees under 12 years of age	\$7.50	Resident Archery License to Hunt with bow and arrow during archery hunting season	\$17.00
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$15.00	Resident Crossbow License to Hunt with crossbow during archery hunting season	\$17.00
		Resident Muzzleloading License to Hunt during muzzleloading hunting season	\$17.00
		Resident Bonus Deer Permit	\$17.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Fish)	\$132.00	Virginia Nonresident Licenses to Hunt	
		Type license	Fee
		Nonresident License to Hunt, for licensees 16 years of age or older	\$110.00
		Nonresident Three-Day Trip License to Hunt	\$59.00
		Nonresident Youth License to Hunt, for licensees:	
		under 12 years of age	\$12.00
		12 through 15 years of age	\$15.00
		Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees under 16 years of age	\$30.00
		Nonresident Lifetime License to Hunt	\$555.00
		Resident Junior Lifetime License to Hunt, for licensees under 12 years of age at the time of purchase	\$255.00
Resident Lifetime License to Hunt, for licensees at the time of purchase:			
	through 44 years of age	\$260.00	
	45 through 50 years of age	\$210.00	
	51 through 55 years of age	\$160.00	
	56 through 60 years of age	\$110.00	
	61 through 64 years of age	\$60.00	
	65 years of age and over	\$20.00	
Totally and Permanently Disabled Resident Special Lifetime License to Hunt	\$15.00	Virginia Nonresident Licenses for Additional Hunting Privileges	
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	\$15.00	Type license or permit	Fee
		Nonresident Bear, Deer, and Turkey Hunting License, for licensees:	
		16 years of age or older	\$85.00
		12 through 15 years of age	\$15.00
Virginia Resident Licenses for Additional Hunting Privileges		under 12 years of age	\$12.00
Type license or permit	Fee	Nonresident Archery License to Hunt with bow and arrow during archery hunting season	\$30.00
Resident Bear, Deer, and Turkey Hunting License, for licensees 16 years of age or older	\$22.00		

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Nonresident Crossbow License to Hunt with crossbow during archery hunting season	\$30.00	Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	\$15.00
Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	\$30.00	Nonresident License to Trap	\$205.00
Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	\$22.00	Virginia Resident Licenses to Fish	
Nonresident Bonus Deer Permit	\$30.00	Type license	Fee
Miscellaneous Licenses or Permits to Hunt		<u>1-year Resident License to Freshwater Fish</u>	\$22.00
		<u>2-year Resident License to Freshwater Fish</u>	\$43.00
		<u>3-year Resident License to Freshwater Fish</u>	\$64.00
		<u>4-year Resident License to Freshwater Fish</u>	\$85.00
		County or City Resident License to Freshwater Fish in County or City of Residence Only	\$15.00
		Resident License to Freshwater Fish, for licensees 65 years of age or older	\$8.00
		Resident License to Fish in Designated Stocked Trout Waters	\$22.00
Type license or permit	Fee	Resident License to Freshwater and Saltwater Fish	\$39.00
Waterfowl Hunting Stationary Blind in Public Waters License	\$22.50	Resident License to Freshwater Fish for Five Consecutive Days	\$13.00
Waterfowl Hunting Floating Blind in Public Waters License	\$40.00	Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$23.00
Foxhound Training Preserve License	\$17.00	Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with bow and arrow during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters, and to hunt with a crossbow (also listed under Virginia Resident Licenses to Hunt)	\$132.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	\$17.00	Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:	
Virginia Resident and Nonresident Licenses to Trap		through 44 years of age	\$260.00
		45 through 50 years of age	\$210.00
Type license	Fee	51 through 55 years of age	\$160.00
<u>1-year Resident License to Trap, for licensees 16 years of age or older</u>	\$45.00	56 through 60 years of age	\$110.00
<u>2-year Resident License to Trap, for licensees 16 years of age or older</u>	\$89.00	61 through 64 years of age	\$60.00
<u>3-year Resident License to Trap, for licensees 16 years of age or older</u>	\$133.00	65 years of age and over	\$20.00
<u>4-year Resident License to Trap, for licensees 16 years of age or older</u>	\$177.00		
County or City Resident License to Trap in County or City of Residence Only	\$20.00		
Resident Junior License to Trap, for licensees under 16 years of age	\$10.00		
Resident Senior Citizen License to Trap, for licensees 65 years of age or older	\$8.00		
Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	\$20.00		
Totally and Permanently Disabled Resident Special Lifetime License to Trap	\$15.00		

Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
through 44 years of age	\$260.00
45 through 50 years of age	\$210.00
51 through 55 years of age	\$160.00
56 through 60 years of age	\$110.00
61 through 64 years of age	\$60.00
65 years of age and over	\$20.00
Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	\$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	\$15.00

Special Guest Fishing License	\$60.00
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VA.R. Doc. No. R12-3005; Filed December 29, 2011, 3:34 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 (Boating Laws) of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-410. Watercraft: Boating Safety Education (amending 4VAC15-410-50).**

Statutory Authority: §§ 29.1-701, 29.1-735, and 29.1-735.2 of the Code of Virginia.

Effective Date: January 1, 2012.

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

Summary:

The amendments update Virginia's boating safety education course provider requirements by (i) amending the date for the referenced National Association of State Boating Law Administrators (NASBLA) National Education Standards from January 1, 2008, to January 1, 2012; and (ii) eliminating language pertaining to education course requirements that will become redundant when addressed in the NASBLA National Education Standards commencing January 1, 2012.

4VAC15-410-50. Boating safety education course provider requirements.

A. To be an approved course provider, any individual, business, or organization that instructs or provides a boating safety education course shall execute and have on file a cooperative agreement with the department. It shall be the responsibility of the state boating law administrator to develop and execute such agreements. A list of approved course providers and boating safety education courses shall be kept by the department and made available to the public. Such list does not constitute any endorsement of any course or course provider by the department or the board.

B. As of January 1, 2009, boating safety education courses offered through the Internet and accepted by the department shall:

1. Be approved by NASBLA in accordance with the National Boating Education Standards, updated January 1, ~~2008~~ 2012, for course content/testing; and

Virginia Nonresident Licenses to Fish	
Type license	Fee
Nonresident License to Freshwater Fish	\$46.00
Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	\$46.00
Nonresident License to Freshwater and Saltwater Fish	\$70.00
Nonresident License to Freshwater Fish for Five Consecutive Days	\$20.00
Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	\$30.00
Nonresident Special Lifetime License to Freshwater Fish	\$555.00
Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	\$555.00

Miscellaneous Licenses or Permits to Fish	
Type license or permit	Fee
Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	\$8.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	\$17.00

Regulations

2. Be provided only by an approved course provider who has executed a valid cooperative agreement with the department. Such agreements may be amended at any time by the department and may be cancelled with 30 days notice upon failure of the course provider to comply with the terms and conditions of the agreement or its amendments;

3. Be formatted and made available to the student only in instructional/training modules;

4. Consist of no less than six instructional/training modules with each module having no less than 10 test questions, randomly selected from a pool of questions that contains at least three times the number of questions presented in the module test in 2009 and four times the number of questions presented in the module test in 2010 and each following year;

5. Allow for the student to advance through the modules only in a sequential, chronological order and only upon successful completion of the test questions for the module. Successful completion shall be by a score of at least 90% correct on the test questions;

6. Be designed so that the student should spend at least six hours of active involvement in completing the course. Completing the course shall include familiarization with the course material, completion of any review questions, and completion of the test questions. The course design shall also include the provision of at least 50 separate web pages of course content and material for presentation to the student. Active involvement shall require the student to click on a "Next" or "Forward" button to progress through the course material;

7. Be designed so that the student is directed to repeat the entire module if the student has not scored at least 90% correct on the test questions for that module. The student shall also be provided with a reference to the applicable course text material for any missed questions on the module test; and

8. Be designed to promote the presentation, understanding and comprehension of boating safety information and safe practices and not the simple completion of an end-of-course test.

C. Any material and/or products to be used by an approved course provider that make reference to the department must be approved by the department, through the state boating law administrator, before publishing and/or distribution to the public.

D. Any fees charged by a course provider are set by the course provider, but must be clearly communicated to the student prior to taking the course.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC15-410)

~~National Boating Education Standards, updated January 1, 2008, National Association of State Boating Law Administrators.~~

[National Boating Education Standards, updated January 1, 2012, National Association of State Boating Law Administrators.](#)

V.A.R. Doc. No. R12-3006; Filed December 29, 2011, 9:28 a.m.



TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Fast-Track Regulation

Title of Regulation: **8VAC20-300. Rules Governing Film Circulation from State and Regional Audiovisual Services (repealing 8VAC20-300-10, 8VAC20-300-20).**

Statutory Authority: § 22.1-16 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 15, 2012.

Effective Date: March 1, 2012.

Agency Contact: Melissa Luchau, Office of Policy & Communications, Department of Education, P.O. Box 2120, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email melissa.luchau@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia provides the Board of Education with general authority to promulgate regulations deemed necessary to carry out the provision of Title 22.1 of the Code of Virginia.

Purpose: This proposal repeals an existing regulation. The rationale or justification for repealing the regulation is that it was approved by the Board of Education and became effective on or about September 1, 1980. It has never been updated or amended. Since the program has been discontinued and no longer exists, the regulation is now obsolete and unnecessary. In the interest of efficiency and effective management, a regulation governing a nonexistent program should be repealed.

Rationale for Using Fast-Track Process: Since the board is repealing a regulation that is obsolete, the fast-track rulemaking process is most appropriate for this action. The repeal of this regulation will not be controversial because the regulation was adopted more than 30 years ago and has never been amended. It is obsolete in that the program it governs no longer exists.

Substance: This proposal is to repeal the Rules Governing Film Circulation from State and Regional Audiovisual Services, 8VAC20-300. This regulation was approved by the Board of Education, became effective on or about September 1, 1980, and has two sections. The first prescribes the eligibility for the general circulation of films, videotapes and audiotapes, slides, transparencies, and filmstrips from state and regional audio visual services and the second prescribes the ordering process. The regulation has never been updated or amended to reflect any changes in the eligibility for circulation or the process to order such items. The lending program has been discontinued and is no longer in existence, making the regulation obsolete. There are no new substantive provisions. This regulation is being repealed.

Issues: There are no disadvantages to the public or the Commonwealth. The regulation is obsolete and its repeal will have no effect on the Commonwealth or on the public. Rather, it will decrease the number of regulations issued by the Board of Education.

Department of Planning and Budget Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Rules Governing Film Circulation from State and Regional Audiovisual Services, 8VAC20-300, was approved by the Board of Education (Board) and became effective on or about September 1, 1980, and has two sections. The first prescribes the eligibility for the general circulation of films, videotapes and audiotapes, slides, transparencies, and filmstrips from state and regional audio visual services and the second prescribes the ordering process. The regulation has never been updated or amended to reflect any changes in the eligibility for circulation or the process to order such items. The lending program has been discontinued and is no longer in existence, making the regulations obsolete. Thus, the Board proposes to repeal these regulations.

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

Estimated Economic Impact. Since the lending program no longer exists, repealing these regulations will have no impact beyond reducing potential confusion for the public.

Businesses and Entities Affected. The regulations pertain to the 132 public school divisions in the Commonwealth.

Localities Particularly Affected. The proposed repeal of these regulations does not disproportionately affect particular localities.

Projected Impact on Employment. The proposal repeal of these regulations will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of these regulations will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of these regulations will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of these regulations will not affect small businesses.

Real Estate Development Costs. The proposed repeal of these regulations will not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The State Board of Education agrees with the economic impact analysis done by the Department of Planning and Budget. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

The proposed action repeals the Rules Governing Film Circulation from State and Regional Audiovisual Services (8VAC20-300). The regulations are obsolete because the lending program has been discontinued and no longer exists.

VA.R. Doc. No. R12-2904; Filed December 19, 2011, 3:12 p.m.



Regulations

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL 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 State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-50. New and Modified Stationary Sources (amending 9VAC5-50-400, 9VAC5-50-410).**

9VAC5-60. Hazardous Air Pollutant Sources (amending 9VAC5-60-60, 9VAC5-60-90, 9VAC5-60-100).

Statutory Authority: § 10.1-1308 of the Code of Virginia; § 112 of the Clean Air Act; 40 CFR Parts 61 and 63.

Effective Date: February 15, 2012.

Agency Contact: 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, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

Summary:

The amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2011. Below is a list of the new standards in the federal regulations that are being incorporated into the regulations by reference.

1. One NSPS is being incorporated: Sewage Sludge Incineration Units (Subpart LLLL, 40 CFR 63.4760-4925). The date of the Code of Federal Regulations book being incorporated by reference is also being updated to the latest version.

2. No new NESHAPs are being incorporated. The date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

3. Two MACTs are being incorporated: Aluminum, Copper, and Other Nonferrous Foundries, Area Sources (Subpart ZZZZZZ, 40 CFR 63.11544-11558); and Gold Mine Ore Processing and Production Area Sources (Subpart EEEEEEE, 40 CFR 63.11640-11653). The date of the Code of Federal Regulations book being

incorporated by reference is being updated to the latest version.

Article 5

Environmental Protection Agency Standards of Performance for New Stationary Sources (Rule 5-5)

9VAC5-50-400. General.

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated herein by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2010)~~ (2011) in effect July 1, ~~2010~~ 2011. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

9VAC5-50-410. Designated standards of performance.

Subpart A - General Provisions.

40 CFR 60.1 through 40 CFR 60.3, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 through 40 CFR 60.15, 40 CFR 60.18 through 40 CFR 60.19

(applicability, definitions, units and abbreviations, notification and recordkeeping, performance tests, compliance, circumvention, monitoring requirements, modification, reconstruction, general control device requirements, and general notification and reporting requirements)

Subpart B - Not applicable.

Subpart C - Not applicable.

Subpart Ca - Reserved.

Subpart Cb - Not applicable.

Subpart Cc - Not applicable.

Subpart Cd - Not applicable.

Subpart Ce - Not applicable.

Subpart D - Fossil-Fuel Fired Steam Generators for which Construction is Commenced after August 17, 1971.

40 CFR 60.40 through 40 CFR 60.46

(fossil-fuel fired steam generating units of more than 250 million Btu per hour heat input rate, and fossil-fuel fired and wood-residue fired steam generating units capable of

firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da - Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978.

40 CFR 60.40a through 40 CFR 60.49a

(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel); electric utility combined cycle gas turbines capable of combusting more than 250 million Btu per hour heat input in the steam generator)

Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b

(industrial-commercial-institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 40 CFR 60.48c

(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E - Incinerators.

40 CFR 60.50 through 40 CFR 60.54

(incinerator units of more than 50 tons per day charging rate)

Subpart Ea - Municipal Waste Combustors for which Construction is Commenced after December 20, 1989, and on or before September 20, 1994

40 CFR 60.50a through 40 CFR 60.59a

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Eb - Large Municipal Combustors for which Construction is Commenced after September 20, 1994, or for which Modification or Reconstruction is Commenced after June 19, 1996

40 CFR 60.50b through 40 CFR 60.59b

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Ec - Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996

40 CFR 60.50c through 40 CFR 60.58c

(hospital/medical/infectious waste incinerators that combust any amount of hospital waste and medical/infectious waste or both)

Subpart F - Portland Cement Plants.

40 CFR 60.60 through 40 CFR 60.64

(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G - Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74

(nitric acid production units)

Subpart H - Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85

(sulfuric acid production units)

Subpart I - Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93

(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt; and the loading, transfer and storage systems associated with emission control systems)

Subpart J - Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106

(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart K - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

Regulations

- 40 CFR 60.110b through 40 CFR 60.117b
(storage vessels with capacity greater than or equal to 10,566 gallons)
- Subpart L - Secondary Lead Smelters.
40 CFR 60.120 through 40 CFR 60.123
(pot furnaces of more than 550 pound charging capacity, blast (cupola) furnaces and reverberatory furnaces)
- Subpart M - Secondary Brass and Bronze Production Plants.
40 CFR 60.130 through 40 CFR 60.133
(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)
- Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973.
40 CFR 60.140 through 40 CFR 60.144
(basic oxygen process furnaces)
- Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which Construction is Commenced after January 20, 1983.
40 CFR 60.140a through 40 CFR 60.145a
(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)
- Subpart O - Sewage Treatment Plants.
40 CFR 60.150 through 40 CFR 60.154
(incinerators that combust wastes containing more than 10% sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that charge more than 2205 pounds per day municipal sewage sludge (dry basis))
- Subpart P - Primary Copper Smelters.
40 CFR 60.160 through 40 CFR 60.166
(dryers, roasters, smelting furnaces, and copper converters)
- Subpart Q - Primary Zinc Smelters.
40 CFR 60.170 through 40 CFR 60.176
(roasters and sintering machines)
- Subpart R - Primary Lead Smelters
40 CFR 60.180 through 40 CFR 60.186
(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces and converters)
- Subpart S - Primary Aluminum Reduction Plants.
40 CFR 60.190 through 40 CFR 60.195
(potroom groups and anode bake plants)
- Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
40 CFR 60.200 through 40 CFR 60.204
(reactors, filters, evaporators, and hot wells)
- Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
40 CFR 60.210 through 40 CFR 60.214
(evaporators, hot wells, acid sumps, and cooling tanks)
- Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
40 CFR 60.220 through 40 CFR 60.224
(reactors, granulators, dryers, coolers, screens, and mills)
- Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.
40 CFR 60.230 through 40 CFR 60.234
(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)
- Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
40 CFR 60.240 through 40 CFR 60.244
(storage or curing piles, conveyors, elevators, screens and mills)
- Subpart Y - Coal Preparation and Processing Plants.
40 CFR 60.250 through 40 CFR 60.258
(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)
- Subpart Z - Ferroalloy Production Facilities.
40 CFR 60.260 through 40 CFR 60.266
(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)
- Subpart AA - Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276

(electric arc furnaces and dust-handling systems that produce carbon, alloy or specialty steels)

Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a

(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB - Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers and kraft pulping operations)

Subpart CC - Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296

(glass melting furnaces)

Subpart DD - Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304

(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar unloading stations, railcar loading stations, grain dryers, and all grain handling operations)

Subpart EE - Surface Coating of Metal Furniture.

40 CFR 60.310 through 40 CFR 60.316

(metal furniture surface coating operations in which organic coatings are applied)

Subpart FF - (Reserved)

Subpart GG - Stationary Gas Turbines.

40 CFR 60.330 through 40 CFR 60.335

(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)

Subpart HH - Lime Manufacturing Plants.

40 CFR 60.340 through 40 CFR 60.344

(each rotary lime kiln)

Subparts II through JJ - (Reserved)

Subpart KK - Lead-Acid Battery Manufacturing Plants.

40 CFR 60.370 through 40 CFR 60.374

(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart LL - Metallic Mineral Processing Plants.

40 CFR 60.380 through 40 CFR 60.386

(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the beneficiation of uranium ore are exempted from the provisions of this subpart)

Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.

40 CFR 60.390 through 40 CFR 60.397

(prime coat operations, guide coat operations, and top-coat operations)

Subpart NN - Phosphate Rock Plants.

40 CFR 60.400 through 40 CFR 60.404

(phosphate rock plants which have a maximum plant production capacity greater than 4 tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorous production)

Subpart OO - (Reserved)

Subpart PP - Ammonium Sulfate Manufacture.

40 CFR 60.420 through 40 CFR 60.424

(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactum by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)

Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.

40 CFR 60.430 through 40 CFR 60.435

(publication rotogravure printing presses, except proof presses)

Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.

Regulations

- 40 CFR 60.440 through 40 CFR 60.447
(pressure sensitive tape and label material coating lines)
- Subpart SS - Industrial Surface Coating: Large Appliances.
40 CFR 60.450 through 40 CFR 60.456
(surface coating operations in large appliance coating lines)
- Subpart TT - Metal Coil Surface Coating.
40 CFR 60.460 through 40 CFR 60.466
(metal coil surface coating operations: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)
- Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.
40 CFR 60.470 through 40 CFR 60.474
(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)
- Subpart VV - Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and On or Before November 7, 2006.
40 CFR 60.480 through 40 CFR 60.489
(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)
- Subpart VVa - Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.
40 CFR 60.480a through 40 CFR 60.489a
(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)
- Subpart WW - Beverage Can Surface Coating Industry.
40 CFR 60.490 through 40 CFR 60.496
(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)
- Subpart XX - Bulk Gasoline Terminals.
40 CFR 60.500 through 40 CFR 60.506
(total of all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)
- Subparts YY through ZZ - (Reserved)
- Subpart AAA - New Residential Wood Heaters.
40 CFR 60.530 through 40 CFR 60.539b
(wood heaters)
- Subpart BBB - Rubber Tire Manufacturing Industry.
40 CFR 60.540 through 40 CFR 60.548
(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)
- Subpart CCC - (Reserved)
- Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
40 CFR 60.560 through 40 CFR 60.566
(for polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a continuous process that emits continuously: each polymerization reaction section; if dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)
- Subpart EEE - (Reserved)
- Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.
40 CFR 60.580 through 40 CFR 60.585
(each rotogravure printing line used to print or coat flexible vinyl or urethane products)
- Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and On or Before November 7, 2006.
40 CFR 60.590 through 40 CFR 60.593
(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart GGGa - Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After November 7, 2006.

40 CFR 60.590a through 40 CFR 60.593a

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH - Synthetic Fiber Production Facilities.

40 CFR 60.600 through 40 CFR 60.604

(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618

(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ - Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625

(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.

40 CFR 60.630 through 40 CFR 60.636

(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet gas service, and any device or system required by this subpart)

Subpart LLL - Onshore Natural Gas Processing: Sulfur Dioxide Emissions.

40 CFR 60.640 through 40 CFR 60.648

(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM - (Reserved)

Subpart NNN - Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668

(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO - Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676

(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685

(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699

(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

Subpart RRR - Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708

(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS - Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718

(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726

(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU - Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 40 CFR 60.737

(each calciner and dryer at a mineral processing plant)

Regulations

Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748

(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW - Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

Subpart AAAA - Small Municipal Waste Combustors for which Construction is Commenced after August 30, 1999, or for which Modification or Reconstruction is Commenced after June 6, 2001.

40 CFR 60.1000 through 40 CFR 60.1465

(municipal waste combustor units with a capacity less than 250 tons per day and greater than 35 tons per day of municipal solid waste or refuse-derived fuel)

Subpart BBBB - Not applicable.

Subpart CCCC - Commercial/Industrial Solid Waste Incinerators for which Construction is Commenced after November 30, 1999, or for which Modification or Construction is Commenced on or after June 1, 2001.

40 CFR 60.2000 through 40 CFR 60.2265

(an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility, or an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility)

Subpart DDDD - Not applicable.

Subpart EEEE - Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006.

40 CFR 60.2880 through 40 CFR 60.2977

(very small municipal waste combustion units with the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, and institutional waste incineration units owned or operated by an organization having a governmental, educational, civic, or religious purpose)

Subpart FFFF - Reserved.

Subpart GGGG - Reserved.

Subpart HHHH - Reserved.

Subpart IIII - Stationary Compression Ignition Internal Combustion Engines.

40 CFR 60.4200 through 40 CFR 60.4219

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart JJJJ - Stationary Spark Ignition Internal Combustion Engines.

40 CFR 60.4230 through 40 CFR 60.4248

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart KKKK - Stationary Combustion Turbines.

40 CFR 60.4300 through 40 CFR 60.4420

(stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour)

Subpart LLLL - Sewage Sludge Incineration Units.

40 CFR 60.4760 through 40 CFR 60.4925

(an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter, including the sewage sludge feed system, auxiliary fuel feed system, grate system, flue gas system, waste heat recovery equipment, and bottom ash system; and all ash handling systems connected with the bottom ash handling system)

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of Emission Rate Change.

Appendix D - Required Emission Inventory Information.

Appendix E - (Reserved)

Appendix F - Quality Assurance Procedures.

Appendix G - (Not applicable)

Appendix H - (Reserved)

Appendix I - Removable label and owner's manual.

Part II Emission Standards

Article 1

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants (Rule 6-1)

9VAC5-60-60. General.

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants

(NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2010)~~ (2011) in effect July 1, ~~2010~~ 2011. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

Article 2

Environmental Protection Agency National Emission Standards for Hazardous Air Pollutants for Source Categories (Rule 6-2)

9VAC5-60-90. General.

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2010)~~ (2011) in effect July 1, ~~2010~~ 2011. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

9VAC5-60-100. Designated emission standards.

Subpart A - General Provisions.

40 CFR 63.1 through 40 CFR 63.11; 40 CFR 63.16

(applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring requirements, notification requirements, recordkeeping and reporting requirements, control device requirements, performance track provisions)

Subpart B - Not applicable.

Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.

40 CFR 63.60, 40 CFR 63.61, 40 CFR 63.62 and 40 CFR 63.63

(deletion of caprolactam from the list of hazardous air pollutants, deletion of methyl ethyl ketone from the list of hazardous air pollutants, redefinition of glycol ethers listed as hazardous air pollutants, deletion of ethylene glycol monobutyl ether)

Subpart D - Not applicable.

Subpart E - Not applicable.

Subpart F - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart G - Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to Subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H - Organic Hazardous Air Pollutants for Equipment Leaks.

40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I - Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in § 112 of the federal Clean Air Act)

Subpart J - Polyvinyl Chloride and Copolymers Production.

40 CFR 63.210 through 40 CFR 63.217

Regulations

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart K - Reserved.

Subpart L - Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing by-product coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M - Perchloroethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

(each dry cleaning facility that uses perchloroethylene)

Subpart N - Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O - Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P - Reserved.

Subpart Q - Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R - Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S - Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical pulping processes using wood; or any process using secondary or nonwood fibers)

Subpart T - Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U - Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V - Reserved.

Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527

(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X - Secondary Lead Smelting.

40 CFR 63.541 through 40 CFR 63.550

(at all secondary lead smelters: blast, reveratory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y - Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567

(marine tank vessel unloading operations at petroleum refineries)

Subpart Z - Reserved.

Subpart AA - Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through 40 CFR 63.610

(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB - Phosphate Fertilizers Production Plants.

40 CFR 63.620 through 40 CFR 63.631

(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC - Petroleum Refineries.

40 CFR 63.640 through 40 CFR 63.654

(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD - Off-Site Waste and Recovery Operations.

40 CFR 63.680 through 40 CFR 63.697

(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE - Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708

(manufacturers of magnetic tape)

Subpart FF - Reserved.

Subpart GG - Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through 40 CFR 63.752

(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH - Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779

(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II - Shipbuilding and Ship Repair (Surface Coating).

40 CFR 63.780 through 40 CFR 63.788

(shipbuilding and ship repair operations)

Subpart JJ - Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819

(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK - Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831

(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL - Primary Aluminum Reduction Plants.

40 CFR 63.840 through 40 CFR 63.859

(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semichemical Pulp Mills.

40 CFR 63.860 through 40 CFR 63.868

(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semichemical combustion units)

Subpart NN - Reserved.

Subpart OO - Tanks--Level 1.

40 CFR 63.900 through 40 CFR 63.907

(for off-site waste and recovery operations, fixed-roof tanks)

Subpart PP - Containers.

40 CFR 63.920 through 40 CFR 63.928

(for off-site waste and recovery operations, containers)

Subpart QQ - Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948

(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR - Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966

(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS - Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999

(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT - Equipment Leaks - Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU - Equipment Leaks - Control Level 2.

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

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Subpart VV - Oil-Water Separators and Organic-Water Separators.

40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

Subpart WW - Storage Vessels (Tanks) - Control Level 2.

40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX - Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste.

40 CFR 63.1080 through 40 CFR 63.1098

(any cooling tower system or once-through cooling water system)

Subpart YY - Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ - Reserved.

Subpart AAA - Reserved.

Subpart BBB - Reserved.

Subpart CCC - Steel Pickling - Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD - Mineral Wool Production.

40 CFR 63.1175 through 40 CFR 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE - Hazardous Waste Combustors.

40 CFR 63.1200 through 40 CFR 63.1221

(hazardous waste combustors)

Subpart FFF - Reserved.

Subpart GGG - Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH - Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III - Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ - Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK - Reserved.

Subpart LLL - Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM - Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN - Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 40 CFR 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO - Amino/Phenolic Resins Production.

40 CFR 63.1400 through 40 CFR 63.1419

(unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP - Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart QQQ - Primary Copper Smelting.

40 CFR 63.1440 through 40 CFR 63.1-1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR - Secondary Aluminum Production.

40 CFR 63.1500 through 40 CFR 63.1520

(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS - Reserved.

Subpart TTT - Primary Lead Smelting.

40 CFR 63.1541 through 40 CFR 63.1550

(sinter machines, blast furnaces, dross furnaces, process fugitive sources, fugitive dust sources)

Subpart UUU - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

40 CFR 63.1560 through 40 CFR 63.1579

(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV - Publicly Owned Treatment Works.

40 CFR 63.1580 through 40 CFR 63.1595

(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW - Reserved.

Subpart XXX - Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679

(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY - Reserved.

Subpart ZZZ - Reserved.

Subpart AAAA - Municipal Solid Waste Landfills.

40 CFR 63.1930 through 40 CFR 63.1990

(municipal solid waste landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition)

Subpart BBBB - Reserved.

Subpart CCCC - Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192

(fermentation vessels)

Subpart DDDD - Plywood and Composite Wood Products.

40 CFR 63.2230 through 40 CFR 63.2292

(manufacture of plywood and composite wood products by bonding wood material or agricultural fiber with resin under heat and pressure to form a structural panel or engineered wood product)

Subpart EEEE - Organic Liquids Distribution (Nongasoline).

40 CFR 63.2330 through 40 CFR 63.2406

(transfer of noncrude oil liquids or liquid mixtures that contain organic hazardous air pollutants, or crude oils downstream of the first point of custody, via storage tanks, transfer racks, equipment leak components associated with pipelines, and transport vehicles)

Subpart FFFF - Miscellaneous Organic Chemical Manufacturing.

40 CFR 63.2430 through 40 CFR 63.2550

(reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment that are used to produce a product or isolated intermediate)

Subpart GGGG - Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH--Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079

(wet-formed fiberglass mat drying and curing ovens)

Subpart IIII - Surface Coating of Automobiles and Light-Duty Trucks.

40 CFR 63.3080 through 40 CFR 63.3176.

(application of topcoat to new automobile or new light-duty truck bodies or body parts)

Subpart JJJJ - Paper and Other Web Coating.

40 CFR 63.3280 through 40 CFR 63.3420

(web coating lines engaged in the coating of metal webs used in flexible packaging and in the coating of fabric substrates for use in pressure-sensitive tape and abrasive materials)

Subpart KKKK - Surface Coating of Metal Cans.

40 CFR 63.3480 through 40 CFR 63.3561

(application of coatings to a substrate using spray guns or dip tanks, including one- and two-piece draw and iron can

Regulations

body coating; sheetcoating; three-piece can body assembly coating; and end coating)

Subpart LLLL - Reserved.

Subpart MMMM - Surface Coating of Miscellaneous Metal Parts and Products.

40 CFR 63.3880 through 40 CFR 63.3981

(application of coatings to industrial, household, and consumer products)

Subpart NNNN - Surface Coating of Large Appliances.

40 CFR 63.4080 through 40 CFR 63.4181

(surface coating of a large appliance part or product, including cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and HVAC units, air-conditioning, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps)

Subpart OOOO - Printing, Coating, and Dyeing of Fabrics and Other Textiles.

40 CFR 63.4280 through 40 CFR 63.4371

(printing, coating, slashing, dyeing, or finishing of fabric and other textiles)

Subpart PPPP - Surface Coating of Plastic Parts and Products.

40 CFR 63.4480 through 40 CFR 63.4581

(application of coating to a substrate using spray guns or dip tanks, including motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products)

Subpart QQQQ - Surface Coating of Wood Building Products.

40 CFR 63.4680 through 40 CFR 63.4781

(finishing or laminating of wood building products used in the construction of a residential, commercial, or institutional building)

Subpart RRRR - Surface Coating of Metal Furniture.

40 CFR 63.4880 through 40 CFR 63.4981

(application of coatings to substrate using spray guns and dip tanks)

Subpart SSSS - Surface Coating of Metal Coil.

40 CFR 63.5080 through 40 CFR 63.5209

(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT - Leather Finishing Operations.

40 CFR 63.5280 through 40 CFR 63.5460

(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU - Cellulose Products Manufacturing.

40 CFR 63.5480 through 40 CFR 63.5610

(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV - Boat Manufacturing.

40 CFR 63.5680 through 40 CFR 63.5779

(resin and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW - Reinforced Plastic Composites Production.

40 CFR 63.5780 through 40 CFR 63.5935

(reinforced or nonreinforced plastic composites or plastic molding compounds using thermostat resins and gel coats that contain styrene)

Subpart XXXX - Rubber Tire Manufacturing.

40 CFR 63.5980 through 40 CFR 63.6015

(production of rubber tires and components including rubber compounds, sidewalls, tread, tire beads, tire cord and liners)

Subpart YYYYY - Stationary Combustion Turbines.

40 CFR 63.6080 through 40 CFR 63.6175

(simple cycle, regenerative/recuperative cycle, cogeneration cycle, and combined cycle stationary combustion turbines)

Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines.

40 CFR 63.6580 through 40 CFR 63.6675.

(any stationary internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work)

(NOTE: Authority to enforce provisions related to affected facilities located at a major source as defined in 40 CFR 63.6675 is being retained by the Commonwealth.)

Authority to enforce the area source provisions of the above standard is being retained by EPA. The provisions of this subpart as they apply to area sources are not incorporated by reference into these regulations)

Subpart AAAAA - Lime Manufacturing Plants.

40 CFR 63.7080 through 40 CFR 63.7143.

(manufacture of lime product, including calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite, by calcination of limestone, dolomite, shells or other calcareous substances)

Subpart BBBBB - Semiconductor Manufacturing.

40 CFR 63.7180 through 40 CFR 63.7195

(semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate)

Subpart CCCCC - Coke Ovens: Pushing, Quenching, and Battery Stacks.

40 CFR 63.7280 through 40 CFR 63.7352

(pushing, soaking, quenching, and battery stacks at coke oven batteries)

Subpart DDDDD - Industrial, Commercial, and Institutional Boilers and Process Heaters.

40 CFR 63.7480 through 40 CFR 63.7575

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart EEEEE - Iron and Steel Foundries.

40 CFR 63.7680 through 40 CFR 63.7765

(metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines)

Subpart FFFFF - Integrated Iron and Steel Manufacturing.

40 CFR 63.7780 through 40 CFR 63.7852

(each sinter plant, blast furnace, and basic oxygen process furnace at an integrated iron and steel manufacturing facility)

Subpart GGGGG - Site Remediation.

40 CFR 63.7880 through 40 CFR 63.7957

(activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material)

Subpart HHHHH - Miscellaneous Coating Manufacturing.

40 CFR 63.7980 through 40 CFR 63.8105

(process vessels; storage tanks for feedstocks and products; pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks and transfer racks)

Subpart IIIII - Mercury Cell Chlor-Alkali Plants.

40 CFR 63.8180 through 40 CFR 63.8266

(byproduct hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes)

Subpart JJJJJ - Brick and Structural Clay Products Manufacturing.

40 CFR 63.8380 through 40 CFR 63.8515

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart KKKKK - Ceramics Manufacturing.

40 CFR 63.8530 through 40 CFR 63.8665

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

Subpart LLLLL - Asphalt Processing and Asphalt Roof Manufacturing.

40 CFR 63.8680 through 40 CFR 63.8698

(preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities)

Subpart MMMMM - Flexible Polyurethane Foam Fabrication Operations.

40 CFR 63.8780 through 40 CFR 63.8830

(flexible polyurethane foam fabrication plants using flame lamination or loop slitter adhesives)

Subpart NNNNN - Hydrochloric Acid Production.

40 CFR 63.8980 through 40 CFR 63.9075

(HCl production facilities that produce a liquid HCl product)

Subpart OOOOO - Reserved.

Subpart PPPPP - Engine Test Cells and Stands.

40 CFR Subpart 63.9280 through 40 CFR 63.9375

(any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines)

Subpart QQQQQ - Friction Materials Manufacturing Facilities.

Regulations

- 40 CFR 63.9480 through 40 CFR 63.9579
(friction materials manufacturing facilities that use a solvent-based process)
- Subpart RRRRRR - Taconite Iron Ore Processing.
40 CFR 63.9580 through 40 CFR 63.9652
(ore crushing and handling, ore dryer stacks, indurating furnace stacks, finished pellet handling, and fugitive dust)
- Subpart SSSSSS - Refractory Products Manufacturing.
40 CFR 63.9780 through 40 CFR 63.9824
(manufacture of refractory products, including refractory bricks and shapes, monolithics, kiln furniture, crucibles, and other materials for liming furnaces and other high temperature process units)
- Subpart TTTTTT - Primary Magnesium Refining.
40 CFR 63.9880 through 40 CFR 63.9942
(spray dryer, magnesium chloride storage bin scrubber, melt/reactor system, and launder off-gas system stacks)
- Subpart UUUUUU - Reserved.
- Subpart VVVVVV - Reserved.
- Subpart WWWWWW - Hospital Ethylene Oxide Sterilizer Area Sources.
40 CFR 63.10382 through 40 CFR 63.10448
(any enclosed vessel that is filled with ethylene oxide gas or an ethylene oxide/inert gas mixture for the purpose of sterilization)
- Subpart XXXXXX - Reserved.
- Subpart YYYYYY - Electric Arc Furnace Steelmaking Facility Area Sources.
40 CFR 63.10680 through 40 CFR 63.10692
(a steel plant that produces carbon, alloy, or specialty steels using an electric arc furnace)
- Subpart ZZZZZZ - Iron and Steel Foundries Area Sources.
40 CFR 63.10880 through 40 CFR 63.10906
(a facility that melts scrap, ingot, and/or other forms of iron and/or steel and pours the resulting molten metal into molds to produce final or near final shape products for introduction into commerce)
- Subpart AAAAAA - Reserved.
- Subpart BBBBBB - Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities, Area Sources.
40 CFR 63.11080 through 40 CFR 63.11100
(gasoline storage tanks, gasoline loading racks, vapor collection-equipped gasoline cargo tanks, and equipment components in vapor or liquid gasoline service)
- Subpart CCCCCC - Gasoline Dispensing Facilities, Area Sources.
40 CFR 63.11110 through 40 CFR 63.11132
(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)
- Subpart DDDDDD - Polyvinyl Chloride and Copolymers Production Area Sources.
40 CFR 63.11140 through 40 CFR 63.11145
(plants that produce polyvinyl chloride or copolymers)
- Subpart EEEEEEE - Primary Copper Smelting Area Sources.
40 CFR 63.11146 through 40 CFR 63.11152
(any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques)
- Subpart FFFFFFFF - Secondary Copper Smelting Area Sources.
40 CFR 63.11153 through 40 CFR 63.11159
(a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap)
- Subpart GGGGGG - Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.
40 CFR 63.11160 through 40 CFR 63.11168
(cadmium melting furnaces used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production; primary beryllium production facilities engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes; and primary zinc production facilities engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques)
- Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating Operations Area Sources.
40 CFR 63.11169 through 40 CFR 63.11180
(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)
- Subpart IIIIII - Reserved.

Subpart JJJJJJ - Reserved Industrial, Commercial, and Institutional Boiler Area Sources.

40 CFR 63.11193 through 40 CFR 63.11226

(NOTE: Authority to enforce the above standard is being retained by EPA and is not incorporated by reference into these regulations.)

Subpart KKKKKK - Reserved.

Subpart LLLLLL - Acrylic and Modacrylic Fibers Production Area Sources.

40 CFR 63.11393 through 40 CFR 63.11399

(production of either of the following synthetic fibers composed of acrylonitrile units: acrylic fiber or modacrylic fiber)

Subpart MMMMMM - Carbon Black Production Area Sources.

40 CFR 63.11400 through 40 CFR 63.11406

(carbon black production process units including all waste management units, maintenance wastewater, and equipment components that contain or contact HAP that are associated with the carbon black production process unit)

Subpart NNNNNN - Chemical Manufacturing Area Sources: Chromium Compounds.

40 CFR 63.11407 through 40 CFR 63.11413

(any process that uses chromite ore as the basic feedstock to manufacture chromium compounds, primarily sodium dichromate, chromic acid, and chromic oxide)

Subpart OOOOOO - Flexible Polyurethane Foam Production and Fabrication Area Sources.

40 CFR 63.11414 through 40 CFR 63.11420

(a facility where pieces of flexible polyurethane foam are cut, bonded, and/or laminated together or to other substrates)

Subpart PPPPPP - Lead Acid Battery Manufacturing Area Sources.

40 CFR 63.11421 through 40 CFR 63.11427

(grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and any other lead-emitting operation that is associated with the lead acid battery manufacturing plant)

Subpart QQQQQQ - Wood Preserving Area Sources.

40 CFR 63.11428 through 40 CFR 63.11434

(pressure or thermal impregnation of chemicals into wood to provide effective long-term resistance to attack by fungi, bacteria, insects, and marine borers)

Subpart RRRRRR - Clay Ceramics Manufacturing Area Sources.

40 CFR 63.11435 through 40 CFR 63.11447

(manufacture of pressed tile, sanitaryware, dinnerware, or pottery with an atomized glaze spray booth or kiln that fires glazed ceramic ware)

Subpart SSSSSS - Glass Manufacturing Area Sources.

40 CFR 63.11448 through 40 CFR 63.11461

(manufacture of flat glass, glass containers, or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers, or other shapes)

Subpart TTTTTT - Secondary Nonferrous Metals Processing Area Sources.

40 CFR 63.11462 through 40 CFR 63.11474

(all crushing and screening operations at a secondary zinc processing facility and all furnace melting operations located at any secondary nonferrous metals processing facility)

Subpart UUUUUU - Reserved.

Subpart VVVVVV - Chemical Manufacturing Area Sources.

40 CFR 63.11494 through 40 CFR 11503

(each chemical manufacturing process unit that uses as feedstocks, generates as byproducts, or produces as products any of the following: 1,3-butadiene; 1,3-dichloropropene; acetaldehyde; chloroform; ethylene dichloride; methylene chloride; hexachlorobenzene; hydrazine; quinoline; or compounds of arsenic, cadmium, chromium, lead, manganese, or nickel)

Subpart WWWWWW - Plating and Polishing Operations, Area Sources.

40 CFR 63.11504 through 40 CFR 63.11513

(new and existing tanks, thermal spraying equipment, and mechanical polishing equipment used in non-chromium electroplating, electroless or non-electrolytic plating, non-electrolytic metal coating, dry mechanical polishing, electroforming, and electropolishing)

Subpart XXXXXX - Nine Metal Fabrication and Finishing Source Categories, Area Sources.

40 CFR 63.11514 through 40 CFR 63.11523

(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations.)

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Subpart YYYYYYY - Ferroalloys Production Facilities, Area Sources.

40 CFR 63.11524 through 40 CFR 63.11543

(manufacture of silicon metal, ferrosilicon, ferrotitanium using the aluminum reduction process, ferrovanadium, ferromolybdenum, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, calcium carbide or other ferroalloy products using electrometallurgical operations including electric arc furnaces or other reaction vessels)

Subpart ZZZZZZ - Aluminum, Copper, and Other Nonferrous Foundries, Area Sources.

40 CFR 63.11544 through 40 CFR 63.11558

~~(NOTE: Authority to enforce the above standard is being retained by EPA and it is not incorporated by reference into these regulations: (melting operations at aluminum, copper, and other nonferrous foundries, including the collection of induction, reverberatory, crucible, tower, or dry hearth furnaces used to melt metal ingot, alloyed ingot and/or metal scrap to produce molten metal that is poured into molds to make castings))~~

Subpart AAAAAAA - Asphalt Processing and Asphalt Roofing Manufacturing Area Sources.

40 CFR 63.11559 through 40 CFR 63.11567

(asphalt processing operations that prepare asphalt flux at standalone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities that include one or more asphalt flux blowing stills; and asphalt roofing manufacturing operations that manufacture asphalt roofing products through a series of sequential process steps depending upon whether the type of substrate used is organic or inorganic)

Subpart BBBB BBB - Chemical Preparations Industry Area Sources.

40 CFR 63.11579 through 40 CFR 63.11588

(any facility-wide collection of chemical preparation operations, including the collection of mixing, blending, milling, and extruding equipment used to manufacture chemical preparations that contain metal compounds for chromium, lead, manganese, and nickel)

Subpart CCCCCC - Paints and Allied Products Manufacturing Area Sources.

40 CFR 63.11599 through 40 CFR 63.11638

(paints and allied products manufacturing processes, including, weighing, blending, mixing, grinding, tinting,

dilution or other formulation, as well as cleaning operations, material storage and transfer, and piping)

Subpart DDDDDDD - Prepared Feeds Manufacturing Area Sources.

40 CFR 63.11619 through 40 CFR 63.11638

(production of animal feed from the point in the process where a material containing chromium or manganese is added, to the point where the finished product leaves the facility, including areas where materials containing chromium and manganese are stored, areas where materials containing chromium and manganese are temporarily stored prior to addition to the feed at the mixer, mixing and grinding processes, pelleting and pellet cooling processes, packing and bagging processes, crumblers and screens, bulk loading operations, and all conveyors and other equipment that transfer feed materials)

Subpart EEEEEEE - Gold Mine Ore Processing and Production Area Sources

40 CFR 63.11640 through 40 CFR 63.11653

(any industrial facility engaged in the processing of gold mine ore that uses any of the following processes: roasting operations, autoclaves, carbon kilns, preg tanks, electrowinning, mercury retorts, or melt furnaces)

Appendix A - Test Methods.

Appendix B - Sources Defined for Early Reduction Provisions.

Appendix C - Determination of the Fraction Biodegraded (F_{bio}) in a Biological Treatment Unit.

Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods.

V.A.R. Doc. No. R12-2976; Filed December 16, 2011, 1:13 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming exemptions from §§ 2.2-4007 through 2.2-4007.06, 2.2-4013, 2.2-4014, and 2.2-4015 of the Administrative Process Act. Sections 2.2-4007.07, 2.2-4013 E, 2.2-4014 D, and 2.2-4015 C of the Administrative Process Act provide that these sections shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

Title of Regulation: **9VAC5-221. Variance for Rocket Motor Test Operations at Atlantic Research Corporation Gainesville Facility (repealing 9VAC5-221-10 through 9VAC5-221-60).**

Statutory Authority: §§ 10.1-1307 and 10.1-1308 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 15, 2012.

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

Background: On September 30, 2002, the board issued a variance (9VAC5-221) to the Atlantic Research Corporation (ARC) rocket test facility. Due to the nature of the testing operations, ARC had no appropriate method by which it could demonstrate compliance with the board's opacity standards. The board, therefore, granted a variance for the testing facility that enabled ARC to demonstrate compliance through meeting a particulate matter standard as an alternative to the opacity standard. Because the facility was shut down in March 2007, the variance is no longer required. In order for the state regulations to be administratively correct, 9VAC5-221 must now be repealed.

Summary:

The proposed action repeals the variance issued to the Atlantic Research Corporation rocket test facility. The variance is no longer required because the facility was shut down in March 2007.

VA.R. Doc. No. R12-3020; Filed December 19, 2011, 12:13 p.m.

VIRGINIA WASTE MANAGEMENT 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 Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-18).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 40 CFR Parts 260-272.

Effective Date: February 15, 2012.

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

Summary:

Virginia Hazardous Waste Management Regulations, 9VAC20-60, include requirements in the form of incorporated federal regulatory text at Title 40 of the Code of Federal Regulations. The amendment specifies that the federal regulatory text as it existed prior to July 1, 2011, is incorporated. The effective date of the incorporated text will be the effective date as published in the Federal Register notice or February 15, 2012 (the effective date of this amendment), whichever is later.

9VAC20-60-18. Applicability of incorporated references based on the dates on which they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, ~~2010~~ 2011, with the effective date as published in the Federal Register notice or ~~March 2, 2011~~ February 15, 2012, whichever is later.

VA.R. Doc. No. R12-3025; Filed December 16, 2011, 1:36 p.m.

Forms

REGISTRAR'S NOTICE: The following forms used in administering the regulations referenced below have been filed by the Virginia Waste Management Board. Amended or added forms are not being published, but online users of the Virginia Register of Regulations may view the forms by clicking on the title of the form. The forms are also available through the agency contact listed below or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Titles of Regulations: **9VAC20-81. Solid Waste Management Regulations.**

9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees.

Agency Contact: Debra A. Miller, Policy Planning Specialist, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

FORMS (9VAC20-81)

[Annual Report QA/QC Submission Checklist, DEQ Form ARSC-01 \(rev. 7/11\).](#)

[Solid Waste Management Facility Permit Applicant's Disclosure Statement, DEQ Form DISC-01 \(rev. 4/11\).](#)

[Solid Waste Management Facility Permit Applicant's Disclosure Statement - Key Personnel, DEQ Form DISC-02 \(rev. 4/11\).](#)

Regulations

[Request for Certification \(Local Government\), DEQ Form SW-11-1 \(rev. 7/11\).](#)

[Solid Waste Part A Application, DEQ Form SW PTA \(rev. 3/11\).](#)

[Solid Waste Disposal Facility Part B Application, DEQ Form SW PTB \(rev. 3/11\).](#)

~~[Solid Waste Information and Assessment Program - Reporting Table, DEQ Form 50-25 \(rev. 10/10\).](#)~~

[Solid Waste Information and Assessment Program - Reporting Table, DEQ Form 50-25 \(rev. 12/11\).](#)

[Instructions for Completing Form DEQ 50-25 \(rev. 12/11\).](#)

[Yard Waste Composting Notice of Intent and Certification, DEQ Form YW-1.](#)

[Exempt Yard Waste Composting Annual Report, DEQ Form YW-2 \(rev. 7/11\).](#)

[Exempt Yard Waste Compost Facility - Notice of Intent and Certification, DEQ Form YW-3 \(rev. 7/11\).](#)

[Exempt Yard Waste & Herbivorous Manures Compost Facility - Notice of Intent and Certification, DEQ Form YW-4 \(rev. 7/11\).](#)

FORMS (9VAC20-90)

~~[Solid Waste Information and Assessment Program - Reporting Table, DEQ Form 50-25 \(rev. 10/10\).](#)~~

[Solid Waste Information and Assessment Program - Reporting Table, DEQ Form 50-25 \(rev. 12/11\).](#)

[Instructions for Completing Form DEQ 50-25 \(rev. 12/11\).](#)

[Solid Waste Annual Permit Fee Quarter Payment Form PF001 \(rev. 7/11\).](#)

VA.R. Doc. No. R12-3079; Filed December 22, 2011, 1:55 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 Virginia Waste Management Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC20-110. Regulations Governing the Transportation of Hazardous Materials (amending 9VAC20-110-110).**

Statutory Authority: §§ 10.1-1450 and 44-146.30 of the Code of Virginia; 49 USC § 1809-1810; 49 CFR Parts 107, 170-180, 383, and 390-397.

Effective Date: February 15, 2012.

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

Summary:

The amendment incorporates certain federal amendments to regulations governing the transportation of hazardous materials promulgated by the U.S. Secretary of Transportation as of October 1, 2011.

Part III

Compliance With Federal Regulations

9VAC20-110-110. Compliance.

Every person who transports or offers for transportation hazardous materials within or through the Commonwealth of Virginia shall comply with the federal regulations governing the transportation of hazardous materials promulgated by the United States Secretary of Transportation with amendments promulgated as of October 1, ~~2010~~ 2011, pursuant to the Hazardous Materials Transportation Act, and located at Title 49 of the Code of Federal Regulations as set forth below and which are incorporated in these regulations by reference:

1. Exemptions. 49 CFR Part 107, Subpart B.
2. Registration of Persons Who Offer or Transport Hazardous Materials in 49 CFR Part 107, Subpart G.
3. Hazardous Materials Regulations in 49 CFR Parts 171 through 177.
4. Specifications for Packagings in 49 CFR Part 178.
5. Specifications for Tank Cars in 49 CFR Part 179.
6. Continuing Qualifications and Maintenance of Packagings in 49 CFR Part 180.
7. Motor Carrier Safety Regulations in 49 CFR Parts 390 through 397.

VA.R. Doc. No. R12-3026; Filed December 16, 2011, 1:40 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors and (ii) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Environmental Quality will

receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-31. **Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-10, 9VAC25-31-30, 9VAC25-31-40, 9VAC25-31-100, 9VAC25-31-120, 9VAC25-31-130, 9VAC25-31-150, 9VAC25-31-190, 9VAC25-31-200, 9VAC25-31-220, 9VAC25-31-230, 9VAC25-31-340, 9VAC25-31-470, 9VAC25-31-490, 9VAC25-31-500, 9VAC25-31-750, 9VAC25-31-770, 9VAC25-31-780, 9VAC25-31-790, 9VAC25-31-800, 9VAC25-31-810, 9VAC25-31-840, 9VAC25-31-900; adding 9VAC25-31-25).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503.

Effective Date: February 15, 2012.

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

Summary:

The Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9VAC25-31, includes citations and requirements in the form of incorporated federal regulatory text of Title 40 of the Code of Federal Regulations (CFR). This regulatory amendment updates the citations and incorporation of Title 40 of the CFR as of July 1, 2011. CFR reference dates throughout the chapter are deleted and a new section, 9VAC25-31-25, is added. This new section provides the date of the latest CFR revised as of July 1, 2011, which is adopted by this action.

Part I

Definitions and General Program Requirements

9VAC25-31-10. Definitions.

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

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

"Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

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

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

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

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

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

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

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

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

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

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

"Class I sludge management facility" means any POTW identified under Part VII (9VAC25-31-730 et seq.) of this chapter as being required to have an approved pretreatment

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program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

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

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

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

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

- a. The type and number of animals that it stables or confines falls within any of the following ranges:
 - (1) 200 to 699 mature dairy cattle, whether milked or dry;
 - (2) 300 to 999 veal calves;

- (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

- (4) 750 to 2,499 swine each weighing 55 pounds or more;

- (5) 3,000 to 9,999 swine each weighing less than 55 pounds;

- (6) 150 to 499 horses;

- (7) 3,000 to 9,999 sheep or lambs;

- (8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

- (9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

- (10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

- (11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;

- (12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

- (1) Pollutants are discharged into surface waters of the state through a manmade ditch, flushing system, or other similar manmade device; or

- (2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

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

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

1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

- a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

- b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or

2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

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

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

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

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

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

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

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

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

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

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

"Department" means the Virginia Department of Environmental Quality.

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

"Direct discharge" means the discharge of a pollutant.

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

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

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

"Discharge of a pollutant" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial

wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

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

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

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

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

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

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

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

"New source," when used in Part VII of this chapter, means any building, structure, facility, or installation from which

there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under § 307(c) of the CWA which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

1. a. The building, structure, facility or installation is constructed at a site at which no other source is located;
- b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

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

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

- a. Begun, or caused to begin, as part of a continuous on-site construction program:
 - (1) Any placement, assembly, or installation of facilities or equipment; or
 - (2) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

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

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

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private

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institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

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

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

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

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

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

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

1. Sewage from vessels; or
2. Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the board, and if the

board determines that the injection or disposal will not result in the degradation of ground or surface water resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Significant industrial user" or "SIU" means:

1. Except as provided in subdivisions 2 and 3 of this definition:
 - a. All industrial users subject to categorical pretreatment standards under 9VAC25-31-780 and incorporated by reference in 9VAC25-31-30; and
 - b. Any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process

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wastestream which makes up 5.0% or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority, on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

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

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

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

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

"Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into surface waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and

subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural run-off. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA § 404 permit.

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

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

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

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

"State" means the Commonwealth of Virginia.

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

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

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

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

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

1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards (except facilities with toxic pollutant effluent standards which are exempted under category 10);
2. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;
3. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) ~~(2005)~~ because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);
4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim

status or a permit under Subtitle C of RCRA (42 USC § 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA (42 USC § 6901 et seq.);
6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;
7. Steam electric power generating facilities, including coal handling sites;
8. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions 1 through 7 or 9 and 10 of this definition are associated with industrial activity;
9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with § 405 of the CWA; and
10. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25.

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

"Surface waters" means:

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

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

2. All interstate waters, including interstate wetlands;

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

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

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

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

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

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

6. The territorial sea; and

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

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

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

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

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

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or

alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

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

"TWTDS" means treatment works treating domestic sewage.

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

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

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

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

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

"Wastewater," when used in Part VII of this chapter, means liquid and water carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

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

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

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

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

9VAC25-31-25. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the United States Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted herein and incorporated by reference, that regulation shall be as it exists and has been published as a final regulation in the Federal Register prior to July 1, 2011, with the effective date as published in the Federal Register notice or February 15, 2012, whichever is later.

9VAC25-31-30. Federal effluent guidelines.

A. The following federal regulations are hereby incorporated by reference:

- Aluminum Forming 40 CFR Part 467 ~~(2005)~~
- Asbestos Manufacturing 40 CFR Part 427 ~~(2005)~~
- Battery Manufacturing 40 CFR Part 461 ~~(2005)~~
- Canned and Preserved Fruits and Vegetables 40 CFR Part 407 ~~(2005)~~
- Canned and Preserved Seafood 40 CFR Part 408 ~~(2005)~~

- Carbon Black Manufacturing 40 CFR Part 458 ~~(2005)~~
- Cement Manufacturing 40 CFR Part 411 ~~(2005)~~
- Centralized Waste Treatment 40 CFR Part 437 ~~(2005)~~
- Coal Mining 40 CFR Part 434 ~~(2005)~~
- Coil Coating 40 CFR Part 465 ~~(2005)~~
- Copper Forming 40 CFR Part 468 ~~(2005)~~
- Dairy Products 40 CFR Part 405 ~~(2005)~~
- Electrical and Electronic Components 40 CFR Part 469 ~~(2005)~~
- Electroplating 40 CFR Part 413 ~~(2005)~~
- Explosives Manufacturing 40 CFR Part 457 ~~(2005)~~
- Feedlots 40 CFR Part 412 (2009)
- Ferrous Alloy Manufacturing 40 CFR Part 424 ~~(2005)~~
- Fertilizer Manufacturing 40 CFR Part 418 ~~(2005)~~
- Glass Manufacturing 40 CFR Part 426 ~~(2005)~~
- Grain Mills 40 CFR Part 406 ~~(2005)~~
- Gum and Wood Chemicals Manufacturing 40 CFR Part 454 ~~(2005)~~
- Hospitals 40 CFR Part 460 ~~(2005)~~
- Ink Formulating 40 CFR Part 447 ~~(2005)~~
- Inorganic Chemicals Manufacturing 40 CFR Part 415 ~~(2005)~~
- Iron and Steel Manufacturing 40 CFR Part 420 ~~(2005)~~
- Landfills 40 CFR Part 445 ~~(2005)~~
- Leather Tanning and Finishing 40 CFR Part 425 ~~(2005)~~
- Meat Products 40 CFR Part 432 ~~(2005)~~
- Metal Finishing 40 CFR Part 433 ~~(2005)~~
- Metal Molding and Casting 40 CFR Part 464 ~~(2005)~~
- Metal Products and Machinery 40 CFR Part 438 ~~(2005)~~
- Mineral Mining and Processing 40 CFR Part 436 ~~(2005)~~
- Nonferrous Metals 40 CFR Part 421 ~~(2005)~~
- Nonferrous Metal Forming 40 CFR Part 471 ~~(2005)~~
- Oil and Gas Extraction 40 CFR Part 435 ~~(2005)~~
- Ore Mining and Dressing 40 CFR Part 440 ~~(2005)~~
- Organic Chemicals, Plastics and Synthetic Fibers 40 CFR Part 414 ~~(2005)~~
- Paint Formulating 40 CFR Part 446 ~~(2005)~~
- Paving and Roofing Materials 40 CFR Part 443 ~~(2005)~~

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Pesticide Chemicals 40 CFR Part 455 ~~(2005)~~
Petroleum Refining 40 CFR Part 419 ~~(2005)~~
Pharmaceutical Manufacturing 40 CFR Part 439 ~~(2005)~~
Phosphate Manufacturing 40 CFR Part 422 ~~(2005)~~
Photographic Processing 40 CFR Part 459 ~~(2005)~~
Plastics Molding and Forming 40 CFR Part 463 ~~(2005)~~
Porcelain Enameling 40 CFR Part 466 ~~(2005)~~
Pulp, Paper and Paperboard 40 CFR Part 430 ~~(2005)~~
Rubber Processing 40 CFR Part 428 ~~(2005)~~
Secondary Treatment 40 CFR Part 133 ~~(2005)~~
Soaps and Detergents 40 CFR Part 417 ~~(2005)~~
Steam Electric Power Generation 40 CFR Part 423 ~~(2005)~~
Sugar Processing 40 CFR Part 409 ~~(2005)~~
Textile Mills 40 CFR Part 410 ~~(2005)~~
Timber Products 40 CFR Part 429 ~~(2005)~~
Toxic Pollutant Effluent Standards 40 CFR Part 129 ~~(2005)~~
Transportation Equipment Cleaning 40 CFR Part 442 ~~(2005)~~
Waste Combustors 40 CFR Part 444 ~~(2005)~~

B. The director shall be responsible for identifying any subsequent changes in the regulations incorporated in the previous subsection or the adoption or the modification of any new national standard. Upon identifying any such federal change or adoption, the director shall initiate a regulation adopting proceedings by preparing and filing with the Registrar of Regulations the notice required by § 2.2-4006 A 4 c of the Code of Virginia or a notice of a public hearing pursuant to § 2.2-4007 C of the Code of Virginia.

9VAC25-31-40. Exclusions.

The following discharges do not require VPDES permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.

2. Discharges of dredged or fill material into surface waters which are regulated under § 404 of the CWA.

3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 ~~(2000)~~ (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) ~~(2000)~~ (Pollution by Oil and Hazardous Substances).

5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water run-off from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

6. Return flows from irrigated agriculture.

7. Discharges into a privately owned treatment works, except as the board may otherwise require.

Part II

Permit Applications and Special VPDES Permit Programs

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

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

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

C. Time to apply.

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the

discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

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

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

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

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

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

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

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

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

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the

environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

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

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

E. Completeness.

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

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

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

4. A permit application shall not be considered complete if the board has waived application requirements under

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subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

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

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

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

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

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

i. Other relevant environmental permits, including state permits.

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

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

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

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.
2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.
3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm

water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

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

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

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

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9VAC25-31-120). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2005). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged.

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

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

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Biochemical oxygen demand (BOD₅)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

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

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A ~~(2005)~~) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

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

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

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D ~~(2005)~~ (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

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

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

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

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

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

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

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

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

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

10. Reserved.

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

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

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

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;
2. Date of expected commencement of discharge;
3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of

operations, along with their composition if existing composition is available;

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

- (1) Biochemical oxygen demand (BOD₅).
- (2) Total suspended solids (TSS).
- (3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).
- (4) Total residual chlorine (if chlorine is used).
- (5) Oil and grease.
- (6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).
- (7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).
- (8) Ammonia (as N).
- (9) Discharge flow.
- (10) pH.
- (11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

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

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

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

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

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

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

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

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

1. For concentrated animal feeding operations:

a. The name of the owner or operator;

b. The facility location and mailing address;

c. Latitude and longitude of the production area (entrance to the production area);

d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision F 7 of this section;

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

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

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

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

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

2. For concentrated aquatic animal production facilities:

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

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

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

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

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

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

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

a. Name, mailing address, and location of the facility for which the application is submitted;

b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under § 404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent,

combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

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

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

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

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

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- (1) Treatment plant area and unit processes;
- (2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;
- (3) Each well where fluids from the treatment plant are injected underground;
- (4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;
- (5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and
- (6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic.

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

- (2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

- (1) The outfall number of each outfall affected;
- (2) A narrative description of each required improvement;
- (3) Scheduled or actual dates of completion for the following:
 - (a) Commencement of construction;
 - (b) Completion of construction;
 - (c) Commencement of discharge; and
 - (d) Attainment of operational level; and
- (4) A description of permits and clearances concerning other federal or state requirements;

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

a. The following information about each outfall:

- (1) Outfall number;

- (2) State, county, and city or town in which outfall is located;
- (3) Latitude and longitude, to the nearest second;
- (4) Distance from shore and depth below surface;
- (5) Average daily flow rate, in million gallons per day;
- (6) The following information for each outfall with a seasonal or periodic discharge:
 - (a) Number of times per year the discharge occurs;
 - (b) Duration of each discharge;
 - (c) Flow of each discharge; and
 - (d) Months in which discharge occurs; and
- (7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

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

- (1) Name of receiving water;
- (2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;
- (3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and
- (4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

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

- (1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:
 - (a) Design biochemical oxygen demand (BOD₅ or CBOD₅) removal (percent);
 - (b) Design suspended solids (SS) removal (percent); and, where applicable;
 - (c) Design phosphorus (P) removal (percent);
 - (d) Design nitrogen (N) removal (percent); and
 - (e) Any other removals that an advanced treatment system is designed to achieve.

- (2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

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

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

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

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

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

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

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (~~2005~~), and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

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

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

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

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

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

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

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

5. Effluent monitoring for whole effluent toxicity.

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

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from

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each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

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

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

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

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

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

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

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

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

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

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

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

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

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

dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

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

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

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

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

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

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

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

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

(1) Name and mailing address;

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

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

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

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

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

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

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

- (1) An annual report submitted within one year of the application; or
- (2) A pretreatment program.

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

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

- (1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and
- (2) The hazardous waste number and amount received annually of each hazardous waste.

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

- (1) The identity and description of the site or facility at which the wastewater originates;
- (2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (~~2005~~), if known; and
- (3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

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

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

a. The following information regarding the combined sewer system:

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

- (a) All CSO discharge points;
- (b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and
- (c) Waters supporting threatened and endangered species potentially affected by CSOs; and

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

- (a) The location of major sewer trunk lines, both combined and separate sanitary;
- (b) The locations of points where separate sanitary sewers feed into the combined sewer system;
- (c) In-line and off-line storage structures;
- (d) The locations of flow-regulating devices; and
- (e) The locations of pump stations.

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

(1) The following information on each outfall:

- (a) Outfall number;
- (b) State, county, and city or town in which outfall is located;
- (c) Latitude and longitude, to the nearest second;
- (d) Distance from shore and depth below surface;
- (e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and
- (f) The number of storm events monitored in the past year;

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

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

(3) The following information about receiving waters:

- (a) Name of receiving water;

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(b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

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

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

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

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

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production

reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

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

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

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

(3) Total organic carbon (TOC).

(4) Total suspended solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

(8) pH.

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

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

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

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

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (~~2005~~) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

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

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

L. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §§ 301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues

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have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2005) have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

M. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (2005).

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance

request to submit a request explaining how the requirements of 40 CFR Part 125 (2005) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

O. Recordkeeping. Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as federal, state, private, public, or other entity;

f. The name, mailing address, and telephone number of the applicant; and

- g. Indication whether the applicant is the owner, operator, or both.
2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:
 - a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
 - b. UIC program under the Safe Drinking Water Act (SDWA);
 - c. NPDES program under the Clean Water Act (CWA);
 - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
 - e. Nonattainment program under the Clean Air Act;
 - f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
 - g. Dredge or fill permits under § 404 of the CWA;
 - h. Other relevant environmental permits, including state or local permits.
 3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.
 4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:
 - a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
 - b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.
 5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.
 6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:
 - a. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.
 - b. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.
 - c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490 unless an alternative has been specified in an existing sewage sludge permit.
 - d. The monitoring data provided must include at least the following information for each parameter:
 - (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
 - (2) The analytical method used; and
 - (3) The method detection level.
 7. If the applicant is a person who prepares sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:
 - a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility.
 - b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:
 - (1) The name, mailing address, and location of the other facility;
 - (2) The total dry metric tons per 365-day period received from the other facility; and
 - (3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.
 - c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:
 - (1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;
 - (2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

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(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined in 9VAC25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(9) Other information that describes how the site will be managed, as specified by the board.

d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 9VAC25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9VAC25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

- (1) Describes the geographical area covered by the plan;
- (2) Identifies the site selection criteria;
- (3) Describes how the site(s) will be managed;
- (4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge and to notify persons residing on property bordering such sites for the purpose of receiving written comments from those persons for a period not to exceed 30 days. The department shall, based upon these comments, determine whether additional site-specific requirements should be included in the authorization for land application at the site; and
- (5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

A request to increase the acreage authorized by the initial permit by 50% or more shall be treated as a new application for purposes of public notice and public hearings.

9. An applicant for a permit authorizing the land application of sewage sludge shall provide to the department, and to each locality in which the applicant proposes to land apply sewage sludge, written evidence of financial responsibility, including both current liability and pollution insurance, or such other evidence of financial responsibility as the board may establish by regulation in an amount not less than \$1 million per occurrence, which shall be available to pay claims for cleanup costs, personal injury, bodily injury and property damage resulting from the transport, storage and land application of sewage sludge in Virginia. The aggregate amount of financial liability to be maintained by the applicant shall be \$1 million for companies with less than \$5 million in annual gross revenue and shall be \$2 million for companies with \$5 million or more in annual gross revenue.

10. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any

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treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

11. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

12. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Solid Waste Management Regulations, 9VAC20-81.

13. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

14. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

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

Q. Applications for facilities with cooling water intake structures.

1. Application requirements. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.

2. Source water physical data. These include:

a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. Location maps.

3. Cooling water intake structure data. These include:

- a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;
- b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;
- c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;
- d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and
- e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

- a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;
- b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;
- c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;
- d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;
- e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;
- f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in subdivision 4 of this subsection is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.

Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

- a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (~~2005~~)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.
- b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (~~2005~~)), and testing and reporting for all four fractions in all other subcategories of this industrial category.
- c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

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

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

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

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

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

9VAC25-31-120. Storm water discharges.

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a VPDES permit except:

a. A discharge with respect to which a permit has been issued prior to February 4, 1987;

b. A discharge associated with industrial activity; or

c. A discharge which either the board or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water run-off, except for those discharges from conveyances which do not require a permit under subdivision 2 of this subsection or agricultural storm water run-off which is exempted from the definition of point source.

2. The board may not require a permit for discharges of storm water run-off from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of

flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation run-off and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. In addition to meeting the requirements of subsection B of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing VPDES permit number.

4. For storm water discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the board, in its discretion, may issue: a single VPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into surface waters; or, individual permits to each discharger of storm water associated with industrial activity through the nonmunicipal conveyance system.

a. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to surface waters, with each discharger to the nonmunicipal conveyance a co-permittee to that permit.

b. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

c. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

5. Conveyances that discharge storm water run-off combined with municipal sewage are point sources that must obtain VPDES permits in accordance with the procedures of 9VAC25-31-100 and are not subject to the provisions of this section.

6. Whether a discharge from a municipal separate storm sewer is or is not subject to VPDES regulation shall have no bearing on whether the owner or operator of the

discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

7. a. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a VPDES permit only if:

(1) The board or the EPA regional administrator determines that storm water controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(2) The board or the EPA regional administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of nonmunicipal sources designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall seek coverage under a VPDES permit in accordance with subdivision B 1 of this section.

c. Operators of storm water discharges designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall apply to the board for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the board.

B. Application requirements for storm water discharges associated with industrial activity.

1. Dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the board is evaluating for designation under subdivision A 1 c of this section, shall submit a VPDES application in accordance with the requirements of 9VAC25-31-100 as modified and supplemented by the provisions of this subsection.

a. Except as provided in subdivisions 1 b and c of this subsection, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(1) A site map showing topography (or indicating the outline of drainage areas served by the outfall or outfalls covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water run-off,

materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR ~~262.34 (2000)~~; 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(2) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(3) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not covered by a VPDES permit; tests for such nonstorm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test;

(4) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(5) Quantitative data based on samples collected during storm events and collected in accordance with 9VAC25-31-100 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(a) Any pollutant limited in an effluent guideline to which the facility is subject;

(b) Any pollutant listed in the facility's VPDES permit for its process wastewater (if the facility is operating under an existing VPDES permit);

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(c) Oil and grease, pH, BOD₅, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(d) Any information on the discharge required under 9VAC25-31-100 G 7 f and g;

(e) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event or events sampled, and the method of flow measurement or estimation; and

(f) The date and duration (in hours) of the storm event or events sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(6) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of 9VAC25-31-100 G 2, G 3, G 4, G 5, G 7 c, G 7 d, G 7 e, and G 7 h; and

(7) Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in subdivision 1 a (5) of this subsection instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in subdivision 1 a (5) of this subsection within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the VPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of 9VAC25-31-100 K 3 b, K 3 c, and K 5.

b. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with subdivision 1 a of this subsection, unless the facility:

(1) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 (~~2000~~) or 40 CFR 302.6 (~~2000~~) at any time since November 16, 1987; or

(2) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 (~~2000~~) at any time since November 16, 1987; or

(3) Contributes to a violation of a water quality standard.

c. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

d. Applicants shall provide such other information the board may reasonably require to determine whether to issue a permit.

2. No application for a VPDES permit authorizing direct or indirect discharge of stormwater runoff from a new municipal solid waste landfill into a local watershed protection district established and designated as such by city ordinance prior to January 1, 2006, shall be considered complete unless it contains certification from the local governing body of the city in which the discharge is to take place, that the discharge is consistent with the city's ordinance establishing and designating the local watershed protection district. This requirement shall apply to applications for new or modified individual VPDES permits and for new or modified coverage under general VPDES permits. This requirement does not apply to any municipal solid waste landfill in operation on or before January 1, 2006.

C. Application deadlines. Any operator of a point source required to obtain a permit under this section that does not have an effective VPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

1. Individual applications.

a. Except as provided in subdivision 1 b of this subsection, for any storm water discharge associated with industrial activity as defined in this chapter which is not authorized by a storm water general permit, a permit application made pursuant to subsection B of this section shall be submitted to the department by October 1, 1992;

b. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications must be submitted to the department by March 10, 2003;

2. A permit application shall be submitted to the department within 180 days of notice, unless permission for a later date is granted by the board, for:

a. A storm water discharge which either the board or the regional administrator, determines that the discharge contributes to a violation of a water quality standard or is

a significant contributor of pollutants to surface waters;
or

b. A storm water discharge subject to subdivision B 1 d of this section;

3. Facilities with existing VPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992, shall submit a new application in accordance with the requirements of 9VAC25-31-100 and 9VAC25-31-120 B (Form 1, Form 2F, and other applicable forms) 180 days before the expiration of such permits.

D. Petitions.

1. Any person may petition the board to require a VPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

2. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition.

E. Conditional exclusion for no exposure of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is no exposure of industrial materials and activities to rain, snow, snowmelt or run-off and the discharger satisfies the conditions in subdivisions 1 through 4 of this subsection. No exposure means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

1. To qualify for this exclusion, the operator of the discharge must:

a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and run-off;

b. Complete and sign (according to 9VAC25-31-110) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in subdivision 2 of this subsection;

c. Submit the signed certification to the department once every five years;

d. Allow the department to inspect the facility to determine compliance with the no exposure conditions;

e. Allow the department to make any no exposure inspection reports available to the public upon request; and

f. For facilities that discharge through an MS4, upon request, submit a copy of the certification of no exposure to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Storm resistant shelter is not required for:

a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("sealed" means banded or otherwise secured and without operational taps or valves);

b. Adequately maintained vehicles used in material handling; and

c. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

3. a. This conditional exclusion from the requirement for a VPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be no exposure discharges, individual permit requirements should be adjusted accordingly.

b. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, or run-off, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

c. Notwithstanding the provisions of this subsection, the board retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

4. The no exposure certification requires the submission of the following information, at a minimum, to aid the board in determining if the facility qualifies for the no exposure exclusion:

a. The legal name, address and phone number of the discharger.

b. The facility name and address, the county name and the latitude and longitude where the facility is located.

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c. Certification that indicates that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

- (1) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;
- (2) Materials or residuals on the ground or in storm water inlets from spills/leaks;
- (3) Materials or products from past industrial activity;
- (4) Material handling equipment (except adequately maintained vehicles);
- (5) Materials or products during loading/unloading or transporting activities;
- (6) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);
- (7) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;
- (8) Materials or products handled/stored on roads or railways owned or maintained by the discharger;
- (9) Waste material (except waste in covered, nonleaking containers, e.g., dumpsters);
- (10) Application or disposal of process wastewater (unless otherwise permitted); and
- (11) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

d. All no exposure certifications must include the following certification statement and be signed in accordance with the signatory requirements of 9VAC25-31-110: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of no exposure and obtaining an exclusion from VPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under 9VAC25-31-120 E 2). I understand that I am obligated to submit a no exposure certification form once every five years to the Department of Environmental Quality and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection

reports publicly available upon request. I understand that I must obtain coverage under a VPDES permit prior to any point source discharge of storm water associated with industrial activity from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

9VAC25-31-130. Concentrated animal feeding operations.

A. Permit requirement for CAFOs.

1. Concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with subsection B of this section are point sources that require VPDES permits for discharges or proposed discharges. Once an operation is defined as a CAFO, the VPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.
2. Two or more animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designations. The board may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the board shall consider the following factors:
 - a. The size of the animal feeding operation and the amount of wastes reaching surface waters;
 - b. The location of the animal feeding operation relative to surface waters;
 - c. The means of conveyance of animal wastes and process wastewaters into surface waters;
 - d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into surface waters; and
 - e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in the definition of Medium CAFO in this regulation shall be designated as a concentrated animal feeding operation unless:

a. Pollutants are discharged into surface waters through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into surface waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the board has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the VPDES permit program.

C. Who must seek coverage under a VPDES permit?

1. The owners or operators of a CAFO shall seek coverage under a VPDES permit if the CAFO discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. Specifically, the CAFO owner or operator shall either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. If there is no VPDES general permit available to the CAFO, the CAFO owner or operator shall submit an application for an individual permit to the board.

2. Exception. An owner or operator of a Large CAFO does not need to seek coverage under a VPDES permit if the owner or operator certifies to the board that the CAFO does not discharge or propose to discharge manure, litter or process wastewater.

3. Information to submit with permit application. A permit application for an individual permit must include the information specified in 9VAC25-31-100 I. A notice of intent for a general permit must include the information specified in 9VAC25-31-100 I and 9VAC25-31-170.

4. Land application discharges from a CAFO are subject to VPDES requirements. The discharge of manure, litter or process wastewater to surface waters from a CAFO as the result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to VPDES requirements, except where it is an agricultural storm water discharge as provided in 33 USC § 1362(14). For purposes of this subdivision, where the manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure

appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

a. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200.

b. Unpermitted Large CAFOs shall maintain documentation specified in subdivision E 1 i of 9VAC25-31-200 either on site or at a nearby office, or otherwise make such documentation readily available to department staff upon request.

5. No discharge certification option.

a. The owner or operator of a CAFO that meets the eligibility criteria in subdivision 5 b of this subsection may certify to the board that the CAFO does not discharge or propose to discharge. A CAFO owner or operator who certifies that the CAFO does not discharge or propose to discharge is not required to seek coverage under a VPDES permit pursuant to subdivision 1 of this subsection, provided that the CAFO is designed, constructed, operated, and maintained in accordance with the requirements of subdivisions 5 b and c of this subsection, and subject to the limitations in subdivision 5 d of this subsection.

b. Eligibility criteria. In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO shall document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge, as follows:

(1) The CAFO's production area is designed, constructed, operated, and maintained so as not to discharge. The CAFO shall maintain documentation that demonstrates that:

(a) Any open manure storage structures are designed, constructed, operated, and maintained to achieve no discharge based on a technical evaluation in accordance with the elements of the technical evaluation set forth in 40 CFR 412.46(a)(1)(i) through (viii) (2009);

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(b) Any part of the CAFO's production area that is not addressed by subdivision 5 b (1) (a) of this subsection is designed, constructed, operated, and maintained such that there will be no discharge of manure, litter, or process wastewater; and

(c) The CAFO implements the additional measures set forth in 40 CFR 412.37(a) and (b) ~~(2009)~~;

(2) The CAFO has developed and is implementing an up-to-date nutrient management plan to ensure no discharge from the CAFO, including from all land application areas under the control of the CAFO, that addresses, at a minimum, the following:

(a) The elements of subdivisions E 1 a through i of 9VAC25-31-200 and 40 CFR 412.37(c) ~~(2009)~~; and

(b) All site-specific operation and maintenance practices necessary to ensure no discharge, including any practices or conditions established by a technical evaluation pursuant to subdivision 5 b (1) (a) of this subsection; and

(3) The CAFO shall maintain documentation required by subdivision 5 b of this subsection either on site or at a nearby office, or otherwise make such documentation readily available to the department staff upon request.

c. Submission to the board. In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator shall complete and submit to the board, by certified mail or equivalent method of documentation, a certification that includes, at a minimum, the following information:

(1) The legal name, address, and phone number of the CAFO owner or operator (see 9VAC25-31-100 B);

(2) The CAFO name and address, the county name, and the latitude and longitude where the CAFO is located;

(3) A statement that describes the basis for the CAFO's certification that it satisfies the eligibility requirements identified in subdivision 5 b of this subsection;

(4) The following certification statement: "I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], and that said CAFO meets the requirements of subdivision 5 of this subsection. I have read and understand the eligibility requirements of subdivision 5 b of this subsection for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by subdivision 5 c of this subsection. I also understand the conditions set forth in subdivisions 5 d, e and f of this subsection regarding loss and withdrawal of certification. I certify under penalty of law that this document and all other

documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."; and

(5) The certification shall be signed in accordance with the signatory requirements of 9VAC25-31-110.

d. Term of certification. A certification that meets the requirements of subdivisions 5 b and c of this subsection shall become effective on the date it is submitted, unless the board establishes an effective date of up to 30 days after the date of submission. Certification will remain in effect for five years or until the certification is no longer valid or is withdrawn, whichever occurs first. A certification is no longer valid when a discharge has occurred or when the CAFO ceases to meet the eligibility criteria in subdivision 5 b of this subsection.

e. Withdrawal of certification.

(1) At any time, a CAFO may withdraw its certification by notifying the board by certified mail or equivalent method of documentation. A certification is withdrawn on the date the notification is submitted to the board. The CAFO does not need to specify any reason for the withdrawal in its notification to the board.

(2) If a certification becomes invalid in accordance with subdivision 5 d of this subsection, the CAFO shall withdraw its certification within three days of the date on which the CAFO becomes aware that the certification is invalid. Once a CAFO's certification is no longer valid, the CAFO is subject to the requirement in subdivision 1 of this subsection to seek permit coverage if it discharges or proposes to discharge.

f. Recertification. A previously certified CAFO that does not discharge or propose to discharge may recertify in accordance with subdivision 5 of this subsection, except that where the CAFO has discharged, the CAFO may only recertify if the following additional conditions are met:

(1) The CAFO had a valid certification at the time of the discharge;

(2) The owner or operator satisfies the eligibility criteria of subdivision 5 b of this subsection, including any necessary modifications to the CAFO's design, construction, operation, and/or maintenance to permanently address the cause of the discharge and

ensure that no discharge from this cause occurs in the future;

(3) The CAFO has not previously recertified after a discharge from the same cause;

(4) The owner or operator submits to the board for review the following documentation: a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge in addition to submitting a certification in accordance with subdivision 5 c of this subsection; and

(5) Notwithstanding subdivision 5 d of this subsection, a recertification that meets the requirements of subdivisions 5 f (3) and (4) of this subsection shall only become effective 30 days from the date of submission of the recertification documentation.

g. Effect of certification.

(1) An unpermitted CAFO certified in accordance with subdivision 5 of this subsection is presumed not to propose to discharge. If such a CAFO does discharge, it is not in violation of the requirement that CAFOs that propose to discharge seek permit coverage pursuant to subdivisions 1 and 6 of this subsection, with respect to that discharge. In all instances, the discharge of a pollutant without a permit is a violation of the Clean Water Act § 301(a) prohibition against unauthorized discharges from point sources.

(2) In any enforcement proceeding for failure to seek permit coverage under subdivisions 1 and 6 of this subsection that is related to a discharge from an unpermitted CAFO, the burden is on the CAFO to establish that it did not propose to discharge prior to the discharge when the CAFO either did not submit certification documentation as provided in subdivision 5 c or 5 f (4) of this subsection within at least five years prior to the discharge, or withdrew its certification in accordance with subdivision 5 e of this subsection. Design, construction, operation, and maintenance in accordance with the criteria of subdivision 5 b of this subsection satisfies this burden.

6. When a CAFO must seek coverage under a VPDES permit.

a. Operations defined as CAFOs prior to April 14, 2003. For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under a VPDES permit as of April 14, 2003, and comply with all applicable VPDES requirements, including the duty to maintain permit coverage in accordance with subdivision 7 of this subsection.

b. Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date. For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under a VPDES permit by February 27, 2009.

c. Operations that become defined as CAFOs after April 14, 2003, but that are not new sources. For newly constructed AFOs and CAFOs that make changes to their operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under a VPDES permit, as follows:

(1) For newly constructed operations not subject to effluent limitation guidelines, 180 days prior to the time the CAFO commences operation;

(2) For other operations (e.g., resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; or

(3) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has at least until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later.

d. New sources. New sources must seek to obtain coverage under a permit at least 180 days prior to the time the CAFO commences operation.

e. Operations that are designated CAFOs. For operations designated as a CAFO in accordance with subsection B of this section, the owner or operator must seek to obtain coverage under a VPDES permit no later than 90 days after receiving notice of the designation.

7. Duty to maintain permit coverage. No later than 180 days before the expiration of the permit, the permittee shall submit an application to renew its permit, in accordance with 9VAC25-31-100. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

a. The facility has ceased operation or is no longer a CAFO; and

b. The permittee has demonstrated to the satisfaction of the board that the CAFO will not discharge or propose to discharge upon expiration of the permit.

8. Procedures for CAFOs seeking coverage under a general permit. CAFO owners or operators shall submit a registration statement when seeking authorization to discharge under a general permit in accordance with subsection B of 9VAC25-31-170. The board will review registration statements submitted by CAFO owners or operators to ensure that the registration statement includes the information required by subsection I of 9VAC25-31-

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100, including a nutrient management plan that meets the requirements of subsection E of 9VAC25-31-200 and applicable effluent limitations and standards, including those specified in 40 CFR Part 412 ~~(2009)~~. When additional information is necessary to complete the registration statement or clarify, modify, or supplement previously submitted material, the board may request such information from the owner or operator. If the board makes a preliminary determination that the registration statement meets the requirements of subsection I of 9VAC25-31-100 and subsection E of 9VAC25-31-200, the board will notify the public of the board's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the registration statement submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit. The process for submitting public comments and public hearing requests, and the public hearing process if a request for a public hearing is granted, shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310 and 40 CFR 124.13 ~~(2009)~~. The board may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and request a public hearing that differs from the time period specified in 9VAC25-31-290. The board's response to significant comments received during the comment period is governed by 9VAC25-31-320, and, if necessary, the board will require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage. When the board authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. The board will notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

9. Changes to a nutrient management plan. Any permit issued to a CAFO shall require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the board:

a. The CAFO owner or operator shall provide the board with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of subdivisions E 5 a (2) and E 5 b (4) of 9VAC25-31-200 are not subject to the requirements of subdivision 9 of this subsection.

b. The board will review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 CFR Part 412

~~(2009)~~, and will determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the board will notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the board will determine whether such changes are substantial changes as described in subdivision 9 c of this subsection.

(1) If the board determines that the changes to the terms of the nutrient management plan are not substantial, the board will make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

(2) If the board determines that the changes to the terms of the nutrient management plan are substantial, the board will notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, public hearing requests, and the public hearing process if a public hearing is held shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310 and 40 CFR 124.13 ~~(2009)~~. The board may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a public hearing on the proposed changes that differs from the time period specified in 9VAC25-31-290. The board will respond to all significant comments received during the comment period as provided in 9VAC25-31-320, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the board incorporates the revised terms of the nutrient management plan into the permit, the board will notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

(1) Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by

terms of a nutrient management plan incorporated into an existing VPDES permit in accordance with the requirements of subdivision E 5 of 9VAC25-31-200, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;

(2) Any changes to the field-specific maximum annual rates for land application, as set forth in subdivision E 5 a of 9VAC25-31-200, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in subdivision E 5 b of 9VAC25-31-200;

(3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with subdivision E 5 of 9VAC25-31-200; and

(4) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to state waters.

10. Causes for modification of nutrient management plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with subdivision C 8 of 9VAC25-31-130 and 9VAC25-31-170 is not a cause for modification pursuant to the requirements of 9VAC25-31-370.

9VAC25-31-150. Aquaculture projects.

Discharges into aquaculture projects, as defined in this chapter, are subject to the VPDES permit program. Permits for aquaculture projects shall be issued according to the criteria of 40 CFR Part 125, Subpart B (2000).

Part III
Permit Conditions

9VAC25-31-190. Conditions applicable to all permits.

The following conditions apply to all VPDES permits. Additional conditions applicable to VPDES permits are in 9VAC25-31-200. All conditions applicable to VPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

A. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of

the law and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the law but not the CWA. 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 CWA for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the CWA within the time provided in the chapters that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

B. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

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

E. 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 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 which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

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

H. 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 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

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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.

I. 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 CWA 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. Except for records of monitoring information required by the permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), 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 or individuals who performed the sampling or measurements;

- c. The date or dates analyses were performed;
- d. The individual or individuals 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 ~~(2000)~~ or alternative EPA approved methods; or, in the case of sludge use or disposal, approved under 40 CFR Part 136 ~~(2000)~~ unless otherwise specified in Part VI of this chapter, unless other test procedures have been specified in the permit.

K. 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 which are subject neither to effluent limitations in the permit, nor to notification requirements under 9VAC25-31-200 A 1.
 - 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.
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 CWA.
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) or forms provided or specified by the department for reporting results of monitoring of sludge use or disposal practices.
 - 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 (2000) or, in the case of sludge use or disposal, approved under 40 CFR Part 136 (2000) unless otherwise specified in Part VI of this chapter, 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 or sludge reporting form specified by the department.
 - c. Calculations for all limitations which 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 effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 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 plant 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 which 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 which must be reported within 24 hours under this subdivision:
 - (1) Any unanticipated bypass which exceeds any effluent limitation in the permit.
 - (2) Any upset which 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 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 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;

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(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 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 or 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 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.

9VAC25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify

the department as soon as they know or have reason to believe:

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

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

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

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be subject to § 301 or § 306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month

period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

- a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.
- b. Upon receipt of the owner's plan of action, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.
- c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.
- d. Nothing herein shall in any way impair the authority of the board to take enforcement action under §§ 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

C. Wastewater works operator requirements.

- 1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators (18VAC160-20). Notwithstanding the foregoing requirement, unless the discharge is determined by the board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:
 - a. That have a design hydraulic capacity equal to or less than 0.04 mgd;
 - b. That discharge industrial waste or other waste from coal mining operations; or
 - c. That do not utilize biological or physical/chemical treatment.
- 2. In making this case-by-case determination, the board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.
- 3. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to

provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated Animal Feeding Operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges as defined in subdivision C 4 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

- 1. Requirements to develop, implement and comply with a nutrient management plan. At a minimum, a nutrient management plan shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented and be in compliance with the nutrient management plan as a requirement of the permit. The nutrient management plan must, to the extent applicable:
 - a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
 - b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
 - c. Ensure that clean water is diverted, as appropriate, from the production area;
 - d. Prevent direct contact of confined animals with surface waters of the state;
 - e. Ensure that chemicals and other contaminants handled onsite are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
 - f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or

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equivalent practices, to control runoff of pollutants to surface waters of the state;

g. Identify protocols for appropriate testing of manure, litter, process wastewater and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

a. All applicable records identified pursuant to subdivision 1 i of this subsection;

b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. The annual report must include:

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

b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

f. Summary of all manure, litter and process wastewater discharges from the production area that occurred in the previous 12 months including date, time and approximate volume;

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and

h. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the board to be necessary to meet the requirements of subdivision 1 of this subsection. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by subdivision 4 h of this subsection and, as applicable, 40 CFR 412.4(c) (2009), shall include the fields available for land application; field-specific rates of application properly developed, as specified in subdivisions 5 a and b of this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms shall address rates of application using one of the following two approaches,

unless the board specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in

accordance with subdivision 5 b (2) of this subsection); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by subdivision 1 g of this subsection; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the board for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in subdivision 5 b (1) of this subsection.

(3) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the board, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year

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using the methodology required in subdivision 5 b (1) of this subsection before land applying manure, litter, and process wastewater and shall rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subdivision 5 b (1) of this subsection, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the board; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

9VAC25-31-220. Establishing limitations, standards, and other permit conditions.

In addition to the conditions established under 9VAC25-31-210 A, each VPDES permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9VAC25-31-180 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N (~~2005~~) if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be

documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards.

1. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

2. Standards for sewage sludge use or disposal under § 405(d) of the CWA and Part VI (9VAC25-31-420 et seq.) of this chapter unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act (42 USC § 6901 et seq.), Part C of Safe Drinking Water Act (42 USC § 300f et seq.), the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC § 1401 et seq.), or the Clean Air Act (42 USC § 4701 et seq.), or in another permit issued by the Department of Environmental Quality or any other appropriate state agency under another permit program approved by the administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under § 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the board may initiate proceedings under this chapter to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

3. Requirements applicable to cooling water intake structures at new facilities under § 316 (b) of the CWA, in accordance with 9VAC25-31-165.

C. Reopener clause. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the board shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under § 405(d) of the CWA. The board may promptly modify or revoke and reissue any permit containing the reopener clause required by this subdivision if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

D. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306, 307, 318 and 405 of the CWA necessary to:

1. Achieve water quality standards established under the law and § 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the VPDES permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an

excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under § 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9VAC25-31-280 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for

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the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7 ~~(2005)~~;

2. Attain or maintain a specified water quality through water quality related effluent limits established under the law and § 302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the law and § 401 of the CWA;

4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the law or regulations in accordance with § 301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under § 208(b) of the CWA;

7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M ~~(2005)~~, for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 the CFR Part 125, Subpart D ~~(2005)~~.

E. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or D of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants which the board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants which, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the law and 40 CFR Part 125, Subpart A ~~(2005)~~.

F. A notification level which exceeds the notification level of 9VAC25-31-200 A 1 a, b, or c, upon a petition from the permittee or on the board's initiative. This new notification

level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

G. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9VAC25-31-190 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

H. Durations for permits, as set forth in 9VAC25-31-240.

I. Monitoring requirements. The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9VAC25-31-190 and in subdivisions 5 through 8 of this subsection. Reporting shall be no less frequent than specified in the above regulation;

4. To assure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring as specified in Part VI (9VAC25-31-420 et seq.) of this chapter; or as determined to be necessary on a case-by-case basis pursuant to the law and § 405(d)(4) of the CWA; and

d. According to test procedures approved under 40 CFR Part 136 ~~(2005)~~ for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency

dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in Part VI (9VAC25-31-420 et seq.) of this chapter (where applicable), but in no case less than once a year;

6. Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loading identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9VAC25-31-110; and

d. Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements; and

8. Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 9VAC25-31-190 L 1, 4, 5, 6, and 7 at least annually.

J. Pretreatment program for POTWs. Requirements for POTWs to:

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under § 307(b) of the CWA and Part VII (9VAC25-31-730 et seq.) of this chapter;

2. Submit a local program when required by and in accordance with Part VII of this chapter to assure compliance with pretreatment standards to the extent applicable under § 307(b) of the CWA. The local program shall be incorporated into the permit as described in Part VII of this chapter. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Part VII of this chapter;

3. Provide a written technical evaluation of the need to revise local limits under Part VII of this chapter following permit issuance or reissuance; and

4. For POTWs which are sludge-only facilities, a requirement to develop a pretreatment program under Part VII of this chapter when the board determines that a pretreatment program is necessary to assure compliance with Part VI of this chapter.

K. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under § 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

2. Authorized under § 402(p) of the CWA for the control of storm water discharges;

3. Numeric effluent limitations are infeasible; or

4. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the law and the CWA.

L. Reissued permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of §§ 301(b)(1)(C) or 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with § 303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

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a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. (1) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the law and §§ 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

M. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the board may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The board's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

N. Any conditions imposed in grants made by the board to POTWs under §§ 201 and 204 of the CWA which are reasonably necessary for the achievement of effluent limitations under § 301 of the CWA and the law.

O. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use regulated by Part VI of this chapter.

P. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

Q. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-31-330.

9VAC25-31-230. Calculating VPDES permit conditions.

A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under 9VAC25-31-220 and subsection H of this section (limitations on internal waste streams).

B. Production-based limitations.

1. In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow.

2. a. Except in the case of POTWs or as provided in subdivision 2 b of this subsection, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit

limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

b. (1) (a) The board may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(b) For the automotive manufacturing industry only, the board may establish a condition under subdivision 2 b (1) (a) of this subsection if the applicant satisfactorily demonstrates to the board at the time the application is submitted that its actual production, as indicated in subdivision 2 a of this subsection, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

(2) If the board establishes permit conditions under subdivision 2 b (1) of this subsection:

(a) The permit shall require the permittee to notify the department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice;

(b) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the department under subdivision 2 b (2) (a) of this subsection, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice; and

(c) The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

C. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal as defined in 40 CFR Part 136 (2000) unless:

1. An applicable effluent standard or limitation has been promulgated under the CWA and specifies the limitation for the metal in the dissolved or valent or total form; or

2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3 (2000), it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA and the law; or

3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

D. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

1. Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

2. Average weekly and average monthly discharge limitations for POTWs.

E. Discharges which are not continuous, as defined in 9VAC25-31-10, shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency;

2. Total mass;

3. Maximum rate of discharge of pollutants during the discharge; and

4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure.

F. Mass Limitations.

1. All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

a. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

b. When applicable standards and limitations are expressed in terms of other units of measurement; or

c. If in establishing technology-based permit limitations on a case-by-case basis, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

2. Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

G. Pollutants in intake water.

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1. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water to the extent necessary to meet the applicable technology-based limitation or standard, up to a maximum value equal to the influent value. Credit shall be granted only if:

a. The applicable effluent limitations and standards contained in the regulations incorporated by reference in 9VAC25-31-30 specifically provide that they shall be applied on a net basis; or

b. The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and standards would, if properly installed and operated, meets the limitations and standards in the absence of pollutants in the intake waters.

2. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

3. Credit for the level of pollutants in the intake water may be considered in setting water quality-based effluent limitations according to 9VAC25-31-220 D. Where a total maximum daily load has been established for the receiving waterbody and it is applicable to the discharge, it shall be considered when such effluent limitations are developed. The board may consider the presence of intake pollutants when determining either that water quality-based effluent limitations are not necessary under 9VAC25-31-220 D or that any water quality-based effluent limitations justified by 9VAC25-31-220 D will be established in a manner that does not hold the permittee responsible for removing pollutants originating in its intake water.

4. Additional monitoring may be necessary to determine eligibility for any credits and compliance with permit limits.

5. Credits shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The board may waive this requirement for technology-based effluent limitations, standards, and prohibitions if he finds that no environmental degradation will result.

a. An intake pollutant is considered to be from the same body of water as the discharge if the board finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding may be deemed established if:

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water;

(2) There is direct hydrological connection between the intake and discharge points; and

(3) Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.

Other site-specific factors relevant to the transport and fate of the pollutant may be considered in making this finding.

b. An intake pollutant from groundwater may be considered to be from the same body of water if the board determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, except that such a pollutant is not from the same body of water if the groundwater contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions or treatment processes.

c. For pollutants in intake water provided by a water supply system, where the raw water supply is removed from the same body of water as the discharge, the concentration of the intake pollutant shall be determined at the point where the water enters the water supplier's distribution system.

d. Where a facility discharges intake pollutants that originate in part from the same body of water and in part from a different body of water, the effluent limitation may provide for intake credits for the portion of the pollutants derived from the same body of water, provided that adequate monitoring to determine compliance can be established and is included in the permit.

6. Credits shall not be granted if the discharger contributes to the level of the pollutant in the intake water prior to the intake.

7. Credits for intake pollutants do not apply to technology-based limitations on the discharge of raw water clarifier sludge generated from the treatment of intake water.

H. Internal waste streams.

1. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by 9VAC25-31-220 I shall also be applied to the internal waste streams.

2. Limits on internal waste streams will be imposed only when the fact sheet sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible, the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

I. Disposal of pollutants into wells, POTWs or by land application.

1. When part of a discharger's process wastewater is not being discharged into surface waters or into the contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters, applicable effluent standards and limitations for the discharge in a VPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

a. If none of the waste from a particular process is discharged into surface waters, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

b. In all cases other than those described in subdivision 1 a of this subsection, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into surface waters, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted to make them more or less stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters. This method may be algebraically expressed as:

$$P = \frac{E \times N}{T}$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total wastestream, N is the wastewater flow to be treated and discharged to surface waters, and T is the total wastewater flow.

2. Subdivision 1 of this subsection does not apply to the extent that promulgated effluent limitations guidelines:

a. Control concentrations of pollutants discharged but not mass; or

b. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

3. Subdivision 1 of this subsection does not alter a discharger's obligation to meet any more stringent requirements established in the permit.

9VAC25-31-340. Decision on variances.

A. The board may grant or deny requests for variances requested pursuant to 9VAC25-31-100 L 4, subject to EPA objection. Decisions on these variances shall be made according to the criteria of 40 CFR Part 125, Subpart H (2000).

B. The board may deny, or forward to the regional administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the economic capability of the applicant submitted pursuant to 9VAC25-31-100 L 2; or

2. A variance based on water quality related effluent limitations submitted pursuant to 9VAC25-31-100 L 3 or 9VAC25-31-100 M 2.

C. If the EPA Office Director for Wastewater Management approves the variance, the board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

D. The board may deny or forward to the administrator with a written concurrence a completed request for:

1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based, made according to the criteria and standards of 40 CFR Part 125, Subpart D (2000); or

2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-31-100 L 2 or 9VAC25-31-100 M 1.

E. If the administrator approves the variance, the board may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

9VAC25-31-470. Exclusions.

A. Treatment processes. This part does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in 9VAC25-31-710 and 9VAC25-31-720.

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B. Selection of a use or disposal practice. This part does not require the selection of a sewage sludge use or disposal practice. The determination of the manner in which sewage sludge is used or disposed is a local determination.

C. Incineration of sewage sludge. This part does not establish requirements for sewage sludge fired in a sewage sludge incinerator or co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired.

D. Sludge generated at an industrial facility. This part does not establish requirements for the use or disposal of sludge generated at an industrial facility during the treatment of industrial wastewater, including sewage sludge generated during the treatment of industrial wastewater combined with domestic sewage.

E. Hazardous sewage sludge. This part does not establish requirements for the use or disposal of sewage sludge determined to be hazardous in accordance with 40 CFR Part 261 (~~2000~~) or the Code of Virginia.

F. Sewage sludge with high PCB concentration. This part does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

G. Incinerator ash. This part does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

H. Grit and screenings. This part does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

I. Drinking water treatment sludge. This part does not establish requirements for the use or disposal of sludge generated during the treatment of either surface water or ground water used for drinking water.

J. Commercial and industrial septage. This part does not establish requirements for the use or disposal of commercial septage, industrial septage, a mixture of domestic septage and commercial septage, or a mixture of domestic septage and industrial septage.

9VAC25-31-490. Sampling and analysis.

A. Representative samples of sewage sludge that is applied to the land, or placed on a surface disposal site shall be collected and analyzed.

B. Methods in the materials listed below shall be used to analyze samples of sewage sludge and calculation procedures in the materials shall be used to calculate the percent volatile solids reduction for sewage sludge.

1. Enteric viruses.

ASTM Designation: D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludges," Annual Book of ASTM Standards: Section 11 - Water and Environmental Technology, ASTM, Philadelphia, PA., 1992.

2. Fecal coliform.

Part 9221 E. or Part 9222 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

3. Helminth ova.

Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987. PB 88-154273/AS, National Technical Information Service, Springfield, Virginia.

4. Inorganic pollutants.

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition (~~1986~~) with Revision 1 as amended by Final Updates I, II, IIA, IIB, III, IIIA, IIIB, IVA and IVB. PB88-239223, National Technical Information Service, Springfield, Virginia.

5. Salmonella sp. bacteria.

Part 9260 D., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992; or

Kenner, B.A. and H.P. Clark, "Detection and enumeration of Salmonella and Pseudomonas aeruginosa," J. Water Pollution Control Federation, 46(9):2163-2171, 1974.

6. Specific oxygen uptake rate.

Part 2710 B., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

7. Total, fixed, and volatile solids.

Part 2540 G., "Standard Methods for the Examination of Water and Wastewater," 18th Edition, American Public Health Association, Washington, D.C., 1992.

8. Percent volatile solids reduction calculation.

"Environmental Regulations and Technology - Control of Pathogens and Vector Attraction in Sewage Sludge," EPA-625/R-92/013, U.S. Environmental Protection Agency, Cincinnati, Ohio, ~~1992~~ Revised July 2003.

9VAC25-31-500. Definitions.

In addition to the definitions given in Part I (9VAC25-31-10 et seq.) of this chapter, the following definitions apply to Part VI (9VAC25-31-420 et seq.) of this chapter. Where the same term is defined in both parts, the definition of Part VI of this chapter applies to the use of the term in Part VI of this chapter.

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agronomic rate" means the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into methane gas and carbon dioxide by microorganisms in the absence of air.

"Annual pollutant loading rate (APLR)" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate (AWSAR)" means the maximum amount of sewage sludge (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply sewage sludge or sewage sludge applied to the land" means land application of sewage sludge.

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

"Base flood" means a flood that has a one percent chance of occurring in any given year (i.e., a flood with a magnitude equaled once in 100 years).

"Bulk sewage sludge" means sewage sludge that is not sold or given away in a bag or other container for application to the land.

"Class I sludge management facility" means any publicly owned treatment works (POTW) required to have an approved pretreatment program under this chapter and any treatment works treating domestic sewage classified as a Class I sludge management facility by the board because of

the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

"Contaminate an aquifer" means to introduce a substance that causes the maximum contaminant level for nitrate in the Virginia Water Quality Standards or in 40 CFR 141.62(b) ~~(2000)~~ to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration of nitrate in the groundwater exceeds the maximum contaminant level for nitrate in the Virginia Water Quality Standards or 40 CFR 141.62(b) ~~(2000)~~.

"Cover" means soil or other material used to cover sewage sludge placed on an active sewage sludge unit.

"Cover crop" means a small grain crop, such as oats, wheat, or barley, not grown for harvest.

"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.

"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

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

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100% solids content).

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

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops such as flax and cotton.

"Final cover" means the last layer of soil or other material placed on a sewage sludge unit at closure.

"Food crops" means crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

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"Forest" means a tract of land thick with trees and underbrush.

"Groundwater" means water below the land surface in the saturated zone.

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

"Industrial wastewater" means wastewater generated in a commercial or industrial process.

"Land application" means the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Leachate collection system" means a system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sewage sludge unit.

"Liner" means soil or synthetic material that has a hydraulic conductivity of 1×10^{-6} centimeters per second or less.

"Lower explosive limit for methane gas" means the lowest percentage of methane gas in air, by volume, that propagates a flame at 25°C and atmospheric pressure.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency under § 208 of the CWA, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in § 201(e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Person who prepares sewage sludge" means either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Celsius or measured at another temperature and then converted to an equivalent value at 25° Celsius.

"Place sewage sludge or sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Pollutant" means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the board, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and golf courses.

"Qualified groundwater scientist" means an individual with a baccalaureate or post-graduate degree in the natural sciences or engineering who has sufficient training and experience in groundwater hydrology and related fields, as may be demonstrated by state registration, professional certification, or completion of accredited university programs, to make sound professional judgments regarding groundwater monitoring, pollutant fate and transport, and corrective action.

"Range land" means open land with indigenous vegetation.

"Reclamation site" means drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and construction sites.

"Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Seismic impact zone" means an area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

"Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge unit boundary" means the outermost perimeter of an active sewage sludge unit.

"Specific oxygen uptake rate (SOUR)" means the mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

"Store or storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried at 103°C to 105°C.

"Treat or treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

"Treatment works" means either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

"Unstable area" means land subject to natural or human-induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land on which the soils are subject to mass movement.

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Vector attraction" means the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

9VAC25-31-750. Incorporation of federal regulations.

The following federal regulations are hereby incorporated into this chapter:

1. 40 CFR Part 403 (~~2000~~), Appendix B - E, and Appendix G
2. 40 CFR Part 136 (~~2000~~), Guidelines for Establishing Test Procedures for the Analysis of Pollutants.

9VAC25-31-770. National pretreatment standards: prohibited discharges.

A. 1. General prohibitions. A user may not introduce into any POTW any pollutant or pollutants which cause pass through, interference or violation of water quality standards. These general prohibitions and the specific prohibitions in subsection B of this section apply to each user introducing pollutants into a POTW whether or not the user is subject to other national pretreatment standards or any national, state, or local pretreatment requirements.

2. Affirmative defenses. A user shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in subdivision A 1 of this section and the specific prohibitions in subdivisions B 3, 4, 5, 6, and 7 of this section where the user can demonstrate that:

a. It did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

b. (1) A local limit designed to prevent pass through or interference or both, as the case may be, was developed in accordance with subsection C of this section for each pollutant in the user's discharge that caused pass through or interference, and the user was in compliance with each such local limit directly prior to and during the pass through or interference; or

(2) If a local limit designed to prevent pass through or interference or both, as the case may be, has not been

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developed in accordance with subsection C of this section for the pollutant or pollutants that caused the pass through or interference, the user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's VPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.

B. Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW:

1. Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140°F or 60°C using the test methods specified in 40 CFR 261.21 (~~2005~~);
2. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges;
3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in interference;
4. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate or pollutant concentration which will cause interference with the POTW;
5. Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40°C (104°F) unless the director, upon request of the POTW, approves alternate temperature limits;
6. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;
7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; or
8. Any trucked or hauled pollutants, except at discharge points designated by the POTW.

C. When specific limits must be developed by POTW.

1. Each POTW developing a POTW pretreatment program pursuant to 9VAC25-31-800 shall develop and enforce specific limits to implement the prohibitions listed in subdivisions A 1 and subsection B of this section. Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

2. All other POTW's shall, in cases where pollutants contributed by users result in interference, pass through or water quality standards violations and such violation is likely to recur, develop and enforce specific effluent limits for industrial users, and all other users, as appropriate, which, together with appropriate changes in the POTW treatment plant's facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's VPDES permit or sludge use or disposal practices.

3. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

4. All POTW's with approved pretreatment programs shall provide a written technical evaluation of the need to revise their local limits within one year of reissuance of VPDES permits for applicable treatment works, or within one year of VPDES permit modifications resulting in significant changes in VPDES permit limitations, POTW pretreatment operations, or POTW sludge disposal methods.

5. POTW's may develop Best Management Practices (BMPs) to implement subdivisions 1 and 2 of this subsection. Such BMPs shall be considered local limits and pretreatment standards for the purposes of this Part and § 307(d) of the Act.

D. Local limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with subsection C of this section, such limits shall be deemed pretreatment standards for the purposes of § 307(d) of the CWA.

E. EPA and state enforcement actions under the law and § 309(f) of the CWA. If, within 30 days after notice of an interference or pass through violation has been sent by the director or EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, the director or EPA may take appropriate enforcement action under the authority provided by the law and in § 309(f) of the CWA.

9VAC25-31-780. National pretreatment standards: categorical standards.

National pretreatment standards included in the regulations incorporated by reference in 9VAC25-31-30, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this part.

A. Category determination request.

1. Application deadline within 60 days after the effective date of a pretreatment standard for a subcategory under which an industrial user may be included, the industrial

user or POTW may request that the Water Management Division Director or director, as appropriate, provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation which may be included in a subcategory, the existing industrial user must request this certification prior to commencing discharge from the added or changed processes or operation. A new source must request this certification prior to commencing discharge. Where a certification is submitted by a POTW, the POTW shall notify any affected industrial user of such submission. The industrial user may provide written comments on the POTW submission to the Water Management Division Director or director, as appropriate, within 30 days of notification.

2. Contents of application each request shall contain a statement:

- a. Describing which subcategories might be applicable; and
- b. Citing evidence and reasons why a particular subcategory is applicable and why others are not applicable. Any person signing the application statement submitted pursuant to this section shall make the following certification:

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

3. Deficient requests. The Water Management Division Director or director will only act on written requests for determinations that contain all of the information required. Persons who have made incomplete submissions will be notified by the Water Management Division Director or director that their requests are deficient and, unless the time period is extended, will be given 30 days to correct the deficiency. If the deficiency is not corrected within 30 days or within an extended period allowed by the Water Management Division Director or the director, the request for a determination shall be denied.

4. Final decision.

- a. When the Water Management Division Director or director receives a submittal he will, after determining that it contains all of the information required by subdivision 2 of this subsection, consider the submission,

any additional evidence that may have been requested, and any other available information relevant to the request. The Water Management Division Director or director will then make a written determination of the applicable subcategory and state the reasons for the determination.

b. Where the request is submitted to the director, the director shall forward the determination described in this subdivision to the Water Management Division Director who may make a final determination. If the Water Management Division Director does not modify the director's decision within 60 days after receipt thereof, or if the Water Management Division Director waives receipt of the determination, the director's decision is final.

c. Where the request is submitted by the industrial user or POTW to the Water Management Division Director or where the Water Management Division Director elects to modify the director's decision, the Water Management Division Director's decision will be final.

d. The director shall send a copy of the determination to the affected industrial user and the POTW.

5. Requests for public hearing or legal decision. Within 30 days following the date of receipt of notice of the final determination as provided for by subdivision A 4 d of this section, the requester may submit a petition to reconsider or contest the decision to the regional administrator who shall act on such petition expeditiously and state the reasons for his determination in writing.

B. Deadline for compliance with categorical standards. Compliance by existing sources with categorical pretreatment standards shall be within three years of the date the standard is effective unless a shorter compliance time is specified in the regulations incorporated by reference in 9VAC25-31-30. Direct dischargers with VPDES permits modified or reissued to provide a variance pursuant to § 301(i)(2) of the CWA shall be required to meet compliance dates set in any applicable categorical pretreatment standard. Existing sources which become industrial users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing industrial users except where such sources meet the definition of a new source as defined in 9VAC25-31-10. New sources shall install and have in operating condition, and shall "start up" all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), new sources must meet all applicable pretreatment standards.

C. 1. Concentration and mass limits pollutant discharge limits in categorical pretreatment standards will be expressed either as concentration or mass limits. Wherever possible, where concentration limits are specified in standards,

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equivalent mass limits will be provided so that local, state or federal authorities responsible for enforcement may use either concentration or mass limits. Limits in categorical pretreatment standards shall apply to the effluent of the process regulated by the standard, or as otherwise specified by the standard.

2. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual industrial users.

3. A control authority calculating equivalent mass-per-day limitations under subdivision 2 of this subsection shall calculate such limitations by multiplying the limits in the standard by the industrial user's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.

4. A control authority calculating equivalent concentration limitations under subdivision 2 of this subsection shall calculate such limitations by dividing the mass limitations derived under subdivision 3 of this subsection by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during the representative year.

5. When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user meets all the following conditions in subdivisions 5 a (1) through (5) of this subsection as follows.

a. To be eligible for equivalent mass limits, the industrial user must:

(1) Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(2) Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard, and not have used dilution as a substitute for treatment;

(3) Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

(4) Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

(5) Have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

b. An industrial user subject to equivalent mass limits must:

(1) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

(2) Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

(3) Continue to record the facility's production rates and notify the control authority whenever production rates are expected to vary by more than 20% from its baseline production rates determined in subdivision 5 a (3) of this subsection. Upon notification of a revised production rate, the Control Authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and

(4) Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to subdivision 5 a (1) of this subsection so long as it discharges under an equivalent mass limit.

c. A control authority that chooses to establish equivalent mass limits:

(1) Must calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the industrial user by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

(2) Upon notification of a revised production rate, must reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and

(3) May retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user's actual average daily flow rate was reduced solely

as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to subdivision 5 d of this subsection. The industrial user must also be in compliance with 9VAC25-31-890 (regarding the prohibition of bypass).

d. The control authority may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants which cannot appropriately be expressed as mass.

6. The control authority may convert the mass limits of the categorical pretreatment standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions: when converting such limits to concentration limits, the control authority must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by subsection D of this section.

7. Equivalent limitations calculated in accordance with subdivisions 3 4, 5 and 6 of this subsection are deemed pretreatment standards for the purposes of § 307(d) of the CWA and this part. The control authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its control mechanism, the individual user must comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

8. Many categorical pretreatment standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four-day average, limitations. Where such standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

9. Any industrial user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long term average production rate.

D. Dilution prohibited as substitute for treatment. Except where expressly authorized to do so by an applicable

pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate.

E. Combined wastestream formula. Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative discharge limits may be derived by the control authority, or by the industrial user with the written concurrence of the control authority. These alternative limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or industrial user shall calculate both an alternative daily maximum value using the daily maximum values specified in the appropriate categorical pretreatment standard or standards and an alternative consecutive sampling day average value using the monthly average values specified in the appropriate categorical pretreatment standards. The industrial user shall comply with the alternative daily maximum and monthly average limits fixed by the control authority until the control authority modifies the limits or approves an industrial user modification request. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative limits for the regulated pollutant. An industrial user must immediately report any such material or significant change to the control authority. Where appropriate new alternative categorical limits shall be calculated within 30 days.

1. Alternative limit calculation. For purposes of these formulas, the "average daily flow" means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant will be derived by the use of either of the following formulas:

a. Alternative concentration limit.

$$C_T = \left(\frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} \right) \left(\frac{F_T - F_D}{F_T} \right)$$

where:

C_T = the alternative concentration limit for the combined wastestream.

C_i = the categorical pretreatment standard concentration limit for a pollutant in the regulated stream i.

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F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from: (i) boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestreams will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; (ii) sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or (iii) any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards for one or more of the following reasons (see Appendix D of 40 CFR Part ~~403 (2005)~~ 403):

- (1) The pollutants of concern are not detectable in the effluent from the industrial user;
- (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;
- (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator; or
- (4) The wastestream contains only pollutants which are compatible with the POTW.

F_T = The average daily flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N = The total number of regulated streams.

b. Alternative mass limit.

$$M_T = \left(\sum_{i=1}^N M_i \right) \left(\frac{F_T - F_D}{\sum_{i=1}^N F_i} \right)$$

where:

M_T = the alternative mass limit for a pollutant in the combined wastestream.

M_i = the categorical pretreatment standard mass limit for a pollutant in the regulated stream i (the categorical

pretreatment mass limit multiplied by the appropriate measure of production).

F_i = the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from: (i) boiler blowdown streams, noncontact cooling streams, stormwater streams, and demineralizer backwash streams; provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an industrial user's regulated process wastestreams will result in a substantial reduction of that pollutant, the control authority, upon application of the industrial user, may exercise its discretion to determine whether such streams should be classified as diluted or unregulated. In its application to the control authority, the industrial user must provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; (ii) sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or (iii) any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards for one or more of the following reasons (see Appendix D of 40 CFR Part ~~403 (2005)~~ 403):

- (1) The pollutants of concern are not detectable in the effluent from the industrial user;
- (2) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects;
- (3) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the administrator; or
- (4) The wastestream contains only pollutants which are compatible with the POTW.

F_T = The average flow (at least a 30-day average) through the combined treatment facility (includes F_i , F_D and unregulated streams).

N = The total number of regulated streams.

2. An alternative pretreatment limit may not be used if the alternative limit is below the analytical detection limit for any of the regulated pollutants.
3. Self-monitoring required to insure compliance with the alternative categorical limit shall be conducted in accordance with the requirements of 9VAC25-31-840 G.
4. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the industrial user may monitor either the segregated process

wastestream or the combined wastestream for the purpose of determining compliance with applicable pretreatment standards. If the industrial user chooses to monitor the segregated process wastestream, it shall apply the applicable categorical pretreatment standard. If the user chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The industrial user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that any change in an industrial user's monitoring point or points will not allow the user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

9VAC25-31-790. Removal credits.

A. General.

1. Definitions for the purpose of this section:

"Removal" means a reduction in the amount of a pollutant in the POTW's effluent or alteration of the nature of a pollutant during treatment at the POTW. The reduction or alteration can be obtained by physical, chemical or biological means and may be the result of specifically designed POTW capabilities or may be incidental to the operation of the treatment system. Removal as used in this subpart shall not mean dilution of a pollutant in the POTW.

"Sludge requirements" means the following statutory provisions and regulations or permits issued thereunder (or more stringent Virginia or local regulations): § 405 of the CWA; the Solid Waste Disposal Act (SWDA) (42 USC § 6901 et seq.) (including Title II more commonly referred to as the Resource Conservation Recovery Act (RCRA) (42 USC § 6901 et seq.) and Virginia regulations contained in any Virginia sludge management plan prepared pursuant to Subtitle D of SWDA); the Clean Air Act (42 USC § 4701 et seq.); the Toxic Substances Control Act (15 USC § 2601 et seq.); and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

2. General. Any POTW receiving wastes from an industrial user to which a categorical pretreatment standards applies may, at its discretion and subject to the conditions of this section, grant removal credits to reflect removal by the POTW of pollutants specified in the categorical pretreatment standards. The POTW may grant a removal credit equal to or, at its discretion, less than its consistent removal rate. Upon being granted a removal credit, each affected industrial user shall calculate its revised discharge limits in accordance with subdivision 4 of this subsection. Removal credits may only be given for indicator or surrogate pollutants regulated in a categorical pretreatment

standard if the categorical pretreatment statement so specifies.

3. Conditions for authorization to give removal credits. A POTW is authorized to give removal credits only if the following conditions are met;

a. Application. The POTW applies for, and receives, authorization from the director to give a removal credit in accordance with the requirements and procedures specified in subsection E of this section;

b. Consistent removal determination. The POTW demonstrates and continues to achieve consistent removal of the pollutant in accordance with subsection B of this section;

c. POTW local pretreatment program. The POTW has an approved pretreatment program in accordance with and to the extent required by this part; provided, however, a POTW which does not have an approved pretreatment program may, pending approval of such a program, conditionally give credits as provided in subsection D of this section;

d. Sludge requirements. The granting of removal credits will not cause the POTW to violate the local, state and federal sludge requirements which apply to the sludge management method chosen by the POTW. Alternatively, the POTW can demonstrate to the director that even though it is not presently in compliance with applicable sludge requirements, it will be in compliance when the industrial users to whom the removal credit would apply is required to meet its categorical pretreatment standards as modified by the removal credit. If granting removal credits forces a POTW to incur greater sludge management costs than would be incurred in the absence of granting removal costs, the additional sludge management costs will not be eligible for EPA grant assistance. Removal credits may be made available for the following pollutants:

(1) For any pollutant listed in Appendix G-I of the regulation incorporated by reference in 9VAC25-31-750 for the use or disposal practice employed by the POTW, when the requirements of Part VI of this chapter for that practice are met;

(2) For any pollutant listed in Appendix G-II of the regulation incorporated by reference in 9VAC25-31-750 for the use or disposal practice employed by the POTW when the concentration for a pollutant listed in Appendix G-II of the regulation incorporated by reference in 9VAC25-31-750 in the sewage sludge that is used or disposed does not exceed the concentration for the pollutant in Appendix G-II of the regulation incorporated by reference in 9VAC25-31-750; and

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(3) For any pollutant in sewage sludge when the POTW disposes all of its sewage sludge in a municipal solid waste landfill that meets the criteria in the Code of Virginia and the Solid Waste Management Regulations, 9VAC20-81;

e. VPDES permit limitations. The granting of removal credits will not cause a violation of the POTW's permit limitations or conditions. Alternatively, the POTW can demonstrate to the director that even though it is not presently in compliance with applicable limitations and conditions in its VPDES permit, it will be in compliance when the industrial user or users to whom the removal credit would apply is required to meet its categorical pretreatment standard or standards, as modified by the removal credit provision.

4. Calculation of revised discharge limits. Revised discharge limits for a specific pollutant shall be derived by use of the following formula:

$$y = \frac{x}{1 - r}$$

where:

x = pollutant discharge limit specified in the applicable categorical pretreatment standard

r = removal credit for that pollutant as established under subsection B of this section (percentage removal expressed as a proportion, i.e., a number between 0 and 1)

y = revised discharge limit for the specified pollutant (expressed in same units as x)

B. Establishment of removal credits; demonstration of consistent removal.

1. Definition of "consistent removal." "Consistent removal" means the average of the lowest 50% of the removal measured according to subdivision 2 of this subsection. All sample data obtained for the measured pollutant during the time period prescribed in subdivision 2 of this subsection must be reported and used in computing consistent removal. If a substance is measurable in the influent but not in the effluent, the effluent level may be assumed to be the limit of measurement, and those data may be used by the POTW at its discretion and subject to approval by the director. If the substance is not measurable in the influent, the data may not be used. Where the number of samples with concentrations equal to or above the limit of measurement is between eight and 12, the average of the lowest six removals shall be used. If there are less than eight samples with concentrations equal to or above the limit of measurement, the director may approve alternate means for demonstrating consistent removal. The term "measurement" refers to the ability of the analytical

method or protocol to quantify as well as identify the presence of the substance in question.

2. Consistent removal data. Influent and effluent operational data demonstrating consistent removal or other information, as provided for in subdivision 1 of this subsection, which demonstrates consistent removal of the pollutants for which discharge limit revisions are proposed. This data shall meet the following requirements:

a. Representative data; seasonal. The data shall be representative of yearly and seasonal conditions to which the POTW is subjected for each pollutant for which a discharge limit revision is proposed;

b. Representative data; quality and quantity. The data shall be representative of the quality and quantity of normal effluent and influent flow if such data can be obtained. If such data are unobtainable, alternate data or information may be presented for approval to demonstrate consistent removal as provided for in subdivision 1 of this subsection;

c. Sampling procedures: composite.

(1) The influent and effluent operational data shall be obtained through 24-hour flow-proportional composite samples. Sampling may be done manually or automatically, and discretely or continuously. For discrete sampling, at least 12 aliquots shall be composited. Discrete sampling may be flow-proportioned either by varying the time interval between each aliquot or the volume of each aliquot. All composites must be flow proportional to each stream flow at time of collection of influent aliquot or to the total influent flow since the previous influent aliquot. Volatile pollutant aliquots must be combined in the laboratory immediately before analysis.

(2)(a) Twelve samples shall be taken at approximately equal intervals throughout one full year. Sampling must be evenly distributed over the days of the week so as to include no-workdays as well as workdays. If the director determines that this schedule will not be most representative of the actual operation of the POTW treatment plant, an alternative sampling schedule will be approved.

(b) In addition, upon the director's concurrence, a POTW may utilize an historical data base amassed prior to July 24, 1996, provide that such data otherwise meet the requirements of this paragraph. In order for the historical data base to be approved it must present a statistically valid description of daily, weekly and seasonal sewage treatment plant loadings and performance for at least one year.

(3) Effluent sample collection need not be delayed to compensate for hydraulic detention unless the POTW

elects to include detention time compensation or unless the director requires detention time compensation. The director may require that each effluent sample be taken approximately one detention time later than the corresponding influent sample when failure to do so would result in an unrepresentative portrayal of actual POTW operation. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year.

d. Sampling procedures: Grab. Where composite sampling is not an appropriate sampling technique, a grab sample or samples shall be taken to obtain influent and effluent operational data. Collection of influent grab samples should precede collection of effluent samples by approximately one detention period. The detention period is to be based on a 24-hour average daily flow value. The average daily flow used will be based upon the average of the daily flows during the same month of the previous year. Grab samples will be required, for example, where the parameters being evaluated are those, such as cyanide and phenol, which may not be held for any extended period because of biological, chemical or physical interactions which take place after sample collection and affect the results. A grab sample is an individual sample collected over a period of time not exceeding 15 minutes;

e. Analytical methods. The sampling referred to in subdivisions 2 a through d of this subsection and an analysis of these samples shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 (2005) and amendments thereto. Where 40 CFR Part 136 (2005) does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator; and

f. Calculation of removal. All data acquired under the provisions of this section must be submitted to the department. Removal for a specific pollutant shall be determined either, for each sample, by measuring the difference between the concentrations of the pollutant in the influent and effluent of the POTW and expressing the difference as a percentage of the influent concentration, or, where such data cannot be obtained, removal may be demonstrated using other data or procedures subject to concurrence by the director as provided for in subdivision 1 of this subsection.

C. Provisional credits. For pollutants which are not being discharged currently (i.e., new or modified facilities, or

production changes) the POTW may apply for authorization to give removal credits prior to the initial discharge of the pollutant. Consistent removal shall be based provisionally on data from treatability studies or demonstrated removal at other treatment facilities where the quality and quantity of influent are similar. Within 18 months after the commencement of discharge of pollutants in question, consistent removal must be demonstrated pursuant to the requirements of subsection B of this section. If, within 18 months after the commencement of the discharge of the pollutant in question, the POTW cannot demonstrate consistent removal pursuant to the requirements of subsection B of this section, the authority to grant provisional removal credits shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director.

D. Exception to POTW pretreatment program requirement. A POTW required to develop a local pretreatment program by 9VAC25-31-800 may conditionally give removal credits pending approval of such a program in accordance with the following terms and conditions:

1. All industrial users who are currently subject to a categorical pretreatment standard and who wish conditionally to receive a removal credit must submit to the POTW the information required in 9VAC25-31-840 B 1 through 7 (except new or modified industrial users must only submit the information required by 9VAC25-31-840 B 1 through 6), pertaining to the categorical pretreatment standard as modified by the removal credit. The industrial users shall indicate what additional technology, if any, will be needed to comply with the categorical pretreatment standard or standards as modified by the removal credit;
2. The POTW must have submitted to the department an application for pretreatment program approval meeting the requirements of 9VAC25-31-800 and 9VAC25-31-810 in a timely manner, not to exceed the time limitation set forth in a compliance schedule for development of a pretreatment program included in the POTW's VPDES permit, but in no case later than July 1, 1983, where no permit deadline exists;
3. The POTW must:
 - a. Compile and submit data demonstrating its consistent removal in accordance with subsection B of this section;
 - b. Comply with the conditions specified in subdivision A 3 of this section; and
 - c. Submit a complete application for removal credit authority in accordance with subsection E of this section;

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4. If a POTW receives authority to grant conditional removal credits and the director subsequently makes a final determination, after appropriate notice, that the POTW failed to comply with the conditions in subdivisions 2 and 3 of this subsection, the authority to grant conditional removal credits shall be terminated by the director and all industrial users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director;

5. If a POTW grants conditional removal credits and the POTW or the director subsequently makes a final determination, after appropriate notice, that the industrial user or users failed to comply with the conditions in subdivision 1 of this subsection, the conditional credit shall be terminated by the POTW or the director for the noncomplying industrial user or users and the industrial user or users to whom the revised discharge limits had been applied shall achieve compliance with the applicable categorical pretreatment standards within a reasonable time, not to exceed the period of time prescribed in the applicable categorical pretreatment standards, as may be specified by the director. The conditional credit shall not be terminated where a violation of the provisions of this paragraph results from causes entirely outside of the control of the industrial user or users or the industrial user or users had demonstrated subsequential compliance; and

6. The director may elect not to review an application for conditional removal credit authority upon receipt of such application, in which case the conditionally revised discharge limits will remain in effect until reviewed by the director. This review may occur at any time in accordance with the procedures of 9VAC25-31-830, but in no event later than the time of any pretreatment program approval or any VPDES permit reissuance thereunder.

E. POTW application for authorization to give removal credits and director review.

1. Who must apply. Any POTW that wants to give a removal credit must apply for authorization from the director.

2. To whom application is made. An application for authorization to give removal credits (or modify existing ones) shall be submitted by the POTW to the department.

3. When to apply. A POTW may apply for authorization to give or modify removal credits at any time.

4. Contents of the application. An application for authorization to give removal credits must be supported by the following information:

a. List of pollutants. A list of pollutants for which removal credits are proposed;

b. Consistent removal data. The data required pursuant to subsection B of this section;

c. Calculation of revised discharge limits. Proposed revised discharge limits for each affected subcategory of industrial users calculated in accordance with subdivision A 4 of this section;

d. Local pretreatment program certification. A certification that the POTW has an approved local pretreatment program or qualifies for the exception to this requirement found at subsection D of this section;

e. Sludge management certification. A specific description of the POTW's current methods of using or disposing of its sludge and a certification that the granting of removal credits will not cause a violation of the sludge requirements identified in subdivision A 3 d of this section; and

f. VPDES permit limit certification. A certification that the granting of removal credits will not cause a violation of the POTW's VPDES permit limits and conditions as required in subdivision A 3 e of this section.

5. Director review. The director shall review the POTW's application for authorization to give or modify removal credits in accordance with the procedures of 9VAC25-31-830 and shall, in no event, have more than 180 days from public notice of an application to complete review.

6. Nothing in this part precludes an industrial user or other interested party from assisting the POTW in preparing and presenting the information necessary to apply for authorization.

F. Continuation and withdrawal of authorization.

1. Effect of authorization. Once a POTW has received authorization to grant removal credits for a particular pollutant regulated in a categorical pretreatment standard it may automatically extend that removal credit to the same pollutant when it is regulated in other categorical standards, unless granting the removal credit will cause the POTW to violate the sludge requirements identified in subdivision A 3 d of this section or its VPDES permit limits and conditions as required by subdivision A 3 e of this section. If a POTW elects at a later time to extend removal credits to a certain categorical pretreatment standard, industrial subcategory or one or more industrial users that initially were not granted removal credits, it must notify the department.

2. Inclusion in POTW permit. Once authority is granted, the removal credits shall be included in the POTW's VPDES permit as soon as possible and shall become an enforceable requirement of the POTW's VPDES permit.

The removal credits will remain in effect for the term of the POTW's VPDES permit, provided the POTW maintains compliance with the conditions specified in subdivision 4 of this subsection.

3. Compliance monitoring. Following authorization to give removal credits, a POTW shall continue to monitor and report on (at such intervals as may be specified by the director, but in no case less than once per year) the POTW's removal capabilities. A minimum of one representative sample per month during the reporting period is required, and all sampling data must be included in the POTW's compliance report.

4. Modification or withdrawal of removal credits.

a. Notice of POTW. The director shall notify the POTW if, on the basis of pollutant removal capability reports received pursuant to subdivision 3 of this subsection or other relevant information available to it, the director determines:

(1) That one or more of the discharge limit revisions made by the POTW, of the POTW itself, no longer meets the requirements of this section, or

(2) That such discharge limit revisions are causing a violation of any conditions or limits contained in the POTW's VPDES Permit.

b. Corrective action. If appropriate corrective action is not taken within a reasonable time, not to exceed 60 days unless the POTW or the affected industrial users demonstrate that a longer time period is reasonably necessary to undertake the appropriate corrective action, the director shall either withdraw such discharge limits or require modifications in the revised discharge limits.

c. Public notice of withdrawal or modification. The director shall not withdraw or modify revised discharge limits unless it shall first have notified the POTW and all industrial users to whom revised discharge limits have been applied, and made public, in writing, the reasons for such withdrawal or modification, and an opportunity is provided for a public hearing. Following such notice and withdrawal or modification, all industrial users to whom revised discharge limits had been applied, shall be subject to the modified discharge limits or the discharge limits prescribed in the applicable categorical pretreatment standards, as appropriate, and shall achieve compliance with such limits within a reasonable time (not to exceed the period of time prescribed in the applicable categorical pretreatment standards) as may be specified by the director.

G. Removal credits in state-run pretreatment programs. Where the director elects to implement a local pretreatment program in lieu of requiring the POTW to develop such a program the POTW will not be required to develop a

pretreatment program as a precondition to obtaining authorization to give removal credits. The POTW will, however, be required to comply with the other conditions of subdivision A 3 of this section.

H. Compensation for overflow. For the purpose of this section, "overflow" means the intentional or unintentional diversion of flow from the POTW before the POTW treatment plant. POTWs which at least once annually overflow untreated wastewater to receiving waters may claim consistent removal of a pollutant only by complying with either subdivision 1 or 2 of this subsection. However, this subsection shall not apply where industrial users can demonstrate that overflow does not occur between the industrial users and the POTW treatment plant:

1. The industrial user provides containment or otherwise ceases or reduces discharges from the regulated processes which contain the pollutant for which an allowance is requested during all circumstances in which an overflow event can reasonably be expected to occur at the POTW or at a sewer to which the industrial user is connected. Discharges must cease or be reduced, or pretreatment must be increased, to the extent necessary to compensate for the removal not being provided by the POTW. Allowances under this provision will only be granted where the POTW submits to the department evidence that:

a. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability to contain or otherwise cease or reduce, during circumstances in which an overflow event can reasonably be expected to occur, discharges from the regulated processes which contain pollutants for which an allowance is requested;

b. The POTW has identified circumstances in which an overflow event can reasonably be expected to occur, and has a notification or other viable plan to insure that industrial users will learn of an impending overflow in sufficient time to contain, cease or reduce discharging to prevent untreated overflows from occurring. The POTW must also demonstrate that it will monitor and verify the data required in subdivision 1 c of this subsection, to insure that industrial users are containing, ceasing or reducing operations during POTW system overflow; and

c. All industrial users to which the POTW proposes to apply this provision have demonstrated the ability and commitment to collect and make available, upon request by the POTW, the director or EPA Regional Administrator, daily flow reports or other data sufficient to demonstrate that all discharges from regulated processes containing the pollutant for which the allowance is requested were contained, reduced or otherwise ceased, as appropriate, during all circumstances in which an overflow event was reasonably expected to occur; or

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2. a. The consistent removal claimed is reduced pursuant to the following equation:

$$r_c = \frac{r_m 8760 - z}{8760}$$

where:

r_m = POTW's consistent removal rate for that pollutant as established under subsections A 1 and B 2 of this section

r_c = removal corrected by the overflow factor

Z = hours per year that overflow occurred between the industrial user or users and the POTW treatment plant, the hours either to be shown in the POTW's current VPDES permit application or the hours, as demonstrated by verifiable techniques, that a particular industrial user's discharge overflows between the industrial user and the POTW treatment plant.

b. The POTW is complying with all VPDES permit requirements and any additional requirements in any order or decree, issued pursuant to the Clean Water Act affecting combined sewer outflows. These requirements include, but are not limited to, any combined sewer overflow requirements that conform to the Combined Sewer Overflow Control Policy.

9VAC25-31-800. Pretreatment program requirements: development and implementation by POTW.

A. POTWs required to develop a pretreatment program. Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five million gallons per day (mgd) and receiving from industrial users pollutants which pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards will be required to establish a POTW pretreatment program unless the director exercises his or her option to assume local responsibilities. The regional administrator or director may require that a POTW with a design flow of five mgd or less develop a POTW pretreatment program if he finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, violations of water quality standards, or other circumstances warrant in order to prevent interference with the POTW or pass through.

B. Deadline for program approval. POTWs identified as being required to develop a POTW pretreatment program under subsection A of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the director of such identification. The approved program shall be in operation within two years of the effective date of the permit. The POTW pretreatment program shall meet the criteria set forth in subsection F of this section and shall be administered by the POTW to ensure compliance by

industrial users with applicable pretreatment standards and requirements.

C. Incorporation of approved programs in permits. A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in subsection B of this section. The POTW's VPDES permit will be reissued or modified to incorporate the approved program as enforceable conditions of the permit. The modification of a POTW's VPDES permit for the purposes of incorporating a POTW pretreatment program approved in accordance with the procedures in 9VAC25-31-830 shall be deemed a minor permit modification subject to the procedures in 9VAC25-31-400.

D. Incorporation of compliance schedules in permits. (Reserved.)

E. Cause for revocation and reissuance or modification of permits. Under the authority of the law and § 402 (b)(1)(C) of the CWA, the director may modify, or alternatively, revoke and reissue a POTW's permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;
2. Coordinate the issuance of § 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;
3. Incorporate a modification of the permit approved under § 301(h) or § 301(i) of the CWA;
4. Incorporate an approved POTW pretreatment program in the POTW permit;
5. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit; or
6. Incorporate the removal credits (established under 9VAC25-31-790) in the POTW permit.

F. POTW pretreatment requirements. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

1. Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of §§ 307(b), (c) and (d), and 402(b)(8) of the CWA and any regulations implementing those sections. Such authority may be contained in a statute or ordinances which the POTW is authorized to enact, enter into or implement, and which are authorized by state

law. At a minimum, this legal authority shall enable the POTW to:

a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its VPDES permit.

b. Require compliance with applicable pretreatment standards and requirements by industrial users.

c. Control through permit, or order the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under 9VAC25-31-10, this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such user except as follows:

(1)(a) At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Require the same effluent limitations;

(iv) Require the same or similar monitoring; and

(v) In the opinion of the POTW, be more appropriately controlled under a general control mechanism than under individual control mechanisms.

(b) To be covered by the general control mechanism, the significant industrial user must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with 9VAC25-31-840 E 2 for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the significant industrial user that such a waiver request has been granted in accordance with 9VAC25-31-840 E 2. The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific significant industrial user meets the criteria in subdivisions 1 c (1) (a) (i) through (v) of this subsection, and a copy of the user's written request for coverage for three years after the expiration

of the general control mechanism. A POTW may not control a significant industrial user through a general control mechanism where the facility is subject to production-based categorical pretreatment standards or categorical pretreatment standards expressed as mass of pollutant discharged per day or for industrial users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (9VAC25-31-780 E and 9VAC25-31-870).

(2) Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(a) Statement of duration (in no case more than five years);

(b) Statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(c) Effluent limits, including Best Management Practices, based on applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;

(d) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with 9VAC25-31-840 E 2, or a specific waiver pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;

(e) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements; and any applicable compliance schedules, which may not extend beyond applicable federal deadlines.

(f) Requirements to control slug discharges, if determined by the POTW to be necessary.

d. Require:

(1) The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and

(2) The submission of all notices and self-monitoring reports from industrial users as are necessary to assess and ensure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in 9VAC25-31-840.

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e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under 9VAC25-31-840 O to ensure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under § 308 of the CWA.

f. Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of \$1,000 a day for each violation by industrial users of pretreatment standards and requirements.

Pretreatment requirements which will be enforced through the remedies set forth in this subdivision, will include but not be limited to, the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or this part. The POTW shall have authority and procedures (after informal notice to the discharger) to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the director believes to be insufficient.

g. Comply with the confidentiality requirements set forth in 9VAC25-31-860.

2. Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

a. Identify and locate all possible industrial users which might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users

made under this subdivision shall be made available to the regional administrator or department upon request.

b. Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under subdivision 2 a of this subsection. This information shall be made available to the regional administrator or department upon request.

c. Notify industrial users identified under subdivision 2 a of this subsection, of applicable pretreatment standards and any applicable requirements under §§ 204(b) and 405 of the CWA and subtitles C and D of the Resource Conservation and Recovery Act (42 USC § 6901 et seq.). Within 30 days of approval pursuant to 9VAC25-31-800 F 6, of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

d. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in 9VAC25-31-840.

e. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year except as otherwise specified below.

(1) Where the POTW has authorized the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard in accordance with 9VAC25-31-840 E the POTW must sample for the waived pollutant(s) at least once during the term of the categorical industrial user's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the user's operations, the POTW must immediately begin at least annual effluent monitoring of the user's discharge and inspection.

(2) Where the POTW has determined that an industrial user meets the criteria for classification as a nonsignificant categorical industrial user, the POTW must evaluate, at least once per year, whether an industrial user continues to meet the criteria in 9VAC25-31-10.

(3) In the case of industrial users subject to reduced reporting requirements under 9VAC25-31-840 E, the POTW must randomly sample and analyze the effluent from industrial users and conduct inspections at least once every two years. If the industrial user no longer meets the conditions for reduced reporting in 9VAC25-

31-840 E, the POTW must immediately begin sampling and inspecting the industrial user at least once a year.

f. Evaluate whether each such significant industrial user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2005; additional significant industrial users must be evaluated within one year of being designated a significant industrial user. For purposes of this subsection, a slug discharge is any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or noncustomary batch discharge that has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulating local limits or permit conditions. The results of such activities shall be available to the department upon request. Significant industrial users are required to notify the POTW immediately of any changes at its facility affecting potential for a slug discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

- (1) Description of discharge practices, including nonroutine batch discharges;
 - (2) Description of stored chemicals;
 - (3) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 9VAC25-31-770 B, with procedures for follow-up written notification within five days; and
 - (4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment necessary for emergency response.
- g. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under 9VAC25-31-840, or indicated by analysis, inspection, and surveillance activities described in subdivision 2 e of this subsection. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.

h. Comply with the public participation requirements of the Code of Virginia and 40 CFR Part 25 (~~2005~~) in the enforcement of national pretreatment standards. These procedures shall include provisions for at least annual public notification, in a newspaper of general circulation

that provides meaningful public notice within the jurisdiction(s) served by the POTW of industrial users which, at any time during the previous 12 months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, a significant industrial user (or any industrial user that violates subdivision 2 h (3), (4) or (8) of this subsection is in significant noncompliance if its violation meets one or more of the following criteria:

- (1) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all of the measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 9VAC25-31-10;
- (2) Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 9VAC25-31-10; multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- (3) Any other violation of a pretreatment standard or requirement as defined by 9VAC25-31-10 (daily maximum, long-term average, instantaneous limit, or narrative standard) that the control authority POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under subdivision 1 f of this subsection to halt or prevent such a discharge;
- (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;
- (6) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
- (7) Failure to accurately report noncompliance; or
- (8) Any other violation or group of violations that may include a violation of Best Management Practices which the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

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3. Funding. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in subdivisions 1 and 2 of this subsection. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in this section, and (ii) a limited aspect of the program does not need to be implemented immediately (see 9VAC25-31-810 B).

4. Local limits. The POTW shall develop local limits as required in 9VAC25-31-770 C 1, using current influent, effluent and sludge data, or demonstrate that they are not necessary.

5. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

- a. Describe how the POTW will investigate instances of noncompliance;
- b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;
- c. Identify (by title) the official or officials responsible for each type of response; and
- d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in subdivisions 1 and 2 of this subsection.

6. The POTW shall prepare and maintain a list of its significant industrial users. The list shall identify the criteria in the definition of significant industrial user in Part I (9VAC25-31-10 et seq.) of this chapter which are applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to subdivision 3 of that definition that such industrial user should not be considered a significant industrial user. This list shall be submitted to the department pursuant to 9VAC25-31-810 as a nonsubstantial program modification pursuant to 9VAC25-31-900 D. Modifications to the list shall be submitted to the department pursuant to 9VAC25-31-840 I 1.

G. A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (electronic reporting).

9VAC25-31-810. POTW pretreatment programs and/or authorization to revise pretreatment standards: submission for approval.

A. A POTW requesting approval of a POTW pretreatment program shall develop a program description which includes the information set forth in subdivisions B 1 through B 4 of this section. This description shall be submitted to the department which will make a determination on the request for program approval in accordance with the procedures described in 9VAC25-31-830.

B. The program description must contain the following information:

1. A statement from the city solicitor or a city official acting in a comparable capacity (or the attorney for those POTWs which have independent legal counsel) that the POTW has authority adequate to carry out the programs described in 9VAC25-31-800. This statement shall:

- a. Identify the provision of the legal authority under 9VAC25-31-800 F 1 which provides the basis for each procedure under 9VAC25-31-800 F 2;
- b. Identify the manner in which the POTW will implement the program requirements set forth in 9VAC25-31-800, including the means by which pretreatment standards will be applied to individual industrial users (e.g., by order, permit, ordinance, etc.); and
- c. Identify how the POTW intends to ensure compliance with pretreatment standards and requirements, and to enforce them in the event of noncompliance by industrial users;

2. A copy of any statutes, ordinances, regulations, agreements, or other authorities relied upon by the POTW for its administration of the program which meet the requirements of 9VAC25-31-800 F 1. This submission shall include a statement reflecting the endorsement or approval of the local boards or bodies responsible for supervising or funding the POTW pretreatment program if approved;

3. A brief description (including organization charts) of the POTW organization which will administer the pretreatment program. If more than one agency is responsible for administration of the program the responsible agencies shall be identified, their respective responsibilities delineated, and their procedures for coordination set forth in an inter-jurisdictional agreement; and

4. A description of the funding levels and full and part-time manpower available to implement the program.

C. The POTW may request conditional approval of the pretreatment program pending the acquisition of funding and personnel from certain elements of the program. The request

for conditional approval must meet the requirements set forth in subsection B of this section except that the requirements of subsection B of this section may be relaxed if the submission demonstrates that:

1. A limited aspect of the program does not need to be implemented immediately;
2. The POTW had adequate legal authority and procedures to carry out those aspects of the program which will not be implemented immediately; and
3. Funding and personnel for the program aspects to be implemented at a later date will be available when needed. The POTW will describe in the submission the mechanism by which this funding will be acquired. Upon receipt of a request for conditional approval, the director will establish a fixed date for the acquisition of the needed funding and personnel. If funding is not acquired by this date, the conditional approval of the POTW pretreatment program and any removal allowances granted to the POTW may be modified or withdrawn.

D. The request for authority to revise categorical pretreatment standards must contain the information required in 9VAC25-31-790 D.

E. Any POTW requesting POTW pretreatment program approval shall submit to the department three copies of the submission described in subsection B, and if appropriate, subsection D of this section. Within 60 days after receiving the submission, the director shall make a preliminary determination of whether the submission meets the requirements of subsection B and, if appropriate, subsection D of this section. If the director makes the preliminary determination that the submission meets these requirements, the director shall:

1. Notify the POTW that the submission has been received and is under review; and
2. Commence the public notice and evaluation activities set forth in 9VAC25-31-830.

F. If, after review of the submission as provided for in subsection E of this section, the director determines that the submission does not comply with the requirements of subsections B or C of this section, and, if appropriate, subsection D, of this section, the director shall provide notice in writing to the applying POTW and each person who has requested individual notice. This notification shall identify any defects in the submission and advise the POTW and each person who has requested individual notice of the means by which the POTW can comply with the applicable requirements of subsections B, C of this section, and, if appropriate, subsection D of this section.

G. Consistency with water quality management plans.

1. In order to be approved the POTW pretreatment program shall be consistent with any approved water quality management plan developed in accordance with 40 CFR Parts 130, ~~and 131 (2000)~~, as revised, where such 208 plan includes management agency designations and addresses pretreatment in a manner consistent with this part. In order to assure such consistency the director shall solicit the review and comment of the appropriate 208 planning agency during the public comment period provided for in 9VAC25-31-830 B 1 b prior to approval or disapproval of the program.

2. Where no 208 plan has been approved or where a plan has been approved but lacks management agency designations or does not address pretreatment in a manner consistent with this part, the director shall nevertheless solicit the review and comment of the appropriate 208 planning agency.

9VAC25-31-840. Reporting requirements for POTWs and industrial users.

A. (Reserved.)

B. Reporting requirements for industrial users upon effective date of categorical pretreatment standard baseline report. Within 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision made upon a category determination submission under 9VAC25-31-780 A 4, whichever is later, existing industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 7 of this subsection. At least 90 days prior to commencement of discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical standard shall be required to submit to the control authority a report which contains the information listed in subdivisions 1 through 5 of this subsection. New sources shall also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards. New sources shall give estimates of the information requested in subdivisions 4 and 5 of this subsection.

1. Identifying information. The user shall submit the name and address of the facility including the name of the operator and owners.
2. Permits. The user shall submit a list of any environmental control permits held by or for the facility.
3. Description of operations. The user shall submit a brief description of the nature, average rate of production, and standard industrial classification of the operation or operations carried out by such industrial user. This description should include a schematic process diagram

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which indicates points of discharge to the POTW from the regulated processes.

4. Flow measurement. The user shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

- a. Regulated process streams; and
- b. Other streams as necessary to allow use of the combined wastestream formula of 9VAC25-31-780 E. (See subdivision 5 d of this subsection.)

The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

5. Measurement of pollutants.

- a. The user shall identify the pretreatment standards applicable to each regulated process;
- b. In addition, the user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the standard requires compliance with a Best Management Practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard;
- c. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this subsection;
- d. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of 9VAC25-31-780 E in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 9VAC25-31-780 E, this adjusted limit along with supporting data shall be submitted to the control authority;
- e. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 (~~2005~~) and amendments thereto. Where 40 CFR Part 136 (~~2005~~) does not contain sampling or analytical techniques for the pollutant in question, or where the

administrator determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator;

f. The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures; and

g. The baseline report shall indicate the time, date and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW

6. Certification. A statement, reviewed by an authorized representative of the industrial user (as defined in subsection M of this section) and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) or additional pretreatment, or both, are required for the industrial user to meet the pretreatment standards and requirements.

7. Compliance schedule. If additional pretreatment or O and M, or both, will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment or O and M, or both. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

a. Where the industrial user's categorical pretreatment standard has been modified by a removal allowance (9VAC25-31-790), the combined wastestream formula (9VAC25-31-780 E), or a fundamentally different factors variance (9VAC25-31-850), or any combination of them, at the time the user submits the report required by this subsection, the information required by subdivisions 6 and 7 of this subsection shall pertain to the modified limits.

b. If the categorical pretreatment standard is modified by a removal allowance (9VAC25-31-790), the combined wastestream formula (9VAC25-31-780 E), or a fundamentally different factors variance (9VAC25-31-850), or any combination of them, after the user submits the report required by this subsection, any necessary amendments to the information requested by subdivisions 6 and 7 of this subsection shall be submitted by the user to the control authority within 60 days after the modified limit is approved.

C. Compliance schedule for meeting categorical pretreatment standards. The following conditions shall apply to the schedule required by subdivision B 7 of this section:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);
2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and
3. Not later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine months elapse between such progress reports to the control authority.

D. Report on compliance with categorical pretreatment standard deadline. Within 90 days following the date for final compliance with applicable categorical pretreatment standards or in the case of a new source following commencement of the introduction of wastewater into the POTW, any industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subdivisions B 4 through B 6 of this section. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9VAC25-31-780 C, this report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period.

E. Periodic reports on continued compliance.

1. Any industrial user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the director, a report indicating the nature and concentration of

pollutants in the effluent which are limited by such categorical pretreatment standards. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subdivision B 4 of this section except that the control authority may require more detailed reporting of flows. In cases where the pretreatment standard requires compliance with a Best Management Practice (or pollution prevention alternative), the user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the user. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the control authority may agree to alter the months during which the above reports are to be submitted.

2. The control authority may authorize the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:

- a. The control authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.
- b. The monitoring waiver is valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent control mechanism.
- c. In making a demonstration that a pollutant is not present, the industrial user must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with subsection L of this subsection, and include the certification statement in 9VAC25-31-780 A 2 b. Nondetectable sample results may only be used as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
- d. Any grant of the monitoring waiver by the control authority must be included as a condition in the user's

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control mechanism. The reasons supporting the waiver and any information submitted by the user in its request for the waiver must be maintained by the control authority for three years after expiration of the waiver.

e. Upon approval of the monitoring waiver and revision of the user's control mechanism by the control authority, the industrial user must certify on each report with the statement below, that there has been no increase in the pollutant in its wastestream due to activities of the industrial user:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR [specify applicable national pretreatment standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under 9VAC25-31-840 E 1."

f. In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the user's operations, the user must immediately: Comply with the monitoring requirements of subdivision 1 of this subsection or other more frequent monitoring requirements imposed by the control authority, and notify the control authority.

g. This provision does not supersede certification processes and requirements established in categorical pretreatment standards, except as otherwise specified in the categorical pretreatment standard.

3. The control authority may reduce the requirement in the subdivision 1 of this subsection to a requirement to report no less frequently than once a year, unless required more frequently in the pretreatment standard or by the approval authority, where the industrial user meets all of the following conditions:

a. The industrial user's total categorical wastewater flow does not exceed any of the following:

(1) 0.01% of the design dry weather hydraulic capacity of the POTW, or 5,000 gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the industrial user discharges in batches;

(2) 0.01% of the design dry weather organic treatment capacity of the POTW; and

(3) 0.01% of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical pretreatment standard for which approved local limits were developed by a POTW in accordance with 9VAC25-31-770 C and D.

b. The industrial user has not been in significant noncompliance, as defined in 9VAC25-31-800 F 2 g, for any time in the past two years;

c. The Industrial User does not have daily flow rates, production levels, or pollutant levels that vary so significantly that decreasing the reporting requirement for this Industrial User would result in data that are not representative of conditions occurring during the reporting period pursuant to subdivision G 3 of this section;

d. The industrial user must notify the control authority immediately of any changes at its facility causing it to no longer meet conditions of subdivision 3 a or b of this subsection. Upon notification, the industrial user must immediately begin complying with the minimum reporting in subdivision 1 of this subsection; and

e. The control authority must retain documentation to support the control authority's determination that a specific industrial user qualifies for reduced reporting requirements under subdivision 3 of this subsection for a period of three years after the expiration of the term of the control mechanism.

4. Where the control authority has imposed mass limitations on industrial users as provided for by 9VAC25-31-780 C, the report required by subdivision 1 of this subsection shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

5. For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 9VAC25-31-780 C, the report required by subdivision 1 of this subsection shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by subdivision 1 of this subsection shall include the user's actual average production rate for the reporting period.

F. Notice of potential problems, including slug loading. All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by 9VAC25-31-770 B, by the industrial user.

G. Monitoring and analysis to demonstrate continued compliance with pretreatment standards and requirements.

1. Except in the case of nonsignificant categorical users, the reports required in subsections B, D, E, and H of this section shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by

the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the user will not be required to submit the compliance certification required under subdivision B 6 and subsection D of this section. In addition, where the POTW itself collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

2. If sampling performed by an industrial user indicates a violation, the user shall notify the control authority within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis. Resampling is not required if:

- a. The control authority performs sampling at the industrial user at a frequency of at least once per month; or
- b. The control authority performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the control authority receives the results of this sampling.

3. The reports required in subsection E of this section must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the control authority. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides

the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

4. For sampling required in support of baseline monitoring and 90-day compliance reports required in subsections B and D of this section, a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the Control Authority may authorize a lower minimum. For the reports required by subsections E and H of this section, the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

5. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136 (~~2005~~) and amendments thereto or with any other test procedures approved by EPA, and shall be reported to the control authority. Sampling shall be performed in accordance with EPA-approved techniques. Where 40 CFR Part 136 (~~2005~~) does not include sampling or analytical techniques for the pollutants in question, or where EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by EPA.

6. If an industrial user subject to the reporting requirement in subsection E or H of this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the control authority, using the procedures prescribed in subdivision 5 of this subsection, the results of this monitoring shall be included in the report.

H. Reporting requirements for industrial users not subject to categorical pretreatment standards. The control authority must require appropriate reporting from those industrial users with discharges that are not subject to categorical pretreatment standards. Significant noncategorical industrial users must submit to the control authority at least once every six months (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the control authority. In cases where a local limit requires compliance with a Best Management Practice or pollution prevention alternative, the user must submit documentation required by the control authority to determine

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the compliance status of the user. These reports must be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136 (~~2005~~) and amendments thereto. This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user.

I. Annual POTW reports. POTWs with approved pretreatment programs shall provide the department with a report that briefly describes the POTW's program activities, including activities of all participating agencies if more than one jurisdiction is involved in the local program. The report required by this section shall be submitted no later than one year after approval of the POTW's pretreatment program, and at least annually thereafter, and shall include, at a minimum, the following:

1. An updated list of the POTW's industrial users, including their names and addresses, or a list of deletions and additions keyed to a previously submitted list. The POTW shall provide a brief explanation of each deletion. This list shall identify which industrial users are subject to categorical pretreatment standards and specify which standards are applicable to each industrial user. The list shall indicate which industrial users are subject to local standards that are more stringent than the categorical pretreatment standards. The POTW shall also list the industrial users that are subject only to local requirements. The list must also identify industrial users subject to categorical pretreatment standards that are subject to reduced reporting requirements under subdivision E 3 of this section and identify which industrial users are nonsignificant categorical industrial users.
2. A summary of the status of industrial user compliance over the reporting period;
3. A summary of compliance and enforcement activities (including inspections) conducted by the POTW during the reporting period;
4. A summary of changes to the POTW's pretreatment program that have not been previously reported to the department; and
5. Any other relevant information requested by the director.

J. Notification of changed discharge. All industrial users shall promptly notify the control authority (and the POTW if the POTW is not the control authority) in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under the Code of Virginia and this section.

K. Compliance schedule for POTWs. The following conditions and reporting requirements shall apply to the compliance schedule for development of an approvable POTW pretreatment program required by 9VAC25-31-800:

1. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the development and implementation of a POTW pretreatment program (e.g., acquiring required authorities, developing funding mechanisms, acquiring equipment);
2. No increment referred to in subdivision 1 of this subsection shall exceed nine months; and
3. Not later than 14 days following each date in the schedule and the final date for compliance, the POTW shall submit a progress report to the department including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps taken by the POTW to return to the schedule established. In no event shall more than nine months elapse between such progress reports to the department.

L. Signatory requirements for industrial user reports. The reports required by subsections B, D, and E of this section shall include the certification statement as set forth in 9VAC25-31-780 A 2 b, and shall be signed as follows:

1. By a responsible corporate officer, if the industrial user submitting the reports required by subsections B, D and E of this section is a corporation. For the purpose of this subdivision, 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 initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
2. By a general partner or proprietor if the industrial user submitting the reports required by subsections B, D and E of this section is a partnership or sole proprietorship, respectively.

3. By a duly authorized representative of the individual designated in subdivision 1 or 2 of this subsection if:

- a. The authorization is made in writing by the individual described in subdivision 1 or 2 of this subsection;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and
- c. The written authorization is submitted to the control authority.

4. If an authorization under subdivision 3 of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision 3 of this subsection must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

M. Signatory requirements for POTW reports. Reports submitted to the department by the POTW in accordance with subsection I of this section must be signed by a principal executive officer, ranking elected official or other duly authorized employee. The duly authorized employee must be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be made in writing by the principal executive officer or ranking elected official, and submitted to the approval authority prior to or together with the report being submitted.

N. Provision governing fraud and false statements. The reports and other documents required to be submitted or maintained under this section shall be subject to:

- 1. The provisions of 18 USC § 1001 relating to fraud and false statements;
- 2. The provisions of the law or § 309(c)(4) of the CWA, as amended, governing false statements, representation or certification; and
- 3. The provisions of § 309(c)(6) of the CWA regarding responsible corporate officers.

O. Recordkeeping requirements.

1. Any industrial user and POTW subject to the reporting requirements established in this section shall maintain records of all information resulting from any monitoring activities required by this section including documentation associated with Best Management Practices. Such records shall include for all samples:

- a. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
- b. The dates analyses were performed;
- c. Who performed the analyses;
- d. The analytical techniques/methods used; and
- e. The results of such analyses.

2. Any industrial user or POTW subject to the reporting requirements established in this section (including documentation associated with Best Management Practices) shall be required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the director and the regional administrator (and POTW in the case of an industrial user). This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or POTW or when requested by the director or the regional administrator.

3. Any POTW to which reports are submitted by an industrial user pursuant to subsections B, D, E, and H of this section shall retain such reports for a minimum of three years and shall make such reports available for inspection and copying by the director and the regional administrator. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the POTW pretreatment program or when requested by the director or the regional administrator.

P. 1. The industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under the Code of Virginia and 40 CFR Part 261 (~~2005~~). Such notification must include the name of the hazardous waste as set forth in the Code of Virginia and 40 CFR Part 261 (~~2005~~), the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide

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the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under subsection J of this section. The notification requirement in this section does not apply to pollutants already reported under self-monitoring requirements of subsections B, D, and E of this section.

2. Dischargers are exempt from the requirements of subdivision 1 of this subsection during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2005). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2005), requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

3. In the case of any new regulations under § 3001 of RCRA (42 USC § 6901 et seq.) identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

4. In the case of any notification made under this subsection, the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Q. Annual certification by nonsignificant categorical industrial users. A facility determined to be a nonsignificant categorical industrial user pursuant to 9VAC25-31-10 must annually submit the following certification statement, signed in accordance with the signatory requirements in subsection L of this section. This certification must accompany an alternative report required by the control authority:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

1. The facility described as _____ [facility name] met the definition of a nonsignificant categorical industrial user as described in 9VAC25-31-10;

2. The facility complied with all applicable pretreatment standards and requirements during this reporting period; and

3. The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information.

_____ "

R. The control authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (Electronic reporting).

9VAC25-31-900. Modification of POTW pretreatment programs.

A. Either the director or a POTW with an approved POTW pretreatment program may initiate program modification at any time to reflect changing conditions at the POTW. Program modification is necessary whenever there is a significant change in the operation of a POTW pretreatment program that differs from the information in the POTW's submission, as approved under 9VAC25-31-830.

B. Substantial modifications defined. Substantial modifications include:

1. Modifications that relax POTW legal authorities (as described in 9VAC25-31-800 F 1, except for modifications that directly reflect a revision to this part or to 40 CFR Chapter I, Subchapter N (2000), and are reported pursuant to subsection D of this section;

2. Modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the maximum allowable industrial loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported pursuant to subsection D of this section. Maximum allowable industrial loading means the total mass of a pollutant that all industrial users of a POTW (or a subgroup of industrial users identified by the POTW) may discharge pursuant to limits developed under 9VAC25-31-770 C;

3. Changes to the POTW's control mechanism as described in 9VAC25-31-800 F 1 c;

4. A decrease in the frequency of self-monitoring or reporting required of industrial users;

5. A decrease in the frequency of industrial user inspections or sampling by the POTW;

6. Changes to the POTW's confidentiality procedures; and

7. Other modifications designated as substantial modifications by the director on the basis that the modification could have a significant impact on the operation of the POTW's pretreatment program, could result in an increase in pollutant loadings at the POTW, or could result in less stringent requirements being imposed on industrial users of the POTW.

C. Approval procedures for substantial modifications.

1. The POTW shall submit to the department a statement of the basis for the desired program modification, a modified program description (see 9VAC25-31-810 B), or such other documents the director determines to be necessary under the circumstances.

2. The director shall approve or disapprove the modification based on the requirements of 9VAC25-31-800 F and using the procedures in 9VAC25-31-830 B through F, except as provided in subdivisions C 3 and C 4 of this section. The modification shall become effective upon approval by the director.

3. The director need not publish a notice of decision under 9VAC25-31-830 E provided (i) the notice of request for approval under 9VAC25-31-830 B 1 states that the request will be approved if no comments are received by a date specified in the notice; (ii) no substantive comments are received; and (iii) the request is approved without change.

4. Notices required by 9VAC25-31-830 may be performed by the POTW provided that the director finds that the POTW notice otherwise satisfies the requirements of 9VAC25-31-830.

D. Approval procedures for nonsubstantial modifications.

1. The POTW shall notify the department of any nonsubstantial modification at least 45 days prior to implementation by the POTW in a statement similar to that provided for in subdivision C 1 of this section.

2. Within 45 days after the submission of the POTW's statement, the director shall notify the POTW of his decision to approve or disapprove the nonsubstantial modification.

3. If the director does not notify the POTW within 45 days of his decision to approve or deny the modification or to treat the modification as substantial under subdivision B 7 of this section, the POTW may implement the modification.

E. Incorporation in permit. All modifications shall be incorporated into the POTW's VPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with 9VAC25-31-400.

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 (9VAC25-31)

~~VPDES Sewage Sludge Permit Application Form with instructions (rev. 2000).~~

[VPDES Sewage Sludge Permit Application Form \(rev. 2000\).](#)

[Instructions for VPDES Sewage Sludge Permit Application Form \(rev. 2000\).](#)

~~Application Form 1 - General Information, Consolidated Permits Program, EPA Form 3510-1 (June 1980).~~

~~Virginia State Water Control Board Fish Farm Questionnaire (July 1996).~~

[Application Form 1 - General Information, Consolidated Permits Program, EPA Form 3510-1 \(rev. 8/90\).](#)

[Virginia State Water Control Board Fish Farm Questionnaire \(rev. 4/11\).](#)

[Application Form 2A - NPDES Form 2A Application for Permit to Discharge Municipal Wastewater, EPA Form 3510-2A \(eff. 1/99\).](#)

[Form 2B NPDES, Applications for Permit to Discharge Wastewater Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities, EPA Form 3510-2B \(rev. 11/08\).](#)

~~Application Form 2C - Wastewater Discharge Information, Consolidated Permits Program, EPA Form 3510-2C (rev. February 1985).~~

~~Application Form 2D - New Sources and New Dischargers: Application for Permit to Discharge Process Wastewater, EPA Form 3510-2D (September 1986).~~

~~Application Form 2E - Facilities Which Do Not Discharge Process Wastewater, EPA Form 3510-2E (September 1986).~~

~~Form 2F NPDES, Application for Permit to Discharge Stormwater, Discharges Associated with Industrial Activity, EPA Form 3510-2F (November 1990).~~

[Application Form 2C - Wastewater Discharge Information, Consolidated Permits Program, EPA Form 3510-2C \(rev. 8/90\).](#)

[Application Form 2D - New Sources and New Dischargers: Application for Permit to Discharge Process Wastewater, EPA Form 3510-2D \(rev. 8/90\).](#)

[Application Form 2E - Facilities Which Do Not Discharge Process Wastewater, EPA Form 3510-2E \(rev. 8/90\).](#)

[Form 2F NPDES, Application for Permit to Discharge Stormwater, Discharges Associated with Industrial Activity, EPA Form 3510-2F \(rev. 1/92\).](#)

[Local Government Ordinance Form \(eff. 2000\).](#)

[Local Government Certification Form for New Municipal Solid Waste Landfill Permits \(eff. 2006\).](#)

VA.R. Doc. No. R12-3010; Filed December 16, 2011; 2:22 p.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Emergency Regulation

Titles of Regulations: 12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-10, 12VAC5-410-60).

12VAC5-412. Regulations for Licensure of Abortion Facilities (adding 12VAC5-412-10 through 12VAC5-412-380).

Statutory Authority: § 32.1-127 of the Code of Virginia.

Effective Dates: December 29, 2011, through December 28, 2012.

Agency Contact: Joe Hilbert, Director of Governmental and Regulatory Affairs, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7006, FAX (804) 864-7022, or email joe.hilbert@vdh.virginia.gov.

Preamble:

Chapter 670 of the 2011 Acts of Assembly (Senate Bill 924) mandates that the State Board of Health promulgate regulations for facilities performing five or more first trimester abortions per month (<http://lis.virginia.gov/cgi-bin/legp604.exe?111+ful+CHAP0670+pdf>). Senate Bill 924 specified that, for purposes of licensure, those facilities were to be classified as a category of hospital. The bill further specified that the regulations have to be effective within 280 days of enactment. For that reason, the board is utilizing the emergency rulemaking process authorized by the Administrative Process Act.

The regulations contain provisions pertaining to definitions, procedures for licensure or license renewal, organization and management, infection prevention, patient care, quality assurance, medical records and reports, disaster preparedness, facility security, functional safety and maintenance, and design and construction.

Part I

Definitions and General Information and Procedures

Article 1

Definitions

12VAC5-410-10. Definitions.

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

"Board" means the State Board of Health.

"Chief executive officer" means a job descriptive term used to identify the individual appointed by the governing body to act in its behalf in the overall management of the hospital. Job titles may include administrator, superintendent, director, executive director, president, vice-president, and executive vice-president.

"Commissioner" means the State Health Commissioner.

"Consultant" means one who provides services or advice upon request.

"Department" means an organized section of the hospital.

"Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

"Facilities" means building(s), equipment, and supplies necessary for implementation of services by personnel.

"Full-time" means a 37-1/2 to 40 hour work week.

"General hospital" means institutions as defined by § 32.1-123 of the Code of Virginia with an organized medical staff; with permanent facilities that include inpatient beds; and with medical services, including physician services, dentist services and continuous nursing services, to provide diagnosis and treatment for patients who have a variety of medical and dental conditions that may require various types of care, such as medical, surgical, and maternity.

"Home health care department/service/program" means a formally structured organizational unit of the hospital that is designed to provide health services to patients in their place of residence and meets Part II (12VAC5-381-150 et seq.) of the regulations adopted by the board for the licensure of home care organizations in Virginia.

"Medical" means pertaining to or dealing with the healing art and the science of medicine.

"Nursing care unit" means an organized jurisdiction of nursing service in which nursing services are provided on a continuous basis.

"Nursing home" means an institution or any identifiable component of any institution as defined by § 32.1-123 of the Code of Virginia with permanent facilities that include inpatient beds and whose primary function is the provision, on a continuing basis, of nursing and health related services for the treatment of patients who may require various types of long term care, such as skilled care and intermediate care.

"Nursing services" means patient care services pertaining to the curative, palliative, restorative, or preventive aspects of nursing that are prepared or supervised by a registered nurse.

"Office of Licensure and Certification" or "OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Organized" means administratively and functionally structured.

"Organized medical staff" means a formal organization of physicians and dentists with the delegated responsibility and authority to maintain proper standards of medical care and to plan for continued betterment of that care.

"Outpatient hospital" means institutions as defined by § 32.1-123 of the Code of Virginia that primarily provide facilities for the performance of surgical procedures on outpatients. Such patients may require treatment in a medical environment exceeding the normal capability found in a physician's office, but do not require inpatient hospitalization. ~~Outpatient abortion clinics are deemed a category of outpatient hospitals.~~

"Ownership/person" means any individual, partnership, association, trust, corporation, municipality, county, governmental agency, or any other legal or commercial entity that owns or controls the physical facilities and/or manages or operates a hospital.

"Rural hospital" means any general hospital in a county classified by the federal Office of Management and Budget (OMB) as rural, any hospital designated as a critical access hospital, any general hospital that is eligible to receive funds under the federal Small Rural Hospital Improvement Grant Program, or any general hospital that notifies the commissioner of its desire to retain its rural status when that hospital is in a county reclassified by the OMB as a metropolitan statistical area as of June 6, 2003.

"Service" means a functional division of the hospital. Also used to indicate the delivery of care.

"Special hospital" means institutions as defined by § 32.1-123 of the Code of Virginia that provide care for a specialized group of patients or limit admissions to provide diagnosis and treatment for patients who have specific conditions (e.g., tuberculosis, orthopedic, pediatric, maternity).

"Special care unit" means an appropriately equipped area of the hospital where there is a concentration of physicians, nurses, and others who have special skills and experience to provide optimal medical care for patients assigned to the unit.

"Staff privileges" means authority to render medical care in the granting institution within well-defined limits, based on the individual's professional license and the individual's experience, competence, ability and judgment.

"Unit" means a functional division or facility of the hospital.

12VAC5-410-60. Separate license.

A. A separate license shall be required by hospitals maintained on separate premises even though they are operated under the same management. Separate license is not required for separate buildings on the same grounds or within the same complex of buildings.

B. Hospitals which have separate organized sections, units, or buildings to provide services of a classification covered by provisions of other state statutes or regulations may be required to have an additional applicable license for that type or classification of service (e.g., psychiatric, nursing home, home health services, and outpatient surgery, ~~outpatient abortions~~ surgery).

CHAPTER 412
REGULATIONS FOR LICENSURE OF ABORTION
FACILITIES

Part I
Definitions and Requirements for Licensure

12VAC5-412-10. Definitions.

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

"Abortion" means the use of an instrument, medicine, drug, or other substance or device with the intent to terminate the pregnancy of a woman, known to be pregnant, for reasons other than a live birth or to remove a dead fetus. Spontaneous miscarriage is excluded from this definition.

"Abortion facility" means a facility in which five or more first trimester abortions per month are performed.

"Commissioner" means the State Health Commissioner.

"Department" means the Virginia Department of Health.

"First trimester" means the first twelve weeks from conception based on an appropriate clinical estimate by a licensed physician.

"Informed written consent" means the knowing and voluntary written consent to abortion by a pregnant woman of any age in accordance with Virginia Code § 18.2-76.

"Licensee" means the person, partnership, corporation, association, organization, or professional entity who owns or on whom rests the ultimate responsibility and authority for the conduct of the abortion facility.

"Minor" means a patient under the age of 18.

"Ownership/person" means any individual, partnership, association, trust, corporation, municipality, county, governmental agency, or any other legal or commercial entity that owns and/or manages or operates an abortion facility.

"Patient" means any person seeking or obtaining services at an abortion facility.

"Physician" means a person licensed to practice medicine in Virginia.

"Trimester" means a 12-week period of pregnancy.

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12VAC5-412-20. General.

A license to establish or operate an abortion facility shall be issued only when the abortion facility is in compliance with all applicable federal, state and local statutes and regulations, the provisions of this chapter, and when the application fee has been received by the department.

No ownership/person, as defined in 12VAC5-412-10, shall establish, conduct, maintain, or operate in this state, any abortion facility as defined and included within provisions of this chapter without having obtained a license. Any person establishing, conducting, maintaining, or operating an abortion facility without a license shall be subject to penalties and other actions pursuant to § 32.1-27 of the Code of Virginia.

12VAC5-412-30. Classification.

Abortion facilities shall be classified as a category of hospital.

12VAC5-412-40. Separate license.

An abortion facility operating at more than one location shall be required to obtain separate licenses for each location in which abortion services are provided.

Abortion facilities which have separate organized sections, units or buildings to provide services of a classification covered by provisions of other state statutes or regulations shall be required to have any additional applicable license required for that type or classification of service.

Facilities licensed as either a general hospital or an outpatient surgical hospital by the department are not subject to the provisions of these regulations.

12VAC5-412-50. Request for issuance.

A. Abortion facility licenses shall be issued by the commissioner. All applications for licensure shall be submitted initially to Department's Office of Licensure and Certification (OLC).

B. Each abortion facility shall be designated by a distinct identifying name which shall appear on the application for licensure. Any change of name shall be reported to the OLC within 30 days.

C. Application for initial licensure of an abortion facility shall be accompanied by a copy of the facility's certificate of use and occupancy.

D. The OLC shall consider an application complete when all requested information and the appropriate nonrefundable application fee is submitted.

E. Written notification from the applicant to OLC that it is ready for the on-site survey must be received 30 days prior to OLC scheduling of the initial licensure survey. Applicants for initial licensure shall be notified of the time and date of the

initial licensure survey, after the notice of readiness is received by the OLC.

F. A license shall not be assigned or transferred. A new application for licensure shall be made at least 30 days in advance of a change of ownership or location.

12VAC5-412-60. License expiration and renewal.

A. Licenses shall expire at midnight April 30th following the date of issue, and shall be renewable annually, upon filing of a renewal application and payment of the appropriate nonrefundable renewal application fee. Renewal applications shall only be granted after a determination by the OLC that the applicant is in substantial compliance with this chapter.

B. The annual license renewal application shall be submitted to the OLC at least 60 days prior to the expiration date of the current license. A renewal application submitted more than 60 days past the expiration of the current license shall not be accepted.

C. Any abortion facility failing to submit an acceptable plan of correction as required in 12VAC5-412-120 shall not be eligible for license renewal.

D. Any license issued before April 30, 2012 shall not expire until April 30, 2013. No additional fee will be required for the period from May 1, 2012 until April 30, 2013.

12VAC5-412-70. Posting of license.

The abortion facility license issued by the commissioner shall at all times be posted in a place readily visible and accessible to the public.

12VAC5-412-80. Return of license.

A. It is the responsibility of the facility's governing body to maintain a current and accurate license.

B. The license issued by the commissioner shall be returned to the OLC when any of the following changes occur which may require reissuance of a license during the licensing year:

1. Revocation or suspension.
2. Change of location.
3. Change of ownership.
4. Change of name.
5. Voluntary closure.

C. The facility shall give written notification 30 working days in advance of any proposed changes that may require the reissuance of a license. Notices shall be sent to the attention of the director of the OLC.

D. The OLC will evaluate written information about any planned changes in operation that affect the terms of the license or the continuing eligibility for a license. A licensing

representative may inspect the facility during the process of evaluating a proposed change.

E. The facility will be notified in writing whether a new application is needed.

12VAC5-412-90. Allowable variances.

Upon finding that the enforcement of a specific regulation would be an impractical hardship unique to the abortion facility, the commissioner may grant a variance temporarily waiving the enforcement of the specific regulation, provided patient safety, patient care, and services are not adversely affected.

12VAC5-412-100. Right of entry.

Pursuant to § 32.1-25 of the Code of Virginia, any duly designated employee of the Virginia Department of Health shall have the right to enter upon and into the premises of any licensed abortion facility, or any entity the department has reason to believe is operated, or maintained as an abortion facility without a license, in order to determine the state of compliance with the provisions of this chapter and applicable laws. Any such employee shall properly identify himself or herself as an inspector designated by OLC; the facility may verify the identity of the inspector prior to his or her admission. Such entries and inspections shall be made with the permission of the owner or person in charge, unless an inspection warrant is obtained after denial of entry from an appropriate circuit court. If the owner, or person in charge, refuses entry, this shall be sufficient cause for immediate revocation or suspension of the license. If the entity is unlicensed, the owner or person in charge shall be subject to penalties and other actions pursuant to § 32.1-27 of the Code of Virginia.

12VAC5-412-110. On-site inspection.

A. An OLC representative shall make periodic unannounced on-site inspections of each abortion facility as necessary, but not less often than biennially. If the department finds, after inspection, non-compliance with any provision of this chapter, the abortion facility shall receive a written licensing report of such findings. The abortion facility shall submit a written plan of correction in accordance with provisions of 12VAC5-412-120.

B. The abortion facility shall make available to the OLC's representative any requested records and shall allow access to interview the agents, employees, contractors, and any person under the facility's control, direction or supervision. If copies of records are removed from the premises, patient names and addresses contained in such records shall be redacted by the facility before removal.

C. If the OLC's representative arrives on the premises to conduct a survey and the administrator, the nursing director, or a person authorized to give access to patient records, is not available on the premises, such person or the designated

alternate, shall be available on the premises within 1 hour of the surveyor's arrival. A list of current patients shall be provided to the surveyor within 2 hours of arrival if requested. Failure to be available or to respond shall be grounds for penalties in accordance with Virginia Code § 32.1-27 and denial, suspension or revocation of the facility's license in accordance with 12VAC5-412-130.

12VAC5-412-120. Plan of correction.

A. Upon receipt of a written licensing report each abortion facility shall prepare a written plan of correction addressing each licensing violation cited at the time of inspection.

B. The administrator shall submit, within 15 working days of receipt of the inspection report, an acceptable plan of correction as determined by the OLC. The plan of correction shall contain for each violation cited:

1. A description of the corrective action or actions to be taken and the personnel to implement the corrective action;
2. The expected correction date, not to exceed 30 working days from the exit date of the survey;
3. A description of the measures implemented to prevent a recurrence of the violation; and
4. The signature of the person responsible for the validity of the report.

C. The administrator shall be notified whenever any item in the plan of correction is determined to be unacceptable. Failure to submit an acceptable plan of correction may result in a penalty in accordance with Virginia Code § 32.1-27 or in denial, revocation or suspension of a license in accordance with 12VAC5-412-130.

D. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

12VAC5-412-130. Denial, revocation or suspension of license.

A. When the department determines that an abortion facility is (i) in violation of any provision of Article 1 of Chapter 5 of Title 32.1 of the Code of Virginia (§ 32.1-123 et seq.) or of any applicable regulation, or (ii) is permitting, aiding, or abetting the commission of any illegal act in the abortion facility, the department may deny, suspend, or revoke the license to operate an abortion facility in accordance with § 32.1-135 of the Code of Virginia.

B. If a license or certification is revoked as herein provided, a new license or certification may be issued by the commissioner after satisfactory evidence is submitted to him that the conditions upon which revocation was based have been corrected and after proper inspection has been made and compliance with all provisions of Article 1 of Chapter 5 of

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Title 32.1 of the Code of Virginia and applicable state and federal law and regulations hereunder has been obtained.

C. Suspension of a license shall in all cases be for an indefinite time. The commissioner may restore a suspended license when he determines that the conditions upon which suspension was based have been corrected and that the interests of the public will not be jeopardized by resumption of operation. No additional fee shall be required for restoring such license.

D. The facility has the right to contest the denial, revocation or suspension of a license in accordance with the provisions of the Administrative Process Act (Virginia Code § 2.2-4000 et seq.).

Part II Organization and Management

12VAC5-412-140. Governing body.

A. Each abortion facility shall have a governing body responsible for the management and control of the operation of the facility.

B. There shall be disclosure of facility ownership. Ownership interest shall be reported to the OLC and in the case of corporations, all individuals or entities holding 5.0% or more of total ownership shall be identified by name and address. The OLC shall be notified of any changes in ownership.

C. The governing body shall provide facilities, personnel, and other resources necessary to meet patient and program needs.

D. The governing body shall have a formal organizational plan with written bylaws. These shall clearly set forth organization, duties and responsibilities, accountability, and relationships of professional staff and other personnel. The bylaws shall identify the person or organizational body responsible for formulating policies.

E. The bylaws shall include at a minimum the following:

1. A statement of purpose;
2. Description of the functions and duties of the governing body, or other legal authority;
3. A statement of authority and responsibility delegated to the administrator and to the clinical staff;
4. Provision for selection and appointment of clinical staff and granting of clinical privileges; and
5. Provision of guidelines for relationships among the governing body, the administrator, and the clinical staff.

12VAC5-412-150. Policy and procedures manual.

Each abortion facility shall develop, implement and maintain an appropriate policy and procedures manual. The

manual shall be reviewed annually and updated as necessary by the licensee. The manual shall include provisions covering, at a minimum, the following topics:

1. Personnel;
2. Types of elective and emergency procedures that may be performed in the facility;
3. Types of anesthesia that may be used;
4. Admissions and discharges, including criteria for evaluating the patient before admission and before discharge;
5. Obtaining written informed consent of the patient prior to the initiation of any procedures;
6. When to use ultrasound to determine gestational age and when indicated to assess patient risk;
7. Infection prevention;
8. Risk and quality management;
9. Management and effective response to medical and/or surgical emergency;
10. Management and effective response to fire;
11. Ensuring compliance with all applicable federal, state, and local laws;
12. Facility security;
13. Disaster preparedness;
14. Patient rights;
15. Functional safety and facility maintenance; and
16. Identification of the person to whom responsibility for operation and maintenance of the facility is delegated and methods established by the licensee for holding such individual responsible and accountable.

These policies and procedures shall be based on recognized standards and guidelines.

A copy of the approved policies and procedures and revisions thereto shall be made available to the OLC upon request.

12VAC5-412-160. Administrator.

A. The governing body shall select an administrator whose qualifications, authority and duties shall be defined in a written statement adopted by the governing body.

B. Any change in the position of the administrator shall be reported immediately by the licensee to the department in writing.

C. A qualified individual shall be appointed in writing to act in the absence of the administrator.

12VAC5-412-170. Personnel.

A. Each abortion facility shall have a staff that is adequately trained and capable of providing appropriate service and supervision to patients. The facility shall develop, implement and maintain policies and procedures to ensure and document appropriate staffing by licensed clinicians based on the level, intensity, and scope of services provided.

B. The licensee shall obtain written applications for employment from all staff. The licensee shall obtain and verify information on the application as to education, training, experience, appropriate professional licensure, if applicable, and the health and personal background of each staff member.

C. Each abortion facility shall obtain a criminal history record check pursuant to § 32.1-126.02 of the Code of Virginia on any compensated employee not licensed by the Board of Pharmacy, whose job duties provide access to controlled substances within the abortion facility.

D. When abortions are being performed, a staff member currently certified to perform cardio-pulmonary resuscitation shall be available on site for emergency care.

E. The facility shall develop, implement and maintain policies and procedures to document that its staff participate in initial and ongoing training and education that is directly related to staff duties, and appropriate to the level, intensity and scope of services provided. This shall include documentation of annual participation in fire safety and infection prevention in-service training.

F. Job Descriptions.

1. Written job descriptions that adequately describe the duties of every position shall be maintained.

2. Each job description shall include: position title, authority, specific responsibilities and minimum qualifications.

3. Job descriptions shall be reviewed at least annually, kept current and given to each employee and volunteer when assigned to the position and when revised.

G. A personnel file shall be maintained for each staff member. The records shall be completely and accurately documented, readily available, and systematically organized to facilitate the compilation and retrieval of information. The file shall contain a current job description that reflects the individual's responsibilities and work assignments, and documentation of the person's in-service education, and professional licensure, if applicable.

H. Personnel policies and procedures shall include, but not be limited to:

1. Written job descriptions that specify authority, responsibility, and qualifications for each job classification;

2. Process for verifying current professional licensing or certification and training of employees or independent contractors;

3. Process for annually evaluating employee performance and competency;

4. Process for verifying that contractors and their employees meet the personnel qualifications of the facility; and

5. Process for reporting licensed and certified health care practitioners for violations of their licensing or certification standards to the appropriate board within the Department of Health Professions.

I. A personnel file shall be maintained for each staff member. Personnel record information shall be safeguarded against loss and unauthorized use. Employee health-related information shall be maintained separately within the employee's personnel file.

12VAC5-412-180. Clinical staff.

A. Physicians and non-physician health care practitioners shall constitute the clinical staff. Clinical privileges of physician and non-physician health care practitioners shall be clearly defined.

B. Abortions shall be performed by physicians who are licensed to practice medicine in Virginia and who are qualified by training and experience to perform abortions. The facility shall develop, implement and maintain policies and procedures to ensure and document that abortions that occur in the facility are only performed by physicians who are qualified by training and experience.

C. A physician shall remain on the premises until all patients are medically stable, sign the discharge order and be readily available and accessible until the last patient is discharged. Licensed health care practitioners trained in post-procedure assessment shall remain on the premises until the last patient has been discharged. The physician shall give a discharge order after assessing a patient or receiving a report from such trained health care practitioner indicating that a patient is safe for discharge. The facility shall develop, implement and maintain policies and procedures that ensure there is an appropriate evaluation of medical stability prior to discharge of the patient and that adequate trained health care practitioners remain with the patient until she is discharged from the facility.

D. Licensed practical nurses, working under direct supervision and direction of a physician or a registered nurse, may be employed as components of the clinical staff.

12VAC5-412-190. Consent of the patient.

A physician shall not perform an abortion without first obtaining the informed written consent of the patient pursuant to the provisions of § 18.2-76 of the Code of Virginia.

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12VAC5-412-200. Minors.

No person may perform an abortion upon an unemancipated minor unless informed written consent is obtained from the minor and the minor's parent, guardian or other authorized person. If the unemancipated minor elects not to seek the informed written consent of an authorized person, a copy of the court order authorizing the abortion entered pursuant to § 16.1-241 of the Code of Virginia shall be obtained prior to the performance of the abortion.

12VAC5-412-210. Patients' rights.

A. Each abortion facility shall establish a protocol relating to the rights and responsibilities of patients consistent with the current edition of the Joint Commission Standards of Ambulatory Care. The protocol shall include a process reasonably designed to inform patients of their rights and responsibilities, in a language or manner they understand. Patients shall be given a copy of their rights and responsibilities upon admission.

B. The facility shall establish and maintain complaint handling procedures which specify the:

1. System for logging receipt, investigation and resolution of complaints; and
2. Format of the written record of the findings of each complaint investigated.

C. The facility shall designate staff responsible for complaint resolution, including:

1. Complaint intake, including acknowledgment of complaints;
2. Investigation of the complaint;
3. Review of the investigation findings and resolution for the complaint; and
4. Notification to the complainant of the proposed resolution within 30 days from the date of receipt of the complaint.

D. The patient shall be given a copy of the complaint procedures, in a language or manner she understands, at the time of admission to service.

E. The facility shall provide each patient or her designee with the name, mailing address, and telephone number of the:

1. Facility contact person; and
2. The OLC Complaint Unit, including the toll-free complaint hotline number. Patients may submit complaints anonymously to the OLC. The facility shall display a copy of this information in a conspicuous place.

F. The facility shall maintain documentation of all complaints received and the status of each complaint from

date of receipt through its final resolution. Records shall be maintained for no less than three years.

Part III Infection Prevention

12VAC5-412-220. Infection prevention.

A. The abortion facility shall have an infection prevention plan that encompasses the entire facility and all services provided, and which is consistent with the provisions of the current edition of "Guide to Infection Prevention in Outpatient Settings: Minimum Expectations for Safe Care," published by the U.S. Centers for Disease Control and Prevention. An individual with training and expertise in infection prevention shall participate in the development of infection prevention policies and procedures and shall review them to assure they comply with applicable regulations and standards.

1. The process for development, implementation and maintenance of infection prevention policies and procedures and the regulations or guidance documents on which they are based shall be documented.

2. All infection prevention policies and procedures shall be reviewed at least annually by the administrator and appropriate members of the clinical staff. The annual review process and recommendations for changes/updates shall be documented in writing.

3. A designated person in the facility shall have received training in basic infection prevention, and shall also be involved in the annual review.

B. Written infection prevention policies and procedures shall include, but not be limited to:

1. Procedures for screening incoming patients and visitors for acute infectious illnesses and applying appropriate measures to prevent transmission of community-acquired infection within the facility;

2. Training of all personnel in proper infection prevention techniques;

3. Correct hand-washing technique, including indications for use of soap and water and use of alcohol-based hand rubs;

4. Use of standard precautions;

5. Compliance with blood-borne pathogen requirements of the U.S. Occupational Safety & Health Administration;

6. Use of personal protective equipment;

7. Use of safe injection practices;

8. Plans for annual retraining of all personnel in infection prevention methods;

9. Procedures for monitoring staff adherence to recommended infection prevention practices; and

10. Procedures for documenting annual retraining of all staff in recommended infection prevention practices.

C. Written policies and procedures for the management of the facility, equipment and supplies shall address the following:

1. Access to hand-washing equipment and adequate supplies (e.g., soap, alcohol-based hand rubs, disposable towels or hot air driers);

2. Availability of utility sinks, cleaning supplies and other materials for cleaning, disposal, storage and transport of equipment and supplies;

3. Appropriate storage for cleaning agents (e.g., locked cabinets or rooms for chemicals used for cleaning) and product-specific instructions for use of cleaning agents (e.g., dilution, contact time, management of accidental exposures);

4. Procedures for handling, storing and transporting clean linens, clean/sterile supplies and equipment;

5. Procedures for handling/temporary storage/transport of soiled linens;

6. Procedures for handling, storing, processing and transporting regulated medical waste in accordance with applicable regulations;

7. Procedures for the processing of each type of reusable medical equipment between uses on different patients. The procedure shall address: (i) the level of cleaning/disinfection/sterilization to be used for each type of equipment; (ii) the process (e.g., cleaning, chemical disinfection, heat sterilization); and (iii) the method for verifying that the recommended level of disinfection/sterilization has been achieved. The procedure shall reference the manufacturer's recommendations and any applicable state or national infection control guidelines;

8. Procedures for appropriate disposal of non-reusable equipment;

9. Policies and procedures for maintenance/repair of equipment in accordance with manufacturer recommendations;

10. Procedures for cleaning of environmental surfaces with appropriate cleaning products;

11. An effective pest control program, managed in accordance with local health and environmental regulations; and

12. Other infection prevention procedures necessary to prevent/control transmission of an infectious agent in the facility as recommended or required by the department.

D. The facility shall have an employee health program that includes:

1. Access to recommended vaccines;

2. Procedures for assuring that employees with communicable diseases are identified and prevented from work activities that could result in transmission to other personnel or patients;

3. An exposure control plan for blood borne pathogens;

4. Documentation of screening and immunizations offered/received by employees in accordance with statute, regulation or recommendations of public health authorities, including documentation of screening for tuberculosis and access to hepatitis B vaccine;

5. Compliance with requirements of the U.S. Occupational Safety & Health Administration for reporting of workplace-associated injuries or exposure to infection.

E. The facility shall develop, implement and maintain policies and procedures for the following patient education, follow up, and reporting activities:

1. Discharge instructions for patients, to include instructions to call or return if signs of infection develop;

2. A procedure for surveillance, documentation and tracking of reported infections; and

3. Policies and procedures for reporting conditions to the local health department in accordance with the Regulations for Disease Reporting and Control (12VAC5-90), including outbreaks of disease.

Part IV Patient Care

12VAC5-412-230. Limitation of services offered by abortion facilities.

Abortions performed in abortion facilities shall be performed only on patients who are within the first trimester of pregnancy based on an appropriate clinical estimate by a licensed physician.

12VAC5-412-240. Medical testing, patient counseling and laboratory services.

A. Prior to the initiation of any abortion, a medical history and physical examination, to include confirmation of pregnancy, shall be completed for each patient.

1. Use of any additional medical testing, including but not limited to ultrasonography, shall be based on an assessment of patient risk. The clinical criteria for such additional

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testing and the actions to be taken if abnormal results are found shall be documented.

2. Medical testing shall include a recognized pregnancy test and determination or documentation of Rh factor.

3. The facility shall develop, implement and maintain policies and procedures for screening of sexually transmitted diseases consistent with current guidelines issued by the U.S. Centers for Disease Control and Prevention. The policies and procedures shall address appropriate responses to a positive screening test.

4. A written report of each laboratory test and examination shall be a part of the patient's record.

B. The abortion facility shall offer each patient, in a language or manner they understand, appropriate counseling and instruction in the abortion procedure and shall develop, implement and maintain policies and procedures for the provision of family planning and post-abortion counseling to its patients.

C. Laboratory services shall be provided on site or through arrangement with a laboratory certified to provide the required procedures under the Clinical Laboratory Improvement Amendments of 1988 (CLIA-88).

1. Facilities for collecting specimens shall be available on site.

2. If laboratory services are provided on site they shall be directed by a person who qualifies as a director under CLIA-88 and shall be performed in compliance with CLIA-88 standards.

3. All laboratory supplies shall be monitored for expiration dates, if applicable, and disposed of properly.

D. All tissues removed resulting from the abortion procedure shall be examined to verify that villi or fetal parts are present; if villi or fetal parts cannot be identified with certainty, the tissue specimen shall be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy, and referred appropriately.

E. All tissues removed resulting from the abortion procedure shall be managed in accordance with requirements for medical waste pursuant to the Regulated Medical Waste Management Regulations (9 VAC20-120).

12VAC5-412-250. Anesthesia service.

A. The anesthesia service shall be managed in accordance with the Office-Based Anesthesia provisions of the Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (18VAC85-20-310 et seq.).

B. The anesthesia service shall be directed by and under the supervision of a physician licensed in Virginia.

C. The facility shall develop, implement and maintain policies and procedures outlining criteria for discharge from anesthesia care. Such criteria shall include stable vital signs, responsiveness and orientation, ability to move voluntarily, controlled pain and minimal nausea and vomiting.

D. When moderate sedation or conscious sedation is administered, the licensed health care practitioner who administers the anesthesia shall routinely monitor the patient according to procedures consistent with such administration.

E. An abortion facility administering moderate sedation/conscious sedation shall maintain the following equipment, supplies and pharmacological agents, as required by 18VAC85-20-360 B:

1. Appropriate equipment to manage airways;

2. Drugs and equipment to treat shock and anaphylactic reactions;

3. Precordial stethoscope;

4. Pulse oximeter with appropriate alarms or an equivalent method of measuring oxygen saturation;

5. Continuous electrocardiograph;

6. Devices for measuring blood pressure, heart rate and respiratory rate;

7. Defibrillator; and

8. Accepted method of identifying and preventing the interchangeability of gases.

F. When deep sedation, general anesthesia or a major conductive block is administered, the licensed health care practitioner who administers the anesthesia service shall remain present and available in the facility to monitor the patient until the patient meets the discharge criteria.

G. In addition to the requirements of subsection E of this section, an abortion facility administering general anesthesia, deep sedation or major conductive blocks shall maintain the following equipment, supplies and pharmacological agents, as required by 18VAC85-20-360 C:

1. Drugs to treat malignant hyperthermia, when triggering agents are used;

2. Peripheral nerve stimulator, if a muscle relaxant is used; and

3. If using an anesthesia machine, the following shall be included:

a. End-tidal carbon dioxide monitor (capnograph);

b. In-circuit oxygen analyzer designed to monitor oxygen concentration within breathing circuit by displaying oxygen percent of the total respiratory mixture;

c. Oxygen failure-protection devices (fail-safe system) that have the capacity to announce a reduction in oxygen pressure and, at lower levels of oxygen pressure, to discontinue other gases when the pressure of the supply of oxygen is reduced;

d. Vaporizer exclusion (interlock) system, which ensures that only one vaporizer, and therefore only a single anesthetic agent can be actualized on any anesthesia machine at one time;

e. Pressure-compensated anesthesia vaporizers, designed to administer a constant non-pulsatile output, which shall not be placed in the circuit downstream of the oxygen flush valve;

f. Flow meters and controllers, which can accurately gauge concentration of oxygen relative to the anesthetic agent being administered and prevent oxygen mixtures of less than 21% from being administered;

g. Alarm systems for high (disconnect), low (subatmospheric) and minimum ventilatory pressures in the breathing circuit for each patient under general anesthesia; and

h. A gas evacuation system.

H. Discharge from anesthesia care is the responsibility of the health care practitioner providing the anesthesia care and shall occur only when the patient has met specific physician-defined criteria.

I. Elective general anesthesia shall not be used.

12VAC5-412-260. Administration, storage and dispensing of drugs.

A. Controlled substances, as defined in § 54.1-3401 of the Drug Control Act of the Code of Virginia, shall be stored, administered and dispensed in accordance with federal and state laws. The dispensing of drugs, excluding manufacturers' samples, shall be in accordance with Chapter 33 of Title 54.1 of the Code of Virginia, Regulations Governing the Practice of Pharmacy (18VAC110-20), and Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (18VAC110-30).

B. Drugs, as defined in § 54.1-3401 of the Drug Control Act of the Code of Virginia, whose intended use is to induce a termination of pregnancy shall only be prescribed, dispensed or administered by a physician.

C. Drugs maintained in the facility for daily administration shall not be expired and shall be properly stored in enclosures of sufficient size with restricted access to authorized personnel only. Drugs shall be maintained at appropriate temperatures in accordance with definitions in 18VAC110-20-10.

D. The mixing, diluting or reconstituting of drugs for administration shall be in accordance with regulations of the Board of Medicine (18VAC85-20-400 et seq.).

E. Records of all drugs in Schedules I-V received, sold, administered, dispensed or otherwise disposed of shall be maintained in accordance with federal and state laws, to include the inventory and reporting requirements of a theft or loss of drugs found in § 54.1-3404 of the Drug Control Act of the Code of Virginia.

12VAC5-412-270. Equipment and supplies.

An abortion facility shall maintain medical equipment and supplies appropriate and adequate to care for patients based on the level, scope and intensity of services provided, to include:

1. A bed or recliner suitable for recovery;
2. Oxygen with flow meters and masks or equivalent;
3. Mechanical suction;
4. Resuscitation equipment to include, as a minimum, resuscitation bags and oral airways;
5. Emergency medications, intravenous fluids, and related supplies and equipment;
6. Sterile suturing equipment and supplies;
7. Adjustable examination light;
8. Containers for soiled linen and waste materials with covers; and
9. Refrigerator.

12VAC5-412-280. Emergency equipment and supplies.

An abortion facility shall maintain medical equipment, supplies and drugs appropriate and adequate to manage potential emergencies based on the level, scope and intensity of services provided. Such medical equipment, supplies and drugs shall be determined by the physician and shall be consistent with the current edition of American Heart Association's Guidelines for Advanced Cardiovascular Life Support. Drugs shall include, at a minimum, those to treat the following conditions:

1. Cardiopulmonary arrest;
2. Seizure;
3. Respiratory distress;
4. Allergic reaction;
5. Narcotic toxicity;
6. Hypovolemic shock; and
7. Vasovagal shock.

Regulations

12VAC5-412-290. Emergency services.

A. An abortion facility shall provide ongoing urgent or emergent care and maintain on the premises adequate monitoring equipment, suction apparatus, oxygen and related items for resuscitation and control of hemorrhage and other complications.

B. An abortion facility that performs abortions using intravenous sedation shall provide equipment and services to render emergency resuscitative and life-support procedures pending transfer of the patient to a hospital. Such medical equipment and services shall be consistent with the current edition of American Heart Association's Guidelines for Advanced Cardiovascular Life Support.

C. A written agreement shall be executed with a licensed general hospital to ensure that any patient of the abortion facility shall receive needed emergency treatment. The agreement shall be with a licensed general hospital capable of providing full surgical, anesthesia, clinical laboratory, and diagnostic radiology service on 30 minutes notice and which has a physician in the hospital and available for emergency service at all times.

12VAC5-412-300. Quality assurance.

A. The abortion facility shall implement an ongoing, comprehensive, integrated, self-assessment program of the quality and appropriateness of care or services provided, including services provided under contract or agreement. The program shall include process design, data collection/analysis, assessment and improvement, and evaluation. The findings shall be used to correct identified problems and revise policies and practices, as necessary.

B. The following shall be evaluated to assure adequacy and appropriateness of services, and to identify unacceptable or unexpected trends or occurrences:

1. Staffing patterns and performance;
2. Supervision appropriate to the level of service;
3. Patient records;
4. Patient satisfaction;
5. Complaint resolution;
6. Infections, complications and other adverse events; and
7. Staff concerns regarding patient care.

C. A quality improvement committee responsible for the oversight and supervision of the program shall be established and at a minimum shall consist of:

1. A physician;
2. A non-physician health care practitioner;
3. A member of the administrative staff; and

4. An individual with demonstrated ability to represent the rights and concerns of patients. The individual may be a member of the facility's staff.

In selecting members of this committee, consideration shall be given to the candidate's abilities and sensitivity to issues relating to quality of care and services provided to patients.

D. Measures shall be implemented to resolve problems or concerns that have been identified.

E. Results of the quality improvement program shall be reported to the licensee at least annually and shall include the deficiencies identified and recommendations for corrections and improvements. The report shall be acted upon by the governing body and the facility. All corrective actions shall be documented. Identified deficiencies that jeopardize patient safety shall be reported immediately in writing to the licensee by the quality improvement committee.

Part V

Medical Records And Reports

12VAC5-412-310. Medical records.

An accurate and complete clinical record or chart shall be maintained on each patient. The record or chart shall contain sufficient information to satisfy the diagnosis or need for the medical or surgical service. It shall include, but not be limited to the following:

1. Patient identification;
2. Admitting information, including patient history and physical examination;
3. Signed consent;
4. Confirmation of pregnancy; and
5. Procedure report to include:
 - a. Physician orders;
 - b. Laboratory tests, pathologist's report of tissue, and radiologist's report of x-rays;
 - c. Anesthesia record;
 - d. Operative record;
 - e. Surgical medication and medical treatments;
 - f. Recovery room notes;
 - g. Physician and nurses' progress notes;
 - h. Condition at time of discharge;
 - i. Patient instructions, preoperative and postoperative; and
 - j. Names of referral physicians or agencies.

12VAC5-412-320. Records storage.

Provisions shall be made for the safe storage of medical records or accurate and eligible reproductions thereof according to applicable federal and state law, including the Health Insurance Portability and Accountability Act (42 USC § 1320d et seq.). In the event of closure of the facility, the facility shall notify OLC concerning the location where patient medical records are stored.

12VAC5-412-330. Reports.

A. Abortion facilities shall comply with the fetal death and induced termination of pregnancy reporting provisions in the Board of Health Regulations Governing Vital Records (12VAC5-550-120).

B. Abortion facilities shall report all patient, staff or visitor deaths to the OLC within 24 hours of occurrence.

Part VI

Functional Safety and Maintenance

12VAC5-412-340. Policies and procedures.

The abortion facility shall develop, implement and maintain policies and procedures to ensure safety within the facility and on its grounds and to minimize hazards to all occupants. The policies and procedures shall include, but not be limited to:

1. Facility security;
2. Safety rules and practices pertaining to personnel, equipment, gases, liquids, drugs, supplies and services; and
3. Provisions for disseminating safety-related information to employees and users of the facility.

12VAC5-412-350. Disaster preparedness.

A. Each abortion facility shall develop, implement and maintain policies and procedures to ensure reasonable precautions are taken to protect all occupants from hazards of fire and other disasters. The policies and procedures shall include provisions for evacuation of all occupants in the event of a fire or other disaster.

B. A facility that participates in a community disaster plan shall establish plans, based on its capabilities, to meet its responsibilities for providing emergency care.

12VAC5-412-360. Maintenance.

A. The facility's structure, its component parts, and all equipment such as elevators, heating, cooling, ventilation and emergency lighting, shall be kept in good repair and operating condition. Areas used by patients shall be maintained in good repair and kept free of hazards. All wooden surfaces shall be sealed with non-lead-based paint, lacquer, varnish, or shellac that will allow sanitization.

B. When patient monitoring equipment is utilized, a written preventive maintenance program shall be developed and implemented. This equipment shall be checked and/or tested in accordance with manufacturer's specifications at periodic intervals, not less than annually, to ensure proper operation and a state of good repair. After repairs and/or alterations are made to any equipment, the equipment shall be thoroughly tested for proper operation before it is returned to service. Records shall be maintained on each piece of equipment to indicate its history of testing and maintenance.

12VAC5-412-370. Fire-fighting equipment and systems.

A. Each abortion facility shall establish a monitoring program for the internal enforcement of all applicable fire and safety laws and regulations and shall designate a responsible employee for the monitoring program.

B. All fire protection and alarm systems and other firefighting equipment shall be inspected and tested in accordance with the current edition of the Virginia Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia) to maintain them in serviceable condition.

C. Corridor Obstructions. All corridors and other means of egress or exit from the building shall be maintained clear and free of obstructions in accordance with the current edition of the Virginia Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia).

Part VII

Design and Construction

12VAC5-412-380. Local and state codes and standards.

Abortion facilities shall comply with state and local codes, zoning and building ordinances, and the Uniform Statewide Building Code. In addition, abortion facilities shall comply with Part 1 and sections 3.1-1 through 3.1-8 and section 3.7 of Part 3 of the 2010 Guidelines for Design and Construction of Health Care Facilities of the Facilities Guidelines Institute, which shall take precedence over the Uniform Statewide Building Code pursuant to Virginia Code § 32.1-127.001.

Entities operating as of the effective date of these regulations as identified by the department through submission of Reports of Induced Termination of Pregnancy pursuant to 12VAC5-550-120 or other means and that are now subject to licensure may be licensed in their current buildings if such entities submit a plan with the application for licensure that will bring them into full compliance with this provision within two years from the date of licensure.

VA.R. Doc. No. R12-2970; Filed December 29, 2011, 4:36 p.m.

Regulations

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Forms

REGISTRAR'S NOTICE: The following forms used in administering the regulations referenced below have been filed by the Board of Medicine. Amended or added forms are not being published, but online users of the Virginia Register of Regulations may view the forms by clicking on the title of the form. The forms are also available through the agency contact listed below or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Titles of Regulations: 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.

18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners.

18VAC85-50. Regulations Governing the Practice of Physician Assistants.

18VAC85-80. Regulations Governing the Licensure of Occupational Therapists.

18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists.

18VAC85-120. Regulations Governing the Licensure of Athletic Trainers.

18VAC85-130. Regulations Governing the Practice of Licensed Midwives.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Virginia Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC85-20)

~~Instructions for Completing an Application to Practice Medicine in Virginia for Graduates of Approved Medical Schools in the US/Canada (rev. 7/08).~~

~~Instructions for Completing an Application to Practice Medicine for Graduates of Nonapproved Medical Schools (outside of the US/Canada) (rev. 7/08).~~

~~Information for Completing Chiropractic Endorsement Application (rev. 8/07).~~

~~Instructions for Completing Podiatry Endorsement Application (rev. 8/07).~~

~~Instructions for Completing Osteopathic Medicine Licensure Application (rev. 11/07).~~

[Instructions and Application for a License to Practice Medicine and Surgery in Virginia for Graduates of American Medical Schools \(US/Canada\) \(rev. 3/10\).](#)

[Instructions and Application for a License to Practice Medicine and Surgery for Graduates of Non-American Medical Schools \(outside of the US/Canada\) \(rev. 3/10\).](#)

[Information and Chiropractic Endorsement Application \(rev. 12/08\).](#)

[Information and Podiatry Endorsement Application \(rev. 12/08\).](#)

[Instructions and Application for a License to Practice Osteopathic Medicine \(rev. 1/09\).](#)

~~Form A, Claims History Sheet (rev. 8/07).~~

~~Form B, Activity Questionnaire (rev. 8/07).~~

~~Form C, Clearance from Other State Boards (rev. 8/07).~~

~~Form E, Disciplinary Inquiry (rev. 8/07).~~

~~Application for a License to Practice Medicine and Surgery (rev. 11/07).~~

~~Application for a License to Practice Osteopathic Medicine (rev. 11/07).~~

~~Application for a License to Practice Podiatry (rev. 8/07).~~

~~Application for a License to Practice Chiropractic (rev. 8/07).~~

~~Form H, Federation of Podiatric Medical Boards Report (rev. 8/07).~~

~~Requirements and Instructions for an Intern/Resident License (rev. 8/07).~~

~~Intern/Resident, Form A, Memorandum from Associate Dean of Graduate Medical Education (rev. 8/07).~~

~~Intern/Resident, Form B, Certificate of Professional Education (rev. 8/07).~~

~~Application for a Temporary License for Intern/Resident Training Program (rev. 8/07).~~

[Form B, Activity Questionnaire \(rev. 10/09\).](#)

[Form C, Clearance from Other State Boards \(rev. 11/09\).](#)

[Form E, Disciplinary Inquiry \(rev. 5/11\).](#)

[Form H, Federation of Podiatric Medical Boards Report \(rev. 12/08\).](#)

[Instructions and Application for a Temporary License for Intern/Resident Training Program \(rev. 8/07\).](#)

[Form A, Intern/Resident, Memorandum from Associate Dean of Graduate Medical Education \(rev. 8/07\).](#)

[Form B, Intern/Resident, Certificate of Professional Education \(rev. 8/07\).](#)

[Form G, Intern Resident, Request for Status Report of ECFMG Certification \(eff. 8/07\).](#)

[Form H, Report of Clinical Rotations \(rev. 12/02\).](#)

[Transfer Request, Intern/Resident \(eff. 8/07\).](#)

Instructions for Completing an Application for a Limited License to Foreign Medical Graduates Pursuant to 54.1-2936 (rev. 8/07).

Application for a Limited License to Foreign Medical Graduates Pursuant to 54.1-2936 (rev. 8/07).

~~Form G, Request for Status Report of Educational Commission for Foreign Medical Graduates Certification (rev. 8/07).~~

~~Form L, Certificate of Professional Education (rev. 8/07).~~

[Form L, Certificate of Professional Education \(rev. 12/08\).](#)

[Continued Competency Activity and Assessment Form \(rev. 9/07\).](#)

Instructions for Reinstatement of Medicine and Surgery Licensure Application (rev. 4/08).

~~Application for Reinstatement of License to Practice Medicine (rev. 8/07).~~

~~Form A, MD Reinstatement, Claims History Sheet (rev. 8/07).~~

[Application for Reinstatement of License to Practice Medicine \(rev. 3/09\).](#)

[Form A, MD Reinstatement, Claims History Sheet \(rev. 9/09\).](#)

Form B, MD Reinstatement, Activity Questionnaire Form (rev. 8/07).

Form C, MD Reinstatement, State Questionnaire Form (rev. 8/07).

MD Reinstatement, Disciplinary Inquiries to Federation of State Medical Boards (rev. 8/07).

Instructions for Reinstatement of Osteopathic Medicine Licensure Application (rev. 4/08).

Application for Reinstatement of License to Practice Osteopathic Medicine (rev. 8/07).

Form A, Osteopathy Reinstatement, Claims History (rev. 8/07).

Instructions for Reinstatement of a Chiropractic Licensure Application (rev. 4/08).

Application for Reinstatement of License to Practice as a Chiropractor (rev. 8/07).

Instructions for Reinstatement of Podiatry Licensure Application (rev. 4/08).

Application for Reinstatement of License to Practice Podiatry (rev. 8/07).

Reinstatement Application Instructions for Medicine & Surgery or Osteopathy Licensure after Reinstatement Denied or License Revoked (rev. 8/07).

Reinstatement Application Instructions for Medicine & Surgery or Osteopathy Licensure after Mandatory Suspension, Suspension or Surrender (rev. 8/07).

Reinstatement Application Instructions for Podiatry Licensure after Mandatory Suspension, Suspension or Surrender (rev. 8/07).

Application for Reinstatement of License to Practice Medicine/Osteopathy After Petition for Reinstatement Denied or License Revoked (rev. 8/07).

[Application for Registration for Volunteer Practice \(rev. 8/07\).](#)

[Sponsor Certification for Volunteer Registration \(rev. 8/08\).](#)

~~Guidelines for Completing the Practitioner Profile Questionnaire (rev. 12/02).~~

~~Practitioner's Help Section (rev. 11/07).~~

~~Practitioner Questionnaire (rev. 8/04).~~

[Guidelines for Completing the Practitioner Profile Questionnaire \(rev. 7/11\).](#)

[Practitioner's Help Section \(rev. 11/10\).](#)

[Practitioner Questionnaire \(rev. 7/11\).](#)

FORMS (18VAC85-40)

~~Instructions for Completing a Respiratory Care Practitioner Application (rev. 12/07).~~

~~Application for a License to Practice as a Respiratory Care Practitioner (rev. 12/07).~~

~~Instructions for Completing Reinstatement Application for Respiratory Care Practitioner License (rev. 8/07).~~

~~Application for Reinstatement of License to Practice Respiratory Care (rev. 10/07).~~

[Instructions and Application for Reinstatement of License to Practice Respiratory Care \(rev. 11/10\).](#)

[Instructions \(rev. 1/09\) and Application for a License to Practice as a Respiratory Care Practitioner \(rev. 12/07\).](#)

Reinstatement Application Instructions for Respiratory Care Practitioner after Reinstatement Denied or License Revoked (rev. 8/07).

Regulations

Reinstatement Application Instructions for Respiratory Care Practitioner after Mandatory Suspension, Suspension or Surrender (rev. 8/07).

[Form A, Claims History Sheet \(rev. 8/07\).](#)

[Form B, Activity Questionnaire \(rev. 8/07\).](#)

[Form C, Clearance from Other State Boards \(rev. 8/07\).](#)

~~Form L, Certificate of Professional Education (rev. 8/07).~~

~~Verification of Certification Request Form (NBRC) (rev. 8/07).~~

[Form L, Certificate of Professional Education \(rev. 1/09\).](#)

[Application for Registration for Volunteer Practice \(rev. 8/07\).](#)

[Sponsor Certification for Volunteer Registration \(rev. 8/08\).](#)

FORMS (18VAC85-50)

~~Instructions for Completing a Physician Assistant Licensure Application (rev. 2/08).~~

~~Application for Licensure as a Physician Assistant (rev. 8/07).~~

[Instructions and Physician Assistant Licensure Application \(rev. 10/09\).](#)

[Form #B, Activity Questionnaire \(rev. 8/07\).](#)

[Form #C, Clearance from Other State Boards \(rev. 8/07\).](#)

~~Form #L, Certificate of Physician Assistant Education (rev. 8/07).~~

[Form #L, Certificate of Physician Assistant Education \(rev. 10/09\).](#)

[Form #2, Physician Assistant Invasive Procedures Protocol \(rev. 8/07\).](#)

~~Instructions for Completing a Practice Application as a Physician Assistant (rev. 11/07).~~

~~Application for Practice as a Physician Assistant (rev. 11/07).~~

~~Request for Prescriptive Authority from the PA (rev. 8/07).~~

~~Alternate Supervisors Signature Form (rev. 3/03).~~

[Instructions and Practice Application as a Physician Assistant \(rev. 10/09\).](#)

[Request for Prescriptive Authority from the PA \(rev. 1/11\).](#)

[Alternate Supervisors Signature Form \(rev. 2/09\).](#)

[Form #1-A, Addendum to Practice of Physician Assistant Duties \(rev. 8/07\).](#)

[Application for Registration for Volunteer Practice \(rev. 8/07\).](#)

[Sponsor Certification for Volunteer Registration \(rev. 8/08\).](#)

~~Physician Assistant Volunteer License Application (eff. 3/03).~~

[Physician Assistant Volunteer License Application \(rev. 12/07\).](#)

FORMS (18VAC85-80)

~~Instructions for Completing an Occupational Therapist Licensure Application (rev. 12/07).~~

~~Application for a License to Practice as an Occupational Therapist (rev. 12/07).~~

~~Instructions for Completing an Occupational Therapy Assistant Licensure Application (eff. 11/08).~~

~~Application for a License to Practice as an Occupational Therapy Assistant (eff. 11/08).~~

[Instructions and Application for Occupational Therapist Licensure \(rev. 1/09\).](#)

[Instructions and Application for Occupational Therapy Assistant Licensure \(rev. 1/09\).](#)

[Form A, Claims History Sheet \(rev. 8/07\).](#)

[Form A, Occupational Therapy Assistant, Claims History Sheet \(eff. 11/08\).](#)

[Form B, Activity Questionnaire \(rev. 8/07\).](#)

[Form B, Occupational Therapy Assistant, Activity Questionnaire \(eff. 11/08\).](#)

[Form C, Clearance from Other State Boards \(rev. 10/07\).](#)

[Form C, Occupational Therapy Assistant, Clearance from Other State Boards \(eff. 11/08\).](#)

~~Form L, Certificate of Professional Education (rev. 8/07).~~

~~Form L, Occupational Therapy Assistant, Certificate of Professional Education (eff. 11/08).~~

[Form L, Occupational Therapy, Certificate of Professional Education \(rev. 1/09\).](#)

[Form L, Occupational Therapy Assistant, Certificate of Professional Education \(rev. 1/09\).](#)

[Board Approved Practice, Occupational Therapist Traineeship \(rev. 8/07\).](#)

~~Instructions for Completing Reinstatement of Occupational Therapy Licensure (rev. 8/07).~~

[Instructions and Application for Reinstatement of Occupational Therapy Licensure \(rev. 11/10\).](#)

[Reinstatement Application Instructions for Occupational Therapy Practitioner Licensure after Mandatory Suspension, Suspension or Surrender \(rev. 10/07\).](#)

Application for Reinstatement of Licensure to Practice Occupational Therapy (rev. 8/07).

Instructions for Supervised Practice, Occupational Therapy Reinstatement (rev. 8/07).

Supervised Practice Application, Occupational Therapy Reinstatement (rev. 8/07).

Continued Competency Activity and Assessment Form (rev. 4/00).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

FORMS (18VAC85-110)

~~Instructions for Completing an Application for a License to Practice as an Acupuncturist - Graduates of Approved Institutions or Programs in the United States (rev. 8/07).~~

~~Instructions for Completing an Application for a License to Practice as an Acupuncturist - Graduates of Nonapproved Educational Programs (rev. 8/07).~~

~~Application for a License to Practice as an Acupuncturist (rev. 8/07).~~

~~Form A, Claims History Sheet (rev. 8/07).~~

~~Form B, Activity Questionnaire (rev. 8/07).~~

~~Form C, Clearance from Other State Boards (rev. 8/07).~~

~~Form L, Certification of Professional Education (rev. 8/07).~~

[Instructions and Application for a License to Practice as an Acupuncturist - Graduates of Approved Institutions or Programs in the United States \(rev. 11/10\).](#)

[Instructions and Application for a License to Practice as an Acupuncturist - Graduates of Nonapproved Educational Programs \(rev. 11/10\).](#)

[Form A, Claims History Sheet \(rev. 11/10\).](#)

[Form B, Activity Questionnaire \(rev. 11/10\).](#)

[Form C, Clearance from Other State Boards \(rev. 11/10\).](#)

[Form L, Certification of Professional Education \(rev. 11/10\).](#)

Verification of NCCAOM Certification (rev. 3/08).

Recommendation for Examination by a Physician (rev. 11/06).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

Instructions for Completing a Reinstatement Application for Licensed Acupuncturist (rev. 8/07).

~~Reinstatement Application Instructions for Licensed Acupuncturist after Suspension, Surrender or Mandatory Suspension (rev. 8/07).~~

~~Application for Reinstatement of a License to Practice as a Licensed Acupuncturist (rev. 8/07).~~

[Instructions and Application for Reinstatement as a Licensed Acupuncturist \(rev. 2/09\).](#)

[Instructions for Completing a Reinstatement Application for Licensed Acupuncturist after Suspension, Surrender, or Mandatory Suspension \(rev. 3/10\).](#)

[Application for Reinstatement of a License to Practice as a Licensed Acupuncturist after Suspension, Surrender, or Mandatory Suspension \(rev. 3/10\).](#)

FORMS (18VAC85-120)

~~Instructions for Completing an Athletic Trainer Licensure Application (rev. 12/07).~~

~~Application for a License to Practice as an Athletic Trainer (rev. 12/07).~~

[Instructions for Completing and Athletic Trainer Licensure Application \(10/09\).](#)

Form A, Claims History (rev. 8/07).

Form B, Activity Questionnaire (rev. 8/07).

Form C, Clearance from Other State Boards (rev. 8/07).

Form L, Certificate of Professional Education (rev. 8/07).

~~Provisional License to Practice as an Athletic Trainer Pursuant to 18VAC85-120-80 (rev. 8/07).~~

[Provisional License to Practice as an Athletic Trainer Pursuant to 18VAC85-120-80 \(rev. 10/10\).](#)

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

~~Instructions for Completing a Reinstatement Application for Athletic Training (rev. 8/07).~~

~~Application for Reinstatement of a License to Practice as an Athletic Trainer (rev. 8/07).~~

[Instructions for Completing and a Reinstatement Application for Athletic Training \(rev. 11/10\).](#)

FORMS (18VAC85-130)

~~Instructions for Completing a Licensed Midwife Application (rev. 12/07).~~

~~Application for a License to Practice as a Licensed Midwife (rev. 12/07).~~

Form A, Claims History (rev. 8/07).

Regulations

~~Form B (rev. 8/07).~~

~~Form C (rev. 8/07).~~

[Instructions for and Application to Practice as a Licensed Midwife \(rev. 11/10\).](#)

[Form A, Claims History \(rev. 11/10\).](#)

[Form B, Activity Questionnaire \(rev. 11/10\).](#)

[Form C, Jurisdiction Clearance \(rev. 11/10\).](#)

VA.R. Doc. No. R12-2953; Filed December 16, 2011, 11:35 a.m.

BOARD OF NURSING

Forms

REGISTRAR'S NOTICE: The following forms used in administering the regulations referenced below have been filed by the Board of Nursing. Amended or added forms are not being published, but online users of the Virginia Register of Regulations may view the forms by clicking on the title of the form. The forms are also available through the agency contact listed below or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Titles of Regulations: 18VAC90-20. Regulations Governing the Practice of Nursing.

18VAC90-25. Regulations Governing Certified Nurse Aides.

18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners.

18VAC90-40. Regulations for Prescriptive Authority for Nurse Practitioners.

18VAC90-50. Regulations Governing the Certification of Massage Therapists.

18VAC90-60. Regulations Governing the Registration of Medication Aides.

Agency Contact: Elaine J. Yeatts, Senior Policy Analyst, Virginia Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

FORMS (18VAC90-20)

~~Application for Licensure by Endorsement — Registered Nurse (rev. 1/08).~~

~~Instructions for Licensure by Endorsement — Registered Nurse (rev. 6/09).~~

~~Instructions for Licensure by Endorsement — Licensed Practical Nurse (rev. 6/09).~~

~~Application for Licensure by Endorsement — Licensed Practical Nurse (rev. 1/08).~~

~~Instructions for Filing Application for Licensure by Examination for Registered Nurses (rev. 7/07).~~

~~Application for Licensure by Examination — Registered Nurse (rev. 7/07).~~

~~Instructions for Filing Application for Licensure by Examination for Practical Nurses (rev. 7/07).~~

~~Application for Licensure by Examination — Licensed Practical Nurse (rev. 7/07).~~

~~Instructions for Filing Application for Licensure by Repeat Examination for Registered Nurses (rev. 8/08).~~

~~Application for Licensure by Repeat Examination for Registered Nurse (rev. 7/07).~~

~~Instructions for Filing Application for Licensure by Repeat Examination for Practical Nurses (rev. 8/08).~~

~~Application for Licensure by Repeat Examination for Licensed Practical Nurse (rev. 7/07).~~

~~Instructions for Filing Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. 7/07).~~

~~Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries (rev. 7/07).~~

~~Instructions for Filing Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. 7/07).~~

~~Application for Licensure by Examination for Registered Nurses Educated in Other Countries (rev. 7/07).~~

~~Temporary Exemption to Licensure (rev. 7/07).~~

~~Instructions for Application for Reinstatement — Registered Nurse (rev. 7/07).~~

~~Application for Reinstatement — Registered Nurse (rev. 7/07).~~

~~Instructions for Application for Reinstatement — Licensed Practical Nurse (rev. 7/07).~~

~~Application for Reinstatement of License as a Licensed Practical Nurse (rev. 7/07).~~

~~Instructions for Application for Reinstatement Following Suspension or Revocation — Registered Nurse (rev. 7/07).~~

~~Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation (rev. 7/07).~~

~~Instructions for Application for Reinstatement Following Suspension or Revocation — Licensed Practical Nurse (rev. 7/07).~~

~~Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation (rev. 7/07).~~

~~License Verification Form (rev. 1/08).~~

~~Application for Registration as a Clinical Nurse Specialist (rev. 7/07).~~

~~Procedure for Registration as a Clinical Nurse Specialist (rev. 7/07).~~

~~Survey Visit Report (rev. 7/07).~~

[Application for Licensure by Endorsement -- Registered Nurse \(rev. 5/11\).](#)

[Instructions for Licensure by Endorsement -- Registered Nurse \(rev. 5/11\).](#)

[Instructions for Licensure by Endorsement -- Licensed Practical Nurse \(rev. 5/11\).](#)

[Application for Licensure by Endorsement -- Licensed Practical Nurse \(rev. 6/11\).](#)

[Verification of Clinical Practice -- Licensure by Endorsement \(rev. 1/10\).](#)

[Instructions and Application for Licensure by Examination for Registered Nurses \(rev. 8/11\).](#)

[Instructions and Application for Licensure by Examination - Licensed Practical Nurse \(rev. 8/11\).](#)

[Instructions and Application for Licensure by Repeat Examination for Registered Nurse \(rev. 8/11\).](#)

[Instructions and Application for Licensure by Repeat Examination for Licensed Practical Nurse \(rev. 8/11\).](#)

[Instructions and Application for Licensure by Examination for Licensed Practical Nurses Educated in Other Countries \(rev. 6/11\).](#)

[Instructions and Application for Licensure by Examination for Registered Nurses Educated in Other Countries \(rev. 6/11\).](#)

[Declaration of Primary State of Residency for Purposes of the Nurse Licensure Compact \(rev. 6/11\).](#)

[Instructions for Application for Reinstatement -- Registered Nurse \(rev. 1/10\).](#)

[Application for Reinstatement -- Registered Nurse \(rev. 6/11\).](#)

[Instructions for Application for Reinstatement -- Licensed Practical Nurse \(rev. 2/10\).](#)

[Application for Reinstatement of License as a Licensed Practical Nurse \(rev. 6/11\).](#)

[Instructions and Application for Reinstatement of License as a Registered Nurse Following Suspension or Revocation \(rev. 6/11\).](#)

[Instructions and Application for Reinstatement of License as a Licensed Practical Nurse Following Suspension or Revocation \(rev. 6/11\).](#)

[License Verification Form \(rev. 10/09\).](#)

[Procedure \(rev. 3/10\) and Application for Registration as a Clinical Nurse Specialist \(rev. 6/11\).](#)

[Application for Reinstatement of Registration as a Clinical Nurse Specialist \(rev. 6/11\).](#)

[Application to Establish a Nursing Education Program \(rev. 6/11\).](#)

[Agenda and Survey Visit Report -- Registered Nurse Education Program \(rev. 4/08\).](#)

[Agenda and Survey Visit Report -- Practical Nurse Education Program \(rev. 4/08\).](#)

[NCLEX Survey Visit Report \(rev. 4/08\).](#)

[Application for Registration for Volunteer Practice \(rev. 7/07\).](#)

[Sponsor Certification for Volunteer Registration \(rev. 8/08\).](#)

FORMS (18VAC90-25)

~~Instructions for Application for Nurse Aide Certification by Endorsement (rev. 8/07).~~

~~Application for Nurse Aide Certification by Endorsement (rev. 8/07).~~

[Instructions for Application for Nurse Aide Certification by Endorsement \(rev. 1/11\)t](#)

[Application for Nurse Aide Certification by Endorsement \(rev. 8/08\).](#)

[Nurse Aide Certification Verification Form \(rev. 11/07\).](#)

~~Instructions for Applicant for Advanced Certified Nurse Aide Registration (rev. 8/07).~~

~~Application for Certification as Advanced Certified Nurse Aide (rev. 8/07).~~

~~Instructions for Application for Reinstatement of Nurse Aide Certification (rev. 1/08).~~

~~Application for Reinstatement of Nurse Aide Certification (rev. 1/08).~~

~~Instructions for Application for Reinstatement of Advanced Nurse Aide Certification (rev. 8/07).~~

~~Application for Reinstatement of Advanced Nurse Aide Certification (rev. 8/07).~~

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~~Application to Establish Nurse Aide Education Program (rev. 8/07).~~

[Instructions and Application for Certification as Advanced Certified Nurse Aide \(rev. 8/07\).](#)

[Instructions and Application for Reinstatement of Nurse Aide Certification \(rev. 8/08\).](#)

[Instructions and Application for Reinstatement of Advanced Nurse Aide Certification \(rev. 8/07\).](#)

[Application to Establish Nurse Aide Education Program \(rev. 7/11\).](#)

Application to Establish an Advanced Certification Nurse Aide Education Program (rev. 8/07).

Nurse Aide Education Program Evaluation Report (rev. 8/07).

Nurse Aide Education Program-On-site Review Report (rev. 8/07).

Advanced Certification Nurse Aide Education Program Evaluation Report (rev. 8/08).

Advanced Certification Nurse Aide Education Program-On-site Review Report (rev. 8/07).

Request for Statistical Information (rev. 6/08).

FORMS (18VAC90-30)

~~Instructions for Licensure—Nurse Practitioner (rev. 1/08).~~

~~Application for Licensure as a Nurse Practitioner (rev. 1/08).~~

~~Application for Reinstatement of License as a Nurse Practitioner (rev. 7/07).~~

[Instructions for Licensure -- Nurse Practitioner \(rev. 2/09\).](#)

[Application for Licensure as a Nurse Practitioner \(rev. 6/11\).](#)

[Application for Reinstatement of License as a Nurse Practitioner \(rev. 6/11\).](#)

License Verification Form (rev. 7/07).

FORMS (18VAC90-40)

~~Application for Prescriptive Authority for Licensed Nurse Practitioners (rev. 7/07).~~

~~Prescriptive Authority for Licensed Nurse Practitioners Practice Agreement (rev. 7/07).~~

[Application for Prescriptive Authority for Licensed Nurse Practitioners \(rev. 6/11\).](#)

[Prescriptive Authority for Licensed Nurse Practitioners Practice Agreement \(rev. 3/11\).](#)

Application for Reinstatement of Prescriptive Authority (rev. 7/07).

FORMS (18VAC90-50)

~~Instructions for Filing Application for Certification as a Massage Therapist (rev. 7/07).~~

~~Application for Certification—Massage Therapist (rev. 7/07).~~

~~Instructions for Filing Application for Certification as a Massage Therapist by Endorsement (rev. 7/07).~~

~~Application for Certification by Endorsement—Massage Therapist (rev. 7/07).~~

[Instructions and Application for Certification as a Massage Therapist \(rev. 6/11\).](#)

[Instructions and Application for Certification by Endorsement -- Massage Therapist \(rev. 6/11\).](#)

Massage Therapist Certification/Licensure Verification Form (rev. 7/07).

~~Application for Reinstatement of Certificate as a Massage Therapist (rev. 7/07).~~

[Application for Reinstatement of Certificate as a Massage Therapist \(rev. 6/11\).](#)

Instructions for Application for Reinstatement following Suspension or Revocation – Certified Massage Therapist (rev. 7/07).

Application for Reinstatement of Certificate as a Massage Therapist following Suspension or Revocation (rev. 7/07).

FORMS (18VAC90-60)

[Application to Establish a Medication Aide Training Program \(eff. 7/07\).](#)

[Instructions for Filing Application for Registration by Examination for Medication Aides \(eff. 7/07\).](#)

~~Application for Registration by Examination for Medication Aide (eff. 7/07).~~

[Checklist for Submission and Application for Registration by Examination for Medication Aide \(rev 8/09\).](#)

[Instructions for Filing Application for Registration by Endorsement for Medication Aides \(rev. 7/07\).](#)

[Checklist for Submission and Application for Registration by Endorsement for Medication Aide \(rev. 1/09\).](#)

~~Instructions for Filing Application for Reinstatement as a Medication Aide (eff. 7/07).~~

[Instructions for Filing Application for Reinstatement as a Medication Aide \(rev. 7/11\).](#)

Application for Reinstatement of Medication Aide Registration (eff. 7/07).

~~Application for Registration by Repeat Examination for Medication Aide (eff. 8/08).~~

VA.R. Doc. No. R12-3068; Filed December 16, 2011, 11:35 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

REGISTRAR'S NOTICE: The regulatory action to repeal 22VAC40-130, Minimum Standards for Licensed Private Child Placing Agencies, and promulgate 22VAC40-131, Standards for Licensed Child-Placing Agencies, was suspended pursuant to § 2.2-4007.06 of the Code of Virginia for an additional 30-day public review and comment period after the State Board of Social Services adopted the final regulation. The suspension was published in 28:1 VA.R. 34 September 12, 2011. Subsequently, the board readopted the final regulation without amendment on December 14, 2011, and set a new effective date of May 1, 2012. Since no changes were made to the regulation since its initial publication in 27:25 VA.R. 2675-2717 August 15, 2011, the text of the regulation is not set out.

Titles of Regulations: **22VAC40-130. Minimum Standards for Licensed Private Child Placing Agencies (repealing 22VAC40-130-10 through 22VAC40-130-550).**

22VAC40-131. Standards for Licensed Child-Placing Agencies (adding 22VAC40-131-10 through 22VAC40-131-610).

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Effective Date: May 1, 2012.

Agency Contact: Joni S. Baldwin, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7162, FAX (804) 726-7132, or email joni.baldwin@dss.virginia.gov.

Summary:

This regulatory action repeals the existing regulation, 22VAC40-130, and establishes a comprehensive new regulation, 22VAC40-131, for licensed private child-placing agencies. The comprehensive new regulation is intended to: (i) improve clarity; (ii) reflect current federal and state law; (iii) align home approvals, supervision, monitoring practices, and responsibilities of private child-placing agencies with public child-placing agencies; (iv) remove intrusive and burdensome language; and (v) provide greater protection for children in care. The new regulation creates consistency between providers approved

by licensed child-placing agencies and local departments of social services, as required by federal regulations, identified in the federal Child and Family Services Review, and included in the Department of Social Services' Performance Improvement Plan.

Major components of the new regulation include incorporating changes for consistency with 22VAC40-211, Resource, Foster and Adoptive Family Home Approval Standards, including: (i) definitions; (ii) home provider training mandates; (iii) home study requirements, streamlining the provider approval process, and documentation protocols; (iv) safety of the providers' home environment; and (v) background check requirements.

Although most of the provisions in the new regulations are not different in effect from those in current regulations, there are several substantive changes as follows:

- 1. Specify how many treatment foster care cases may be handled at one time by a caseworker,*
- 2. Allow executive directors of social services to have a doctorate or master's degree in any subject but require them to have five years experience rather than the currently required three,*
- 3. Specify topics that must be covered in training for foster parents,*
- 4. Increase the time allowed after a foster care placement for the child-placing agency to complete a full written assessment from 30 days to 45 days, and*
- 5. Change bedroom requirements so that children over the age of two may not share a bed and children over the age of three may not share a bedroom with a child of the opposite gender.*

Substantive revisions in the new regulation from proposed to final include: (i) changing the definition of "serious incident reports" to include the requirement to report incidents involving criminal activity and police intervention; (ii) allowing parents with adoption experience to serve on the agency's board; (iii) changing language pertaining to discrimination regarding the denial or delay of a child's placement or regarding the denial of an opportunity for persons to apply to be a foster or adoptive parent to make the language consistent with 42 USC § 671; (iv) allowing the agency to develop preservice training for new providers based on their program statement and description: short-term foster families are no longer required to complete this training; (v) allowing one parent to sign the entrustment agreement instead of requiring both parents to sign the agreement to be consistent with the Code of Virginia; (vi) changing the requirement for Interstate Compact approval of a placement of an out-of-state child in Virginia to allow the child to be placed with verbal approval from Interstate

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Compact: verbal approval will be followed by written approval; (vii) adding a requirement for the licensee to work collaboratively and cooperatively with the local education authority to ensure educational stability and school enrollment for children in care; (viii) requiring one face-to-face contact with the child in the child's placement setting every 60 days; (ix) requiring that the licensee inform the local departments who have referred children to the licensee for placement of where the children are placed at all times, including permanent, nonpermanent and short-term placement settings; (x) requiring the licensee to be responsible for compliance with all elements of 22VAC40-131-370 H 3 for active and closed file maintenance; (xi) clarifying the requirement for staffing of treatment foster care to provide the flexibility to have either at least one full-time or part-time staff with hours equivalent to a full-time position; (xii) removing the section that referenced state board policy regarding involuntary termination of parental rights and adding a requirement to be in compliance with other legal requirements at the suggestion of the Attorney General; (xiii) clarifying the Adoption Resource Exchange of Virginia registration requirements to specify the timeframes or circumstances that the licensee must register in the Adoption Resource Exchange of Virginia the prospective adoptive families who will accept a child with special needs; (ix) aligning the license's responsibility to provide necessary and appropriate services to children with special needs with requirements of the Code of Virginia; and (xv) adding a requirement for the licensee to include information about the child's education when providing full factual information about the child to adoptive parents.

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.

VA.R. Doc. No. R10-2036; Filed December 15, 2011, 3:51 p.m.

GENERAL NOTICES/ERRATA

OFFICE OF THE GOVERNOR

Notice of Petition for Temporary Suspension of a State Mandate

Pursuant to § 2.2-113 of the Code of Virginia, the petitioning locality, Rockbridge County, is seeking temporary suspension by the Governor of a state mandate pertaining to requirements for landfill closure, as administered by the Virginia Department of Environmental Quality (DEQ). Section 2.2-113 of the Code of Virginia provides that the Governor may temporarily suspend any mandate, or portion thereof, prescribed by any unit of the executive branch of state government on a county, city, town, or other unit of local government upon a finding that it faces fiscal stress and the suspension of the mandate or portion thereof would help alleviate the fiscal hardship. Section 2.2-113 of the Code of Virginia further provides that, in making a determination of fiscal stress, the Governor may consider, but is not limited to, the following factors: any changes in anticipated revenue, income distribution of residents, revenue effort, revenue capacity, and changes in local population and employment levels. In addition, the statute requires that publication in the Virginia Register of the following information occur at least 20 days in advance of any suspension by the Governor.

- (i) Name of the petitioning locality: County of Rockbridge.
- (ii) Mandate or portion thereof requested to be suspended: § 10.1-1413.2 of the Code of Virginia.
- (iii) Impact of the suspension of the mandate on the ability of the local government to deliver services: Suspension will allow the Rockbridge County Solid Waste Authority to use the existing landfill past the closing date of December 31, 2012. This will negate the requirement to transfer trash via truck over state highways to another landfill for ultimate disposal.
- (iv) Estimated reduction in current budget from the suspension: There will be no impact on the Fiscal Year Budget ending on June 30, 2012; however, the suspension of the mandate would allow a reduction in planned expenditures of approximately \$1,000,000 for each year of the suspension.
- (v) Time period requested for suspension: Two years beginning December 31, 2012, or until the landfill reaches its permitted capacity, whichever occurs first.

The public comment period begins on January 16, 2012, and ends on January 30, 2012.

Comments should be sent to Susan B. Williams, Esq., Local Government Policy Manager, Commission on Local Government, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6508,

FAX (804) 371-7090, or
email susan.williams@dhcd.virginia.gov.

VIRGINIA DEPARTMENT OF HEALTH

Drinking Water Construction

The Virginia Department of Health (VDH) will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Fund (WSAGF) Program will be discussed. Attendees will be asked for specific suggestions and opinions.

Attendees will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

To attend, please return the form below by February 3, 2012, so VDH may properly plan the meeting. Mail the application to Theresa Hewlett at the Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219 or fax it to (804) 864-7521. Questions should be directed to Theresa Hewlett at (804) 864-7501.

January 9, 2012

Drinking Water Construction Funding Meetings

VDH will offer funding informational meetings at six locations throughout the state. Attendance is on a first come basis and is limited to 50 people at each location.

Material will focus on Drinking Water Construction funding available through VDH. The Drinking Water State Revolving Loan Fund (DWSRF) Program and the Water Supply Assistance Grant Fund (WSAG) Program will be discussed. You will be asked for your specific suggestions and opinions.

You will be advised on program updates and then guided through program criteria, program applications, and the project scheduling steps needed for smooth project implementation.

If you plan to attend, please return the form below by February 3, 2012 so we may properly plan the meeting. You may mail it to Theresa Hewlett at the above address or fax at 804/864-7521. If you have any questions, please call Theresa Hewlett at 804/864-7501.

I (we) wish to attend the meeting indicated below: **NOTE THAT THE CHESTERFIELD WORKSHOP IS IN THE AFTERNOON!!**

- Danville 9:00 a.m.-12:00 p.m., Wednesday, February 8, 2012 at the Pittsylvania/Danville Health District's Library, 326 Taylor Drive, 2nd Floor, Danville, VA.
- Abingdon 9:00 a.m.-12:00 p.m., Thursday, February 9, 2012 at the Southwest VA Higher Education Center, Room 240, Abingdon, VA
- Lexington 9:00 a.m.-12:00 p.m., Friday, February 10, 2012 at the Virginia Military Institute's Preston Library, Turman Room, Lexington, VA
- Chesterfield 1:00 p.m.-4:00 p.m., Monday, February 13, 2012 at the Chesterfield County Health Department's Multi-purpose Room, 9501 Lucy Corr Circle, Chesterfield, VA.
- Suffolk Area 9:00 a.m.-12:00 p.m., Tuesday, February 14, 2012 at the Town of Windsor's Municipal Building Counsel Chamber, 8 East Windsor Blvd., Windsor, VA. (Isle of Wight County)
- Culpeper 9:00 a.m.-12:00 p.m., Thursday, February 16, 2012 at the County of Culpeper's Board of Supervisors Room (rear entrance to Administration Bldg. and 3-hr. parking across the street), 302 North Main Street, Culpeper, VA

There will be _____ person(s) in my party as follows:

Name	Address	Phone	Representing

Drinking Water State Revolving Funds

The Virginia Department of Health (VDH) is pleased to announce several opportunities for funding drinking water infrastructure. Construction applications may be submitted year round. However, applications received after the due date stated below will be considered for funding in the following cycle. Funding is made possible by the Drinking Water State Revolving Fund (DWSRF) Program and the Water Supply Assistance Grant Fund (WSAG) Program (if funds are available). VDH anticipates a funding level of \$20 million. The FY 2013 DWSRF Intended Use Plan will be developed using the public's input on these issues.

(1) Construction Funds - Must be postmarked by April 2, 2012. Private and public owners of community waterworks and nonprofit noncommunity waterworks are eligible to apply for construction funds. VDH makes selections based on criteria described in the DWSRF Program Design Manual, such as existing public health problems, noncompliance, affordability, regionalization, the availability of matching funds, etc. Readiness to proceed with construction is a key element. A preliminary engineering report must be submitted if required by VDH. An instruction packet and construction project schedule are included.

(2) Set-Aside Suggestion Forms - Must be postmarked by April 2, 2012. Anyone has the opportunity to suggest new or continuing set-aside (nonconstruction) activities. Set-aside funds help VDH assist waterworks owners to prepare for future drinking water challenges and assure the sustainability of safe drinking water.

(3) 1452(k) Source Water Protection Initiatives - Must be postmarked by April 2, 2012. This provision allows VDH to loan money for activities to protect important drinking water resources. Loan funds are available to: (i) community and nonprofit noncommunity waterworks to acquire land/conservation easements and (ii) community waterworks, only, to establish local, voluntary incentive-based protection measures.

(4) Planning and Design Grants – Must be postmarked by August 27, 2012. Private and public owners of community waterworks are eligible to apply for these grant funds. Grants can be up to \$50,000 per project for small, financially stressed, community waterworks serving fewer than 10,000 persons. Eligible projects may include preliminary engineering planning, design of plans and specifications, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, or other similar technical assistance projects. These funds could assist the waterworks owner in future submittals for construction funds.

The VDH's DWSRF Program Design Manual describes the features of the above opportunities for funding. After

receiving the aforementioned public input, VDH will develop a draft Intended Use Plan for public review and comment. When developed the draft Intended Use Plan will describe specific details for use of the funds. A public meeting is planned and written comments will be accepted before VDH submits a final version to the US Environmental Protection Agency for approval.

Applications, set-aside suggestion forms, Program Design Manuals, and information may be requested from Steven Pellei, PE, FCAP Director, telephone (804) 864-7500, FAX (804) 864-7521, or mail to Virginia Department of Health, Office of Drinking Water, 109 Governor Street, 6th Floor, Richmond, VA 23219. Any comments can be directed to Mr. Pellei. The materials are also accessible at <http://www.vdh.virginia.gov/odw/financial/dwfundingprogramdetails.htm>.

Water Supply Assistance Grant Funding

The 1999 General Assembly created the Water Supply Assistance Grant Fund (WSAG) in § 32.1-171.2 of the Code of Virginia. The purpose of the WSAG is to make grant funds available to localities and owners of waterworks to assist in the provision of drinking water. The Virginia Department of Health does not anticipate WSAG funds being made available at the present time. If WSAG funds are made available VDH will implement the following WSAG requirements

Funds are available by submitting an application postmarked on or before the dates indicated for the following:

(1) Small Project Construction Grants - Application must be postmarked by April 2, 2012. Funding for small project construction may be available for projects whose total project cost does not exceed \$150,000. Eligible activities may include (but not be limited to) upgrade or construction of well or spring sources, waterlines, storage tanks, and treatment.

The applicant submits the current VDH construction application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAG purposes only, up to thirty (30) extra points are added to the VDH rating criteria relative to the Stress Index rank. Preference is given to community waterworks. This priority system ensures that all eligible acute or chronic health/SDWA compliance projects are funded before any other eligible project.

(2) Surface Water Development or Improvement Grants - Application must be postmarked by April 2, 2012. Funding for community waterworks surface source water development or improvement activities. An application cannot exceed \$200,000.

The applicant submits the current construction application to VDH. In ranking of applications, preference is given to those

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that address problems of small, community waterworks with multi-jurisdictional support.

Eligible activities may include land purchase, options to purchase land, general site development costs, and dam upgrade and construction.

(3) Planning and Design Grants - Application must be postmarked by August 27, 2012. Funding for waterworks planning and design needs. An application cannot exceed \$50,000.

In ranking of applications, preference is given to those that address problems of small, community waterworks with multi-jurisdictional support. The applicant submits the current VDH planning and design application to VDH. To promote coordination of funding and streamline the process for applicants, grants are prioritized in accordance with rating criteria of the current DWSRF Program. For WSAG funding purposes only, up to fifty (50) extra points are added to the DWSRF rating criteria relative to the Stress Index rank.

Eligible activities may include (but not be limited to) capacity building activities addressing regionalization or consolidation, performance of source water quality and quantity studies, drilling test wells to determine source feasibility, income surveys, preliminary engineering planning, design and preparation of plans and specifications, or other similar technical assistance projects.

The VDH's WSAG Program Guidelines describes the features of the above opportunities for funding.

Applications or program guidelines may be requested from Steve Pellei, P.E., FCAP Director, telephone (804) 864-7500, FAX (804) 864-7521, or mail to Virginia Department of Health, Office of Drinking Water, 109 Governor St., 6th Floor, Richmond, VA 23219. The applications are also accessible at <http://www.vdh.virginia.gov/odw/financial/dwfundingsprogramdetails.htm>.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on December 20, 2011, and December 21, 2011. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number One Hundred Four (11)

Virginia's Instant Game Lottery 1284; "Emerald 8's" Final Rules for Game Operation (effective December 20, 2011)

Director's Order Number One Hundred Six (11)

Virginia's Instant Game Lottery 1308; "Money Roll" Final Rules for Game Operation (effective December 20, 2011)

Director's Order Number One Hundred Twenty-Four (11)

"Stretch For Your Goal Retailer Incentive Chain Promotion - Worsley/VPA T/A Everyday" Virginia Lottery Retailer Incentive Program Rules (effective December 20, 2011 and remains in full force and effect until 90 days after the conclusion of the Incentive Program, unless otherwise extended by the Director)

Director's Order Number One Hundred Twenty-Five (11)

Virginia's Instant Game Lottery 1287; "Cat Scratch Fever" Final Rules for Game Operation (effective December 20, 2011)

Director's Order Number One Hundred Twenty-Six (11)

Virginia's Instant Game Lottery 1297; "Lucky Dog Doubler" Final Rules for Game Operation (effective December 20, 2011)

Director's Order Number One Hundred Twenty-Seven (11)

Virginia's Instant Game Lottery 1299; "5X The Money" Final Rules for Game Operation (effective December 20, 2011)

Director's Order Number One Hundred Twenty-Nine (11)

Virginia's Instant Game Lottery 1309; "In The Chips" Final Rules for Game Operation (effective December 20, 2011)

Director's Order Number One Hundred Thirty (11)

Virginia's Instant Game Lottery 1311; "9's In A Line" Final Rules for Game Operation (effective December 20, 2011)

Director's Order Number One Hundred Thirty-One (11)

Virginia's Instant Game Lottery 1316; "24K" Final Rules for Game Operation (effective December 20, 2011)

Director's Order Number One Hundred Thirty-Two (11)

Virginia's Instant Game Lottery 1324; "Jewel 7's" Final Rules for Game Operation (effective December 20, 2011)

Director's Order Number One Hundred Thirty-Three (11)

Virginia's Instant Game Lottery 1323; "10X The Money" Final Rules for Game Operation (effective December 20, 2011)

STATE WATER CONTROL BOARD

Notice of Intent to Provide § 401 Water Quality Certification for Norfolk District COE Regional Permit 20

Pursuant to Virginia Water Protection Permit Regulation (9VAC25-210-130 H), the State Water Control Board (board)

is giving notice of its intent to provide § 401 Water Quality Certification for activities authorized by the above referenced U.S. Army Corps of Engineers (USACE) Norfolk District Regional Permit after considering public comment for a 30-day period starting December 20, 2011, for the development of state owned and operated artificial fin and shellfish reefs. The regional permit was last issued on February 6, 2006, with an expiration date of December 31, 2011.

On September 15, 2011, the U.S. Army Corps of Engineers (USACE) Norfolk District published a notice of their proposed reissuance and modification of the Norfolk District Regional Permit 20 (RP-20). The notice can be found at: <http://www.nao.usace.army.mil/Technical%20Services/Regulatory%20Branch/PN/ProposedReissuance-NorfolkDist/document2011-09-12-165941.pdf>.

The State Water Control Board hereby proposes unconditional § 401 Water Quality Certification for the RP-20.

Proposed modifications to the existing RP-20 establish enhanced protections to water quality and include a requirement for compliance with the Toxic Substances Control Act, specification of hydrocarbons and certain toxic metals as prohibited materials, restrictions protective of spawning fish, as relevant, and provisions for coordinating projects to avoid impacts to nesting bald eagles.

The board can only issue final § 401 certification of a nationwide or regional USACE permit if the permit meets the requirements of the Virginia Water Protection Permit Regulation and after advertising and accepting public comment for 30 days on its intent to provide certification.

The State Water Control Board will issue its final § 401 Water Quality Certification for activities authorized by the above referenced U.S. Army Corps of Engineers (USACE) Norfolk District permits at the end of the 30-day comment period and after any comments received are considered. Written comments, including those by email, must be received no later than 5 p.m. on January 20, 2012, and should be submitted to David L. Davis at the address given below. Only those comments received within this period will be considered by the board. Written comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments.

Contact Information: David L. Davis, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4347, or email dave.davis@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

COMMONWEALTH TRANSPORTATION BOARD

Title of Regulation: 24VAC30-92. Secondary Street Acceptance Requirements (amending 24VAC30-92-10, 24VAC30-92-20, 24VAC30-92-60, 24VAC30-92-70, 24VAC30-92-80, 24VAC30-92-110, 24VAC30-92-120, 24VAC30-92-130, 24VAC30-92-140; repealing 24VAC30-92-50, 24VAC30-92-150).

Publication: 28:8 VA.R. 687-719 December 19, 2011.

Correction to Final Regulation:

Page 698, 24VAC30-92-10 in the definition of "Level of Service," line 6, change "(VDOT)" to "(TRB)"

Page 704, 24VAC30-92-60 C, first column, second paragraph, line 2, insert "an" before "adjacent property"

Page 706, 24VAC30-92-60 C 5, first column, second paragraph, line 2, after "modification" delete "or both"

General Notices/Errata

Page 709, insert the following before 24VAC30-92-110:

"24VAC30-92-100. Discretionary authority.

The district administrator's designees are authorized considerable discretionary authority regarding the design of secondary streets functionally classified as "local." The department's district administrators are authorized considerable discretion regarding the design of secondary streets functionally classified as "collector" or above- and the acceptance of streets into the secondary system of state highways."

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