



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 29 ISS. 4

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

OCTOBER 22, 2012

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# THE VIRGINIA REGISTER INFORMATION PAGE

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**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; **Gregory D. Habeeb**; **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. Tavernner**; **Christopher R. Nolen**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant; **Karen Perrine**, Staff Attorney.

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# PUBLICATION SCHEDULE AND DEADLINES

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

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## October 2012 through November 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 ( <b>Tuesday</b> )	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 ( <b>Tuesday</b> )	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013
30:1	August 21, 2013	September 9, 2013
30:2	September 4, 2013	September 23, 2013
30:3	September 18, 2013	October 7, 2013
30:4	October 2, 2013	October 21, 2013
30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013

\*Filing deadlines are Wednesdays unless otherwise specified.

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# PETITIONS FOR RULEMAKING

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## TITLE 18. AGRICULTURE

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Initial Agency Notice

Title of Regulation: **2VAC5-670. Rules and Regulations for Enforcement of the Virginia Pesticide Law.**

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

Name of Petitioner: H. Ronald Coake.

Nature of Petitioner's Request: The petitioner is requesting that the Board of Agriculture and Consumer Services amend the regulation to prohibit a person from applying, dispensing, or using any pesticide or herbicide on property without written permission from the property owner and without notification of the application that includes the material safety data sheet.

Agency Plan for Disposition of Request: The Board of Agriculture and Consumer Services will consider this request at its next scheduled meeting following the public comment period.

Public Comment Deadline: November 11, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-1308, or email erin.williams@vdacs.virginia.gov.

VA.R. Doc. No. R13-06, Filed September 25, 2012, 10:15 a.m.

#### Initial Agency Notice

Title of Regulation: **2VAC5-680. Regulations Governing Licensing of Pesticide Businesses Operating Under Authority of the Virginia Pesticide Control Act.**

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

Name of Petitioner: H. Ronald Coake.

Nature of Petitioner's Request: The petitioner is requesting that the Board of Agriculture and Consumer Services amend the regulation to require the revocation of the business license of any person who applies any pesticide or herbicide on property without written permission from the property owner and without notification to the property owner that includes the material safety data sheet. The petitioner is also requesting that the Board of Agriculture and Consumer Services amend the regulation to include provisions regarding the restoration of property and environmental cleanup.

Agency Plan for Disposition of Request: The Board of Agriculture and Consumer Services will consider this request at its next scheduled meeting following the public comment period.

Public Comment Deadline: November 11, 2012.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-1308, or email erin.williams@vdacs.virginia.gov.

VA.R. Doc. No. R13-05, Filed September 25, 2012, 10:20 a.m.

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# REGULATIONS

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

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## 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.

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## TITLE 1. ADMINISTRATION

### DEPARTMENT OF GENERAL SERVICES

#### Final Regulation

**REGISTRAR'S NOTICE:** The Department General Services 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 General Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** **1VAC30-45. Certification for Noncommercial Environmental Laboratories (amending 1VAC30-45-40).**

**1VAC30-46. Accreditation for Commercial Environmental Laboratories (amending 1VAC30-46-40).**

**Statutory Authority:** § 2.2-1105 of the Code of Virginia.

**Effective Date:** November 21, 2012.

**Agency Contact:** Rhonda Bishton, Regulatory Coordinator, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, FAX (804) 371-8305, or email rhonda.bishton@dgs.virginia.gov.

#### **Summary:**

*To conform to the amendment made to § 2.2-1105 by Chapter 99 of the 2012 Acts of Assembly, the Division of Consolidated Laboratory Services has revised the definition of "environmental analysis" in the regulations governing the Virginia Environmental Laboratory Accreditation Program (1VAC30-45 and 1VAC30-46). The definition is revised to include an exemption for laboratories using protocols pursuant to § 10.1-104.2 of the Code of Virginia to determine soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purposes of nutrient management.*

#### **1VAC30-45-40. Definitions.**

Where a term is defined in this section, the term shall have no other meaning, even if it is defined differently in the Code of Virginia or another regulation of the Virginia Administrative Code. Unless specifically defined in this section, the terms used in this chapter shall have the meanings commonly ascribed to them by recognized authorities.

"Acceptance criteria" means specified limits placed on characteristics of an item, process, or service defined in requirement documents.

"Accuracy" means the degree of agreement between an observed value and an accepted reference value. Accuracy includes a combination of random error (precision) and systematic error (bias) components that are due to sampling and analytical operations. Accuracy is an indicator of data quality.

"Algae" means simple single-celled, colonial, or multicelled, mostly aquatic plants, containing chlorophyll and lacking roots, stems and leaves that are either suspended in water (phytoplankton) or attached to rocks and other substrates (periphyton).

"Aliquot" means a portion of a sample taken for analysis.

"Analyte" means the substance or physical property to be determined in samples examined.

"Analytical method" means a technical procedure for providing analysis of a sample, defined by a body such as the Environmental Protection Agency or the American Society for Testing and Materials, that may not include the sample preparation method.

"Assessment" means the evaluation process used to measure or establish the performance, effectiveness, and conformance of an organization and its systems or both to defined criteria.

"Assessor" means the person who performs on-site assessments of laboratories' capability and capacity for meeting the requirements under this chapter by examining the records and other physical evidence for each one of the tests for which certification has been requested.

"Audit" means a systematic evaluation to determine the conformance to quantitative and qualitative specifications of some operational function or activity.

"Authority" means, in the context of a governmental body or local government, an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia.

"Batch" means environmental samples that are prepared together or analyzed together or both with the same process and personnel, using the same lot or lots of reagents. "Analytical batch" means a batch composed of prepared environmental samples (extracts, digestates or concentrates) that are analyzed together as a group. An analytical batch can include prepared samples originating from various environmental matrices and can exceed 20 samples. "Preparation batch" means a batch composed of one to 20 environmental samples of the same matrix that meets the

criteria in this definition for "batch" and with a maximum time between the start of processing of the first and last sample in the batch to be 24 hours.

"Benthic macroinvertebrates" means bottom dwelling animals without backbones that live at least part of their life cycles within or upon available substrates within a body of water.

"Blank" means a sample that has not been exposed to the analyzed sample stream in order to monitor contamination during sampling, transport, storage or analysis. The blank is subjected to the usual analytical and measurement process to establish a zero baseline or background value and is sometimes used to adjust or correct routine analytical results. Blanks include the following types:

1. Field blank. A blank prepared in the field by filling a clean container with pure deionized water and appropriate preservative, if any, for the specific sampling activity being undertaken.
2. Method blank. A sample of a matrix similar to the batch of associated samples (when available) that is free from the analytes of interest and is processed simultaneously with and under the same conditions as samples through all steps of the analytical procedures, and in which no target analytes or interferences are present at concentrations that impact the analytical results for sample analyses.

"Calibration" means to determine, by measurement or comparison with a standard, the correct value of each scale reading on a meter, instrument or other device. The levels of the applied calibration standard should bracket the range of planned or expected sample measurements.

"Calibration curve" means the graphical relationship between the known values, such as concentrations, of a series of calibration standards and their instrument response.

"Calibration standard" means a substance or reference material used to calibrate an instrument.

"Certified reference material" means a reference material one or more of whose property values are certified by a technically valid procedure, accompanied by or traceable to a certificate or other documentation that is issued by a certifying body.

"Commercial environmental laboratory" means an environmental laboratory where environmental analysis is performed for another person.

"Corrective action" means the action taken to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent recurrence.

"DGS-DCLS" means the Division of Consolidated Laboratory Services of the Department of General Services.

"Demonstration of capability" means the procedure to establish the ability of the analyst to generate data of acceptable accuracy and precision.

"Detection limit" means the lowest concentration or amount of the target analyte that can be determined to be different from zero by a single measurement at a stated degree of confidence.

"Environmental analysis" or "environmental analyses" means any test, analysis, measurement, or monitoring used for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste Management Act or the State Water Control Law (§ 10.1-1300 et seq., § 10.1-1400 et seq., and § 62.1-44.2 et seq., respectively, of the Code of Virginia). For the purposes of these regulations, any test, analysis, measurement, or monitoring required pursuant to the regulations promulgated under these three laws, or by any permit or order issued under the authority of any of these laws or regulations is "used for the purposes" of these laws. The term shall not include the following:

1. Sampling of water, solid and chemical materials, biological tissue, or air and emissions.
2. Field testing and measurement of water, solid and chemical materials, biological tissue, or air and emissions, except when performed in an environmental laboratory rather than at the site where the sample was taken.
3. Taxonomic identification of samples for which there is no national accreditation standard such as algae, benthic macroinvertebrates, macrophytes, vertebrates and zooplankton.

4. Protocols used pursuant to § 10.1-104.2 of the Code of Virginia to determine soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purposes of nutrient management.

"Environmental laboratory" or "laboratory" means a facility or a defined area within a facility where environmental analysis is performed. A structure built solely to shelter field personnel and equipment from inclement weather shall not be considered an environmental laboratory.

"Establishment date" means the date set for the accreditation program under 1VAC30-46 and the certification program to be established under this chapter.

"Establishment of certification program" or "established program" means that DGS-DCLS has completed the initial accreditation of environmental laboratories covered by 1VAC30-46 and the initial certification of environmental laboratories covered by 1VAC30-45.

"Facility" means something that is built or installed to serve a particular function.

"Field of certification" means an approach to certifying laboratories by matrix, technology/method and analyte/analyte group.

"Field testing and measurement" means any of the following:

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# Regulations

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1. Any test for parameters under 40 CFR Part 136 for which the holding time indicated for the sample requires immediate analysis; or
2. Any test defined as a field test in federal regulation.

The following is a limited list of currently recognized field tests or measures that is not intended to be inclusive: continuous emissions monitoring; on-line monitoring; flow monitoring; tests for pH, residual chlorine, temperature and dissolved oxygen; and field analysis for soil gas.

"Finding" means an assessment conclusion that identifies a condition having a significant effect on an item or activity. An assessment finding is normally a deficiency and is normally accompanied by specific examples of the observed condition.

"Governmental body" means any department, agency, bureau, authority, or district of the United States government, of the government of the Commonwealth of Virginia, or of any local government within the Commonwealth of Virginia.

"Holding time (or maximum allowable holding time)" means the maximum time that a sample may be held prior to analysis and still be considered valid or not compromised.

"Initial certification period" means the period during which DGS-DCLS is accepting and processing applications for the first time under this chapter as specified in 1VAC30-45-60.

"International System of Units (SI)" means the coherent system of units adopted and recommended by the General Conference on Weights and Measures.

"Laboratory control sample" or "LCS" means a sample matrix, free from the analytes of interest, spiked with verified known amounts of analytes or a material containing known and verified amounts of analytes. It is generally used to establish intra-laboratory or analyst specific precision and bias or to assess the performance of all or a portion of the measurement system. "Laboratory control sample" or "LCS" may also be named laboratory fortified blank, spiked blank, or QC check sample.

"Laboratory manager" means the person who has overall responsibility for the technical operation of the environmental laboratory and who exercises actual day-to-day supervision of laboratory operation for the appropriate fields of testing and reporting of results. The title of this person may include but is not limited to laboratory director, technical director, laboratory supervisor or laboratory manager.

"Legal entity" means an entity, other than a natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue and make decisions through agents as in the case of corporations.

"Limit of detection" or "LOD" means an estimate of the minimum amount of a substance that an analytical process can reliably detect. An LOD is analyte and matrix specific and may be laboratory dependent.

"Limit of quantitation" or "LOQ" means the minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence.

"Local government" means a municipality (city or town), county, sanitation district, or authority.

"Macrophytes" means any aquatic or terrestrial plant species that can be identified and observed with the eye, unaided by magnification.

"Matrix" means the component or substrate that may contain the analyte of interest. A matrix can be a field of certification matrix or a quality system matrix.

1. Field of certification matrix. These matrix definitions shall be used when certifying a laboratory.

a. Non-potable water. Any aqueous sample that has not been designated a potable or potential potable water source. Includes surface water, groundwater, effluents, water treatment chemicals, and TCLP or other extracts.

b. Solid and chemical materials. Includes soils, sediments, sludges, products and byproducts of an industrial process that results in a matrix not previously defined.

c. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.

d. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

2. Quality system matrix. For purposes of batch and quality control requirement determinations, the following matrix types shall be used:

a. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.

b. Aqueous. Any aqueous sample excluded from the definition of drinking water matrix or saline/estuarine source. Includes surface water, groundwater, effluents, and TCLP or other extracts.

c. Saline/estuarine. Any aqueous sample from an ocean or estuary, or other salt water source.

d. ~~Nonaqueous~~ Nonaqueous liquid. Any organic liquid with less than 15% settleable solids.

e. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.

f. Solids. Includes soils, sediments, sludges and other matrices with more than 15% settleable solids.

g. Chemical waste. A product or by-product of an industrial process that results in a matrix not previously defined.



h. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

"Matrix spike (spiked sample or fortified sample)" means a sample prepared by adding a known mass of target analyte to a specified amount of matrix sample for which an independent estimate of target analyte concentration is available. Matrix spikes are used, for example, to determine the effect of the matrix on a method's recovery efficiency.

"Matrix spike duplicate (spiked sample or fortified sample duplicate)" means a second replicate matrix spike prepared in the laboratory and analyzed to obtain a measure of the precision of the recovery for each analyte.

"National Environmental Laboratory Accreditation Conference (NELAC)" means a voluntary organization of state and federal environmental officials and interest groups with the primary purpose to establish mutually acceptable standards for accrediting environmental laboratories. A subset of NELAP.

"National Environmental Laboratory Accreditation Program (NELAP)" means the overall National Environmental Laboratory Accreditation Program of which NELAC is a part.

"National Institute of Standards and Technology" or "NIST" means an agency of the U.S. Department of Commerce's Technology Administration that is working with EPA, states, NELAC, and other public and commercial entities to establish a system under which private sector companies and interested states can be certified by NIST to provide NIST-traceable proficiency testing (PT) samples.

"Negative control" means measures taken to ensure that a test, its components, or the environment do not cause undesired effects, or produce incorrect test results.

"Noncommercial environmental laboratory" means either of the following:

1. An environmental laboratory where environmental analysis is performed solely for the owner of the laboratory.
2. An environmental laboratory where the only performance of environmental analysis for another person is one of the following:
  - a. Environmental analysis performed by an environmental laboratory owned by a local government for an owner of a small wastewater treatment system treating domestic sewage at a flow rate of less than or equal to 1,000 gallons per day.
  - b. Environmental analysis performed by an environmental laboratory operated by a corporation as part of a general contract issued by a local government to operate and maintain a wastewater treatment system or a waterworks.

c. Environmental analysis performed by an environmental laboratory owned by a corporation as part of the prequalification process or to confirm the identity or characteristics of material supplied by a potential or existing customer or generator as required by a hazardous waste management permit under 9VAC20-60.

d. Environmental analysis performed by an environmental laboratory owned by a Publicly Owned Treatment Works (POTW) for an industrial source of wastewater under a permit issued by the POTW to the industrial source as part of the requirements of a pretreatment program under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31.

e. Environmental analysis performed by an environmental laboratory owned by a county authority for any municipality within the county's geographic jurisdiction when the environmental analysis pertains solely to the purpose for which the authority was created.

f. Environmental analysis performed by an environmental laboratory owned by an authority or a sanitation district for any participating local government of the authority or sanitation district when the environmental analysis pertains solely to the purpose for which the authority or sanitation district was created.

"Owner" means any person who owns, operates, leases or controls an environmental laboratory.

"Person" means an individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

"Physical," for the purposes of fee test categories, means the tests to determine the physical properties of a sample. Tests for solids, turbidity and color are examples of physical tests.

"Positive control" means measures taken to ensure that a test or its components are working properly and producing correct or expected results from positive test subjects.

"Precision" means the degree to which a set of observations or measurements of the same property, obtained under similar conditions, conform to themselves. Precision is an indicator of data quality. Precision is expressed usually as standard deviation, variance or range, in either absolute or relative terms.

"Primary accrediting authority" means the agency or department designated at the territory, state or federal level as the recognized authority with the responsibility and accountability for granting NELAC accreditation to a specific laboratory for a specific field of accreditation.

"Proficiency test or testing (PT)" means evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source.

"Proficiency test (PT) field of testing" means the approach to offer proficiency testing by matrix, technology/method, and analyte/analyte group.

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"Proficiency test (PT) sample" means a sample, the composition of which is unknown to both the analyst and the laboratory provided to test whether the analyst or laboratory or both can produce analytical results within specified acceptance criteria.

"Proficiency testing (PT) program" means the aggregate of providing rigorously controlled and standardized environmental samples to a laboratory for analysis, reporting of results, statistical evaluation of the results and the collective demographics and results summary of all participating laboratories.

"Program," in the context of a regulatory program, means the relevant U.S. Environmental Protection Agency program such as the water program under the Clean Water Act (CWA), the air program under the Clean Air Act (CAA), the waste program under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) or the waste program under the Resource Conservation and Recovery Act (RCRA).

"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.

"Quality assurance" means an integrated system of activities involving planning, quality control, quality assessment, reporting and quality improvement to ensure that a product or service meets defined standards of quality with a stated level of confidence.

"Quality assurance officer" means the person who has responsibility for the quality system and its implementation. Where staffing is limited, the quality assurance officer may also be the laboratory manager.

"Quality control" means the overall system of technical activities whose purpose is to measure and control the quality of a product or service so that it meets the needs of users.

"Quality manual" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of an agency, organization, or laboratory, to ensure the quality of its product and the utility of its product to its users.

"Quality system" means a structured and documented management system describing the policies, objectives, principles, organizational authority, responsibilities, accountability, and implementation plan of an organization for ensuring quality in its work processes, products (items),

and services. The quality system provides the framework for planning, implementing, and assessing work performed by the organization and for carrying out required quality assurance and quality control.

"Range" means the difference between the minimum and maximum of a set of values.

"Reference material" means a material or substance one or more properties of which are sufficiently well established to be used for the calibration of an apparatus, the assessment of a measurement test method, or for assigning values to materials.

"Reference standard" means a standard, generally of the highest metrological quality available at a given location, from which measurements made at that location are derived.

"Responsible official" means one of the following, as appropriate:

1. If the laboratory is owned or operated by a private corporation, "responsible official" means (i) a president, secretary, treasurer, or a 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 employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated in accordance with corporate procedures.
2. If the laboratory is owned or operated by a partnership, association, or a sole proprietor, "responsible official" means a general partner, officer of the association, or the proprietor, respectively.
3. If the laboratory is owned or operated by a governmental body, "responsible official" means a director or highest official appointed or designated to oversee the operation and performance of the activities of the environmental laboratory.
4. Any person designated as the responsible official by an individual described in subdivision 1, 2 or 3 of this definition, provided the designation is in writing, the designation specifies an individual or position with responsibility for the overall operation of the environmental laboratory, and the designation is submitted to DGS-DCLS.

"Sampling" means the act of collection for the purpose of analysis.

"Sanitation district" means a sanitation district created under the provisions of Chapters 3 (§ 21-141 et seq.) through 5 (§ 21-291 et seq.) of Title 21 of the Code of Virginia.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Simple test procedures" means any of the following:

1. Field testing and measurement performed in an environmental laboratory.
2. The test procedures to determine:
  - a. Biochemical oxygen demand (BOD);
  - b. Fecal coliform;
  - c. Total coliform;
  - d. Fecal streptococci;
  - e. E. coli;
  - f. Enterococci;
  - g. Settleable solids (SS);
  - h. Total dissolved solids (TDS);
  - i. Total solids (TS);
  - j. Total suspended solids (TSS);
  - k. Total volatile solids (TVS); and
  - l. Total volatile suspended solids (TVSS).

"Standard operating procedure (SOP)" means a written document that details the method of an operation, analysis or action whose techniques and procedures are thoroughly prescribed and which is accepted as the method for performing certain routine or repetitive tasks.

"Standardized reference material (SRM)" means a certified reference material produced by the U.S. National Institute of Standards and Technology or other equivalent organization and characterized for absolute content, independent of analytical method.

"System laboratory" means a noncommercial laboratory that analyzes samples from multiple facilities having the same owner.

"TCLP" or "toxicity characteristic leachate procedure" means Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11. This method is used to determine whether a solid waste exhibits the characteristic of toxicity (see 40 CFR 261.24).

"Test" means a technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical phenomenon, process or service according to a specified procedure.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Air Pollution Control Law" means any method of analysis required by the Virginia Air Pollution Control Law (§ 10.1-1300 et seq.); by the regulations promulgated under this law (9VAC5) including any method of analysis listed either in the definition of "reference method" in 9VAC5-10-20, or listed or adopted by reference in 9VAC5; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Waste Management Act" means any method of analysis required by the Virginia Waste Management Act (§ 10.1-1400 et seq.); by the regulations promulgated under this law (9VAC20), including any method of analysis listed or adopted by reference in 9VAC20; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Water Control Law" means any method of analysis required by the Virginia Water Control Law (§ 62.1-44.2 et seq.); by the regulations promulgated under this law (9VAC25), including any method of analysis listed or adopted by reference in 9VAC25; or by any permit or order issued under and in accordance with this law and these regulations.

"Test method" means an adoption of a scientific technique for performing a specific measurement as documented in a laboratory standard operating procedure or as published by a recognized authority.

"Traceability" means the property of a result of a measurement whereby it can be related to appropriate standards, generally international or national standards, through an unbroken chain of comparisons.

"U.S. Environmental Protection Agency" means the federal government agency with responsibility for protecting, safeguarding and improving the natural environment (i.e., air, water and land) upon which human life depends.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia, which is titled "Air Pollution Control Board."

"Wastewater" means liquid and water-carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions.

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping.

"Zooplankton" means microscopic animals that float freely with voluntary movement in a body of water.

## **1VAC30-46-40. Definitions.**

The definitions in the 2003 National Environmental Laboratory Accreditation Conference (NELAC) standards, Chapter 1, Appendix A – Glossary, are incorporated by reference into this section. Some of the definitions from this glossary are included in this section because the terms are used throughout this chapter. Where a term is defined in this section, the term shall have no other meaning, even if it is defined differently in the Code of Virginia or another regulation of the Virginia Administrative Code. Unless specifically defined in this section, the terms used in this

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chapter shall have the meanings commonly ascribed to them by recognized authorities.

"Accreditation" means the process by which an agency or organization evaluates and recognizes a laboratory as meeting certain predetermined qualifications or standards, thereby accrediting the laboratory. "Accreditation" is the term used as a substitute for the term "certification" under this chapter.

"Accrediting authority" means the territorial, state, or federal agency having responsibility and accountability for environmental laboratory accreditation and which grants accreditation.

"Acceptance criteria" means specified limits placed on characteristics of an item, process, or service defined in requirement documents.

"Algae" means simple single-celled, colonial, or multicelled, mostly aquatic plants, containing chlorophyll and lacking roots, stems and leaves that are either suspended in water (phytoplankton) or attached to rocks and other substrates (periphyton).

"Analyte" means the substance or physical property to be determined in samples examined.

"Analytical method" means a technical procedure for providing analysis of a sample, defined by a body such as the Environmental Protection Agency or the American Society for Testing and Materials, that may not include the sample preparation method.

"Assessment" means the evaluation process used to measure or establish the performance, effectiveness, and conformance of an organization and its systems or both to defined criteria.

"Assessor" means the person who performs on-site assessments of laboratories' capability and capacity for meeting the requirements under this chapter by examining the records and other physical evidence for each one of the tests for which accreditation has been requested.

"Authority" means, in the context of a governmental body or local government, an authority created under the provisions of the Virginia Water and Waste Authorities Act, Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2 of the Code of Virginia.

"Benthic macroinvertebrates" means bottom dwelling animals without backbones that live at least part of their life cycles within or upon available substrates within a body of water.

"Commercial environmental laboratory" means an environmental laboratory where environmental analysis is performed for another person.

"Corrective action" means the action taken to eliminate the causes of an existing nonconformity, defect or other undesirable situation in order to prevent recurrence.

"DGS-DCLS" means the Division of Consolidated Laboratory Services of the Department of General Services.

"Environmental analysis" or "environmental analyses" means any test, analysis, measurement, or monitoring used

for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste Management Act or the State Water Control Law (§ 10.1-1300 et seq., § 10.1-1400 et seq., and § 62.1-44.2 et seq., respectively, of the Code of Virginia). For the purposes of these regulations, any test, analysis, measurement, or monitoring required pursuant to the regulations promulgated under these three laws, or by any permit or order issued under the authority of any of these laws or regulations is "used for the purposes" of these laws. The term shall not include the following:

1. Sampling of water, solid and chemical materials, biological tissue, or air and emissions.
2. Field testing and measurement of water, solid and chemical materials, biological tissue, or air and emissions, except when performed in an environmental laboratory rather than at the site where the sample was taken.
3. Taxonomic identification of samples for which there is no national accreditation standard such as algae, benthic macroinvertebrates, macrophytes, vertebrates and zooplankton.

4. Protocols used pursuant to § 10.1-104.2 of the Code of Virginia to determine soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purposes of nutrient management.

"Environmental laboratory" or "laboratory" means a facility or a defined area within a facility where environmental analysis is performed. A structure built solely to shelter field personnel and equipment from inclement weather shall not be considered an environmental laboratory.

"Establishment date" means the date set for the accreditation program under this chapter and the certification program under 1VAC30-45 to be established.

"Establishment of accreditation program" or "established program" means that DGS-DCLS has completed the initial accreditation of environmental laboratories covered by this chapter and the initial certification of environmental laboratories covered by 1VAC30-45.

"Facility" means something that is built or installed to serve a particular function.

"Field of accreditation" means an approach to accrediting laboratories by matrix, technology/method and analyte/analyte group.

"Field of accreditation matrix" means the following when accrediting a laboratory:

1. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.
2. Nonpotable water. Any aqueous sample excluded from the definition of drinking water matrix. Includes surface water, groundwater, effluents, water treatment chemicals, and TCLP or other extracts.

3. Solid and chemical materials. Includes soils, sediments, sludges, products and byproducts of an industrial process that results in a matrix not previously defined.

4. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin, i.e., by species.

5. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

"Field of proficiency testing" means an approach to offer proficiency testing by matrix, technology/method, and analyte/analyte group.

"Field testing and measurement" means any of the following:

1. Any test for parameters under 40 CFR Part 136 for which the holding time indicated for the sample requires immediate analysis; or
2. Any test defined as a field test in federal regulation.

The following is a limited list of currently recognized field tests or measures that is not intended to be inclusive: continuous emissions monitoring; on-line monitoring; flow monitoring; tests for pH, residual chlorine, temperature and dissolved oxygen; and field analysis for soil gas.

"Finding" means a conclusion reached during an on-site assessment that identifies a condition having a significant effect on an item or activity. An assessment finding is normally a deficiency and is normally accompanied by specific examples of the observed condition.

"Governmental body" means any department, agency, bureau, authority, or district of the United States government, of the government of the Commonwealth of Virginia, or of any local government within the Commonwealth of Virginia.

"Holding time (or maximum allowable holding time)" means the maximum time that a sample may be held prior to analysis and still be considered valid or not compromised.

"Initial accreditation period" means the period during which DGS-DCLS is accepting and processing applications for the first time under this chapter as specified in 1VAC30-46-70.

"Legal entity" means an entity, other than a natural person, who has sufficient existence in legal contemplation that it can function legally, be sued or sue and make decisions through agents as in the case of corporations.

"Local government" means a municipality (city or town), county, sanitation district, or authority.

"Macrophytes" means any aquatic or terrestrial plant species that can be identified and observed with the eye, unaided by magnification.

"Matrix" means the component or substrate that contains the analyte of interest.

"National accreditation database" means the publicly accessible database listing the accreditation status of all laboratories participating in NELAP.

"National Environmental Laboratory Accreditation Conference (NELAC)" means a voluntary organization of state and federal environmental officials and interest groups with the primary purpose to establish mutually acceptable standards for accrediting environmental laboratories. A subset of NELAP.

"National Environmental Laboratory Accreditation Program (NELAP)" means the overall National Environmental Laboratory Accreditation Program of which NELAC is a part.

"Noncommercial environmental laboratory" means either of the following:

1. An environmental laboratory where environmental analysis is performed solely for the owner of the laboratory.
2. An environmental laboratory where the only performance of environmental analysis for another person is one of the following:
  - a. Environmental analysis performed by an environmental laboratory owned by a local government for an owner of a small wastewater treatment system treating domestic sewage at a flow rate of less than or equal to 1,000 gallons per day.
  - b. Environmental analysis performed by an environmental laboratory operated by a corporation as part of a general contract issued by a local government to operate and maintain a wastewater treatment system or a waterworks.
  - c. Environmental analysis performed by an environmental laboratory owned by a corporation as part of the prequalification process or to confirm the identity or characteristics of material supplied by a potential or existing customer or generator as required by a hazardous waste management permit under 9VAC20-60.
  - d. Environmental analysis performed by an environmental laboratory owned by a Publicly Owned Treatment Works (POTW) for an industrial source of wastewater under a permit issued by the POTW to the industrial source as part of the requirements of a pretreatment program under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31.
  - e. Environmental analysis performed by an environmental laboratory owned by a county authority for any municipality within the county's geographic jurisdiction when the environmental analysis pertains solely to the purpose for which the authority was created.
  - f. Environmental analysis performed by an environmental laboratory owned by an authority or a sanitation district for any participating local government of the authority or sanitation district when the

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environmental analysis pertains solely to the purpose for which the authority or sanitation district was created.

"Owner" means any person who owns, operates, leases or controls an environmental laboratory.

"Person" means an individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity.

"Physical," for the purposes of fee test categories, means the tests to determine the physical properties of a sample. Tests for solids, turbidity and color are examples of physical tests.

"Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730 et seq.) of 9VAC25-31 including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a POTW; or any reporting requirements imposed by the owner of a POTW or by the regulations of the State Water Control Board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

"Primary accrediting authority" means the agency or department designated at the territory, state or federal level as the recognized authority with the responsibility and accountability for granting NELAC accreditation to a specific laboratory for a specific field of accreditation.

"Proficiency test or testing (PT)" means evaluating a laboratory's performance under controlled conditions relative to a given set of criteria through analysis of unknown samples provided by an external source.

"Proficiency test (PT) sample" means a sample, the composition of which is unknown to both the analyst and the laboratory, provided to test whether the analyst or laboratory or both can produce analytical results within specified acceptance criteria.

"Proficiency testing (PT) program" means the aggregate of providing rigorously controlled and standardized environmental samples to a laboratory for analysis, reporting of results, statistical evaluation of the results and the collective demographics and results summary of all participating laboratories.

"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.

"Quality assurance" means an integrated system of activities involving planning, quality control, quality assessment, reporting and quality improvement to ensure that a product or

service meets defined standards of quality with a stated level of confidence.

"Quality assurance officer" means the person who has responsibility for the quality system and its implementation. Where staffing is limited, the quality assurance officer may also be the technical director.

"Quality control" means the overall system of technical activities whose purpose is to measure and control the quality of a product or service so that it meets the needs of users.

"Quality manual" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of an agency, organization, or laboratory, to ensure the quality of its product and the utility of its product to its users.

"Quality system" means a structured and documented management system describing the policies, objectives, principles, organizational authority, responsibilities, accountability, and implementation plan of an organization for ensuring quality in its work processes, products (items), and services. The quality system provides the framework for planning, implementing, and assessing work performed by the organization and for carrying out required quality assurance and quality control.

"Quality system matrix," for purposes of batch and quality control requirements, means the following:

1. Aqueous. Any aqueous sample excluded from the definition of drinking water matrix or saline/estuarine source. Includes surface water, groundwater, effluents, and TCLP or other extracts.
2. Drinking water. Any aqueous sample that has been designated a potable or potential potable water source.
3. Saline/estuarine. Any aqueous sample from an ocean or estuary, or other salt water source such as the Great Salt Lake.
4. Non-aqueous liquid. Any organic liquid with less than 15% settleable solids.
5. Biological tissue. Any sample of a biological origin such as fish tissue, shellfish, or plant material. Such samples shall be grouped according to origin.
6. Solids. Includes soils, sediments, sludges and other matrices with more than 15% settleable solids.
7. Chemical waste. A product or byproduct of an industrial process that results in a matrix not previously defined.
8. Air and emissions. Whole gas or vapor samples including those contained in flexible or rigid wall containers and the extracted concentrated analytes of interest from a gas or vapor that are collected with a sorbent tube, impinger solution, filter or other device.

"Recognition" means the mutual agreement of two or more accrediting authorities to accept each other's findings

regarding the ability of environmental laboratories to meet NELAC standards.

"Responsible official" means one of the following, as appropriate:

1. If the laboratory is owned or operated by a private corporation, "responsible official" means (i) a president, secretary, treasurer, or a 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 employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated in accordance with corporate procedures.
2. If the laboratory is owned or operated by a partnership, association, or a sole proprietor, "responsible official" means a general partner, officer of the association, or the proprietor, respectively.
3. If the laboratory is owned or operated by a governmental body, "responsible official" means a director or highest official appointed or designated to oversee the operation and performance of the activities of the governmental laboratory.
4. Any person designated as the responsible official by an individual described in subdivision 1, 2 or 3 of this definition provided the designation is in writing, the designation specifies an individual or position with responsibility for the overall operation of the laboratory, and the designation is submitted to DGS-DCLS.

"Sampling" means the act of collection for the purpose of analysis.

"Sanitation district" means a sanitation district created under the provisions of Chapters 3 (§ 21-141 et seq.) through 5 (§ 21-291 et seq.) of Title 21 of the Code of Virginia.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places together with such industrial wastes and underground, surface, storm, or other water as may be present.

"Standard operating procedure (SOP)" means a written document which details the method of an operation, analysis or action whose techniques and procedures are thoroughly prescribed and which is accepted as the method for performing certain routine or repetitive tasks.

"TCLP" or "toxicity characteristic leachate procedure" means Test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11. This method is used to determine whether a solid waste exhibits the characteristic of toxicity (see 40 CFR 261.24).

"Technical director (however named)" means the person who has overall responsibility for the technical operation of

the environmental laboratory and who exercises actual day-to-day supervision of laboratory operation for the appropriate fields of testing and reporting of results. The title of this person may include but is not limited to laboratory director, technical director, laboratory supervisor or laboratory manager.

"Technology" means a specific arrangement of analytical instruments, detection systems, or preparation techniques, or any combination of these elements.

"Test" means a technical operation that consists of the determination of one or more characteristics or performance of a given product, material, equipment, organism, physical phenomenon, process or service according to a specified procedure.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Air Pollution Control Law" means any method of analysis required by the Virginia Air Pollution Control Law (§ 10.1-1300 et seq.); by the regulations promulgated under this law (9VAC5), including any method of analysis listed either in the definition of "reference method" in 9VAC5-10-20, or listed or adopted by reference in 9VAC5; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Waste Management Act" means any method of analysis required by the Virginia Waste Management Act (§ 10.1-1400 et seq.); by the regulations promulgated under this law (9VAC20), including any method of analysis listed or adopted by reference in 9VAC20; or by any permit or order issued under and in accordance with this law and these regulations.

"Test, analysis, measurement or monitoring required pursuant to the Virginia Water Control Law" means any method of analysis required by the Virginia Water Control Law (§ 62.1-44.2 et seq.); by the regulations promulgated under this law (9VAC25), including any method of analysis listed or adopted by reference in 9VAC25; or by any permit or order issued under and in accordance with this law and these regulations.

"Test method" means an adoption of a scientific technique for performing a specific measurement, as documented in a laboratory standard operating procedure or as published by a recognized authority.

"U.S. Environmental Protection Agency (U.S. EPA or EPA)" means the federal government agency with responsibility for protecting, safeguarding and improving the natural environment (i.e., air, water and land) upon which human life depends.

"Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia which is titled "Air Pollution Control Board."

"Wastewater" means liquid and water-carried industrial wastes and domestic sewage from residential dwellings,

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commercial buildings, industrial and manufacturing facilities and institutions.

"Waterworks" means each system of structures and appliances used in connection with the collection, storage, purification, and treatment of water for drinking or domestic use and the distribution thereof to the public, except distribution piping.

"Zooplankton" means microscopic animals that float freely with voluntary movement in a body of water.

V.A.R. Doc. No. R13-3359; Filed September 24, 2012, 1:48 p.m.



## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### DEPARTMENT OF MINES, MINERALS AND ENERGY

#### Proposed Regulation

Title of Regulation: **4VAC25-31. Reclamation Regulations for Mineral Mining (amending 4VAC25-31-10, 4VAC25-31-100, 4VAC25-31-110, 4VAC25-31-130, 4VAC25-31-140, 4VAC25-31-150, 4VAC25-31-170, 4VAC25-31-190, 4VAC25-31-260, 4VAC25-31-290, 4VAC25-31-330, 4VAC25-31-360, 4VAC25-31-380, 4VAC25-31-420, 4VAC25-31-460, 4VAC25-31-490, 4VAC25-31-500, 4VAC25-31-510, 4VAC25-31-530, 4VAC25-31-540, 4VAC25-31-550; adding 4VAC25-31-405, 4VAC25-31-505).**

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Public Hearing Information:

December 4, 2012 - 10 a.m. - Department of Mines, Minerals and Energy, Division of Mineral Mining, Fontaine Research Park, 900 Natural Resources Drive, Charlottesville, VA

Public Comment Deadline: December 21, 2012.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email [mike.skiffington@dmme.virginia.gov](mailto:mike.skiffington@dmme.virginia.gov).

Basis: The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under the authority found in § 45.1-161.3 of the Code of Virginia. Section 45.1-180.3 of the Code of Virginia gives the Director of DMME specific authority over the reclamation of mineral mines.

Purpose: The purpose of the amended regulation is to ensure that public health and safety is maintained by ensuring mineral mining reclamation standards are updated to reflect current industry best practices.

Substance: The agency's commitment to offering electronic services to customers requires certain sections to be amended to facilitate the use of electronic forms. Other sections will be reorganized or reworded to make them clearer. Obsolete information, such as agency addresses that have changed, will be corrected. Sections dealing with reclamation standards and post-mining land use will be clarified and strengthened to assure adequate protection of the environment. The agency is also allowing an additional type of financial instrument to be used as bond.

Issues: The proposed changes will improve the water quality for the state waters of Virginia. The proposed changes will also provide additional flexibility to the regulated businesses by increasing their ability to conduct business electronically and by allowing an additional acceptable form of bonding.

DMME will benefit by improvements in its ability to conduct business electronically. The proposed changes coordinate definitions and requirements of other state agencies (Department of Conservation and Recreation and Department of Environmental Quality) to make compliance easier during mining and after mining.

There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a periodic review, the Department of Mines, Minerals and Energy (Department) proposes numerous changes to these regulations. Many of the proposed changes involve clarifications, additions and modifications to definitions, updating of citations, elimination of obsolete language, etc. Additionally the Department proposes to: 1) specify that areas that are disturbed (by mining activities) shall be provided with an undisturbed riparian buffer, 50 feet in width, along both sides of a perennial stream, 2) add irrevocable letters of credit as an acceptable form of performance bond, 3) add and modify language to enable mineral mining permits and permit applications to be submitted electronically, and 4) require operators to notify the Division of Mineral Mining (Division) immediately if an impoundment suffers a partial or complete failure.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact. The current regulations specify that all intermittent or perennial streams shall be protected from spoil by natural or constructed barriers. The Department proposes to additionally state that

Areas disturbed after the effective date of this regulation shall provide an undisturbed riparian buffer, 50 feet in width, along both sides of a perennial stream unless otherwise approved by the director. Areas disturbed prior



to the effective date shall provide the aforementioned riparian buffer upon reclamation, in accordance with the approved post-mining land use.

A riparian buffer is defined as an area of trees, shrubs or other vegetation that is managed to maintain the integrity of the stream channel and reduce the effects of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals.

The Department estimates the cost of riparian buffer compliance at less than \$1,000 per affected site. There are currently about 430 active permitted sites. Approximately 230 of the sites are within the Chesapeake Bay watershed, and would already fall under existing riparian buffer standards for that watershed.<sup>1</sup> These sites would not be affected by the proposed new language. The Department estimates that approximately 10% of the 200 sites outside the Chesapeake Bay watershed, or an estimated 20 sites, would be affected. Thus the total aggregated cost for all of the permitted site owners would likely be less than \$20,000.<sup>2</sup> The riparian buffers are likely to have a positive impact on the quality of waters passing through or adjacent to these mine sites. This may have a positive impact on public health and the surrounding ecosystem. The dollar value of potential improvement to public health and the local ecosystem cannot be easily measured, but likely exceeds the aggregated compliance cost of less than \$20,000.

The current regulations require that once a mineral permit application is deemed complete, the applicant shall submit a bond or bonds that cover the entire area presently disturbed by mining plus the estimated number of acres to be disturbed in the upcoming year. As additional areas outside the bonded acreage are to be disturbed to facilitate the mining operation, the permittee must file a bond or bonds to cover the acreage with the division. Permitted operators must certify annually with the permit renewal the type, current insurer or bank, and the amount of all reclamation bonds. Pursuant to a request from operators, the Department proposes to add irrevocable letters of credit as an acceptable form of bond. This will likely lower costs for mine owner/operators while still assuring that funds are available for site reclamation. This proposal will thus create a net benefit.

The Department proposes to add and modify language to enable mineral mining permits and permit applications to be submitted electronically. The current regulations specify that submissions be made in writing. This proposed change will enable improved efficiency and reduced time costs.

The Department proposes to require that if upon examination an operator determines that a water impounding structure has failed partially or completely, the incident must be reported to the Division immediately. In practice operators have not always immediately notified the Division upon the discovery of impounding structure failures.<sup>3</sup> By putting this into regulation it will become perfectly clear that operators should do so; and it gives operators added incentive to do so in that

the Department can take punitive action for noncompliance. Immediate knowledge will enable the Division to act sooner and to reduce potential risk to public safety. The cost of immediate notification is negligible while the benefits may be substantial in that it may reduce significant risk to public safety and potential property damage.

**Businesses and Entities Affected.** The proposed amendments potentially affect any permitted mine site that has a perennial stream passing through or bordering on the permit. The Department currently has about 430 active permitted sites. Approximately 10% of the 200 sites in the western portion of the state would be affected, or an estimated 20 sites. Approximately 230 sites are within the Chesapeake Bay watershed, and would already fall under existing riparian buffer standards for that watershed. Outside firms that are contracted in order to implement riparian buffers are potentially affected as well.

**Localities Particularly Affected.** Localities outside of the Chesapeake Bay watershed with current or potential mining activity will be particularly affected.

**Projected Impact on Employment.** Some outside firms may be contracted in order to build riparian buffers. The additional business may modestly increase employment at a few of these firms.

**Effects on the Use and Value of Private Property.** Some outside firms may be contracted in order to build riparian buffers. The additional business may moderately increase the value of these firms.

**Small Businesses: Costs and Other Effects.** Owners of approximately 20 mining sites outside of the Chesapeake Bay watershed will face higher costs due to the proposed riparian buffer requirement. Small firms which may be contracted to help build the riparian buffers would likely benefit. The proposal to add irrevocable letters of credit as an acceptable form of performance bond will likely reduce costs for some small site owners.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Owners of approximately 20 mining sites outside of the Chesapeake Bay watershed will face higher costs due to the proposed riparian buffer requirement. The proposed riparian buffer requirement is intended for improved water quality. There is no obvious alternative that would commensurately improve water quality at a lower cost.

**Real Estate Development Costs.** Adding irrevocable letters of credit as an acceptable form of performance bond may moderately reduce the cost of developing land for mining for some owners. On the other hand, requiring riparian buffers will add costs for developing certain affected sites for mining.

**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

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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.

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<sup>1</sup> Source: Department of Mines, Minerals and Energy

<sup>2</sup> \$1,000 x 20 = \$20,000

<sup>3</sup> Source: Department of Mines, Minerals and Energy

Agency's Response to Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

## Summary:

*The proposed amendments facilitate the use of electronic permitting and forms and clarify reclamation and post-mining land use requirements. Obsolete items, such as addresses that have changed, are updated. The proposal also expands the types of financial instruments that can be used for performance bonds.*

## Part I

### General Provisions

#### **4VAC25-31-10. Definitions.**

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

"Acre-foot" means a unit of volume equal to 43,560 cubic feet or 325,853 gallons. One acre-foot of water is equivalent to one acre covered by water one foot deep.

"Berm" means a stable ridge of material used in reclamation for the control of sound and surface water, safety, aesthetics, or such other purpose as may be applicable.

"Critical areas" mean problem areas such as those with steep slopes, easily erodible material, hostile growing conditions, concentration of drainage or other situations where revegetation or stabilization will be potentially difficult.

"Dam break inundation zone" means the area downstream of a dam that would be inundated or otherwise directly affected by the failure of a dam.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy or his designee.

"Division" means the Division of Mineral Mining.

"Fifty-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 50 years. It may also be expressed as a probability that there is a 2.0% chance that the storm magnitude may be equaled or exceeded in any given year. A 50-year, 24-hour storm occurs when the total 50-year storm rainfall occurs in a 24-hour period.

"Inert waste" means brick, concrete block, broken concrete, asphalt paving, and uncontaminated minerals or soil.

"Intermittent stream" means a stream or part of a stream that flows for at least one month of the calendar year as a result of ground water discharge or surface run off that contains flowing water for extended periods during a year, but does not carry flows at all times.

"Internal service roads" mean roads that are to be used for internal movement of raw materials, soil, overburden, finished, or in-process materials within the permitted area, some of which may be temporary.

"Natural drainageway" means any natural or existing channel, stream bed, or watercourse that carries surface or ground water.

"One hundred-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as a probability that there is a 1.0% chance that the storm magnitude may be equaled or exceeded in any given year. A 100-year, 24-hour storm occurs when the total 100-year storm rainfall occurs in a 24-hour period.

"On-site generated mine waste" means the following items generated by mineral mining or processing activities taking place on the permitted mine site:

Drill steel

Tree stumps/land clearing debris

Crusher liners

Large off-road tires

Conveyor belting

Scrap wood or metal

Steel cable

Steel reinforced air hoses

Screen cloth

Broken concrete or block

Punch plate

V-belts

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface run off well-defined channel that contains water year round during a year of

normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permitted area" means the area within the defined boundary shown on the application map including all disturbed land area, and areas used for access roads and other mining-related activities.

"Principal access roads" mean roads that are well-defined roads leading from scales, sales offices, or loading points to a public road.

"Probable maximum flood (PMF)" means the flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the current probable maximum precipitation (PMP) available from the National Weather Service, National Oceanic and Atmospheric Association Administration. In some cases local topography or meteorological conditions will cause changes from the generalized PMP values; therefore, it is advisable to contact local, state, or federal agencies to obtain the prevailing practice in specific cases.

"Qualified person" means a person who is suited by training or experience for a given purpose or task.

"Regrade" or "grade" means to change the contour of any surface.

"Riparian buffer" means an area of trees, shrubs, or other vegetation that is managed to maintain the integrity of the stream channel and reduce the effects of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals.

"Sediment" means undissolved organic or inorganic material transported or deposited by water.

"Sediment basin" means a basin created by the construction of a barrier, embankment, or dam across a drainageway or by excavation for the purpose of removing sediment from the water.

"Spillway design flood (SDF)" means the largest flood that needs be considered in the evaluation of the performance for a given project. The impounding structure shall perform so as to safely pass the appropriate SDF. Where a range of SDF is indicated, the magnitude that most closely relates to the involved risk should be selected.

"Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth. This includes increasing bearing capacity, increasing shear strength, draining, compacting, rip-rapping, vegetating or other approved method.

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

"Ten-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as a probability that there is a 10% chance that the storm magnitude may be equaled or exceeded in any given year. A 10-year 24-hour storm occurs when the total 10-year storm rainfall amount occurs in a 24-hour period.

"Top soil" means the surface layer and its underlying materials that have properties capable of producing and sustaining vegetation.

**4VAC25-31-100. Mineral mining permits.**

Permits shall be renewed annually, in a manner acceptable to the director, to continue to remain in effect.

**4VAC25-31-110. Permit application.**

Application for a mineral mining permit shall be made in ~~writing on~~ a form prescribed by the director and shall be ~~signed and sworn to~~ certified by the applicant or his ~~duly sworn authorized~~ representative. ~~Two copies~~ Copies of the application shall be submitted to the division in a manner acceptable to the director.

**4VAC25-31-130. Mineral mining plans.**

Mineral mining plans shall be attached to the application and consist of the following:

~~1. The reclamation plan shall include a statement of the planned land use to which the disturbed land will be returned through reclamation, the proposed actions to assure suitable reclamation, and a time schedule for reclamation. The method of grading, removal of metal, lumber, and debris, including processing equipment, buildings, and other equipment relative to the mining operation and revegetation of the disturbed area shall be specified.~~

~~2.~~ 1. The operation plan shall include a description of the proposed method of mining and processing; the location of top soil storage areas; overburden, refuse and waste disposal areas; stockpiles, equipment storage, and maintenance areas; cut and fill slopes; and roadways. The operation plan shall also include all related design and construction data. The method of operation shall provide for the conducting of reclamation simultaneously where practicable with the mining operation. For the impoundments that meet the criteria of § 45.1-225.1 A of the Code of Virginia, plans shall be provided as required under 4VAC-25-31-180 and 4VAC25-31-500.

~~3.~~ 2. The drainage plan shall consist of a description of the drainage system to be constructed before, during and after mining, a map or overlay showing the natural drainage system, and all sediment and drainage control structures to be installed along with all related design and construction data.

3. The reclamation plan shall include a statement of the planned land use to which the disturbed land will be returned through reclamation, the proposed actions to

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assure suitable reclamation, and a time schedule for reclamation. The method of grading, removal of metal, lumber, and debris, including processing equipment, buildings, and other equipment relative to the mining operation and revegetation of the disturbed area shall be specified.

4. Adequate maps, plans and cross sections, and construction specifications shall be submitted to demonstrate compliance with the performance standards of Part IV (4VAC25-31-330 et seq.) of this chapter and Chapter 16 (§ 45.1-180 et seq.) of Title 45.1 of the Code of Virginia. Designs, unless otherwise specified, shall be prepared by a qualified person, using accepted engineering design standards and specifications.

5. A copy of the Virginia Department of Transportation land use permit for roads that connect to public roads.

6. If mining below the water table is to take place, the following conditions apply:

a. The application shall contain an assessment of the potential for impact on the overall hydrologic balance from the proposed operations to be conducted within the permitted area.

b. A plan for the minimization of adverse affects on water quality or quantity shall be prepared based on the assessment in subdivision ~~6a~~ 6 a of this section and included in the application.

c. ~~In no case shall Permanent lakes or ponds be created if they are less by mining shall be equal to or greater than four feet deep, except when creation of wetlands is approved as part of the post mining land use or otherwise constructed in a manner acceptable to the director.~~

#### **4VAC25-31-140. Marking of permit boundaries.**

A. The permit boundary of the mine shall be clearly marked with identifiable markings when mine related land disturbing activities are within 100 feet of the permit boundary.

B. This section is not applicable to lands disturbed prior to ~~the effective date of this regulation~~ September 11, 2003.

C. Maintenance of permit boundary markers is not required after completion of construction, completion of final disturbances, or completion of final reclamation unless the area is being redisturbed by mining.

D. Separate boundary markings are not required if clear, readily identifiable features, such as streams, permanent roads, or permanent power lines coincide with the permit boundary.

#### **4VAC25-31-150. Maps.**

A. Maps shall be supplied as described in §§ 45.1-181 and 45.1-182.1 of the Code of Virginia and in this chapter that show the total area to be permitted and the area to be affected in the next ensuing year (with acreage calculated).

B. Preparation of maps.

1. All application, renewal, and completion maps shall be prepared and certified under the direction of a professional engineer, licensed land surveyor, licensed geologist, issued by a standard mapping service, or prepared in such a manner as to be acceptable to the director.

2. If maps are not prepared by the applicant, the certification of the maps shall read as follows: "~~I, the undersigned,~~ hereby certify that this map is correct and shows to the best of my knowledge and belief, all the information required by the mineral mining laws and regulations of the DMME."

3. The applicant shall submit a general location map showing the location of the mine, such as a county highway map or equivalent, in the initial application.

4. Sensitive features within ~~1,000~~ 500 feet of the permit boundary ~~such as including state waters, cemeteries, oil and gas wells, underground mine workings, streams, creeks and other bodies of public water, public utilities and utility lines, public buildings, public roads, schools, churches, and occupied dwellings shall be shown. Delineated wetlands within the permit boundary shall be shown. All properties, and their owners, within 1,000 feet of the permit boundary shall be identified.~~

#### **C. Map code and legend.**

1. A color code as prescribed by the director shall be used in preparing the map.

2. Graphic symbols may be used to represent the different areas instead of a color-coded map.

3. The map shall include a legend that shows the graphic symbol or color code and the acreage for each of the different areas.

#### **4VAC25-31-170. Permit application notifications.**

A. The following shall be made with a new permit application:

1. Notification to property owners within 1,000 feet of the permit boundary by certified mail. A record shall be kept of:

- a. The names and addresses of those notified, and
- b. The certified mail return receipts used for the notification.

2. A statement as required by § 45.1-184.1 of the Code of Virginia to property owners that requires land owners within 1,000 feet of the permit boundary to be notified that the operator is seeking a surface mining and reclamation permit from the Department of Mines, Minerals and Energy. The statement shall also include:

- a. Company name;
- b. Date;
- c. Location;
- d. Distance and direction of nearest town or other easily identified landmark;

- e. City or county;
- f. Tax map identification number; and
- g. Requirements for (i) regrading; (ii) revegetation; and (iii) erosion controls of mineral mine sites.
- h. A notice that informs property owners that they have 10 days from receipt of the permit notification to specify written objections or request a hearing. This request shall be in writing and shall be sent to the Department of Mines, Minerals and Energy, Division of Mineral Mining, ~~P.O. Box 3727, Charlottesville, Virginia 22903, (434) 951-6310.~~

B. Applicants will provide a copy of the permit notification to the division at the time they are mailed to the neighboring landowners.

~~B. C.~~ A statement, with certified mail receipt, certifying that the chief administrative official of the local political subdivision has been notified.

~~C. D.~~ Notification shall be made to any public utilities on or within ~~500~~ 1,000 feet of the permitted area. The notification shall consist of the following:

- 1. The name of the party issuing the notice;
- 2. The applicant name, address, and phone number; and
- 3. The name and address of the party receiving the notice and the information noted in subdivision A 2 of this section.

~~D. E.~~ No permit will be issued until at least 15 days after receipt of the application by the division. If all persons required to receive notice have issued a statement of no objection, the permit may be issued in less than 15 days.

~~E. F.~~ Copies of all permit notifications and statements required in subsections A through ~~C. D.~~ of this section shall be supplied to the ~~department~~ division with the application.

**4VAC25-31-190. Availability of permits.**

Mineral mining permits ~~and~~ a copy of the permit application, and a copy of the approved mineral mining plan shall be kept on-site while mining is underway.

**4VAC25-31-260. Form of performance bond.**

The bond shall be submitted in the form of cash, check, certificate of deposit, ~~or~~ insurance surety bond, or irrevocable letter of credit.

A. Certificates of deposit.

- 1. Certificates of deposit must be made payable to the Treasurer of Virginia, Division of Mineral Mining.
- 2. The amount of the certificate of deposit must include the maximum early withdrawal penalty rounded up to the next higher hundred dollars.
- 3. The original certificate of deposit shall be submitted to the division and held by the division throughout the bond liability period.
- 4. Certificates of deposit must be automatically renewable.

5. The certificate of deposit must be from a bank located in the Commonwealth of Virginia or approved as an allowable bank depository by the Virginia Department of Treasury.

6. Interest accrued on certificates of deposit may be deposited to the permittee's individual account and is free of encumbrance by bond liability.

7. In the event of forfeiture of a certificate of deposit, the face value of the deposit plus any accrued interest that has been rolled back into the certificate principal will be subject to bond liability and expenditure in the performance of the reclamation obligation.

B. Surety bonds.

1. All bonds shall be in a form acceptable by to the director. Bonds shall be executed by the permittee, and a corporate surety and agent licensed to do business in the Commonwealth.

2. Surety bonds shall not be canceled during their term except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the division. The division shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area.

C. Irrevocable letter of credit.

1. The director may accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the Commonwealth. The letter of credit shall be irrevocable and unconditional, shall be payable to the division on demand, and shall afford to the division protection equivalent to a corporate surety bond. The issuer of the letter of credit shall give prompt notice to the permittee and the division of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements that could result in the suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the division. Upon the incapacity of an issuer by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the division, and the division shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease mineral extraction and mineral processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mineral extraction and mineral processing operations shall not resume until the division has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by

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the end of the period allowed, the division may suspend the permit until acceptable bond is posted.

2. The letter of credit shall be provided on the form and in the format established by the director.

3. Nothing contained in this section shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

## **4VAC25-31-290. Intensive agricultural use.**

If the post-mining use is to be intensive agriculture, then planting and harvesting of a normal crop yield is required to meet the regulatory requirements for full or partial bond release. A normal yield for a particular crop is equal to the five-year average for the county. If crop yield data is unavailable, then other methods to determine suitability for bond release may be utilized as acceptable to the director. The use of grass, water bars, or diversion strips and natural vegetative drainage control may be required in the initial planting year as specified by the director.

### Part IV

#### Performance Standards

## **4VAC25-31-330. Protected structures and sensitive features.**

Mining activities shall be conducted in a manner that protects state waters, cemeteries, oil and gas wells, underground mine workings, public utilities, and utility lines, public buildings, public roads, schools, churches, and occupied dwellings.

## **4VAC25-31-360. Operation and reclamation.**

A. Mining operations shall be conducted to minimize adverse effects on the environment and facilitate integration of reclamation with mining operations according to the special requirements of individual mineral types. Mining shall be conducted to minimize the acreage that is disturbed and reclamation shall be conducted simultaneously with mining to the extent feasible.

B. Open pit mining of unconsolidated material shall be performed in such a way that extraction and reclamation are conducted simultaneously.

C. Mining activities shall be conducted so that the impact on water quality and quantity are minimized. Mining below the water table shall be done in accordance with the mining plan under 4VAC25-31-130.

D. ~~In no case shall lakes or ponds of water be created that are less than four feet deep, unless wetlands are formed as part of the approved post-mining land use~~ Permanent lakes or ponds created by mining shall be equal to or greater than four feet deep, or otherwise constructed in a manner acceptable to the director.

E. Excavation shall be done in such a manner as to keep storm drainage flowing toward sediment control structures. Diversions shall be used to minimize storm run-off over disturbed areas.

F. The mining operation shall be planned to enhance the appearance to the public during mining and to achieve simultaneous and final reclamation.

G. At the completion of mining, all entrances to underground mines shall be closed or secured and the surface area reclaimed in accordance with the mineral mining plan.

H. Reclamation shall be completed to allow the post-mining land use to be implemented. After reclamation, the post mining land use shall be achievable and compatible with surrounding land use. All necessary permits and approvals for the post-mining land use shall be obtained prior to implementation.

## **4VAC25-31-380. Treatment of acid material.**

~~All acid material, which is part of or directly associated with the mineral deposit or deposits being mined, encountered during the mining operation shall be properly controlled during mining and upon to prevent adverse impacts on surface or groundwater quality. Upon completion of mining, acid materials shall be covered with a material capable of shielding the acid material them and supporting plant cover in accordance with the approved reclamation plan. Unless otherwise specified by the director, the minimum cover shall be four feet in depth.~~

## **4VAC25-31-405. Disposal of waste.**

On-site generated waste shall not be disposed of within the permitted mine area without prior approval. Off-site generated inert waste shall not be brought onto the mine permitted area or disposed of on the mine permitted area without prior approval.

## **4VAC25-31-420. Screening.**

A. Screening shall be provided for sound absorption and to improve the appearance of the mining site from public roads, public buildings, recreation areas, and occupied dwellings.

B. If screening is to be undisturbed forest, a distance of 100 feet must be left undisturbed within the permit boundary. Less than 100 feet may be approved if the natural vegetation provides the needed screening benefits between the mining operation and the adjacent property. Planted earth berms, tree plantings, natural topography, or appropriately designed fences or walls may be used if approved in the mineral mining plan.

C. On permanent berms for screening, the spoils (waste materials) shall be initially placed on the proposed berm area and top soil (where available) shall be spread over the spoil areas, not less than ~~four~~ six inches in thickness, and if possible, 12 inches in thickness. The remaining top soil shall be placed in a designated area for future spreading on other areas which need top dressing. The top soil shall be seeded or planted in accordance with the approved reclamation plan.

## **4VAC25-31-460. Intermittent or perennial streams.**

All intermittent or perennial streams shall be protected from spoil by natural or constructed barriers. Areas disturbed after

(the effective date of this regulation) shall provide an undisturbed riparian buffer, 50 feet in width, along both sides of a perennial stream unless otherwise approved by the director. Areas disturbed prior to (the effective date) shall provide the aforementioned riparian buffer upon reclamation, in accordance with the approved post-mining land use. Stream channel diversions shall safely pass the peak run-off from a 10-year, 24-hour storm. Stream channel diversions shall be at least equal to the capacity of the unmodified

stream channel immediately upstream and downstream of the diversion.

**4VAC25-31-490. Water quality.**

The pH of all water discharge resulting from the mining of minerals shall be between pH 6.0 and pH 9.0 unless otherwise approved by the director. In addition, discharges shall be in compliance with applicable standards established by the Department of Environmental Quality (4VAC25-260-20).

**4VAC25-31-500. Water impoundments.**

A. Structures that impound water or sediment to a height of five feet or more above the lowest natural ground area within the impoundment and have a storage volume of 50 acre-feet or more, or impound water or sediment to a height of 20 feet or more regardless of storage volume, shall meet the following criteria (noted in Chapter 18.1 (§ 45.1-225.1 et seq.) of Title 45.1 of the Code of Virginia):

1. Impoundments meeting or exceeding the size criteria set forth in this section shall be designed utilizing a spillway flood and hazard potential classification as specified in the following table:

Class of Impoundment*	Hazard Potential if Failure Occurred	Size Classification** Spillway Design Flood (SDF)**		Spillway Design Flood (SDF)*** Minimum Threshold for Incremental Damage Analysis ***
		Capacity (ac ft)	Height	
I <u>High Hazard</u>	Probable loss of life Extensive off-site effect	A) >1000 <u>PMF</u> B) > 500 C) > 50 D) < 50	>40 ft <40 ft >5 ft >20 ft	<u>.50 PMF</u> <del>0.5 PMF PMF</del> <del>0.5 PMF PMF</del> <del>100 yr 0.5 PMF</del>
II <u>Significant Hazard</u>	Probable loss of life Appreciable off-site effects	A) >1000 <u>.50 PMF</u> B) > 500 C) > 50 D) < 50	>40 ft <40 ft >5 ft >20 ft	<del>0.5 PMF PMF</del> <u>100 year storm</u> <del>100 yr 0.5 PMF</del> <del>100 yr 0.5 PMF</del> <del>100 yr</del>
III <u>Low Hazard</u>	No loss of life Minimal off-site effect	A) >1000 <u>100 year storm</u> B) > 500 C) > 50 D) < 50	>40 ft <40 ft >5 ft <20 ft	<del>100 yr 0.5 PMF</del> <u>50 year storm</u> <del>100 yr</del> <del>100 yr</del> <del>50 yr 100 yr</del>

\*Size and hazard potential classifications shall be proposed and justified by the operator and shall be subject to approval by the director. Present and projected development in the inundation zone downstream from the structure shall be used in determining the classification.

\*\*~~The factor determining the largest size classification shall govern~~ \*\*The complete definitions of hazard potential are those contained in 4VAC50-20-40.

\*\*\*The establishment of rigid design flood criteria or standards is not intended. Safety must be evaluated in the light of peculiarities and local conditions for each impounding structure and in recognition of the many factors involved, some of which may not be precisely known. Such can only be done by competent, experienced engineering judgment, which the values in the table are intended to add to, not replace.

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Reductions in the SDF may be evaluated by use of incremental damage analysis described in 4VAC50-20-52. Note that future development downstream may increase the required SDF.

2. Impounding structures shall be constructed, operated, and maintained such that they perform in accordance with their design and purpose throughout their life.

a. Impoundments shall be designed and constructed by or under the direction of a qualified ~~registered~~ professional engineer licensed in Virginia and experienced in the design and construction of impoundments.

b. The designs shall meet the requirements of this section and use current prudent engineering practices.

c. The plans and specifications for an impoundment shall consist of a detailed engineering design report that includes engineering drawings and specifications, with the following as a minimum:

(1) The name of the mine; the name of the owner; classification of the impounding structure as set forth in this regulation; designated access to the impoundment and the location with respect to highways, roads, streams and existing impounding structures and impoundments that would affect or be affected by the proposed impounding structure.

(2) Cross sections, profiles, logs of test borings, laboratory and in situ test data, drawings of principal and emergency spillways and other additional drawings in sufficient detail to indicate clearly the extent and complexity of the work to be performed.

(3) The technical provisions as may be required to describe the methods of the construction and construction quality control for the project.

(4) Special provisions as may be required to describe technical provisions needed to ensure that the impounding structure is constructed according to the approved plans and specifications.

d. Components of the impounding structure, the impoundment, the outlet works, drain system and appurtenances shall be durable in keeping with the design and planned life of the impounding structure.

e. All new impounding structures regardless of their hazard potential classification, shall include a device to permit draining of the impoundment within a reasonable period of time, and at a minimum shall be able to lower the pool level six vertical inches per day, as determined by the owner's professional engineer, subject to approval by the director.

f. Impoundments meeting the size requirements and hazard potential of ~~Class I, Class II and Class III~~ high, significant, or low shall have a minimum static safety factor of 1.5 for a normal pool with steady seepage saturation conditions and a seismic safety factor of 1.2.

g. Impoundments shall be inspected and maintained to ensure that all structures function to design specifications.

h. Impoundments shall be constructed, maintained and inspected to ensure protection of adjacent properties and preservation of public safety and shall meet proper design and engineering standards under Chapter 18.1 (§ 45.1-225.1 et seq.) of Title 45.1 of the Code of Virginia. Impoundments shall be inspected at least daily by a qualified person, designated by the licensed operator, who can provide prompt notice of any potentially hazardous or emergency situation as required under § 45.1-225.2 of the Code of Virginia. Records of the inspections shall be kept and certified by the operator or his agent.

i. The operator will prepare an Emergency Action Plan (EAP) that includes the following information:

(1) A notification chart of persons or organizations to be notified, the person or persons responsible for notification, and the priority in which notifications are issued. Notifications shall include at a minimum the division, the local government authority responsible for emergency response, and the Virginia Department of Emergency Management.

(2) A discussion of the procedures used for timely and reliable detection, evacuation, and classification of emergency situations considered to be relevant to the structure and its setting.

(3) Designation of responsibilities for EAP related tasks. Also, the EAP shall designate the responsible party for making a decision that an emergency situation no longer exists at the impounding structure. Finally, the EAP shall include the responsible party and the procedures for notifying to the extent possible any known local occupants, owners, or lessees of downstream properties potentially impacted by a failure of the impounding structure.

(4) A section describing actions to be taken in preparation for impoundment emergencies, both before and during the development of emergency conditions.

(5) Dam break inundation maps. Each sheet of such maps for high and significant potential hazard classification structures shall be prepared and sealed by a professional engineer. Where possible, inundation mapping in the EAP should be provided on sheets no larger than 11 inches by 17 inches to facilitate copying for emergency response.

(6) Appendices containing information that supports and supplements the material used in the development of the EAP, including plans for training, exercising, and updating the EAP.



- (7) A section that identifies all parties with assigned responsibilities in the EAP and signed certification by all of those parties that a copy of the EAP has been received.
- (8) Times periods for review or revision acceptable to the director.

3. Impoundments shall be closed and abandoned in a manner that ensures continued stability and compatibility with the post-mining land use.

4. The following are acceptable as design procedures and references:

- a. The design procedures, manuals and criteria used by the United States Army Corps of Engineers;
- b. The design procedures, manuals and criteria used by the United States Department of Agriculture, Natural Resources Conservation Service;
- c. The design procedures, manuals and criteria used by the United States Department of Interior, Bureau of Reclamation;
- d. The design procedures, manuals and criteria used by the United States Department of Commerce, National Weather Service;
- e. The design procedures, manuals and criteria used by the United States Federal Energy Regulatory Commission;
- f. Federal Guidelines for Dam Safety: Emergency Action Planning for Dam Owners, United States Department of Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted January 2004; FEMA 64 or as revised;
- g. Federal Guidelines for Dam Safety: Selecting and Accommodating Inflow Design Floods for Dams, United States Department of Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted April 2004; FEMA 94 or as revised; or
- e. h. Other design procedures, manuals and criteria that are accepted as current, sound engineering practices, as approved by the director prior to the design of the impounding structure.

B. Impoundments that do not meet or exceed the size criteria of subsection A of this section shall meet the following criteria:

- 1. Be designed and constructed using current, prudent engineering practice to safely perform the intended function.
- 2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.
- 3. Safely pass the runoff from a 50-year storm event for temporary (life of mine) structures and a 100-year storm event for permanent (to remain after mining is completed) structures.

4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

C. Impoundments with impounding capability created solely by excavation shall comply with the following criteria:

- 1. Be designed and constructed using prudent engineering practice to safely perform the intended function.
- 2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.
- 3. Be designed and constructed with outlet facilities capable of:
  - a. Protecting public safety;
  - b. Maintaining water levels to meet the intended use; and
  - c. Being compatible with regional hydrologic practices.
- 4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.
- 5. Be inspected and maintained to ensure proper functioning.
- 6. Provide adequate protection for adjacent property owners and ensure public safety.

**4VAC25-31-505. Reporting impoundment failures.**

If upon examination an operator determines that a water impounding structure has failed partially or completely, the incident must be reported to the division immediately.

**4VAC25-31-510. Alternative methods of stabilization.**

Riprap shall be used for the control of erosion on those areas where it is impractical to establish vegetation or other means of erosion control or in any areas where rock riprap is an appropriate means of reclamation. Placing of rock riprap shall be in accordance with drainage standards and the approved mineral mining plan. Other methods of stabilization ~~shall~~ may include gabions, concrete, ~~and~~ shotcrete, geotextiles, and other means acceptable to the director.

**4VAC25-31-530. Process in revegetation.**

A. Slopes shall be graded in keeping with good conservation practices acceptable to the division. Slopes shall be provided with proper structures such as terraces, berms, and waterways, to accommodate surface water where necessary and to minimize erosion due to surface run-off. Slopes shall be stabilized, protected with a permanent vegetative or riprap covering and not be in an eroded state at the time reclamation is complete.

B. Crusted and hard soil surfaces shall be scarified prior to revegetation. Steep graded slopes shall be tracked (running a cleated crawler tractor or similar equipment up and down the slope).

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C. Application of lime and fertilizer shall be performed based on soil tests and the revegetation requirements in the approved reclamation plan.

D. Vegetation shall be planted or seeded and mulched according to the mixtures and practices included in the approved reclamation plan. ~~Mulch shall be applied at the rate of 2,000 pounds per acre for straw or hay, and 1,500 pounds per acre for wood cellulose mulch.~~

E. The seed used must meet the purity and germination requirements of the Virginia Department of Agriculture and Consumer Services. The division may, at its discretion, take samples for laboratory testing. Noncritical vegetated areas shall achieve adequate cover so that no areas larger than one-half acre shall exist with less than 75% cover after two growing seasons. Seeded portions of critical areas shall have adequate vegetative cover so the area is completely stabilized.

#### **4VAC25-31-540. Trees and shrubs.**

Trees and shrubs shall be planted according to the specific post-mining land use, regional adaptability, and planting requirements included in the approved reclamation plan. ~~Tree and shrub planting for ground cover shall be combined with well-established grass species.~~ For forest and wildlife post-mining land uses, at least 400 healthy plants per acre shall be established after two growing seasons.

#### **4VAC25-31-550. Intensive agricultural use.**

If the post-mining use is to be intensive agriculture, the planting and harvesting of a normal crop yield is required. A normal yield for a particular crop is equal to the five-year average for the county. If crop yield data is unavailable, then other methods to determine suitability for bond release may be utilized as acceptable to the director. The use of grass, water bars, or diversion strips and natural vegetative drainage control may be required in the initial planting year as specified by the director.

VA.R. Doc. No. R09-1913; Filed October 2, 2012, 8:24 a.m.

## **VIRGINIA GAS AND OIL BOARD**

### **Proposed Regulation**

Title of Regulation: **4VAC25-165. Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes (adding 4VAC25-165-10 through 4VAC25-165-130).**

Statutory Authority: § 45.1-361.15 of the Code of Virginia.

Public Hearing Information:

November 28, 2012 - 10 a.m. - Conference Center, Russell County Office Building, 139 Highland Drive, Lebanon, VA

Public Comment Deadline: December 21, 2012.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402,

telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email [mike.skiffington@dmme.virginia.gov](mailto:mike.skiffington@dmme.virginia.gov).

Basis: Chapter 442 of the 2010 Acts of Assembly, which directs the Virginia Gas and Oil Board (VGOB) to adopt regulations to implement the arbitration process created in that act within 280 days of its enactment, mandates these regulations. Also, the Director of DMME is generally empowered with regulatory authority under §§ 45.1-161.3 and 45.1-361.4 of the Code of Virginia. VGOB possesses authority to issue regulations under § 45.1-361.15 of the Code of Virginia. On June 14, 2011, the VGOB voted to adopt proposed regulations pursuant to Chapter 442 of the 2010 Acts of Assembly. On July 19, 2011, the VGOB voted to make one minor change to the proposed regulations.

Purpose: The purpose of this regulation is to administer the arbitration process mandated in Chapter 442 of the 2010 Acts of Assembly. The act creates a voluntary arbitration process for parties with conflicting claims of ownership of coalbed methane gas. Currently, there are approximately \$26 million in royalties held in escrow, most of which is due to unresolved claims of ownership. Creating an arbitration system that is an effective alternative to litigation can help reduce the amount of funds in escrow. To date, VGOB has not received a request for arbitration.

Substance: The regulation will establish the arbitration process. It will detail how interest is calculated to determine if sufficient funds are available to fund the arbitration, how the process works, and what happens once a determination is issued.

Issues: The primary advantage of this statutorily mandated regulation is that landowners and mineral owners in Southwest Virginia have another potential avenue to voluntarily resolve disputes over the ownership of coalbed methane gas. Another potential benefit to citizens, relevant businesses, and the Commonwealth would be a decrease of funds currently held in escrow as the result of arbitration determinations. There are no disadvantages to this regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapter 442 of the 2010 Acts of Assembly directs the Virginia Gas and Oil Board (Board) to adopt regulations to implement the arbitration process created in that act within 280 days of its enactment. The Board proposes these regulations in order to establish guidelines for the voluntary arbitration process. Some of the key provisions include how arbitrations are funded, the qualifications of the arbitrator, and procedures associated with the arbitration itself. Except for one minor change, these proposed regulations are identical to the existing emergency regulations currently in effect.

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

**Estimated Economic Impact.** The purpose of this regulation is to administer the arbitration process mandated in Chapter 442 of the 2010 Acts of Assembly. The act creates a voluntary arbitration process for parties with conflicting claims of ownership of coalbed methane gas. Currently, there are approximately \$26 million in royalties held in escrow, most of which are due to unresolved claims of ownership. The creation of an arbitration system that is an effective alternative to litigation could potentially help reduce the amount of funds in escrow and legal costs for the parties involved. Emergency regulations which are effectively the same as these proposed regulations have been in effect since December 20, 2010. To date, the Board has not received any requests for arbitration.

Since the proposed arbitration system is voluntary, it will be used if all affected parties believe it would be to their benefit. Thus the proposed creation of this system would be net beneficial if it is used in practice, and neutral in impact if it is not. Since the emergency regulations have been in effect since December 20, 2010 and thus far no parties have approached the Board requesting arbitration, the initial evidence indicates that the use of the proposed arbitration may be limited in practice.

**Businesses and Entities Affected.** Due to family heirships, the Department of Mines, Minerals and Energy (Department) estimates there could be anywhere from 8,000 to 12,000 entities primarily affected by these regulations. Most of these entities are landowners and energy firms with conflicting claims of ownership of coalbed methane gas. The Board, though, has not yet received any requests for arbitration. Potential affected small businesses could include land management groups or small coal companies.

**Localities Particularly Affected.** Coalbeds in the Commonwealth primarily occur in the following seven counties: Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise.

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

**Effects on the Use and Value of Private Property.** To the extent that affected parties pursue the proposed arbitration process, legal costs may be reduced and funds currently in escrow may be more quickly distributed.

**Small Businesses: Costs and Other Effects.** The proposed regulations will not increase costs for small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed regulations will not produce an adverse impact for small businesses.

**Real Estate Development Costs.** To the extent that affected parties pursue the proposed arbitration process, the cost of developing land for coalbed methane gas extraction may be moderately reduced due to savings in legal costs associated with the ownership disputes.

**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 Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

**Summary:**

*The proposed regulations implement a voluntary arbitration process for parties with conflicting claims of ownership of coalbed methane gas as directed by Chapter 442 of the 2010 Acts of Assembly. Key provisions include how arbitrations are funded, the qualifications of the arbitrator, and procedures associated with the arbitration process.*

**CHAPTER 165**  
**REGULATIONS GOVERNING THE USE OF**  
**ARBITRATION TO RESOLVE COALBED METHANE**  
**GAS OWNERSHIP DISPUTES**

**4VAC25-165-10. Definitions.**

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

"Accrued interest" means funds accrued during the preceding 36 months on total proceeds held in the general escrow account. Accrued interest does not include escrow account fees or administrative costs of the board related to the general escrow account.

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"Act" means the Virginia Gas and Oil Act of 1990, Chapter 22.1 (§ 45.1-361.1 et seq.) of Title 45.1 of the Code of Virginia.

"Arbitrator" means a qualified individual appointed by a court to render a determination in an ownership dispute concerning coalbed methane gas.

"Board" means the Virginia Gas and Oil Board.

"Claimant" means a person or entity in a dispute over ownership of coalbed methane gas who has agreed to arbitration to resolve the dispute.

"Court" means a circuit court in the Commonwealth of Virginia wherein the majority of the subject tract of land is located.

"Department" means the Department of Mines, Minerals and Energy.

"Escrow account" means the account established by the board pursuant to §§ 45.1-361.21 and 45.1-361.22 (2) of the Code of Virginia.

"Ex parte communication" means any form of communication between an arbitrator and a claimant without the presence of the opposing claimant.

"Operator" means the gas or oil owner designated by the board to operate in or on a pooled unit.

#### **4VAC25-165-20. Costs of arbitration.**

Arbitrations shall be funded from accrued interest. The department shall determine on a case-by-case basis if sufficient funds exist to conduct an arbitration. Sufficiency of funds shall be determined by the amount of accrued interest available at the time arbitration is requested, less estimated costs of pending arbitrations. If sufficient funds are not available, the department shall maintain a waiting list of parties willing to arbitrate.

#### **4VAC25-165-30. Qualification of arbitrators.**

The department shall review all applications from potential arbitrators pursuant to § 45.1-361.22:1 C of the Code of Virginia. Applications shall be submitted on a form prescribed by the department. In order to qualify, applicants must demonstrate substantial expertise in mineral title examination. Substantial expertise shall be determined on an individual basis. The department shall notify applicants deemed to be qualified.

The department shall maintain a list of qualified arbitrators and update it annually. The list shall be supplied to the court when the board issues an order for arbitration. Pursuant to § 45.1-361.22:1 C of the Code of Virginia, the court has the discretion to appoint an individual not on the list of qualified arbitrators.

In order to maintain a current, accurate list, qualified arbitrators shall at least annually update their disclosures to the department.

#### **4VAC25-165-40. Agreement to arbitrate.**

Claimants shall submit their request of arbitration to the board on a form prescribed by the department. Claimants shall also provide an affidavit pursuant to § 45.1-361.22:1 A of the Code of Virginia.

#### **4VAC25-165-50. Conflicts of interest.**

In addition to the limitations set forth in § 45.1-361.22:1 A of the Code of Virginia, an arbitrator may not hear an arbitration if the arbitrator is related to one of the claimants, has a personal interest in the subject of the arbitration, or if other circumstances exist that might affect the arbitrator's ability to render a fair determination. If evidence of a conflict exists under this section, a claimant may petition the court to appoint a different arbitrator.

#### **4VAC25-165-60. Location.**

The arbitrator shall determine an appropriate time and place for the arbitration. The arbitration shall take place in the jurisdiction where the majority of the subject tract is located, unless all claimants agree to an alternate location. Notice to claimants shall be given pursuant to the requirements of § 45.1-361.22:1 D of the Code of Virginia.

#### **4VAC25-165-70. Postponement of arbitration.**

Any request for postponement may be granted by the arbitrator if all claimants consent, or if good cause for a postponement is shown to the satisfaction of the arbitrator. Requests for postponement for cause should be made to the arbitrator at least 15 days before the hearing, unless the circumstances requiring the postponement do not allow 15 days notice. Whenever a postponement is granted, the arbitrator will promptly reschedule the hearing and notify the board and the claimants.

#### **4VAC25-165-80. Discovery.**

Pursuant to §§ 8.01-581.06 and 45.1-361.22:1 D of the Code of Virginia, the arbitrator may issue subpoenas, administer oaths, and take depositions. Additionally, any documents a claimant intends to introduce at the arbitration must be shared with the opposing claimant and the arbitrator not less than five days prior to the arbitration. If this provision is found not to be met, the arbitrator may elect to continue the arbitration.

#### **4VAC25-165-90. Extension of arbitration.**

If, pursuant to § 45.1-361.22:1 E of the Code of Virginia, the claimants agree that the arbitrator may take longer than six months from the date the board ordered the arbitration to render a determination, the arbitrator shall notify the board of this extension.

#### **4VAC25-165-100. Determination of arbitrator.**

Pursuant to § 45.1-361.22:1 E of the Code of Virginia, the determination of the arbitrator shall be in writing and sent to the board and each party to whom notice is required to be given. The determination shall include, at a minimum, a finding of facts and an explanation for the basis of the determination. A copy of the determination shall be placed on

the department's website. The arbitrator shall record the determination with the clerk's office of the court.

**4VAC25-165-110. Ex parte communications.**

There shall be no direct communication between the claimants and the arbitrator concerning the merits of the dispute other than at the arbitration hearing. If an ex parte communication occurs between a party and the arbitrator outside of the arbitration hearing, the arbitrator shall notify the other parties of the date, time, place, and content of the communication.

**4VAC25-165-120. Fees.**

Arbitrators shall be paid at the rate of no more than \$250 per hour. Expenses of the arbitrator incurred during the course of the arbitration shall be reimbursed in accordance with the State Travel Regulations prescribed by the Department of Accounts. Arbitrators shall submit a complete W-9 form to the department before payment is made.

Pursuant to § 45.1-361.22:1 F of the Code of Virginia, payment of fees and expenses of the arbitration may be delayed if there are intervening disbursements from the general escrow account under § 45.1-361.22 (5)(i) or (iii) of the Code of Virginia that reduce the interest balance below the amount of fees and expenses requested.

**4VAC25-165-130. Disbursement of proceeds.**

Within 30 days of receipt of an affidavit from the claimants affirming the determination, the operator shall petition the board for disbursement pursuant to § 45.1-361.22 (5) of the Code of Virginia.

NOTICE: The following forms used in administering the regulation have been filed by the Department of Mines, Minerals and Energy. The forms are not being published; however, the names of the forms are listed below. Online users of this issue of the Virginia Register of Regulations may access the forms by clicking on the name of the form. The forms are also available for public inspection at the Department of Mines, Minerals and Energy, 1100 Bank Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (4VAC25-165)

[Arbitrator Qualification Form, DGO-ARB \(rev. 5/10\).](#)

[Agreement to Arbitrate Form, DGO-ARB2 \(rev. 7/10\).](#)

VA.R. Doc. No. R11-2556; Filed October 2, 2012, 4:21 p.m.

**VIRGINIA SOIL AND WATER CONSERVATION BOARD**

**Final Regulation**

REGISTRAR'S NOTICE: The Virginia Soil and Water Conservation 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; (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; and (iii) § 2.2-4006 A 4 c of the Code of Virginia, which exempts 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 Soil and Water Conservation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision. In addition, amendments to 4VAC50-30-30 C are exempt from Article 2 of the Administrative Process Act pursuant to Item 360 I 2 of Chapter 3 of the 2012 Acts of Assembly--Special Session I.

**Title of Regulation:** **4VAC50-30. Erosion and Sediment Control Regulations (amending 4VAC50-30-10, 4VAC50-30-30, 4VAC50-30-40, 4VAC50-30-50, 4VAC50-30-60, 4VAC50-30-80, 4VAC50-30-90, 4VAC50-30-100; adding 4VAC50-30-65; repealing 4VAC50-30-110).**

**Statutory Authority:** § 10.1-561 of the Code of Virginia.

**Effective Date:** November 21, 2012.

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

**Background:** The majority of the amendments are being made to conform the Erosion and Sediment Control Regulations (4VAC50-30) to changes in Virginia statutory law in response to Chapters 785 and 819 of the 2012 Acts of Assembly, which integrated programs under the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts. The legislation integrated elements of the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act (where appropriate; no Bay Act program expansion) so that those regulatory programs could be implemented in a consolidated and consistent manner, resulting in greater efficiencies (one-stop shopping) for those being regulated. The bill also abolished the Chesapeake Bay Local Assistance Board and transferred its powers and responsibilities to the Virginia Soil and Water Conservation Board. Accordingly, this consolidation legislation has resulted in necessary amendments to each of the referenced Acts' attendant regulations. This specific action also includes an amendment that is being made to meet the federal requirements of the Effluent Limitations Guidelines set out in Federal Register Volume 74; Number 229; December 1, 2009; Page 63057; Subpart B - Construction and Development Effluent Guidelines; 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT); (b) Soil Stabilization.

**Summary:**

*The substantive elements of this action include:*

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1. Global updates changing "erosion and sediment control program" to "VЕСP" and changing "plan approval authority" to "VЕСP authority";

2. Modifying the definitions section;

3. Updating the list of entities that may submit annual general erosion and sediment control standards and specifications and clarifying that such standards and specifications or erosion and sediment control plans are submitted to the department for approval;

4. Citing the appropriation act authority stipulating that public institutions of higher education shall be subject to project review and compliance for state erosion and sediment control requirements;

5. Allowing VЕСP authorities to charge applicants a reasonable fee to defray the costs of program administration, clarifying that such fee may be in addition to any fee charged for administration of a Virginia stormwater management program, and requiring a VЕСP authority to hold a public hearing prior to establishing a schedule of fees;

6. Stipulating that temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days, rather than the 30 days;

7. Modifying Minimum Standard 19 specifying that (i) stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels; (ii) any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed as specified; (iii) for plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § 10.1-561 A of the Code of Virginia and subdivision 19 of 4VAC50-30-40 shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ 10.1-603.2 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with 4VAC50-60-48 of the Virginia Stormwater Management Program (VSMP) Permit Regulations (grandfathering provisions); and (iv) compliance with the water quantity minimum standards set out in 4VAC50-60-66 of the Virginia Stormwater Management Program (VSMP) Permit Regulations shall be deemed to satisfy the requirements of Minimum Standard 19;

8. Requiring each VЕСP authority to report to the department a listing of each land-disturbing activity for which a plan has been approved by the VЕСP authority under the Erosion and Sediment Control Act and associated regulations;

9. Clarifying that in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations that erosion and sediment control shall be addressed for projects disturbing 2,500 square feet or more unless otherwise exempted;

10. Requiring each VЕСP operated by a locality to include provisions for the integration of the VЕСP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs;

11. Stipulating that the department is authorized to conduct partial program compliance reviews of a VЕСP authority;

12. Clarifying the review procedure for an Erosion and Sediment Control Program by the department and the corrective action agreement process;

13. Clarifying that all state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities that have been approved by the department as being consistent with the Act and this chapter, or an erosion and sediment control plan has been submitted to and approved by the department; and

14. Repealing 4VAC50-30-110, which specifies that the board shall develop, adopt, and administer an appropriate local erosion and sediment control program for the locality under consideration.

## **4VAC50-30-10. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 10.1-560 of the Erosion and Sediment Control Law.

"Act" means the Erosion and Sediment Control Law, Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Adequate channel" means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections of the same.

"Agreement in lieu of a plan" means a contract between the program VЕСP authority and the owner which that specifies conservation measures which that must be implemented in the construction of a single-family residence; this contract may

be executed by the ~~program~~ VESCP authority in lieu of an erosion and sediment control plan.

"Applicant" means any person submitting an erosion and sediment control plan or an agreement in lieu of a plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

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

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Channel" means a natural stream or manmade waterway.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

"Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic head, to prevent gully erosion, or to retain soil, rock or other debris.

"Denuded" means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

"Department" means the Department of Conservation and Recreation.

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

"Dike" means an earthen embankment constructed to confine or control water, especially one built along the banks of a river to prevent overflow of lowlands; levee.

"Director" means the Director of the Department of Conservation and Recreation.

"District" or "soil and water conservation district" means a political subdivision of the Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Diversion" means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

"Dormant" refers to denuded land that is not actively being brought to a desired grade or condition.

"Energy dissipator" means a nonerrodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

"Erosion and Sediment Control Plan;" ~~"conservation plan"~~ or "plan"; means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions

contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

"Locality" means a county, city or town.

"Natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"Nonerrodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

~~"Plan approving authority" means the board, the program authority, a department of a program authority, or an agent of the program authority responsible for determining the adequacy of a conservation plan submitted for land disturbing activities on a unit or units of land and for approving plans.~~

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

"Program administrator" means the person or persons responsible for administering and enforcing the erosion and sediment control program of a program VESCP authority.

~~"Program authority" means a district, county, city, or town which has adopted a soil erosion and sediment control program which has been approved by the board.~~

"Pre-development" refers to conditions at the time the erosion and sediment control plan is submitted to the ~~plan~~ approving VESCP authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

"Sediment basin" means a temporary impoundment ~~built~~ built to retain sediment and debris with a controlled stormwater release structure.

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"Sediment trap" means a temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

"Shore erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

"Stormwater detention" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedence probability with a 10% chance of being equaled or exceeded in any given year.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedence probability with a 50% chance of being equaled or exceeded in any given year.

"Twenty-five-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as exceedence probability with a 4.0% chance of being equaled or exceeded in any given year.

"Virginia Erosion and Sediment Control Program" or "VЕСP" means a program approved by the board that has been established by a VЕСP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties,

stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of the Act and this chapter.

"Virginia Erosion and Sediment Control Program authority" or "VЕСP authority" means an authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

## **4VAC50-30-30. Scope and applicability.**

A. This chapter sets forth minimum standards for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that must be met:

- ~~1. In erosion and sediment control programs~~ VЕСPs adopted ~~by districts and localities~~ under § 10.1-562 of the Act;
2. In erosion and sediment control plans that may be submitted directly to the ~~board~~ department pursuant to § 10.1-563 A of the Act;
3. In annual general erosion and sediment control standards and specifications that electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies are required to file, and authorities created pursuant to § 15.2-5102 of the Code of Virginia may file with the ~~board~~ department pursuant to § 10.1-563 D of the Act;
4. In ~~conservation~~ erosion and sediment control plans ~~and~~ or annual standards and specifications that state agencies are required to file with the department pursuant to § 10.1-564 of the Act; and
5. ~~By~~ In erosion and sediment control plans or annual standards and specifications that federal agencies ~~that enter into agreements with the board~~ may submit to the department pursuant to § 10.1-564 of the Act.

B. The submission of annual standards and specifications to the ~~board or the department~~ by any agency or company does not eliminate the need where applicable for a project specific Erosion and Sediment Control Plan.

~~C. This chapter must be incorporated into the local erosion and sediment control program within one year of its effective date. In accordance with Item 360 I1 of Chapter 3 of the 2012 Virginia Acts of Assembly, Special Session 1, public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control~~



requirements by the VESCP authority of the locality within which the land-disturbing activity is located, unless such institution submits annual specifications to the Department of Conservation and Recreation in accordance with § 10.1-564 A (i) of the Code of Virginia.

D. Any VESCP authority that administers a VESCP may charge applicants a reasonable fee to defray the costs of program administration. Such fee may be in addition to any fee charged for administration of a Virginia stormwater management program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

#### **4VAC50-30-40. Minimum standards.**

~~An erosion and sediment control program adopted by a district or locality~~ A VESCP must be consistent with the following criteria, techniques and methods:

1. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than ~~30~~ 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year.
2. During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.
3. A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.
4. Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.
5. Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.
6. Sediment traps and sediment basins shall be designed and constructed based upon the total drainage area to be served by the trap or basin.
- a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre of drainage area and the trap shall only control drainage areas less than three acres.
- b. Surface runoff from disturbed areas that is comprised of flow from drainage areas greater than or equal to three acres shall be controlled by a sediment basin. The minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of drainage area. The outfall system shall, at a minimum, maintain the structural integrity of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in runoff calculations shall correspond to a bare earth condition or those conditions expected to exist while the sediment basin is utilized.
7. Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected.
8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an adequate temporary or permanent channel, flume or slope drain structure.
9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.
10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.
11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.
12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.
13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.
14. All applicable federal, state and local chapters pertaining to working in or crossing live watercourses shall be met.
15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.
16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

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- a. No more than 500 linear feet of trench may be opened at one time.
- b. Excavated material shall be placed on the uphill side of trenches.
- c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property.
- d. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.
- e. Restabilization shall be accomplished in accordance with this chapter.
- f. Applicable safety chapters shall be complied with.

17. Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.

18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the ~~local program~~ VESCP authority. Trapped sediment and the disturbed soil areas resulting from the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels:

- a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.
- b. Adequacy of all channels and pipes shall be verified in the following manner:

(1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is one hundred times greater than the contributing drainage area of the project in question; or

(2)(a) Natural channels shall be analyzed by the use of a two-year storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.

(b) All previously constructed man-made channels shall be analyzed by the use of a ten-year storm to verify that stormwater will not overtop its banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and

(c) Pipes and storm sewer systems shall be analyzed by the use of a ten-year storm to verify that stormwater will be contained within the pipe or system.

c. If existing natural receiving channels or previously constructed man-made channels or pipes are not adequate, the applicant shall:

(1) Improve the channels to a condition where a ten-year storm will not overtop the banks and a two-year storm will not cause erosion to channel the bed or banks; or

(2) Improve the pipe or pipe system to a condition where the ten-year storm is contained within the appurtenances;

(3) Develop a site design that will not cause the pre-development peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the pre-development peak runoff rate from a ten-year storm to increase when runoff outfalls into a man-made channel; or

(4) Provide a combination of channel improvement, stormwater detention or other measures which is satisfactory to the ~~plan approving~~ VESCP authority to prevent downstream erosion.

d. The applicant shall provide evidence of permission to make the improvements.

e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

f. If the applicant chooses an option that includes stormwater detention, he shall obtain approval from the ~~locality~~ VESCP of a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.

g. Outfall from a detention facility shall be discharged to a receiving channel, and energy dissipators shall be placed at the outfall of all detention facilities as necessary to provide a stabilized ~~transition~~ transition from the facility to the receiving channel.

h. All on-site channels must be verified to be adequate.

i. Increased volumes of sheet flows that may cause erosion or sedimentation on adjacent property shall be

diverted to a stable outlet, adequate channel, pipe or pipe system, or to a detention facility.

j. In applying these stormwater management criteria, individual lots or parcels in a residential, commercial or industrial development shall not be considered to be separate development projects. Instead, the development, as a whole, shall be considered to be a single development project. Hydrologic parameters that reflect the ultimate development condition shall be used in all engineering calculations.

k. All measures used to protect properties and waterways shall be employed in a manner which minimizes impacts on the physical, chemical and biological integrity of rivers, streams and other waters of the state.

l. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to § 10.1-562 or 10.1-570 of the Act.

m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § 10.1-561 A of the Act and this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and attendant regulations, unless such land-disturbing activities are in accordance with 4VAC50-60-48 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

n. Compliance with the water quantity minimum standards set out in 4VAC50-60-66 of the Virginia Stormwater Management Program (VSMP) Permit Regulations shall be deemed to satisfy the requirements of Minimum Standard 19.

#### **4VAC50-30-50. Variances.**

The ~~plan approving~~ VESCP authority may waive or modify any of the chapters that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

1. At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the ~~plan approving~~ VESCP authority shall be documented in the plan.

2. During construction, the person responsible for implementing the approved plan may request a variance in writing from the ~~plan approving~~ VESCP authority. The ~~plan approving~~ VESCP authority shall respond in writing either approving or disapproving such a request. If the ~~plan approving~~ VESCP authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

3. The ~~plan approving~~ VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

#### **4VAC50-30-60. Maintenance and inspections.**

A. All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.

B. Periodic inspections are required on all projects by the ~~program~~ VESCP authority. The ~~program~~ VESCP authority shall either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or

2. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:

- a. Approved by the board prior to implementation;
- b. Established in writing;
- c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
- d. Documented by inspection records.

#### **4VAC50-30-65. Reporting.**

Each VESCP authority shall report to the department, in a method such as an online reporting system and on a time schedule established by the department, a listing of each land-

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disturbing activity for which a plan has been approved by the VESCP authority under the Act and this chapter.

## **4VAC50-30-80. Criteria for determining status of land-disturbing activity.**

A. The program administrator shall determine the validity of a claim of exempt status by a property owner who disturbs 10,000 square feet or more ~~or 2,500 square feet or more in all~~ area of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations. As soon as a nonexempt status is determined, the requirements of the Act shall be immediately enforced.

B. Should a land-disturbing activity not begin during the 180-day period following plan approval or cease for more than 180 days, the ~~plan approval authority or the permit issuing~~ VESCP authority may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the VESCP authority finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

C. Shore erosion control projects are not subject to this chapter. However, land-disturbing activity immediately outside the limits of the shore erosion project is subject to the Act and this chapter.

D. Whenever land-disturbing activity involves activity at a separate location (including but not limited to borrow and disposal areas), the ~~program~~ VESCP authority may either:

1. Consider the off-site activity as being part of the proposed land-disturbing activity; or
2. If the off-site activity is already covered by an approved erosion and sediment control plan, the ~~program~~ VESCP authority may require the applicant to provide proof of the approval and to certify that the plan will be implemented in accordance with a the Act and this chapter.

## **4VAC50-30-90. Review and evaluation of ~~local programs~~ VESCPs: minimum program standards.**

A. This section sets forth the criteria that will be used by the department to determine whether a ~~local program~~ VESCP operating under authority of the Act, satisfies minimum standards of effectiveness, as follows.

Each ~~local program~~ VESCP must contain an ordinance or other appropriate document or documents adopted by the ~~governing body~~ VESCP authority. Such document or documents must be consistent with the Act, this chapter, and 4VAC50-40-10 et seq., including the following criteria:

1. The document or documents shall include or reference the definition of land-disturbing activity including exemptions, as well as any other significant terms, as necessary to produce an effective ~~local program~~ VESCP.
2. The document or documents shall identify the ~~plan approving~~ VESCP authority and ~~other positions of~~

~~authority within the program any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the Act and this chapter, and must include the chapters and design standards to be used in the program.~~

3. The document or documents shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land-disturbing activities. The position, agency, department, or other party responsible for conducting inspections shall be identified. The ~~local program~~ VESCP authority shall maintain, either on-site or in ~~local program~~ VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity.

4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

5. The ~~local program~~ VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

B. ~~The department staff, under authority of the board,~~ shall periodically conduct a comprehensive review and evaluation of local programs. The review and evaluation of a local program shall consist of the following: (i) personal interview between the department staff and the local program administrator or designee or designees; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the program; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial program compliance review.

C. Local programs shall be reviewed and evaluated for effectiveness in carrying out the Act and this chapter using the criteria in this section. ~~However, the director is not limited to the consideration of only these items when assessing the overall effectiveness of a local program.~~

D. ~~If the director determines that the deficiencies noted in the review will cause the local erosion and sediment control program to be inconsistent with the state program and chapters, the director board shall notify provide the local program VESCP authority concerning the deficiencies and provide a reasonable period of time for corrective action to be taken with a copy of its decision that specifies the deficiencies, action needed to be taken, and the approved~~

compliance schedule required to attain the minimum standard of effectiveness. If the program authority fails to take the corrective action within the specified time, the director may formally request board action pursuant to § 10.1-562 of the Code of Virginia. If the VESCP authority has not implemented the necessary compliance actions identified by the board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the board shall have the authority to (i) issue a special order to any VESCP imposing a civil penalty set out in § 10.1-562 F of the Act or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the activities and proceedings of the board and the judicial review thereof. In lieu of issuing a special order or revoking the program, the board is authorized to take legal action against a VESCP to ensure compliance.

E. Review and evaluation of local programs VESCPs shall be conducted according to a schedule adopted by the board department.

**4VAC50-30-100. State agency projects.**

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities which has been reviewed and approved by the department as being consistent with the Act and this chapter, or an erosion and sediment control plan has been submitted to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the Act and this chapter.

B. Where inspections by department personnel reveal deficiencies in carrying out an approved plan, the person responsible for carrying out the plan, as well as the state agency responsible, will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure to meet the prescribed deadlines can result in the issuance of a stop work order for all land-disturbing activities on the project at the discretion of the ~~Chief Administrative Officer of the board, who is authorized to sign such an order~~ department. The stop work order will be lifted once the required erosion and sediment control measures are in place and inspected by department staff.

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural Resources Secretariat, to the ~~secretary~~ Secretary of Natural Resources; for violations in other secretariats, to the appropriate Secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the

Governor for resolution. The board or the department may also pursue enforcement as provided by § 10.1-569 of the Act.

D. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

**4VAC50-30-110. ~~Document or documents adopted local erosion and sediment control programs. (Repealed.)~~**

~~A. To carry out its duties under § 10.1-562 of the Code of Virginia, the board shall develop, adopt, and administer an appropriate local erosion and sediment control program for the locality under consideration. In fulfilling these duties, the board shall assume the full powers of the local erosion and sediment control program granted by law.~~

~~B. The board shall develop, adopt and administer a local erosion and sediment control program based on the minimum program standards established by this chapter and, as deemed appropriate by the board, may include any or all of the provisions provided by law and chapter including administrative fees and performance securities.~~

~~C. Upon adoption of a local erosion and sediment control program by the board, payment of moneys, including fees, securities, and penalties, shall be made to the state treasury.~~

~~D. When administering a local erosion and sediment control program the board may delegate to the director such operational activities as necessary. Further, the board may enter into agreements with other public or private entities to accomplish certain program responsibilities as it deems necessary to administer the local program.~~

VA.R. Doc. No. R13-3314; Filed October 3, 2012, 8:56 a.m.

**VIRGINIA SOIL AND WATER CONSERVATION BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** The Virginia Soil and Water Conservation Board is claiming an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors and (ii) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Virginia Soil and Water Conservation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation: 4VAC50-50. Erosion and Sediment Control Certification Regulations (amending 4VAC50-50-10 through 4VAC50-50-90; adding 4VAC50-50-55).**

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# Regulations

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Statutory Authority: § 10.1-561 of the Code of Virginia.

Effective Date: November 21, 2012.

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

Background: The majority of the amendments are being made to conform the Erosion and Sediment Control Certification Regulations (4VAC50-50) to changes in Virginia law in response to Chapters 785 and 819 of the 2012 Acts of Assembly, which integrated programs under the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts. The legislation integrated elements of the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act (where appropriate; no Bay Act program expansion) so that those regulatory programs could be implemented in a consolidated and consistent manner, resulting in greater efficiencies (one-stop shopping) for those being regulated. The bill also abolished the Chesapeake Bay Local Assistance Board and transferred its powers and responsibilities to the Virginia Soil and Water Conservation Board. Accordingly, this consolidation legislation has resulted in necessary amendments to each of the referenced acts' attendant regulations.

Summary:

*The substantive elements of this action include (i) changing the title of the regulations to recognize the broadened scope of the certification program to include stormwater training and certification; (ii) updating definitions; (iii) expanding the series of classifications currently available in the certification program for erosion and sediment control to include a parallel track in stormwater that includes program administrator for stormwater management (SWM), plan reviewer for SWM, project inspector for SWM, and combined administrator for SWM; (iv) recognizing that a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified plan reviewer for erosion and sediment control (ESC) and will not require a certificate of competence from the board; and (v) establishing a dual certificate upon request for an individual who holds a valid and unexpired certificate of competence issued by the board in the classification of ESC or SWM, or who obtains such a certificate, and who later successfully obtains an additional certificate of competence from the board in the parallel ESC or SWM classification.*

*Within the eligibility requirements in 4VAC50-50-50, the amendments include (i) establishing the availability of stormwater training programs for project inspectors for SWM, plan reviewers for SWM, administrators for SWM, and combined administrators for SWM and stipulating*

*which programs must be taken for each of these classifications; (ii) clarifying that both certifications and recertifications are valid for a period of three years; (iii) expanding the provision on recertifications to clarify the recertification process and those professional entities that may be fully or partially exempt from recertification requirements should they hold an appropriate and valid professional license; and (iv) clarifying that for the purposes of Virginia Erosion and Sediment Control Program (VESCP) or Virginia Stormwater Management Program (VSMP) compliance reviews and evaluations, the certification requirements of §§ 10.1-561.1 and 10.1-603.4:2 of the Code of Virginia shall be deemed to have been met if the VESCP or the VSMP authority has a person or persons enrolled in the board's ESC or SWM training programs for the necessary classifications and such person or persons obtains certification within one year of completing the necessary training programs.*

CHAPTER 50  
EROSION AND SEDIMENT CONTROL AND  
STORMWATER MANAGEMENT CERTIFICATION  
REGULATIONS

**4VAC50-50-10. Definitions.**

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

~~"Act" means the Erosion and Sediment Control Law, Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.~~

"Applicant" means any person submitting a request to be considered for certification.

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

"Certification" means the process whereby the board, on behalf of the Commonwealth, issues a certificate to persons who have completed board-approved training programs and met any additional eligibility requirements of 4VAC50-50-50 related to the specified classifications (4VAC50-50-40) within the areas of ESC or SWM or in other ways demonstrated adequate knowledge and experience in accordance with the eligibility requirements of 4VAC50-50-50 in the specified ~~subject~~ classifications within the areas of ESC or SWM.

"Certified combined administrator for ESC" means an employee or agent of a ~~program~~ VESCP authority who: ~~(i) holds a certificate of competence from the board in the combined areas ESC classifications of program authority administrator, plan review reviewer, and project inspection; or (ii) is enrolled in the board's training program for program administrator, plan reviewer, and project inspector and successfully completes such program within one year after enrollment~~ inspector in the area of ESC. "Certified combined administrator for SWM" means an employee or agent of a

VSMP authority who holds a certificate of competence from the board in the combined classifications of program administrator, plan reviewer, and project inspector in the area of SWM.

"Certified project inspector for ESC" means an employee or agent of a ~~program~~ VESCP authority who: ~~(i) holds a certificate of competence from the board in the area classification of project inspection; or (ii) is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment~~ inspector in the area of ESC.

"Certified project inspector for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of project inspector in the area of SWM.

"Certified plan reviewer for ESC" means an employee or agent of a ~~program~~ VESCP authority who: (i) holds a certificate of competence from the board in the ~~area classification of plan review~~ reviewer in the area of ESC; (ii) ~~is enrolled in the board's training program for plan review and successfully completes such program within one year after enrollment; or (iii) is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia; or (iii) is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.~~

"Certified plan reviewer for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of plan reviewer in the area of SWM.

"Certified program administrator for ESC" means an employee or agent of a ~~program~~ VESCP authority who: ~~(i) holds a certificate of competence from the board in the area classification of program administration; or (ii) is enrolled in the board's training program for program administrator and successfully completes such program within one year after enrollment~~ administrator in the area of ESC.

"Certified program administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of program administrator in the area of SWM.

"Classification" refers to the four specific ~~subject~~ certificate of competence classifications within the areas of ESC or SWM that make up activities being performed (program administrator, plan reviewer, project inspector, and ~~combined~~) combined administrator).

"Combined administrator for ESC" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a ~~program~~ VESCP authority.

"Combined administrator for SWM" means anyone who is responsible for performing the combined duties of a program

administrator, plan reviewer and project inspector of a VSMP authority.

"Department" means the Department of Conservation and Recreation.

"ESC" means erosion and sediment control.

"ESC Act" means the Erosion and Sediment Control Law, Article 4 (§ 10.1-560 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Erosion and Sediment Control Plan", "conservation plan" sediment control plan" or "ESC plan"; means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of all decisions contributing to conservation treatment. The plan shall contain all major conservation decisions ~~and all information deemed necessary by the plan approving authority to assure~~ ensure that the entire unit or units of land will be so treated to achieve the conservation objective.

~~"Inspector" means anyone who, as a representative of a program authority, is responsible for periodically examining the erosion and sediment control activities and premises of a land-disturbing activity for consistency with the Erosion and Sediment Control Law and Regulations.~~

"Plan reviewer" means anyone who is responsible for determining the accuracy of ~~erosion and sediment control~~ ESC plans and supporting documents ~~or SWM plans and supporting documents~~ for approval by a ~~program~~ VESCP authority ~~or a VSMP authority as may be applicable in the areas of ESC or SWM.~~

"Program administrator" means the person or persons responsible for administering and enforcing the ~~erosion and sediment control program~~ VESCP or VSMP of a ~~program~~ VESCP authority ~~or a VSMP authority as may be applicable in the areas of ESC or SWM.~~

~~"Program authority" means a soil and water conservation district, county, city or town which has adopted an erosion and sediment control program which has been approved by the board.~~

"Project inspector" means anyone who, as a representative of a VESCP authority or a VSMP authority, is responsible for periodically examining the ESC or SWM activities and premises of a land-disturbing activity for compliance with the ESC Act and Regulations or the SWM Act and Regulations as may be applicable.

~~"State erosion and sediment control program" or "state program" means the program administered by the board through the Director of the Department of Conservation and Recreation pursuant to the Erosion and Sediment Control Law and 4VAC50-30-10 et seq., Erosion and Sediment Control Regulations.~~

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"Stormwater management plan" or "SWM plan" means a document containing material describing methods for complying with the requirements of a VSMP and the SWM Act and its attendant regulations.

"SWM" means stormwater management.

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

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in the ESC Act and this chapter, and evaluation consistent with the requirements of the ESC Act and this chapter.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the board to operate a Virginia erosion and sediment control program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the board after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the SWM Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the department. An authority may include a locality; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 10.1-603.5 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies,

railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

## **4VAC50-50-20. Purpose.**

The purpose of this chapter is to guide the issuance of certificates of competence required by §§ 10.1-561 E and 10.1-561.1 of the ESC Act and § 10.1-603.4:2 of the SWM Act.

## **4VAC50-50-30. Applicability.**

This chapter is applicable to:

1. Every ~~program~~ VESCP authority or VSMP authority that administers ~~an erosion and sediment control program a~~ VESCP or VSMP as may be applicable. Staff of ~~program a~~ VESCP authority must be certified in accordance with §§ 10.1-560 E and 10.1-561.1 of the ESC Act. Staff of a VSMP authority must be certified in accordance with § 10.1-603.4:2 of the SWM Act.
2. Anyone who is contracted by a ~~program~~ VESCP authority or a VSMP authority to perform any or all of the functions of that authority as may be applicable. This person will be subject to the same certification requirements as the authority.
3. Anyone voluntarily seeking certificates of competence from the board for classifications described in 4VAC50-50-40 ~~of this chapter~~.

## **4VAC50-50-40. Certificates of competence.**

A. Certificates of competence shall be issued by the board in accordance with the requirements of 4VAC50-50-50 for the following classifications:

1. Program administrator for ESC. The person ~~or persons~~ employed as the ~~erosion and sediment control program~~ VESCP administrator.
2. Plan reviewer for ESC. The person ~~or persons~~ who ~~review conservation~~ reviews ESC plans to be approved by the ~~program~~ VESCP authority.
3. ~~Inspector~~ Project inspector for ESC. The person ~~or persons~~ responsible for inspecting erosion and sediment control practices to ensure compliance with the Virginia Erosion and Sediment Control Law and Regulations.
4. Combined administrator for ESC. The person ~~or persons~~ responsible for performing the combined duties of ~~administration~~ program administrator, plan review reviewer and inspection of regulated activities of a local ~~program~~ project inspector for a VESCP authority.
5. Program administrator for SWM. The person employed as the VSMP administrator.
6. Plan reviewer for SWM. The person who reviews SWM plans to be approved by the VSMP authority.
7. Project inspector for SWM. The person responsible for inspecting regulated activities to ensure compliance with the SWM Act and Regulations.



8. Combined administrator for SWM. The person responsible for performing the combined duties of program administrator, plan reviewer, and project inspector for a VSMP authority.

B. Any person employed as a plan reviewer who is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or as a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified plan reviewer for ESC and will not require a certificate of competence from the board. In lieu of a person holding this board certificate of competence, such person shall produce a current professional license or certification upon request of the department.

C. ~~Any person who holds a level II certificate of competence from the board in areas of plan review, project inspection or as a program administrator which was obtained prior to adoption of the mandatory certification as specified in § 10.1-561.1 B of the Act shall be deemed to satisfy the requirements of that area of certification. Any certification obtained before the adoption of the mandatory program which satisfies the requirements will be valid until its previously scheduled expiration date~~ valid and unexpired certificate of competence issued by the board in the classification of ESC or SWM, or who obtains such a certificate, and who later successfully obtains an additional certificate of competence from the board in the parallel ESC or SWM classification may surrender both certificates of competence to the board and request in writing issuance of a dual certificate showing certification in both classifications. Such a request must be made while both of the ESC and SWM certificates of competence obtained are valid and unexpired. The expiration date of the dual certificate shall be three years from the date of expiration of the additional certificate acquired.

**4VAC50-50-50. Eligibility requirements.**

A. Certification may be obtained by satisfactorily completing and submitting an application to the department for review and approval and:

1. By obtaining a total of ~~six months~~ 800 hours of experience (~~800 hours~~) as a an ESC or SWM plan reviewer, project inspector, or combined duties administrator and obtaining a passing score on the certification examination administered by the department in the applicable ESC or SWM area; or
2. By enrolling in and completing a board-approved training program in the ~~areas~~ classifications of program administrator, plan reviewer, project inspector, or combined administrator ~~within 12 months of the time of enrollment (starting with the first training course enrolled)~~ and obtaining within one year of completion of the training program a passing score on the certification examination administered by the department in the applicable ESC or SWM area.

a. The training program for project inspectors for ESC will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Inspectors."

b. The training program for plan reviewers for ESC will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Plan Reviewers."

c. The training program for program administrators for ESC will consist of attending the seminar "Basic Erosion and Sediment Control in Virginia."

d. The training program for combined administrators for ESC will consist of attending the courses/seminars "Basic Erosion and Sediment Control in Virginia," "Erosion and Sediment Control for Inspectors," and "Erosion and Sediment Control for Plan Reviewers."

e. The training program for project inspectors for SWM will consist of attending and completing courses/seminars in "Basic Stormwater Management in Virginia" and "Stormwater Management for Inspectors."

f. The training program for plan reviewers for SWM will consist of attending and completing courses/seminars in "Basic Stormwater Management in Virginia" and "Stormwater Management for Plan Reviewers."

g. The training program for program administrators for SWM will consist of attending the seminar "Basic Stormwater Management in Virginia."

h. The training program for combined administrators for SWM will consist of attending the courses/seminars "Basic Stormwater Management in Virginia," "Stormwater Management for Inspectors," and "Stormwater Management for Plan Reviewers."

B. Certification and recertification shall be valid for three years and will expire on the last day of the expiration month except as otherwise set out in 4VAC50-50-40 C or 4VAC50-50-90.

C. Recertification may be obtained for classifications outlined in 4VAC50-50-40 of this chapter prior to the expiration date of a certification by:

1. Obtaining a passing score on the certification examination; ~~or~~
2. Successfully completing a board-approved training program- during the last 12 months of the term of the certificate but prior to its expiration date;
3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1, and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for classifications in

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subdivisions A 1 through 4 of 4VAC50-50-40. However, such professionals when in the classification of plan reviewer for ESC shall be exempt from the recertification requirements and fees of this chapter provided they maintain their professional license; or

4. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for classifications in subdivisions A 5 through 8 of 4VAC50-50-40.

#### **4VAC50-50-55. Classification acknowledgement for the purposes of program compliance reviews.**

For the purposes of VESCP or VSMP compliance reviews and evaluations, the certification requirements of §§ 10.1-561.1 and 10.1-603.4:2 of the Code of Virginia shall be deemed to have been met if the VESCP or the VSMP authority has a person or persons enrolled in the board's ESC or SWM training programs for the necessary classifications and such person or persons obtains certification within one year of completing the necessary training programs.

#### **4VAC50-50-60. Fees.**

A. Application ~~and~~ recertification, and dual certificate issuance fees shall be collected to cover the administrative cost for the certification program.

B. A fee will also be charged to present education and training program courses/seminars which support the certification program.

C. Fees are nonrefundable and shall not be prorated.

#### **4VAC50-50-70. Examination.**

A. A board approved examination shall be administered at least twice a year.

B. An individual may take the certification examination for the desired certificate of competence after fulfilling the prerequisite experience requirement or completing a board-approved training program in accordance with 4VAC50-50-50 ~~of this chapter~~.

C. An individual who is unable to take an examination at the time scheduled shall notify the department within 48 hours prior to the date of the examination; such an individual may be rescheduled for the next examination. Failure to notify the department may require an individual to submit a new application and payment of fees in accordance with this chapter.

D. An applicant who is unsuccessful in passing an examination will be allowed to pay the appropriate fee and retake the appropriate exam within one year without resubmitting an application. After the one-year period has elapsed, an applicant will be required to submit a new application with the appropriate fee in accordance with this chapter in order to take the examination. Application for

examination must be received at least 60 days prior to the scheduled examination by the department to be eligible to sit for the examination.

E. ~~An acceptable~~ A minimum passing score of 70% will be required on the appropriate certification ~~exam~~ exam(s).

F. All applicants will be notified in writing within 60 days of the results of the examination.

#### **4VAC50-50-80. Application.**

A. Any person seeking certification by a combination of experience and examination or by the combination of completion of the training program and examination shall submit a completed application with the appropriate fee(s) attached. The application shall contain the following:

1. The applicant's name, address, daytime phone number, ~~social security number,~~ and name and address of business as well as the date the application was filled out.
2. The classification of certification applying for as set forth in 4VAC50-50-40 of this chapter, and if applying for initial certification or recertification.
3. If any special arrangements must be provided for because of a handicap.
4. A verification of all work experience signed and dated by applicant's supervisor.
5. A signed and notarized affidavit confirming that all statements in the application are believed to be true.

Incomplete applications will be returned to the applicant. All applications must be received in the appropriate department office or by mail post marked at least 60 days prior to the scheduled examination date in order to be able to sit for the examination.

B. All applications of candidates will be reviewed by the department to determine eligibility for certification. All applicants will be notified of the results of the review within 30 days of receipt of the application. Any applicant may appeal the review, in writing, to the board within 30 days of the department's determination. No applicant will be approved for certification unless they meet all requirements of this chapter.

C. Applicants who have been found ineligible to sit for an examination may request further consideration by submitting a letter to the board with the necessary evidence of additional qualifications. No additional fee will be required provided that all requirements for certification are met within one year from the date of original application.

#### **4VAC50-50-90. Discipline of certified personnel.**

The board may suspend, revoke or refuse to grant or renew the certification of any person if the board, in an informational fact finding under ~~§ 9-6-14:11~~ § 2.2-4019 of the Code of Virginia, finds that:

1. The certification was obtained or renewed through fraud or misinterpretation;

2. The certified person has violated or cooperated with others in violating any provision of this chapter;
3. The certified person has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of his duties; or
4. The certified person has made any material misrepresentation in the course of performing his duties.

VA.R. Doc. No. R13-3316; Filed October 3, 2012, 9:05 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Virginia Soil and Water Conservation Board is claiming an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 2, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority; (ii) § 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; (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; and (iv) § 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 Soil and Water Conservation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-20, 4VAC50-60-30, 4VAC50-60-40, 4VAC50-60-45, 4VAC50-60-47, 4VAC50-60-47.1, 4VAC50-60-48, 4VAC50-60-51, 4VAC50-60-54, 4VAC50-60-55, 4VAC50-60-57, 4VAC50-60-58, 4VAC50-60-59, 4VAC50-60-62, 4VAC50-60-63, 4VAC50-60-65, 4VAC50-60-66, 4VAC50-60-69, 4VAC50-60-72, 4VAC50-60-76, 4VAC50-60-92, 4VAC50-60-93.1, 4VAC50-60-95, 4VAC50-60-96, 4VAC50-60-97, 4VAC50-60-100, 4VAC50-60-102, 4VAC50-60-103, 4VAC50-60-104, 4VAC50-60-106, 4VAC50-60-108, 4VAC50-60-112, 4VAC50-60-114, 4VAC50-60-116, 4VAC50-60-118, 4VAC50-60-122, 4VAC50-60-126, 4VAC50-60-142, 4VAC50-60-144, 4VAC50-60-146, 4VAC50-60-148, 4VAC50-60-150, 4VAC50-60-160, 4VAC50-60-170, 4VAC50-60-180, 4VAC50-60-200, 4VAC50-60-210, 4VAC50-60-300, 4VAC50-60-310, 4VAC50-60-320, 4VAC50-60-330, 4VAC50-60-340, 4VAC50-60-350, 4VAC50-60-360, 4VAC50-60-370, 4VAC50-60-380, 4VAC50-60-390, 4VAC50-60-400, 4VAC50-60-410, 4VAC50-60-420, 4VAC50-60-430, 4VAC50-60-440, 4VAC50-60-450, 4VAC50-60-460, 4VAC50-60-470, 4VAC50-60-480, 4VAC50-60-490, 4VAC50-60-500, 4VAC50-60-510, 4VAC50-60-520, 4VAC50-60-530, 4VAC50-60-540, 4VAC50-60-550, 4VAC50-60-560,

4VAC50-60-570, 4VAC50-60-580, 4VAC50-60-590,  
 4VAC50-60-610, 4VAC50-60-620, 4VAC50-60-630,  
 4VAC50-60-640, 4VAC50-60-650, 4VAC50-60-660,  
 4VAC50-60-680, 4VAC50-60-700, 4VAC50-60-730,  
 4VAC50-60-740, 4VAC50-60-750, 4VAC50-60-760,  
 4VAC50-60-770, 4VAC50-60-780, 4VAC50-60-790,  
 4VAC50-60-800, 4VAC50-60-810, 4VAC50-60-820,  
 4VAC50-60-825, 4VAC50-60-830, 4VAC50-60-1100,  
 4VAC50-60-1110, 4VAC50-60-1130, 4VAC50-60-1140,  
 4VAC50-60-1150, 4VAC50-60-1160, 4VAC50-60-1170,  
 4VAC50-60-1200, 4VAC50-60-1210, 4VAC50-60-1220,  
 4VAC50-60-1230, 4VAC50-60-1240).

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

**Effective Date:** November 21, 2012.

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

**Background:** The majority of the amendments conform the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60) to changes in Virginia law in response to the Erosion and Sediment Control, Stormwater Management, and Chesapeake Bay Preservation Acts integration of programs bill ([Chapters](#) 785 and 819 of the 2012 Acts of Assembly). The legislation integrated elements of the Erosion and Sediment Control Act, the Stormwater Management Act, and the Chesapeake Bay Preservation Act so that those regulatory programs could be implemented in a consolidated and consistent manner, resulting in greater efficiencies for those being regulated. The bill also abolished the Chesapeake Bay Local Assistance Board and transferred its powers and responsibilities to the Virginia Soil and Water Conservation Board. Accordingly, this consolidation legislation resulted in necessary amendments to each of the referenced regulations.

This specific action also includes an amendment to meet the federal requirements of the Effluent Limitations Guidelines set out in the Federal Register at 74 FR 63057; December 1, 2009; Page 63057 - Construction and Development Effluent Guidelines; 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT); (f) Surface Outlets. When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

**Summary:**

*Amendments address style, form, and corrections of technical errors, as well as reflect board internal practice and procedures. The substantive elements of this action include:*

1. Global updates throughout the regulation to include (i) inserting "state" before "permit" to differentiate it from a

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locality's VSMP permit; (ii) changing "permit issuing authority" to "VSMP authority, department, or board" or a combination of these selections as may be applicable; (iii) changing "local stormwater management program" or "local program" to "VSMP"; (iv) changing "plan approval authority" to "VSMP authority"; (v) changing "qualifying local stormwater management program" or "qualifying local program" to "VSMP authority" or "VSMP"; (vi) changing "stormwater program administrative authority" to "VSMP authority, department, or board" or a combination or derivation of these selections; (vii) changing "local erosion and sediment control program" to "VESCP"; and (viii) clarifying where necessary different requirements between a locality's VSMP authority and other VSMP authorities.

2. Amending, adding or removing a variety of definitions.

3. Adding a missing Effluent Limitation Guideline to comply with federal regulation.

4. Clarifying that linear projects are no longer exempt and must now control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan. This action is in accordance with amendments made to § 10.1-603.7 of the Code of Virginia that conformed state law to federal requirements.

5. Stipulating that the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions rendered by localities but appeals shall be conducted in accordance with local appeal procedures. This change ensures conformance with § 10.1-603.13 of the Code of Virginia.

6. Clarifying the review procedure for a Virginia Stormwater Management Program by the department. Introduces the "term corrective action agreements" that is already utilized in the Erosion and Sediment Control Program. Also stipulates that the department shall provide results and compliance recommendations to the board in the form of a corrective action agreement if deficiencies are found within 120 days of the completion of a review, otherwise the board may find the program compliant.

7. Updating the application process and adoption timelines that all localities must follow that are required to adopt a VSMP or towns electing to adopt a VSMP. Striking language that requires the department under certain circumstances to operate a local VSMP in accordance with changes in the law as this is no longer the practice. Clarifying annual standards and specifications and state permit coverage requirements for state agency projects.

8. Clarifying state and local authorities regarding the establishment of fees to support program activities under the Stormwater Management Act and this chapter including a VSMP authority's ability to raise or lower fees set out in the statewide fee schedule. Making technical corrections to antiquated terms such as qualifying local

program by replacing it with VSMP authority or VSMP as found to be applicable.

9. Stipulating the department's authority (pursuant to § 10.1-603.4 of the Code of Virginia) to assess reinspection fees to recoup the costs associated with each visit to a land-disturbing project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection and assess business transaction costs associated with the processing of credit card payments.

10. Clarifying procedural items in the section on fees (pursuant to § 10.1-603.4 of the Code of Virginia) for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities as follows:

a. Clarifying that the department will charge \$750 for large construction activities and \$450 for small construction activities upon the effective date of the regulations;

b. Clarifying the applicant's fee of 28% payable to the department;

c. Clarifying fees for a Chesapeake Bay Preservation Act Land-Disturbing Activity;

d. Removing fees associated with Small Construction Activity/Land Clearing of sites within designated areas of Chesapeake Bay Act localities;

e. Making parallel changes where applicable in permit modification fees and in maintenance fees.

## Part I

### Definitions, Purpose, and Applicability

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

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

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

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

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

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

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

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

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

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

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

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

"Channel" means a natural or manmade waterway.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (~~9VAC10-20~~) (4VAC50-90) adopted pursuant to the Chesapeake Bay Preservation Act.

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

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

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

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

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the

Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

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

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

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

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

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

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

"Department" means the Department of Conservation and Recreation.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of these regulations, does not include the exemptions found in 4VAC50-60-300.

"Direct discharge" means the discharge of a pollutant.

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

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

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean

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from any point source other than a vessel or other floating craft which is being used as a means of transportation.

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

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

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

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

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

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

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

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

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

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

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

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes, but is not limited to, the flood or floodway fringe designated by the Federal Emergency Management Agency.

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

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency.

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

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

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

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

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

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

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

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

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and

including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

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

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

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

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

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

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including ~~any~~ clearing, grading, or excavation ~~associated with a construction activity regulated pursuant to the CWA, the Act, and this chapter or with a Chesapeake Bay Preservation Act land-disturbing activity regulated pursuant to the Act and this chapter, except that the term shall not include those exemptions specified in § 10.1-603.8 of the Code of Virginia.~~

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

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

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial

census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));

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

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

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; and
- e. Other relevant factors.

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

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

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

~~"Local stormwater management program" or "local program" means the various methods employed by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, plan review, inspection, enforcement, and evaluation consistent with the Act and this chapter. Upon~~

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~~board approval of a local stormwater management program, it shall be recognized as a qualifying local program.~~

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

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

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

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

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

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

"Manmade" means constructed by man.

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

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

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

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

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

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

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; or
- e. Other relevant factors.

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

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

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

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created



by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

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

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

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

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

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

"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the ~~permit-issuing VSMP authority~~ for the initiation of a land-disturbing activity ~~or for stormwater discharges from an MS4 after evidence of general permit coverage has been provided where applicable. Permit does not include any permit that has not yet been the subject of final permit issuing authority action, such as a draft permit or a proposed permit.~~

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

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

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

state, or local entity as applicable, any interstate body or any other legal entity.

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

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

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

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

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

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

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

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

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

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

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

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

"Qualified personnel" means a person knowledgeable in the principles and ~~practice~~ practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. ~~This may include a licensed professional engineer, responsible land disturber, or other~~ For VSMP authorities this requires the use of a person who holds a certificate of competency from the board in the area of project inspection for ESC and project inspection for SWM or combined administrator for ESC and combined administrator for SWM as defined in 4VAC50-50-10 or a combination of ESC and SWM qualifications from these two areas.

~~"Qualifying local stormwater management program" or "qualifying local program" means a local stormwater management program, administered by a locality, that has~~

~~been authorized by the board. To authorize a qualifying local program, the board must find that the ordinances adopted by the locality are consistent with the VSMP General Permit for Discharges of Stormwater from Construction Activities (Part XIV (4VAC50-60-1100 et seq.) of this chapter.~~

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

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

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

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

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

"Runoff characteristics" include maximum velocity, peak flow rate, volume, and flow duration.

"Runoff volume" means the volume of water that runs off the site from a prescribed design storm.

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

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

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

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

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

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

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the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

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

"Small construction activity" means:

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

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

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a

sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

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

"State" means the Commonwealth of Virginia.

"State 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 state permit.

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

"State permit" means an approval to conduct a land-disturbing activity issued by the board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act and this chapter. State permit does not include any state permit that has not yet been the subject of final board action, such as a draft state permit or a proposed state permit.

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

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

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

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

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

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;

2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or

3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

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

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

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

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

"Stormwater management plan" means a document(s) containing material for describing methods for complying with the requirements of the ~~local program~~ VSMP or this chapter.

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

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

~~"Stormwater program administrative authority" means a local stormwater management program or the department, as~~

~~the permit issuing authority, in the absence of a local stormwater management program, which administers the Virginia Stormwater Management Program.~~

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

"Surface waters" means:

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

2. All interstate waters, including interstate wetlands;

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

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

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

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

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

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

6. The territorial sea; and

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

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

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

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

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or

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disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

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

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

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in the Erosion and Sediment Control Act and its attendant regulations, and evaluation consistent with the requirements of the Erosion and Sediment Control Act and its attendant regulations.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

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

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

"Virginia Stormwater BMP Clearinghouse website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations and that is jointly created by the department and the Virginia Water Resources Research Center subject to advice to the director from a permanent stakeholder advisory committee.

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

~~"Virginia Stormwater Management Program" or "VSMP" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the CWA, the Act, this chapter, and associated guidance documents~~ a program approved by the board after September 13, 2011, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the department. An authority may include a locality: state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 10.1-603.5 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the board must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this chapter including the General Permit for Discharges of Stormwater from Construction Activities (Part XIV (4VAC50-60-1100 et seq.) of this chapter).

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

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

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

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

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

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

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

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

The purposes of this chapter are to provide a framework for the administration, implementation and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the procedures and requirements to be followed in connection with ~~VSMP state~~ permits issued by the board ~~or its designee~~ pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management Act and permits issued by a VSMP authority, while at the same time providing flexibility for innovative solutions to stormwater management issues. The chapter also establishes the board's procedures for the authorization of a ~~qualifying local program VSMP~~, the board's procedures for approving the administration of a ~~local stormwater management program VSMP~~ by an ~~authorized qualifying local program a VSMP authority~~, board and department oversight authorities for ~~an authorized qualifying local program a VSMP~~, the board's procedures for utilization by the department in administering the Virginia Stormwater Management Program in localities where no qualifying local program is authorized, and the required technical criteria for stormwater management for land-disturbing activities.

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

This chapter is applicable to:

1. Every ~~locality VSMP authority~~ that administers a ~~local stormwater management program VSMP~~;
2. The department in its oversight of ~~locally administered programs VSMPs~~ or in its administration of the Virginia Stormwater Management Program;
3. Every MS4 program;
4. Every state agency project regulated and every federal entity project covered under the Act and this chapter; and
5. Every land-disturbing activity regulated under § 10.1-603.8 of the Code of Virginia unless otherwise exempted in § 10.1-603.8 B.

Part II

Administrative and Technical Criteria for Land-Disturbing Activities

**4VAC50-60-40. Authority.**

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

**4VAC50-60-45. Implementation date.**

The technical criteria in Part II A and Part II B shall be implemented by a ~~stormwater program administrative VSMP~~ authority when a ~~VSMP~~ General Permit for Discharges of Stormwater from Construction Activities has been issued that incorporates such criteria. Until that time, the required technical criteria shall be found in Part II C. VSMPs adopted in accordance with the Act and this chapter shall become effective July 1, 2014, unless otherwise specified by the board.

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

Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except as provided in § 10.1-603.3 ~~¶ K~~ of the Code of Virginia, and all applicable regulations adopted in accordance with those laws, or the

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rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

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

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

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

A. Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, was approved by a locality prior to July 1, 2012, and for which no coverage under the ~~VSMP~~ General Permit for Discharges of Stormwater from Construction Activities has been issued prior to July 1, 2014, shall be considered grandfathered by the ~~stormwater program administrative~~ VSMP authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C for those areas that were included in the approval, provided that the ~~stormwater program administrative~~ VSMP authority finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C. In the event that the locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.

B. Until June 30, 2019, for locality, state, and federal projects for which there has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the department has approved a stormwater management plan prior to July 1, 2012, such projects shall be

considered grandfathered by the ~~stormwater program administrative~~ VSMP authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C for those areas that were included in the approval.

C. For land-disturbing activities grandfathered under subsections A and B of this section, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical criteria of Part II B.

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

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

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

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

1. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by either the ~~local erosion and sediment control program~~ VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.
2. A stormwater plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during the land-disturbing activity. The stormwater management plan shall be developed and submitted in accordance with 4VAC50-60-55. Prior to land disturbance, this plan must be approved by the ~~stormwater program administrative~~ VSMP authority.
3. Exceptions may be requested in accordance with 4VAC50-60-57.
4. Long-term maintenance of stormwater management facilities shall be provided for and conducted in accordance with 4VAC50-60-58.
5. Water quality design criteria in 4VAC50-60-63 shall be applied to the site.
6. Water quality compliance shall be achieved in accordance with 4VAC50-60-65.



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

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

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

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

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

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

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

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

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

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

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

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

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

4. Minimize the disturbance of steep slopes;

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

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

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

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

9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

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

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

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

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical

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criteria set forth in this part to the entire land-disturbing activity.

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

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

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

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

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

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

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

6. Hydrologic and hydraulic computations, including runoff characteristics;

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

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

- a. All contributing drainage areas;
- b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
- c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
- d. Current land use including existing structures, roads, and locations of known utilities and easements;
- e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- f. The limits of clearing and grading, and the proposed drainage patterns on the site;
- g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

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

9. If an operator intends to meet the requirements established in 4VAC50-60-63 or 4VAC50-60-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and

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

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

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

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

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

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

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

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

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

## Part II B

Technical Criteria for Regulated Land-Disturbing Activities

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

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

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

A. In order to protect the quality of state waters and to control the discharge of stormwater pollutants from regulated activities, the following minimum design criteria and statewide standards for stormwater management shall be applied to the site.

1. New development. The total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to 4VAC50-60-65.
2. Development on prior developed lands.
  - a. For land-disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.
  - b. For regulated land-disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 10% below the predevelopment total phosphorus load.
  - c. For land-disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivisions a or b above, shall be applied to the remainder of the site.
  - d. In lieu of subdivision c, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.
  - e. The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by a ~~local stormwater management program~~ locality.

B. Compliance with subsection A of this section shall be determined in accordance with 4VAC50-60-65.

C. Upon completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan, the department shall review the water quality design criteria standards.

D. Nothing in this section shall prohibit a ~~local stormwater management program~~ locality's VSMP authority from establishing more stringent water quality design criteria requirements.

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

A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of 4VAC50-60-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent methodology that is approved by the board.

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

1. Vegetated Roof (Version 2.3, March 1, 2011);
2. Rooftop Disconnection (Version 1.9, March 1, 2011);
3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
4. Soil Amendments (Version 1.8, March 1, 2011);
5. Permeable Pavement (Version 1.8, March 1, 2011);
6. Grass Channel (Version 1.9, March 1, 2011);
7. Bioretention (Version 1.9, March 1, 2011);
8. Infiltration (Version 1.9, March 1, 2011);
9. Dry Swale (Version 1.9, March 1, 2011);
10. Wet Swale (Version 1.9, March 1, 2011);
11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);
12. Extended Detention Pond (Version 1.9, March 1, 2011);
13. Filtering Practice (Version 1.8, March 1, 2011);
14. Constructed Wetland (Version 1.9, March 1, 2011); and
15. Wet Pond (Version 1.9, March 1, 2011).

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

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

E. The ~~stormwater program administrative~~ VSMP authority shall have the discretion to allow for application of the design

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criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 4VAC50-60-92.

F. Offsite alternatives where allowed in accordance with 4VAC50-60-69 may be utilized to meet the design criteria of subsection A of 4VAC50-60-63.

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

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section, which are established pursuant to the requirements of subdivision 7 of § 10.1-603.4 of the Code of Virginia. Nothing in this section shall prohibit a ~~local stormwater management program~~ locality's VSMP authority from establishing a more stringent standard especially where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of subdivision 19 of 4VAC50-30-40 (Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations).

B. Channel protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this subsection.

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

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

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

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

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

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

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

a. In accordance with the following methodology:

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

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

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

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

$\text{RV}_{\text{Developed}}$  = The volume of runoff from the site in the developed condition.

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

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

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

$\text{RV}_{\text{Forest}}$  = The volume of runoff from the site in a forested condition; or

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

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

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

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

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

1. Concentrated stormwater flow to stormwater conveyance systems that currently do not experience

localized flooding during the 10-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the ~~stormwater program administrative~~ VSMP authority.

2. Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event: The point of discharge either:

- a. Confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the ~~stormwater program administrative~~ VSMP authority; or
- b. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event that is less than the predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.

3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:

- a. The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;
- b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
- c. The stormwater conveyance system enters a mapped floodplain or other flood-prone area, adopted by ordinance, of any locality.

D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater

conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

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

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

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

A. Offsite compliance options that a ~~stormwater program administrative~~ VSMP authority may allow an operator to use to meet required phosphorus nutrient reductions include the following:

- 1. Offsite controls utilized in accordance with a comprehensive stormwater management plan adopted pursuant to 4VAC50-60-92 for the local watershed within which a project is located;
- 2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243 of the Code of Virginia or similar local funding mechanism;
- 3. The nonpoint nutrient offset program established pursuant to § 10.1-603.8:1 of the Code of Virginia;
- 4. Any other offsite options approved by an applicable state agency or state board; and
- 5. When an operator has additional properties available within the same HUC or upstream HUC that the land-disturbing activity directly discharges to or within the same watershed as determined by the ~~stormwater program administrative~~ VSMP authority, offsite stormwater management facilities on those properties may be utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity.

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

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

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

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

C. Notwithstanding subsections A and B of this section, offsite options shall not be allowed:

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

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

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

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

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

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

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

hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.

D. For drainage areas of 200 acres or less, the ~~stormwater program administrative~~ VSMP authority may allow for the use of the Rational Method for evaluating peak discharges.

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

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

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

#### **4VAC50-60-92. Comprehensive stormwater management plans.**

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

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

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

3. During the plan's implementation, the ~~local stormwater management program~~ locality's VSMP authority shall document nutrient reductions accredited to the BMPs specified in the plan.

4. State and federal agencies may develop comprehensive stormwater management plans, and may participate in locality-developed comprehensive stormwater management plans where practicable and permitted by the ~~local stormwater management program~~ locality's VSMP authority.

## Part II C

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

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

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

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

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

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. ~~Note that a locality may opt to calculate actual or a calculated watershed-specific values value for the average land cover condition based upon 4VAC50-60-110 as approved by the Chesapeake Bay Local Assistance Board prior to September 13, 2011.~~

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

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

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

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

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

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is

normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

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

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

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

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

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

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

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

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet even

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during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding or stream channel erosion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas defined in the Chesapeake Bay Preservation Act provided such facilities are allowed and constructed in accordance with the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and this chapter, and provided that (i) the local government has conclusively established that the location of the facility within the resource protection area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; ~~and~~ (iii) the facility must be consistent with a ~~stormwater management program~~ comprehensive stormwater management plan developed and approved in accordance with 4VAC50-60-92 or with a VSMP that has been approved prior to July 1, 2012, by the board, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Conservation and Recreation, the Virginia Department of Environmental Quality, and the Virginia



Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.

**4VAC50-60-96. Water quality.**

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

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

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

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

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

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

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

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

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

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

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

Table 1\*

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

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Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench)	65%	
*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the <del>stormwater program administrative</del> <u>VSMP</u> authority. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the <del>stormwater program administrative</del> <u>VSMP</u> authority.		

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

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

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

C. The ~~local stormwater management program~~ locality's VSMP authority may determine that some watersheds or receiving stream systems require enhanced criteria in order to address the increased frequency of bankfull flow conditions (top of bank) brought on by land-disturbing activities or where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional waters. Therefore, in lieu of the reduction of the two-year postdeveloped peak rate of runoff as required in subsection B of this section, the land development project being considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour duration storm.

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

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.
3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
4. Criteria for the selection of proposed natural or manmade channel linings.

## Part III

### General Provisions Applicable to ~~Stormwater Program Administrative Authorities~~ and to ~~Local Stormwater Management Programs~~ VSMPs and VSMP Authorities

#### 4VAC50-60-100. Applicability.

This part establishes the board's procedures for the authorization of a ~~qualifying local program~~ VSMP, the board's procedures for the administration of a ~~local stormwater management program~~ VSMP by an ~~authorized qualifying local program~~ a locality's VSMP authority or by other VSMP authorities where the procedures may be applicable, and board and department oversight authorities for an ~~authorized qualifying local program,~~ and the board's procedures for utilization by the department in administering the ~~Virginia Stormwater Management Program in localities where no qualifying local program is authorized~~ a VSMP.

#### 4VAC50-60-102. Authority.

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

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

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

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

- 2. A VSMP authority permit, where applicable, shall be issued permitting the land-disturbing activity.
- 3. The ~~stormwater program administrative~~ VSMP authority shall regulate such land-disturbing activities in compliance with the:
  - a. Program requirements in 4VAC50-60-104;
  - b. Plan review requirements in 4VAC50-60-108 with the exception of subsection D of 4VAC50-60-108;
  - c. Long-term stormwater management facility requirements of 4VAC50-60-112;
  - d. Inspection requirements of 4VAC50-60-114 with the exception of subdivisions A 3 and A 4 of 4VAC50-60-114;
  - e. Enforcement components of 4VAC50-60-116;
  - f. Hearing requirements of 4VAC50-60-118;
  - g. Exception conditions of 4VAC50-60-122 excluding subsection C of 4VAC50-60-122 which is not applicable; and
  - h. Reporting and recordkeeping requirements of 4VAC50-60-126 with the exception of subdivision B 3 of 4VAC50-60-126.

B. A ~~local stormwater management program locality's~~ VSMP authority shall adopt an ordinance, and other VSMP authorities shall provide program documentation, that incorporates the components of this section.

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

Part III A

Programs Operated by a ~~Stormwater Program Administrative~~ VSMP Authority

**4VAC50-60-104. Criteria for programs operated by a ~~stormwater program administrative~~ VSMP authority.**

- A. All ~~stormwater program administrative~~ VSMP authorities shall require compliance with the provisions of Part II (4VAC50-60-40 et seq.) of this chapter.
- B. When a ~~local stormwater management program locality's~~ VSMP authority has adopted requirements more stringent than those imposed by this chapter in accordance with § 10.1-603.7 of the Code of Virginia or implemented a comprehensive stormwater management plan, the department shall consider such requirements in its review of state projects within that locality in accordance with Part IV (4VAC50-60-160 et seq.) of this chapter.
- C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require prior approval by the locality for, a state or federal project, unless authorized by separate statute.

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

**4VAC50-60-106. Additional requirements for ~~local stormwater management programs~~ VSMP authorities.**

- A. A ~~local stormwater management program locality's~~ VSMP authority shall adopt ordinances, and other VSMP authorities shall provide program documentation, that ensure compliance with the requirements set forth in 4VAC50-60-460 L.
- B. The ~~local stormwater management program locality's~~ VSMP authority shall adopt ordinances, and other VSMP authorities shall provide program documentation, at least as stringent as the provisions of the ~~Virginia Stormwater Management Program (VSMP)~~ General Permit for Discharges of Stormwater from Construction Activities.

**4VAC50-60-108. Stormwater management plan review.**

- A. A ~~stormwater program administrative~~ VSMP authority shall review and approve stormwater management plans.
- B. A ~~stormwater program administrative~~ VSMP authority shall approve or disapprove a stormwater management plan according to the following:
  - 1. The ~~stormwater program administrative~~ VSMP authority shall determine the completeness of a plan in accordance with 4VAC50-60-55, and shall notify the applicant of any determination, within 15 calendar days of receipt. Where available to the applicant, electronic communication may be considered communication in writing.
    - a. If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.
    - b. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.
    - c. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.
    - d. The ~~stormwater program administrative~~ VSMP authority shall review, within 45 calendar days of the date of resubmission, any plan that has been previously disapproved.
  - 2. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the

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reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter and of the ~~stormwater program administrative~~ VSMP authority. Where available to the applicant, electronic communication may be considered communication in writing.

3. If a plan meeting all requirements of this chapter and of the ~~stormwater program administrative~~ VSMP authority is submitted and no action is taken within the time specified above, the plan shall be deemed approved.

C. Each approved plan may be modified in accordance with the following:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the ~~stormwater program administrative~~ VSMP authority. The ~~stormwater program administrative~~ VSMP authority shall have 60 calendar days to respond in writing either approving or disapproving such requests.

2. Based on an inspection, the ~~stormwater program administrative~~ VSMP authority may require amendments to the approved stormwater management plan to address any deficiencies within a time frame set by the stormwater program administrative authority.

D. ~~A stormwater program administrative authority shall not provide authorization to begin land disturbance until provided evidence of VSMP permit coverage. Upon the development of an online reporting system by the department, but no later than July 1, 2014, a VSMP authority shall then be required to obtain evidence of state permit coverage, where it is required, prior to providing approval to begin land disturbance.~~

E. The ~~stormwater program administrative~~ VSMP authority shall require the submission of a construction record drawing for permanent stormwater management facilities in accordance with 4VAC50-60-55. A ~~stormwater program administrative~~ VSMP authority may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to 4VAC50-60-112.

#### **4VAC50-60-112. Long-term maintenance of permanent stormwater management facilities.**

A. The ~~stormwater program administrative~~ VSMP authority shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to state permit termination or earlier as required by the ~~stormwater program administrative~~ VSMP authority and shall at a minimum:

1. Be submitted to the ~~stormwater program administrative~~ VSMP authority for review and approval prior to the approval of the stormwater management plan;
2. Be stated to run with the land;

3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the ~~stormwater program administrative~~ VSMP authority; and

5. Be enforceable by all appropriate governmental parties.

B. At the discretion of the ~~stormwater program administrative~~ VSMP authority, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the ~~stormwater program administrative~~ VSMP authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the ~~stormwater program administrative~~ VSMP authority.

#### **4VAC50-60-114. Inspections.**

A. The ~~stormwater program administrative~~ VSMP authority shall inspect the land-disturbing activity during construction for:

1. Compliance with the approved erosion and sediment control plan;
2. Compliance with the approved stormwater management plan;
3. Development, updating, and implementation of a pollution prevention plan; and
4. Development and implementation of any additional control measures necessary to address a TMDL.

B. The ~~stormwater program administrative~~ VSMP authority shall establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:

1. Be approved by the board;
2. Ensure that each stormwater management facility is inspected by the ~~stormwater program administrative~~ VSMP authority, or its designee, not to include the owner, except as provided in subsections C and D of this section, at least once every five years; and
3. Be documented by records.

C. The ~~stormwater program administrative~~ VSMP authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the board.

D. If a recorded instrument is not required pursuant to 4VAC50-60-112, a ~~stormwater program administrative~~ VSMP authority shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the ~~stormwater program administrative~~ VSMP authority.

**4VAC50-60-116. Enforcement.**

A. A ~~stormwater program administrative~~ locality's VSMP authority shall incorporate components from subdivisions 1 and 2 of this subsection.

1. Informal and formal administrative enforcement procedures may include:
  - a. Verbal warnings and inspection reports;
  - b. Notices of corrective action;
  - c. Consent special orders and civil charges in accordance with subdivision 7 of § 10.1-603.2:1 and § 10.1-603.14 D 2 of the Code of Virginia;
  - d. Notices to comply in accordance with § 10.1-603.11 of the Code of Virginia;
  - e. Special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia;
  - f. Emergency special orders in accordance with subdivision 7 of § 10.1-603.2:1 of the Code of Virginia; and
  - g. Public notice and comment periods for proposed settlements and consent special orders pursuant to 4VAC50-60-660.
2. Civil and criminal judicial enforcement procedures may include:
  - a. Schedule of civil penalties in accordance with § 10.1-603.14 of the Code of Virginia;
  - b. Criminal penalties in accordance with § 10.1-603.14 B and C of the Code of Virginia; and
  - c. Injunctions in accordance with §§ 10.1-603.12:4, 10.1-603.2:1 and 10.1-603.14 D 1 of the Code of Virginia.

B. A ~~stormwater program administrative~~ locality's VSMP authority shall develop policies and procedures that outline the steps to be taken regarding enforcement actions under the Stormwater Management Act and attendant regulations and local ordinances.

C. Pursuant to § 10.1-603.14 A of the Code of Virginia, the ~~permit issuing~~ locality's VSMP authority shall use the following schedule of civil penalties for enforcement actions. The court has the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with § 10.1-

603.14 A of the Code of Virginia. Such violation may reflect the degree of harm caused by the violation. The court may take into account the economic benefit to the violator from noncompliance. Such violations include, but are not limited to:

1. No state permit registration;
2. No SWPPP;
3. Incomplete SWPPP;
4. SWPPP not available for review;
5. No approved erosion and sediment control plan;
6. Failure to install stormwater BMPs or erosion and sediment controls;
7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
8. Operational deficiencies;
9. Failure to conduct required inspections;
10. Incomplete, improper, or missed inspections.

D. Pursuant to subdivision 2 of § 10.1-603.2:1 of the Code of Virginia, authorization to administer a ~~local stormwater management~~ VSMP program shall not remove from the board the authority to enforce the provisions of the Act and attendant regulations.

E. The department may terminate ~~VSMP~~ state permit coverage during its term and require application for an individual state permit or deny a state permit renewal application for failure to comply with state permit conditions or on its own initiative in accordance with the Act and this chapter.

F. Pursuant to § 10.1-603.14 A of the Code of Virginia, civil penalties recovered by a ~~local stormwater management program~~ locality's VSMP authority shall be paid into the treasury of the locality in which the violation occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

G. The department may provide additional guidance concerning suggested penalty amounts in its Stormwater Management Enforcement Manual.

**4VAC50-60-118. Hearings.**

The ~~stormwater program administrative~~ VSMP authority shall ensure that any permit applicant, ~~or permittee, or person~~ subject to state permit requirements under the Act aggrieved by any action of the ~~stormwater program administrative~~ VSMP authority taken without a formal hearing, or by inaction of the ~~stormwater program administrative~~ VSMP authority, shall have a right to a hearing pursuant to § 10.1-603.12:6 of the Code of Virginia and shall ensure that all hearings held under this chapter shall be conducted in ~~accordance~~ a manner consistent with § 10.1-603.12:7 of the Code of Virginia or as otherwise provided by law. The

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provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions rendered by localities but appeals shall be conducted in accordance with local appeal procedures.

## **4VAC50-60-122. Exceptions.**

A. A ~~stormwater program administrative~~ VSMP authority may grant exceptions to the provisions of Part II B or Part II C of this chapter. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

C. Under no circumstance shall the ~~stormwater program administrative~~ VSMP authority grant an exception to the requirement that the land-disturbing activity obtain required ~~VSMP state~~ permits, nor approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part II C (4VAC50-60-146 et seq.) of this chapter.

D. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through 4VAC50-60-69 have been considered and found not available.

E. A record of all exceptions granted shall be maintained by the ~~stormwater program administrative~~ VSMP authority in accordance with [4VAC50-60-126](#).

## **4VAC50-60-126. Reports and recordkeeping.**

A. On a fiscal year basis (July 1 to June 30), a ~~local stormwater management program~~ VSMP authority shall report to the department by October 1 of each year in a format provided by the department. The information to be provided shall include the following:

1. Information on each permanent stormwater management facility completed during the fiscal year to include type of stormwater management facility, geographic coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;
2. Number and type of enforcement actions during the fiscal year; and
3. Number of exceptions granted during the fiscal year.

B. A ~~stormwater program administrative~~ VSMP authority shall keep records in accordance with the following:

1. Project records, including approved stormwater management plans, shall be kept for three years after state permit termination or project completion.

2. Stormwater management facility inspection records shall be documented and retained for at least five years from the date of inspection.

3. Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed.

4. All registration statements submitted in accordance with 4VAC50-60-59 shall be documented and retained for at least three years from the date of project completion or state permit termination.

### Part III B

Department of Conservation and Recreation Procedures for Review of ~~Local Stormwater Management Programs~~ VSMPs

## **4VAC50-60-142. Authority and applicability.**

This part specifies the criteria that the department will utilize in reviewing a ~~locality's~~ VSMP authority's administration of a ~~local stormwater management program~~ VSMP pursuant to § 10.1-603.12 of the Code of Virginia following the board's approval of such program in accordance with the Act and this chapter.

## **4VAC50-60-144. Local Virginia stormwater management program review.**

A. The department shall review each board-approved ~~local stormwater management program~~ VSMP at least once every five years on a review schedule approved by the board. The department may review a ~~local stormwater management program~~ VSMP on a more frequent basis if deemed necessary by the board and shall notify the ~~local government~~ VSMP authority if such review is scheduled.

B. The review of a board-approved ~~local stormwater management program~~ VSMP shall consist of the following:

1. An interview between department staff and the ~~local stormwater management program~~ VSMP administrator or designee;
2. A review of the local ordinance(s) and other applicable documents;
3. A review of a subset of the plans approved by the ~~local stormwater management program~~ VSMP authority for consistency of application including exceptions granted and calculations or other documentation that demonstrates that required nutrient reductions are achieved using appropriate on-site and off-site compliance options;
4. A review of the funding and staffing plan developed in accordance with 4VAC50-60-148;
5. An inspection of regulated activities; and
6. A review of enforcement actions and an accounting of amounts recovered through enforcement actions where applicable.

C. To the extent practicable, the department will coordinate the reviews with its other ~~local government~~ program reviews for the same entity to avoid redundancy.

D. The department shall provide ~~its~~ results and compliance recommendations to the board in the form of a corrective action agreement if deficiencies are found within 90 120 days of the completion of a review otherwise the board may find the program compliant.

E. The board shall determine if the ~~local stormwater management program VSMP~~ and ordinances where applicable are consistent with the Act and state stormwater management regulations and notify the ~~local stormwater management program VSMP authority~~ of its findings. If such findings indicate that the program is consistent with the Act and attendant regulations, the findings shall be provided to the ~~local stormwater management program VSMP authority~~ at least 21 days in advance of the meeting where the board will take action on the ~~locality's program VSMP~~. If such findings indicate that the program is inconsistent with the Act and attendant regulations, the findings shall be provided to the ~~local stormwater management program VSMP authority~~ at least 35 days in advance of the meeting where the board will take action on the ~~locality's program VSMP~~.

F. If the board determines that the deficiencies noted in the review will cause the ~~local stormwater management program VSMP~~ to be out of compliance with the Act and attendant regulations, the board shall notify the ~~local stormwater management program VSMP authority~~ concerning the deficiencies and provide a reasonable period of time in accordance with § 10.1-603.12 of the Code of Virginia for corrective action to be taken. If the ~~local stormwater management program VSMP authority~~ agrees to the corrective action approved by the board, the ~~local stormwater management program VSMP~~ will be considered to be conditionally compliant with the Act and attendant regulations until a subsequent finding of compliance is issued by the board. If the ~~local stormwater management program VSMP authority~~ fails to take the board's required corrective action implement the necessary compliance actions identified by the board within the specified time, the board may take action pursuant to § 10.1-603.12 of the Code of Virginia. ~~A local stormwater management program that fails to take corrective action in accordance with the board requirements shall not be considered a qualifying local program for purposes of the Virginia Stormwater Management Program permitting regulations.~~

Part III C

Virginia Soil and Water Conservation Board Authorization Procedures for ~~Local~~ Virginia Stormwater Management Programs

**4VAC50-60-146. Authority and applicability.**

Subdivision A 1 of § 10.1-603.4 of the Code of Virginia requires that the board establish standards and procedures for ~~authorizing a locality to administer a stormwater management program~~ for administering a VSMP. In accordance with that requirement, and with the further authority conferred upon the board by the Virginia Stormwater Management Act (§ 10.1-

603.2 et seq. of the Code of Virginia), this part specifies the procedures the board will utilize in authorizing a ~~locality VSMP authority~~ to administer a ~~qualifying local program VSMP~~.

**4VAC50-60-148. ~~Local~~ Virginia stormwater management program administrative requirements.**

A. A ~~local stormwater management program VSMP~~ shall provide for the following:

1. Identification of the authority accepting complete registration statements and of the authorities completing plan review, plan approval, inspection, and enforcement;
2. Submission and approval of erosion and sediment control plans in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations and the submission and approval of stormwater management plans;
3. Requirements to ensure compliance with 4VAC50-60-54, 4VAC50-60-55, and 4VAC50-60-56;
4. Requirements for inspections and monitoring of construction activities by the operator for compliance with local ordinances;
5. Requirements for long-term inspection and maintenance of stormwater management facilities;
6. Collection, distribution to the state if required, and expenditure of fees;
7. Enforcement procedures and civil penalties where applicable;
8. Policies and procedures to obtain and release bonds, if applicable; and
9. Procedures for complying with the applicable reporting and recordkeeping requirements in 4VAC50-60-126.

B. A ~~local stormwater management program locality's VSMP authority~~ shall adopt and enforce an ordinance(s) that incorporates the components set out in subdivisions 1 through 5 and 7 of subsection A of this section. Other VSMP authorities shall provide supporting documentation that incorporate the components set out in subdivisions 1 through 5 of subsection A of this section in a format acceptable to the department.

**4VAC50-60-150. Authorization procedures for ~~local~~ Virginia stormwater management programs.**

A. A locality required to adopt a ~~program VSMP~~ in accordance with § 10.1-603.3 A of the Code of Virginia or ~~those electing to seek authorization to administer a qualifying local program~~ a town electing to adopt its own VSMP in accordance with § 10.1-603.3 B of the Code of Virginia, must submit to the board an application package which, at a minimum, contains the following:

1. The draft ~~local stormwater management program VSMP~~ ordinance(s) as required in 4VAC50-60-148;
2. A funding and staffing plan; ~~and~~

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3. The policies and procedures including, but not limited to, agreements with Soil and Water Conservation Districts, adjacent localities, or other public or private entities for the administration, plan review, inspection, and enforcement components of the program; and

4. Such ordinances, plans, policies, and procedures must account for any town lying within the county as part of the locality's VSMP program unless such towns choose to adopt their own program.

B. Upon receipt of an application package, the board or its designee shall have 30 calendar days to determine the completeness of the application package. If an application package is deemed to be incomplete based on the criteria set out in subsection A of this section, the board or its designee must identify to the ~~locality~~ VSMP authority applicant in writing the reasons the application package is deemed deficient.

C. Upon receipt of a complete application package, the board or its designee shall have 120 calendar days for the review of the application package, unless an extension of time, not to exceed 12 months unless otherwise specified by the board in accordance with § 10.1-603.3 M of the Code of Virginia, is requested by the department, provided the VSMP authority applicant has made substantive progress. During the 120-day review period, the board or its designee shall either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the ~~locality~~ VSMP authority applicant in writing. If the application is not approved, the reasons for not approving the application shall be provided to the ~~locality~~ VSMP authority applicant in writing. Approval or denial shall be based on the application's compliance with the Virginia Stormwater Management Act and this chapter.

D. ~~A locality required to adopt a local stormwater management program~~ VSMP authority applicant in accordance with § 10.1-603.3 A of the Code of Virginia shall submit a complete application package for the board's review pursuant to a schedule set by the board in accordance with § 10.1-603.3 and shall adopt a ~~local stormwater management program~~ VSMP consistent with the Act and this chapter within the timeframe established pursuant to § 10.1-603.3 or otherwise established by the board.

E. ~~A locality town or other authorized entity not required to adopt a local stormwater management program~~ VSMP in accordance with § 10.1-603.3 A of the Code of Virginia but electing to adopt a ~~local stormwater management program~~ shall notify the board in accordance with the following:

~~1. A locality electing to adopt a local stormwater management program may notify the board of its intention by March 13, 2012. Such locality shall submit a complete application package for the board's review pursuant to a schedule set by the board and shall adopt a local stormwater management program within the timeframe established by the board.~~

~~2. A locality electing to adopt a local stormwater management program that does not notify the board within the initial six month period of its intention~~ VSMP may thereafter notify the board at any regular meeting of the board. Such notification shall include a proposed schedule for adoption of a local stormwater management program on or after July 1, 2014, and within a timeframe agreed upon by the board.

~~F. A local stormwater management program approved by the board shall be considered a qualifying local program for purposes of the Virginia Stormwater Management Program permitting regulations.~~

~~G. The department shall administer the responsibilities of the Act and this chapter in any locality in which a local stormwater management program has not been adopted. The department shall develop a schedule, to be approved by the board, for adoption and implementation of the requirements of this chapter in such localities. Such schedule may include phases of implementation and shall be based upon considerations including the typical number of permitted projects located within a locality, total number of acres disturbed by such permitted projects, and such other considerations as may be deemed necessary by the board.~~

## Part IV

Technical Criteria and State Permit Application Requirements for State Projects

### **4VAC50-60-160. Technical criteria and requirements for state projects.**

A. This part specifies technical criteria and administrative procedures for all state projects.

B. Stormwater management state permit applications prepared for state projects shall comply with the technical criteria outlined in Part II (4VAC50-60-40 et seq.) of this chapter and, to the maximum extent practicable, any ~~local stormwater management program~~ locality's VSMP authority's technical requirements adopted pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the ~~local program~~ locality's VSMP authority's technical requirements are not practical for the project under consideration.

C. The department may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria.

D. As a minimum, stormwater management state permit application shall contain the following:

1. The location and the design of the proposed stormwater management facilities.
2. Overall site plan with pre-developed and post-developed condition drainage area maps.
3. Comprehensive hydrologic and hydraulic computations of the pre-development and post-development runoff conditions for the required design storms, considered individually.



4. Calculations verifying compliance with the water quality requirements.
5. A description of the requirements for maintenance of the stormwater management facilities and a recommended schedule of inspection and maintenance.
6. The identification of a person or persons who will be responsible for maintenance.
7. All stormwater management and erosion and sediment control plans associated with a state permit application shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations.

**4VAC50-60-170. Requirements for state stormwater management ~~permit application~~ annual standards and specifications.**

A. ~~A permit application for approval of stormwater management standards~~ Standards and specifications may be submitted to the department by a state agency on an annual basis. Such standards and specifications shall be consistent with the requirements of the Act and this chapter, including the General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1100 et seq.), and the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and associated regulations. Each project constructed in accordance with the requirements of the Act, this chapter, and where required standards and specifications shall obtain coverage issued under the state general permit prior to land disturbance. State agency stormwater management standards and specifications describe how land-disturbing activities shall be conducted and shall include, but are not limited to:

1. Technical criteria to meet the requirements of ~~this the Act and regulations developed under this Act~~ this chapter.
2. Provisions for the preparation of individual stormwater management and erosion and sediment control plans for each project. In addition, the individual plans, to the maximum extent practicable, shall comply with any ~~local stormwater management program~~ locality's VSMP authority's technical requirements adopted pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the ~~local program~~ locality's VSMP authority's technical requirements are not practical for the project under consideration.
3. Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques specified to manage the quantity and quality of runoff, including an inspection and maintenance schedule, shall be developed and implemented.
4. Provisions for erosion and sediment control and stormwater management program administration, plan

design, review and approval, and construction inspection and enforcement;

5. Provisions for ensuring that responsible personnel and contractors obtain certifications or qualifications for erosion and sediment control and stormwater management comparable to those required ~~for local government~~ VSMP authorities;
6. Implementation of a project tracking and notification system to the department of all land-disturbing activities covered under ~~this the Act and this chapter;~~ and
7. Requirements for documenting on-site changes as they occur to ensure compliance with the requirements of the Act and this chapter.

B. Copies of such stormwater management specifications and standards including, but not limited to, design manuals, technical guides and handbooks, shall be submitted.

**4VAC50-60-180. Administrative procedures: stormwater management permit applications.**

A. Within 30 days after receipt of a complete state permit application (registration statement) submitted by a state agency, the department shall issue or deny the state permit.

1. The department shall transmit its decision in writing to the state agency that submitted the state permit application.
2. Denied state permit applications shall be revised and resubmitted to the department.

B. Approval of a state permit application (registration statement) for a state project shall be subject to the following conditions:

1. The state agency shall comply with all applicable requirements of the state permit and this chapter, and shall certify that all land clearing, construction, land development, and drainage will be done according to the state permit.
2. The land development shall be conducted only within the area specified in the state permit.
3. No changes may be made to a plan for which a state permit has been issued without review and written approval by the department.
4. The department shall be notified one week prior to the pre-construction meeting and one week prior to the commencement of land-disturbing activity.
5. The department shall conduct random inspections of the project to ensure compliance with the state permit.
6. The department shall require inspections and reports from the state agency responsible for compliance with the state permit and to determine if the measures required in the state permit provide effective stormwater management.

C. Compliance with the state permit shall be subject to the following conditions:

1. Where inspection by the responsible state agency reveals deficiencies in carrying out a permitted activity, the

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responsible state agency shall ensure compliance with the issued state permit, state permit conditions, and plan specifications.

2. Where inspections by department personnel reveal deficiencies in carrying out the state permit, the responsible state agency shall be issued a notice to comply, with corrective actions specified and the deadline within which the work shall be performed.

3. Whenever the Commonwealth or any of its agencies fail to comply within the time provided in a notice to comply, the director may petition the secretary of a given secretariat or an agency head for a given state agency for compliance. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution.

4. Where compliance will require the appropriation of funds, the director shall cooperate with the appropriate agency head in seeking such an appropriation; where the director determines that an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or other appropriate source.

5. The department may also seek compliance through other means specified in the Act and this chapter.

## **4VAC50-60-200. Administrative procedures: maintenance and inspections.**

A. Responsibility for the operation and maintenance of stormwater management facilities shall remain with the state agency and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each state project the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

B. At a minimum, a stormwater management facility shall be inspected by the responsible state agency on an annual basis and after any storm which causes the capacity of the facility principal spillway to be exceeded.

C. During construction of the stormwater management facilities, the department shall make inspections on a random basis.

D. The department shall require inspections and reports from the state agency responsible for ensuring compliance with the state permit and to determine if the measures required in the state permit provide effective stormwater management.

E. Inspection reports shall be maintained as part of the land disturbance project file.

## Part V Reporting

### **4VAC50-60-210. Reporting on stormwater management.**

~~Local governments delegated authority for the implementation of the stormwater management program and~~ state State agencies shall report annually, on a schedule to be specified, to the department on the extent to which stormwater management programs have reduced nonpoint source pollution to the Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide the following: data on the number and types of stormwater management facilities installed in the preceding year, the drainage area or watershed size served, the receiving stream or hydrologic unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness of the programs and BMP technologies in current use. VSMP authorities shall report in accordance with 4VAC50-60-126.

## Part VI

### ~~VSMP General Program Requirements Related to MS4s and Land-Disturbing Activities~~

### **4VAC50-60-300. Exclusions.**

The following discharges do not require ~~VSMP state 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 that 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 state 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 stormwater runoff 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 State Water Control Board may otherwise require.

**4VAC50-60-310. Prohibitions.**

A. Except in compliance with a **VSMP** state permit issued by the board pursuant to Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia, it shall be unlawful for any person to discharge stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.

B. Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the state permit.

C. No state permit may be issued:

1. When the conditions of the state permit do not provide for compliance with the applicable requirements of the CWA or the Act, or regulations promulgated under the CWA or the Act;

2. When the state permit applicant is required to obtain a state or other appropriate certification under § 401 of the CWA and that certification has not been obtained or waived;

3. When the regional administrator has objected to issuance of the state permit;

4. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;

5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

6. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b) of the CWA;

8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the board determines state permit issuance to be in the public interest; or

b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

9. To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by the Act and §§ 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

a. There are sufficient remaining pollutant load allocations to allow for the discharge; and

b. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The board may waive the submission of information by the new source or new discharger required by this subdivision if the board determines that it already has adequate information to evaluate the request. An explanation of the development of limitations to meet the

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criteria of this paragraph is to be included in the fact sheet to the state permit under 4VAC50-60-520.

#### **4VAC50-60-320. Effect of a state permit.**

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

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

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

#### **4VAC50-60-330. Continuation of expiring state permits.**

A. The state permit shall expire at the end of its term, except that the conditions of an expired state permit continue in force until the effective date of a new state permit if:

1. The permittee has submitted a timely application as required by this chapter, which is a complete application for a new state permit; and
2. The board, through no fault of the permittee, does not issue a new state with an effective date on or before the expiration date of the previous state permit.

B. ~~Permits~~ State permits continued under this section remain fully effective and enforceable.

C. When the permittee is not in compliance with the conditions of the expiring or expired state permit the board may choose to do any or all of the following:

1. Initiate enforcement action based upon the state permit which has been continued;
2. Issue a notice of intent to deny the new state permit. If the state permit is denied, the owner or operator would then be required to cease the activities authorized by the continued state permit or be subject to enforcement action for operating without a state permit;
3. Issue a new state permit with appropriate conditions; or
4. Take other actions authorized by this chapter.

#### **4VAC50-60-340. Confidentiality of information.**

A. The board, the department, or the ~~permit-issuing~~ VSMP authority may require every state permit applicant or state permittee to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the Act and this chapter. Any personal information shall not be disclosed except to an appropriate official of the board,

department, or ~~permit-issuing~~ VSMP authority or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:

1. Disclosure of records of the department, the board, or the ~~permit-issuing~~ VSMP authority relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions is prohibited. Upon request, such records shall be disclosed after a proposed sanction resulting from the investigation has been determined by the department, the board, or the ~~permit-issuing~~ VSMP authority.

2. Any secret formula, secret processes, or secret methods other than effluent data submitted to the department pursuant to this chapter may be claimed as confidential by the submitter in accordance with 40 CFR 122.7 (2000). Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae," "secret processes" "secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

3. This section shall not be construed to prohibit the disclosure of records related to inspection reports, notices of violation, and documents detailing the nature of any land-disturbing activity that may have occurred, or similar documents.

B. Claims of confidentiality for the following information will be denied:

1. The name and address of any state permit applicant or state permittee;
2. ~~Permit~~ State permit applications, state permits, and effluent data.

C. Information required by ~~VSMP~~ state permit application forms provided by the department may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

#### **4VAC50-60-350. Guidance documents.**

The board may develop and use guidance, as appropriate, to implement technical and regulatory details of the ~~VSMP~~ state permit program. Such guidance is distinguished from regulation by the fact that it is not binding on either the board or permittees. If a more appropriate methodology than that called for in guidance is available in a given situation, the more appropriate methodology shall be used to the extent it is

consistent with applicable regulations and the Stormwater Management Act.

Part VII  
~~V~~SMP State Permit Applications

**4VAC50-60-360. Application for a state permit.**

A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or upon state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities and who does not have an effective state permit, except persons covered by general permits, excluded from the requirement for a state permit by this chapter, shall submit a complete application ~~to the department~~ in accordance with this section.

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 state permit.

C. Time to apply. 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. Stormwater discharges from large construction activities and stormwater discharges associated with small construction activities shall submit applications at least 90 days before the date on which construction is to commence. 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.

D. Duty to reapply. All state permittees with a currently effective state permit shall submit a new application at least 180 days before the expiration date of the existing state 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 state permit.

E. Completeness. The board shall not issue a state permit before receiving a complete application for a state permit except for ~~V~~SMP general permits. An application for a state 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 state permit shall be judged independently of the status of any other state permit application or state permit for the same facility or activity.

F. Information requirements. All applicants for ~~V~~SMP state permits shall provide the following information ~~to the department~~ using the application form provided by the department.

1. The activities conducted by the state permit applicant which require it to obtain a ~~V~~SMP state 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 State Water Control 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;
- i. ~~V~~SMP program A state permit under the CWA and the Virginia Stormwater Management Act; and
- j. 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, which depicts: the facility and (i) each of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage, or disposal facilities; (iii) each well where fluids from the facility are injected underground; and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the state permit applicant in the map area; and

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

G. Variance requests. 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:

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(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft state 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 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 that 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 state 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 state permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2000) 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 Administrator 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 state permit on the state 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 state 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 state permit. A copy of the request shall be sent simultaneously to the department.

H. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsection G of this section, the board may notify a state permit applicant before a draft state permit is issued that the draft state permit will likely contain limitations which are eligible for variances. In the notice the board may require the state permit applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 (2000) 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 state permit application has been submitted. The draft or final state 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 G 2 a (2) or G 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.

I. Recordkeeping. ~~Permit~~ State permit applicants shall keep records of all data used to complete state 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.

## **4VAC50-60-370. Signatories to state permit applications and reports.**

A. All state permit applications shall be signed as follows:

1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of making

major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

B. All reports required by state permits, and other information requested by the board shall be signed by a person described in subsection A of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

1. The authorization is made in writing by a person described in subsection A of this section;

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

3. The written authorization is submitted to the department.

C. If an authorization under subsection B of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection B of this section must be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

D. Any person signing a document under subsection A or B of 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."

#### 4VAC50-60-380. Stormwater discharges.

A. ~~Permit~~ State permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be required to obtain a ~~VSM~~ state permit except:

a. A discharge with respect to which a state permit has been issued prior to February 4, 1987;

b. A stormwater discharge associated with large construction activity;

c. A discharge from a large municipal separate storm sewer system;

d. A discharge from a medium municipal separate storm sewer system; or

e. A discharge that 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 stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances that do not require a state permit under subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from the definition of point source.

The board may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the board may consider the following factors:

(1) The location of the discharge with respect to surface waters;

(2) The size of the discharge;

(3) The quantity and nature of the pollutants discharged to surface waters; and

(4) Other relevant factors.

2. The board may not require a state permit for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows that are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and that 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.

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3. a. ~~Permits~~ State permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

b. The board may either issue one system-wide state permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct state permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

c. The operator of a discharge from a municipal separate storm sewer that is part of a large or medium municipal separate storm sewer system must either:

(1) Participate in a state permit application (to be a state permittee or a state co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system that covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(2) Submit a distinct state permit application that only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(3) A regional authority may be responsible for submitting a state permit application under the following guidelines:

(a) The regional authority together with state permit co-applicants shall have authority over a stormwater management program that is in existence, or shall be in existence at the time Part 1 of the application is due;

(b) The state permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;

(c) Each of the operators of municipal separate storm sewers within large or medium municipal separate storm sewer systems, that are under the purview of the designated regional authority, shall comply with the application requirements of subsection C of this section.

d. One state permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The board may issue one system-wide state permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

e. ~~Permits~~ State permits for all or a portion of all discharges from large or medium municipal separate

storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the state permit, including different management programs for different drainage areas that contribute stormwater to the system.

f. ~~Co-permittees~~ State co-permittees need only comply with state permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.

4. In addition to meeting the requirements of subsection B of this section, an operator of a stormwater discharge associated with a large construction activity that 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, that best reflects the principal products or services provided by each facility; and any existing ~~VSMP~~ state permit number.

5. The board may issue state permits for municipal separate storm sewers that are designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue state permits for individual discharges.

6. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain VPDES permits in accordance with the procedures of 4VAC50-60-360 and are not subject to the provisions of this section.

7. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this subsection 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.

8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that are not required by subdivision 1 of this subsection to obtain a state permit, operators shall be required to obtain a ~~VSMP~~ state permit only if:

(1) The discharge is from a small MS4 required to be regulated pursuant to 4VAC50-60-400 B;

(2) The discharge is a stormwater discharge associated with small construction activity as defined in 4VAC50-60-10;

(3) The board or the EPA regional administrator determines that stormwater 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



(4) 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 small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4) of this subsection shall seek coverage under a ~~VSMMP~~ state permit in accordance with 4VAC50-60-400 C through E. Operators of nonmunicipal sources designated pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a ~~VSMMP~~ state permit in accordance with subdivision B 1 of this section.

c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and (4) of this subsection shall apply to the board for a state permit within 180 days of receipt of notice, unless permission for a later date is granted by the board.

B. Application requirements for stormwater discharges associated with large and small construction activity.

1. Dischargers of stormwater associated with large and small construction activity are required to apply for an individual state permit or seek coverage under a promulgated stormwater general permit. Facilities that are required to obtain an individual state permit, or any discharge of stormwater that the board is evaluating for designation under subdivision A 1 e of this section and is not a municipal separate storm sewer, shall submit a ~~VSMMP~~ state application in accordance with the requirements of 4VAC50-60-360 as modified and supplemented by the provisions of this subsection.

a. The operator of an existing or new stormwater discharge that is associated with a large or small construction activity shall provide a narrative description of:

- (1) The location (including a map) and the nature of the construction activity;
- (2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the state permit;
- (3) Proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable state and ~~local erosion and sediment control~~ VESCP requirements;
- (4) Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local ~~erosion and sediment control~~ VESCP requirements;
- (5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the state permit application is completed,

the nature of fill material and existing data describing the soil or the quality of the discharge; and

- (6) The name of the receiving water.
- (7) Location of Chesapeake Bay Preservation Areas.

b. ~~Permit State permit~~ applicants shall provide such other information the board may reasonably require to determine whether to issue a state permit.

C. Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the board under subdivision A 1 e of this section, may submit a jurisdiction-wide or system-wide state permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a state permit copapplicant to the same application. ~~Permit State permit~~ applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under subdivision A 1 e of this section shall include;

1. Part 1 of the application shall consist of:

- a. The state permit applicants' name, address, telephone number of contact person, ownership status, and status as a state or local government entity;
- b. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in subdivision 2 a of this subsection, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria;
- c. Source identification.

(1) A description of the historic use of ordinances, guidance or other controls that limited the discharge of nonstormwater discharges to any publicly owned treatment works serving the same area as the municipal separate storm sewer system.

(2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the state permit application. The following information shall be provided:

- (a) The location of known municipal storm sewer system outfalls discharging to surface waters;
- (b) A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural, and industrial uses) accompanied with estimates of population densities and projected growth

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for a 10-year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(c) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(d) The location and the state permit number of any known discharge to the municipal storm sewer that has been issued a ~~VSMMP~~ state permit;

(e) The location of major structural controls for stormwater discharge (retention basins, detention basins, major infiltration devices, etc.); and

(f) The identification of publicly owned parks, recreational areas, and other open lands;

#### d. Discharge characterization.

(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(2) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(3) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of the State Water Control Law and the CWA goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(b) Listed under §§ 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or § 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under § 314(a) of the CWA (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

(e) Areas of concern of the Great Lakes identified by the International Joint Commission;

(f) Designated estuaries under the National Estuary Program under § 320 of the CWA;

(g) Recognized by the state permit applicant as highly valued or sensitive waters;

(h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(4) Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the state permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24-hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of nonstormwater discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 CFR Part 136 (2000), the state permit applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(a) A grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

(b) All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(c) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(d) Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(e) Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(f) For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this subsection, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the state permit applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the state permit applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(5) Information and a proposed program to meet the requirements of subdivision 2 c of this subsection. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under subdivision 2 c (1) of this subsection, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, and a description of the sampling equipment.

The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see subdivision 1 d (3) of this subsection) to the extent practicable;

e. Management programs.

(1) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to, procedures to control pollution resulting from construction activities, floodplain management controls, wetland protection measures, best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under state law as well as local requirements.

(2) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and

f. Fiscal resources. A description of the financial resources currently available to the municipality to complete Part 2 of the state permit application. A description of the municipality's budget for existing stormwater programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for stormwater programs.

2. Part 2 of the application shall consist of:

a. A demonstration that the state permit applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts that authorizes or enables the state permit applicant at a minimum to:

(1) Control through ordinance, state permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;

(2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than stormwater;

(4) Control through interagency agreements among state permit coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(5) Require compliance with conditions in ordinances, state permits, contracts or orders; ~~an~~ and

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(6) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with state permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer;

b. The location of any major outfall that discharges to surface waters that was not reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) that best reflects the principal products or services provided by each facility that may discharge, to the municipal separate storm sewer, stormwater associated with industrial activity;

c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of this subsection, the state permit applicant must collect a sample of effluent in accordance with 4VAC50-60-390 and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2000). When no analytical method is approved the state permit applicant may use any suitable method but must provide a description of the method. The state permit applicant must provide information characterizing the quality and quantity of discharges covered in the state permit application, including:

(1) Quantitative data from representative outfalls designated by the board (based on information received in Part 1 of the application, the board shall designate between five and 10 outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls) covered in the application, the board shall designate all outfalls developed as follows:

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of stormwater discharges from three storm events occurring at least one month apart in accordance with the requirements at 4VAC50-60-390 (the board may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(b) A narrative description shall be provided of the date and duration of the storm event or events sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of this subsection, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of 40 CFR Part 122 Appendix D (2000), and for the following pollutants:

Total suspended solids (TSS)

Total dissolved solids (TDS)

COD

BOD<sub>5</sub>

Oil and grease

Fecal coliform

Fecal streptococcus

pH

Total Kjeldahl nitrogen

Nitrate plus nitrite

Dissolved phosphorus

Total ammonia plus organic nitrogen

Total phosphorus

(d) Additional limited quantitative data required by the board for determining state permit conditions (the board may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to ensure representativeness);

(2) Estimates of the annual pollutant load of the cumulative discharges to surface waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to surface waters from all identified municipal outfalls during a storm event (as described under 4VAC50-60-390) for BOD<sub>5</sub>, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

(3) A proposed schedule to provide estimates for each major outfall identified in either subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under subdivision 2 c (1) of this subsection; and

(4) A proposed monitoring program for representative data collection for the term of the state permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment;

d. A proposed management program that covers the duration of the state permit. It shall include a comprehensive planning process that involves public participation and, where necessary, intergovernmental coordination to reduce the discharge of pollutants to the

maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions that are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each state permit coapplicant. Proposed programs may impose controls on a system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the board when developing state permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(1) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the state permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in subdivision 2 d (4) of this subsection;

(c) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(d) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible;

(e) A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for

municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under subdivision 2 d (3) of this subsection); and

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer that will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities;

(2) A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate ~~VSMMP~~ state permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(a) A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of nonstormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to surface waters: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm sewers, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to surface waters);

(b) A description of procedures to conduct on-going field screening activities during the life of the state permit, including areas or locations that will be evaluated by such field screens;

(c) A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of nonstormwater (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue Active Substances—MBAS), residual chlorine, fluorides and

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potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(d) A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(3) A description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC § 11023), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(b) Describe a monitoring program for stormwater discharges associated with the industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented during the term of the state permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing VPDES permit for a facility; oil and grease, COD, pH, BOD<sub>5</sub>, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 4VAC50-60-390 F and G; and

(4) A description of a program to implement and maintain structural and nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include:

(a) A description of procedures for site planning that incorporate consideration of potential water quality impacts;

(b) A description of requirements for nonstructural and structural best management practices;

(c) A description of procedures for identifying priorities for inspecting sites and enforcing control measures that consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(d) A description of appropriate educational and training measures for construction site operators;

e. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal stormwater quality management program. The assessment shall also identify known impacts of stormwater controls on groundwater;

f. For each fiscal year to be covered by the state permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under subdivisions 2 c and d of this subsection. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds;

g. Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination; and

h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this subsection are not practicable or are not applicable, the board may exclude any operator of a discharge from a municipal separate storm sewer that is designated under subdivision A 1 e of this section, or that is located in the counties listed in 40 CFR Part 122 Appendix H or Appendix I (2000) (except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties) from such requirements. The board shall not exclude the operator of a discharge from a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I (2000) from any of the state permit application requirements under this subdivision except where authorized under this subsection.

## D. Petitions.

1. Any operator of a municipal separate storm sewer system may petition the appropriate authority, the Virginia Soil and Water Conservation Board or the State Water Control Board, to require a separate state permit for any discharge into the municipal separate storm sewer system.

2. Any person may petition the board to require a ~~VSM~~ state permit for a discharge which is composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

3. Any person may petition the board for the designation of a large, medium or small municipal separate storm sewer system as defined by this chapter.

4. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small MS4, in which case the board shall make a final determination on the petition within 180 days after its receipt.

#### 4VAC50-60-390. Effluent sampling procedures.

~~VSM~~ State permit applicants for discharges from large and small municipal storm sewers or municipal storm sewers designated under 4VAC50-60-380 A 1 e shall provide the following information to the department, using application forms provided by the department.

A. Information on stormwater discharges that is to be provided as specified in 4VAC50-60-380. When quantitative data for a pollutant are required, the state permit applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2000). When no analytical method is approved the state permit applicant may use any suitable method but must provide a description of the method. When an a state permit applicant has two or more outfalls with substantially identical effluents, the board may allow the state permit 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~~ a state permit 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 stormwater discharges, the board may waive composite sampling for any outfall for which the state permit 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 stormwater 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 state permit 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 stormwater 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. However, a minimum of one grab sample may be taken for stormwater 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 stormwater 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 4VAC50-60-380 C 1. For all stormwater state permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 4VAC50-60-380 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 (2000), and additional time for submitting data on a case-by-case basis. A state permit 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 stormwater runoff from the facility.)

C. Every state permit applicant must report quantitative data for every outfall for the following pollutants:

- Biochemical oxygen demand (BOD<sub>5</sub>)
- 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 subsection C of this section if the state permit applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a state permit can be obtained with less stringent requirements.

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E. Each state permit applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2000)) 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 (2000) for the state permit applicant's industrial category or categories unless the state permit applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2000) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry. A determination that a state permit applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the state permit 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 (2000) (the toxic metals, cyanide, and total phenols).

F. 1. Each state permit 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 (2000) (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 state permit applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline, the state permit 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 (2000) (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 state permit 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 state permit 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 state permit applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. A state permit 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 (2000) (the organic toxic pollutants).

G. Each state permit 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 (2000) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the state permit 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 state permit 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.

## **4VAC50-60-400. Small municipal separate storm sewer systems.**

A. Objectives of the stormwater regulations for small MS4s.

1. Subsections A through G of this section are written in a "readable regulation" format that includes both rule requirements and guidance that is not legally binding. The recommended guidance is distinguished from the regulatory requirements by putting the guidance in a separate subdivision headed by the word "Note."

2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this portion of the stormwater program is to designate additional sources that need to be regulated to protect water quality and to establish a comprehensive stormwater program to regulate these sources.

3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by human activities can harm surface water resources in several ways including by changing natural hydrologic patterns and by elevating pollutant concentrations and loadings. Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding substances, and floatables.

4. The board strongly encourages partnerships and the watershed approach as the management framework for efficiently, effectively, and consistently protecting and restoring aquatic ecosystems and protecting public health.

B. As an operator of a small MS4, am I regulated under the ~~VSMP~~ state's stormwater program?



1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and

a. Your small MS4 is located in an urbanized area as determined by the latest decennial census by the Bureau of the Census (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

b. You are designated by the board, including where the designation is pursuant to subdivisions C 3 a and b of this section or is based upon a petition under 4VAC50-60-380 D.

2. You may be the subject of a petition to the board to require a ~~VSM~~ state permit for your discharge of stormwater. If the board determines that you need a state permit, you are required to comply with subsections C through E of this section.

3. The board may waive the requirements otherwise applicable to you if you meet the criteria of subdivision 4 or 5 of this subsection. If you receive a waiver under this section, you may subsequently be required to seek coverage under a ~~VSM~~ state permit in accordance with subdivision C 1 of this section if circumstances change. (See also subdivision E 2 of this section).

4. The board may waive state permit coverage if your MS4 serves a population of less than 1,000 within the urbanized area and you meet the following criteria:

a. Your system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the ~~VSM stormwater program board~~; and

b. If you discharge any pollutants that have been identified as a cause of impairment of any water body to which you discharge, stormwater controls are not needed based on wasteload allocations that are part of an EPA-approved or established "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The board may waive state permit coverage if your MS4 serves a population under 10,000 and you meet the following criteria:

a. The board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from your MS4;

b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of an EPA-approved ~~or~~ established TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from your MS4; and

d. The board has determined that future discharges from your MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

C. If I am an operator of a regulated small MS4, how do I apply for a ~~VSM~~ state permit and when do I have to apply?

1. If you operate a regulated small MS4 under subsection B of this section, you must seek coverage under a ~~VSM~~ state permit issued by the board.

2. You must seek authorization to discharge under a general or individual ~~VSM~~ state permit, as follows:

a. If the board has issued a general permit applicable to your discharge and you are seeking coverage under the general permit, you must submit a registration statement that includes the information on your best management practices and measurable goals required by subdivision D 4 of this section. You may file your own registration statement, or you and other municipalities or governmental entities may jointly submit a registration statement. If you want to share responsibilities for meeting the minimum measures with other municipalities or governmental entities, you must submit a registration statement that describes which minimum measures you will implement and identify the entities that will implement the other minimum measures within the area served by your MS4. The general permit will explain any other steps necessary to obtain permit authorization.

b. (1) If you are seeking authorization to discharge under an individual state permit and wish to implement a program under subsection D of this section, you must submit an application to the board that includes the information required under 4VAC50-60-360 F and subdivision D 4 of this section, an estimate of square mileage served by your small MS4, and any additional information that the board requests. A storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section will satisfy the map requirement in 4VAC50-60-360 F 7.

(2) If you are seeking authorization to discharge under an individual state permit and wish to implement a program that is different from the program under subsection D of this section, you will need to comply with the state permit application requirements of 4VAC50-60-380 C. You must submit both parts of the application requirements in 4VAC50-60-380 C 1 and 2 by March 10,

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2003. You do not need to submit the information required by 4VAC50-60-380 C 1 b and C 2 regarding your legal authority, unless you intend for the state permit writer to take such information into account when developing your other state permit conditions.

(3) If allowed by the board, you and another regulated entity may jointly apply under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under an individual state permit.

c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a ~~VSMP stormwater~~ state permit and that other MS4 is willing to have you participate in its stormwater program, you and the other MS4 may jointly seek a modification of the other MS4 state permit to include you as a limited state co-permittee. As a limited state co-permittee, you will be responsible for compliance with the state permit's conditions applicable to your jurisdiction. If you choose this option you will need to comply with the state permit application requirements of 4VAC50-60-380, rather than the requirements of subsection D of this section. You do not need to comply with the specific application requirements of 4VAC50-60-380 C 1 c and d and 4VAC50-60-380 C 2 c (discharge characterization). You may satisfy the requirements in 4VAC50-60-380 C 1 e and 2 d (identification of a management program) by referring to the other MS4's stormwater management program.

d. NOTE: In referencing an MS4's stormwater management program, you should briefly describe how the existing plan will address discharges from your small MS4 or would need to be supplemented in order to adequately address your discharges. You should also explain your role in coordinating stormwater pollutant control activities in your MS4 and detail the resources available to you to accomplish the plan.

3. If you operate a regulated small MS4:

a. Designated under subdivision B 1 a of this section, you must apply for coverage under a ~~VSMP~~ state permit or apply for a modification of an existing ~~VSMP~~ state permit under subdivision 2 c of this subsection by March 10, 2003.

b. Designated under subdivision B 1 b of this section, you must apply for coverage under a ~~VSMP~~ state permit or apply for a modification of an existing VPDES permit under subdivision 2 c of this subsection within 180 days of notice, unless the board grants a later date.

D. As an operator of a regulated small MS4, what will my ~~VSMP MS4 stormwater~~ state permit require?

1. Your ~~VSMP~~ MS4 state permit will require at a minimum that you develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from your MS4 to the maximum

extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Virginia Stormwater Management Act, and the State Water Control Law. Your stormwater management program must include the minimum control measures described in subdivision 2 of this subsection unless you apply for a state permit under 4VAC50-60-380 C. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the state permit required pursuant to subsection C of this section constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. The board will specify a time period of up to five years from the date of state permit issuance for you to develop and implement your program.

2. Minimum control measures.

a. Public education and outreach on stormwater impacts.

(1) You must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff.

(2) NOTE: You may use stormwater educational materials provided by the state, your tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The public education program should inform individuals and households about the steps they can take to reduce stormwater pollution, such as ensuring proper septic system maintenance, ensuring the proper use and disposal of landscape and garden chemicals including fertilizers and pesticides, protecting and restoring riparian vegetation, and properly disposing of used motor oil or household hazardous wastes. The board recommends that the program inform individuals and groups how to become involved in local stream and beach restoration activities as well as activities that are coordinated by youth service and conservation corps or other citizen groups. The board recommends that the public education program be tailored, using a mix of locally appropriate strategies, to target specific audiences and communities. Examples of strategies include: distributing brochures or fact sheets, sponsoring speaking engagements before community groups, providing public service announcements, implementing educational programs targeted at school-age children, and conducting community-based projects such as storm drain stenciling,

and watershed and beach cleanups. In addition, the board recommends that some of the materials or outreach programs be directed toward targeted groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts. For example, providing information to restaurants on the impact of grease clogging storm drains and to garages on the impact of oil discharges. You are encouraged to tailor your outreach program to address the viewpoints and concerns of all communities, particularly minority and disadvantaged communities, as well as any special concerns relating to children.

b. Public involvement/participation.

(1) You must, at a minimum, comply with state, tribal, and local public notice requirements when implementing a public involvement/participation program.

(2) The board recommends that the public be included in developing, implementing, and reviewing your stormwater management program and that the public participation process should make efforts to reach out and engage all economic and ethnic groups. Opportunities for members of the public to participate in program development and implementation include serving as citizen representatives on a local stormwater management panel, attending public hearings, working as citizen volunteers to educate other individuals about the program, assisting in program coordination with other pre-existing programs, or participating in volunteer monitoring efforts. (Citizens should obtain approval where necessary for lawful access to monitoring sites.)

c. Illicit discharge detection and elimination.

(1) You must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined in 4VAC50-60-10) into your small MS4.

(2) You must:

(a) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all surface waters that receive discharges from those outfalls;

(b) To the extent allowable under state, tribal or local law, effectively prohibit, through ordinance or other regulatory mechanism, nonstormwater discharges into your storm sewer system and implement appropriate enforcement procedures and actions;

(c) Develop and implement a plan to detect and address nonstormwater discharges, including illegal dumping, to your system; and

(d) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(3) You need to address the following categories of nonstormwater discharges or flows (i.e., illicit discharges) only if you identify them as significant

contributors of pollutants to your small MS4: water line flushing, landscape irrigation, diverted stream flows, rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20) (2000)), uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water. (Discharges or flows from fire-fighting activities are excluded from the effective prohibition against nonstormwater and need only be addressed where they are identified as significant sources of pollutants to surface waters.)

(4) NOTE: The board recommends that the plan to detect and address illicit discharges include the following four components: (i) procedures for locating priority areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit discharge, (iii) procedures for removing the source of the discharge, and (iv) procedures for program evaluation and assessment. The board recommends visually screening outfalls during dry weather and conducting field tests of selected pollutants as part of the procedures for locating priority areas. Illicit discharge education actions may include storm drain stenciling; a program to promote, publicize, and facilitate public reporting of illicit connections or discharges; and distribution of outreach materials.

d. Construction site stormwater runoff control.

(1) You must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to your small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in your program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the board waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 4VAC50-60-10, you are not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.

(2) Your program must include the development and implementation of, at a minimum:

(a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state, tribal, or local law;

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(b) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(d) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(e) Procedures for receipt and consideration of information submitted by the public; and

(f) Procedures for site inspection and enforcement of control measures.

(3) NOTE: Examples of sanctions to ensure compliance include nonmonetary penalties, fines, bonding requirements and/or state permit denials for noncompliance. The board recommends that procedures for site plan review include the review of individual pre-construction site plans to ensure consistency with ~~local sediment and erosion control~~ VESCP requirements. Procedures for site inspections and enforcement of control measures could include steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water quality. You are encouraged to provide appropriate educational and training measures for construction site operators. You may wish to require a stormwater pollution prevention plan for construction sites within your jurisdiction that discharge into your system. (See 4VAC50-60-460 L and subdivision E 2 of this section.) The board may recognize that another government entity may be responsible for implementing one or more of the minimum measures on your behalf.

e. Post-construction stormwater management in new development and redevelopment.

(1) You must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into your small MS4. Your program must ensure that controls are in place that would prevent or minimize water quality impacts.

(2) You must:

(a) Develop and implement strategies that include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for your community;

(b) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development

and redevelopment projects to the extent allowable under state, tribal or local law; and

(c) Ensure adequate long-term operation and maintenance of BMPs.

(3) NOTE: If water quality impacts are considered from the beginning stages of a project, new development and potentially redevelopment provide more opportunities for water quality protection. The board recommends that the BMPs chosen be appropriate for the local community, minimize water quality impacts, and attempt to maintain pre-development runoff conditions. In choosing appropriate BMPs, the board encourages you to participate in locally based watershed planning efforts that attempt to involve a diverse group of stakeholders, including interested citizens. When developing a program that is consistent with this measure's intent, the board recommends that you adopt a planning process that identifies the municipality's program goals (e.g., minimize water quality impacts resulting from post-construction runoff from new development and redevelopment), implementation strategies (e.g., adopt a combination of structural and/or nonstructural BMPs), operation and maintenance policies and procedures, and enforcement procedures. In developing your program, you should consider assessing existing ordinances, policies, programs and studies that address stormwater runoff quality. In addition to assessing these existing documents and programs, you should provide opportunities to the public to participate in the development of the program. Nonstructural BMPs are preventative actions that involve management and source controls such as: (i) policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space (including a dedicated funding source for open space acquisition), provide buffers along sensitive water bodies, minimize impervious surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing infrastructure; (iii) education programs for developers and the public about project designs that minimize water quality impacts; and (iv) measures such as minimization of percent impervious area after development and minimization of directly connected impervious areas. Structural BMPs include: storage practices such as wet ponds and extended-detention outlet structures; filtration practices such as grassed swales, sand filters and filter strips; and infiltration practices such as infiltration basins and infiltration trenches. The board recommends that you ensure the appropriate implementation of the structural BMPs by considering some or all of the following: pre-construction review of BMP designs; inspections during construction to verify BMPs are built as designed; post-

construction inspection and maintenance of BMPs; and penalty provisions for the noncompliance with design, construction or operation and maintenance. Stormwater technologies are constantly being improved, and the board recommends that your requirements be responsive to these changes, developments or improvements in control technologies.

f. Pollution prevention/good housekeeping for municipal operations.

(1) You must develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, state, tribe, or other organizations, your program must include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

(2) NOTE: The board recommends that, at a minimum, you consider the following in developing your program: maintenance activities, maintenance schedules, and long-term inspection procedures for structural and nonstructural stormwater controls to reduce floatables and other pollutants discharged from your separate storm sewers; controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by you, and waste transfer stations; procedures for properly disposing of waste removed from the separate storm sewers and areas listed above (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways to ensure that new flood management projects assess the impacts on water quality and examine existing projects for incorporating additional water quality protection devices or practices. Operation and maintenance should be an integral component of all stormwater management programs. This measure is intended to improve the efficiency of these programs and require new programs where necessary. Properly developed and implemented operation and maintenance programs reduce the risk of water quality problems.

3. If an existing ~~qualifying local program~~ VSMP requires you to implement one or more of the minimum control measures of subdivision 2 of this subsection, the board may include conditions in your ~~VPDES~~ state permit that direct you to follow that ~~qualifying program's~~ VSMP's requirements rather than the requirements of subdivision 2 of this subsection. A ~~qualifying local program~~ VSMP is a local, state or tribal municipal stormwater management

program that imposes, at a minimum, the relevant requirements of subdivision 2 of this subsection.

4. a. In your state permit application (either a registration statement for coverage under a general permit or an individual permit application), you must identify and submit to the board the following information:

(1) The best management practices (BMPs) that you or another entity will implement for each of the stormwater minimum control measures provided in subdivision 2 of this subsection;

(2) The measurable goals for each of the BMPs including, as appropriate, the months and years in which you will undertake required actions, including interim milestones and the frequency of the action; and

(3) The person or persons responsible for implementing or coordinating your stormwater management program.

b. If you obtain coverage under a general permit, you are not required to meet any measurable goals identified in your registration statement in order to demonstrate compliance with the minimum control measures in subdivisions 2 c through f of this subsection unless, prior to submitting your registration statement, EPA or the board has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, you still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures.

c. NOTE: Either EPA or the board will provide a menu of BMPs. You may choose BMPs from the menu or select others that satisfy the minimum control measures.

5. a. You must comply with any more stringent effluent limitations in your state permit, including state permit requirements that modify or are in addition to the minimum control measures based on an approved total maximum daily load (TMDL) or equivalent analysis. The board may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

b. NOTE: The board strongly recommends that until the evaluation of the stormwater program in subsection G of this section, no additional requirements beyond the minimum control measures be imposed on regulated small MS4s without the agreement of the operator of the affected small MS4, except where an approved TMDL or equivalent analysis provides adequate information to develop more specific measures to protect water quality.

6. You must comply with other applicable ~~VSMP~~ state permit requirements, standards and conditions established in the individual or general permit developed consistent with the provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.

7. Evaluation and assessment.

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a. You must evaluate program compliance, the appropriateness of your identified best management practices, and progress towards achieving your identified measurable goals. The board may determine monitoring requirements for you in accordance with monitoring plans appropriate to your watershed. Participation in a group monitoring program is encouraged.

b. You must keep records required by the VSMP state permit for at least three years. You must submit your records to the department only when specifically asked to do so. You must make your records, including a description of your stormwater management program, available to the public at reasonable times during regular business hours (see 4VAC50-60-340 for confidentiality provision). You may assess a reasonable charge for copying. You may require a member of the public to provide advance notice.

c. Unless you are relying on another entity to satisfy your VSMP state permit obligations under subdivision E 1 of this section, you must submit annual reports to the department for your first state permit term. For subsequent state permit terms, you must submit reports in years two and four unless the department requires more frequent reports. Your report must include:

(1) The status of compliance with state permit conditions, an assessment of the appropriateness of your identified best management practices and progress towards achieving your identified measurable goals for each of the minimum control measures;

(2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(3) A summary of the stormwater activities you plan to undertake during the next reporting cycle;

(4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

(5) Notice that you are relying on another governmental entity to satisfy some of your state permit obligations (if applicable).

E. As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

1. You may rely on another entity to satisfy your VSMP state permit obligations to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding VSMP state permit requirement; and

c. The other entity agrees to implement the control measure on your behalf. In the reports you must submit under subdivision D 7 c of this section, you must also specify that you rely on another entity to satisfy some of your state permit obligations. If you are relying on another governmental entity regulated under the VSMP state permit program to satisfy all of your state permit obligations, including your obligation to file periodic reports required by subdivision D 7 c of this section, you must note that fact in your registration statement, but you are not required to file the periodic reports. You remain responsible for compliance with your state permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the board encourages you to enter into a legally binding agreement with that entity if you want to minimize any uncertainty about compliance with your state permit.

2. In some cases, the board may recognize, either in your individual VSMP permit or in a VSMP general permit, that another governmental entity is responsible under a VSMP state permit for implementing one or more of the minimum control measures for your small MS4. Where the board does so, you are not required to include such minimum control measure(s) in your stormwater management program. Your state permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

F. As an operator of a regulated small MS4, what happens if I don't comply with the application or state permit requirements in subsections C through E of this section?

VSMP State permits are enforceable under the Clean Water Act and the Virginia Stormwater Management Act. Violators may be subject to the enforcement actions and penalties described in Clean Water Act §§ 309 (b), (c), and (g) and 505 or under §§ 10.1-603.12:1 through 10.1-603.14 of the Code of Virginia. Compliance with a state permit issued pursuant to § 402 of the Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306, 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human health. If you are covered as a state co-permittee under an individual permit or under a general permit by means of a joint registration statement, you remain subject to the enforcement actions and penalties for the failure to comply with the terms of the state permit in your jurisdiction except as set forth in subdivision E 2 of this section.

G. Will the small MS4 stormwater program regulations at subsections B through F of this section change in the future?

The board will evaluate the small MS4 regulations at subsections B through F of this section after December 10, 2012, and make any necessary revisions. (EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on

data from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from stormwater, and the effectiveness of best management practices (BMPs), as well as other relevant information sources.)

#### 4VAC50-60-410. General permits.

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

- a. Designated planning areas under §§ 208 and 303 of CWA;
- b. Sewer districts or sewer authorities;
- c. City, county, or state political boundaries;
- d. State highway systems;
- e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or
- g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are stormwater point sources.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 4VAC50-60-460, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

#### B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge.

- a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger who fails to submit a notice of intent in accordance with the terms of the state permit is not authorized to discharge, under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of

this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams. All notices of intent shall be signed in accordance with 4VAC50-60-370.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the state permit.

d. General permits shall specify whether a discharger that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the state permit, is authorized to discharge in accordance with the state permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Stormwater discharges associated with small construction activity may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential for toxic and conventional pollutants in the discharges, (iv) expected volume of the discharges, (v) other means of identifying discharges covered by the state permit, and (vi) estimated number of discharges to be covered by the state permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered. A discharger so notified may request an individual permit under subdivision 3 c of this subsection.

3. Requiring an individual permit.

- a. The board may require any discharger authorized by a general permit to apply for and obtain an individual ~~VSMP~~ permit. Any interested person may request the

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board to take action under this subdivision. Cases where an individual ~~VSMP~~ permit may be required include the following:

- (1) The discharger is not in compliance with the conditions of the general ~~VSMP~~ permit;
- (2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- (3) Effluent limitation guidelines are promulgated for point sources covered by the general ~~VSMP~~ permit;
- (4) A water quality management plan, established by the State Water Control Board pursuant to 9VAC25-720, containing requirements applicable to such point sources is approved;
- (5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
- (6) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:
  - (a) The location of the discharge with respect to surface waters;
  - (b) The size of the discharge;
  - (c) The quantity and nature of the pollutants discharged to surface waters; and
  - (d) Other relevant factors;

b. ~~Permits~~ State permits required on a case-by-case basis.

- (1) The board may determine, on a case-by-case basis, that certain stormwater discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.
- (2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft state permit and in any subsequent public hearing.
- (3) Prior to a case-by-case determination that an individual permit is required for a stormwater discharge under this subsection, the board may require the discharger to submit a state permit application or other information regarding the discharge under the Act and § 308 of the CWA. In requiring such information, the

board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a state permit under 4VAC50-60-380 A 1 within 60 days of notice or under 4VAC50-60-380 A 8 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft state permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 4VAC50-60-360 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual ~~VSMP~~ permit is issued to an owner or operator otherwise subject to a general ~~VSMP~~ permit, the applicability of the general permit to the individual ~~VSMP~~ permit state permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

## **4VAC50-60-420. New sources and new dischargers.**

### **A. Criteria for new source determination.**

1. Except as otherwise provided in an applicable new source performance standard, a source is a new source if it meets the definition of new source in this chapter, and
  - a. It is constructed at a site at which no other source is located; or
  - b. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - c. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the board shall consider such factors 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.
2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger.
3. Construction on a site at which an existing source is located results in a state permit modification subject to



4VAC50-60-630 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

4. Construction of a new source 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 the paragraph.

B. Effect of compliance with new source performance standards. The provisions of this subsection do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this subdivision.

1. Except as provided in subdivision 2 of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under § 301(b)(2) of the CWA for the soonest ending of the following periods:

a. Ten years from the date that construction is completed;

b. Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

c. The period of depreciation or amortization of the facility for the purposes of § 167 or § 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169, respectively).

2. The protection from more stringent standards of performance afforded by subdivision 1 of this subsection does not apply to:

a. Additional or more stringent state permit conditions that are not technology based; for example, conditions

based on water quality standards, or toxic effluent standards or prohibitions under the Act and § 307(a) of the CWA; or

b. Additional state permit conditions controlling toxic pollutants or hazardous substances that are not controlled by new source performance standards. This includes state permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

3. When a VPDES or ~~VSMP~~ state permit issued to a source with a protection period under subdivision 1 of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of § 301 of the CWA and any other then applicable requirements of the CWA and the Act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three years before the expiration of the protection period.

4. The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall start-up all pollution control equipment required to meet the conditions of its state permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all state permit conditions. The requirements of this paragraph do not apply if the owner or operator is issued a state permit containing a compliance schedule under 4VAC50-60-490 A 2.

5. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

#### Part VIII

#### ~~VSMP~~ State Permit Conditions

#### **4VAC50-60-430. Conditions applicable to all permits.**

The following conditions apply to all ~~VSMP~~ state permits. Additional conditions applicable to ~~VSMP~~ state permits are in 4VAC50-60-440. All conditions applicable to ~~VSMP~~ state permits shall be incorporated into the state permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the state permit.

A. The state permittee shall comply with all conditions of the state permit. Any state permit noncompliance constitutes a violation of the Act and the CWA, except that noncompliance with certain provisions of the state permit may constitute a violation of the Act but not the CWA. ~~Permit~~ State permit

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noncompliance is grounds for enforcement action; for state permit termination, revocation and reissuance, or modification; or denial of a state permit renewal application.

The state permittee shall comply with effluent standards or prohibitions established under § 307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these standards or prohibitions, even if the state permit has not yet been modified to incorporate the requirement.

B. If the state permittee wishes to continue an activity regulated by the state permit after the expiration date of the state permit, the state permittee must apply for and obtain a new state permit.

C. It shall not be a defense for a state 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 state permit.

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

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

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

G. ~~Permits~~ State permits do not convey any property rights of any sort, or any exclusive privilege.

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

I. The state permittee shall allow the director as the board's designee, 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 state permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the state permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the state permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the state permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring state permit compliance or as otherwise authorized by the CWA and the Act, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. The state 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 state permit, and records of all data used to complete the application for the state 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 state 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, unless other test procedures have been specified in the state permit.

K. All applications, reports, or information submitted to the permit issuing VSMP authority and department shall be signed and certified as required by 4VAC50-60-370.

L. Reporting requirements.

1. The state 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 4VAC50-60-420 A; or
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in the state permit.

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

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

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

- a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department.
- b. If the state permittee monitors any pollutant specifically addressed by the state permit more frequently than required by the state permit using test procedures approved under 40 CFR Part 136 (2000) or as otherwise specified in the state permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
- c. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the state 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 state permittee shall promptly notify, in no case later than 24 hours, the Department of Environmental Quality and 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 state permittee shall reduce the report to writing and shall submit it to the Department of Environmental Quality and 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 state 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 state permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the state 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 that exceeds any effluent limitation in the state permit.
- (2) Any upset that exceeds any effluent limitation in the state permit.
- (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the state 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 state 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 state permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a state permit

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application or in any report to the department, it shall promptly submit such facts or information.

## M. Bypass.

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

### 2. Notice.

a. Anticipated bypass. If the state 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 state 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 state permittee for bypass, unless:

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

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

(3) The state 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 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 state 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 state 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 state permittee can identify the cause or causes of the upset;

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

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

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

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

### **4VAC50-60-440. Additional conditions applicable to Municipal Separate Storm Sewer System ~~VSM~~ state permits.**

In addition to those conditions set forth in 4VAC50-60-430, the operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the board under 4VAC50-60-380 A 1 e must submit an annual report by a date specified in the state permit for such system. The report shall include:

1. The status of implementing the components of the stormwater management program that are established as state permit conditions;

2. Proposed changes to the stormwater management programs that are established as state permit ~~condition~~ conditions. Such proposed changes shall be consistent with 4VAC50-60-380 C 2 d;

3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the state permit application;

4. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

5. Annual expenditures and budget for year following each annual report;

6. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

7. Identification of water quality improvements or degradation.

### **4VAC50-60-450. Establishing state permit conditions.**

A. In addition to conditions required in all state permits, the board shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the Stormwater Management Act, the State Water Control Law, the CWA, and attendant regulations. These shall include conditions under 4VAC50-60-480 (duration of state permits), 4VAC50-60-490 (schedules of compliance) and 4VAC50-60-460 (monitoring).

B. 1. An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a state permit. An applicable requirement is also any requirement that takes effect prior to

the modification or revocation and reissuance of a state permit to the extent allowed in Part X of this chapter.

2. New or reissued state permits, and to the extent allowed under Part X of this chapter modified or revoked and reissued state permits, shall incorporate each of the applicable requirements referenced in 4VAC50-60-460 and 4VAC50-60-470.

C. All state permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the state permit.

**4VAC50-60-460. Establishing limitations, standards, and other state permit conditions.**

In addition to the conditions established under 4VAC50-60-450 A, each VSMP state 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 4VAC50-60-420 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VSMP state permit to forego sampling of a pollutant found at 40 CFR Subchapter N (2000) 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 state permit and is not available during the term of the first state permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued state permit or modification of a reissued state permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier state 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 state permit as an express state permit condition and the reasons supporting the grant must be documented in the state 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 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 state permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the state permit to conform to the toxic effluent standard or prohibition.

C. 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 State Water Control 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 that 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 that 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 state 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 state 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 VSMP state permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain

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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; or

(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 state permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 4VAC50-60-520 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 state permit requires all effluent and ambient monitoring necessary to show that during the term of the state permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The state permit contains a reopener clause allowing the board to modify or revoke and reissue the state 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 the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7 (2000);

2. Attain or maintain a specified water quality through water quality related effluent limits established under the State Water Control Law and § 302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the State Water Control 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 Act or regulations in accordance with § 301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan established by the State Water Control Board pursuant to 9VAC25-720 and approved by EPA under § 208(b) of the CWA;

7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M (2000), for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 CFR Part 125, Subpart D (2000).

D. Technology-based controls for toxic pollutants. Limitations established under subsections A, B, or C 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 that the board determines (based on information reported in a permit application or in a notification required by the state permit or on other information) are or may be discharged at a level greater than the level that can be achieved by the technology-based treatment requirements appropriate to the state 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 that, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the Stormwater Management Act, the State Water Control Law, and 40 CFR Part 125, Subpart A (2000).

E. A notification level that exceeds the notification level of 4VAC50-60-440 A 1 a, b, or c, upon a petition from the state 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 state permittee.

F. Twenty-four-hour reporting. Pollutants for which the state permittee must report violations of maximum daily discharge limitations under 4VAC50-60-430 L 7 b (3) (24-hour reporting) shall be listed in the state 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.

G. Durations for state permits, as set forth in 4VAC50-60-480.

H. 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 that 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 4VAC50-60-430 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 state permit limitations, requirements to monitor:
  - a. The mass (or other measurement specified in the state permit) for each pollutant limited in the state permit;
  - b. The volume of effluent discharged from each outfall;
  - c. Other measurements as appropriate including pollutants; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; or as determined to be necessary on a case-by-case basis pursuant to the Stormwater Management Act, the State Water Control Law, and § 405(d)(4) of the CWA; and
  - d. According to test procedures approved under 40 CFR Part 136 (2000) 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 state 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;

6. Requirements to report monitoring results for stormwater discharges associated with industrial activity that 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 stormwater discharges (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 state 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 stormwater discharge and evaluate whether measures to reduce pollutant loading identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the state 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 state permit, and identifying any incidents of noncompliance;
- c. Such report and certification be signed in accordance with 4VAC50-60-370; and

8. Permits State permits which do not require the submittal of monitoring result reports at least annually shall require that the state permittee report all instances of noncompliance not reported under 4VAC50-60-430 L 1, 4, 5, 6, and 7 at least annually.

I. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;
2. Numeric effluent limitations are infeasible; or
3. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the Stormwater Management Act, the State Water Control Law, and the CWA.

J. Reissued state permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a state 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 state permit, to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous state 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

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state permit may not be renewed, reissued, or modified to contain effluent limitations that are less stringent than the comparable effluent limitations in the previous state permit except in compliance with § 303(d)(4) of the CWA.

2. Exceptions. A state 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:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance that justify the application of a less stringent effluent limitation;

b. (1) Information is available that was not available at the time of state permit issuance (other than revised regulations, guidance, or test methods) and that would have justified the application of a less stringent effluent limitation at the time of state permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of the Act were made in issuing the state permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the state permittee has no control and for which there is no reasonably available remedy;

d. The state permittee has received a state permit modification under the Stormwater Management Act, the State Water Control Law, and §§ 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or § 316(a) of the CWA; or

e. The state permittee has installed the treatment facilities required to meet the effluent limitations in the previous state 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 state 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 state 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 Act or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a state permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation that is less stringent than required by effluent guidelines in

effect at the time the state permit is renewed, reissued, or modified. In no event may such a state 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.

K. 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 4VAC50-60-570.

L. Qualifying state, tribal, or local programs.

1. For stormwater discharges associated with small construction activity identified in 4VAC50-60-10, the board may include state permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. Where a qualifying state, tribal, or local program does not include one or more of the elements in this subdivision, then the board must include those elements as conditions in the state permit. A qualifying state, tribal, or local erosion and sediment control program is one that includes:

a. Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

b. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

c. Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. A stormwater pollution prevention plan includes site descriptions; descriptions of appropriate control measures; copies of approved state, tribal or local requirements; maintenance procedures; inspection procedures; and identification of nonstormwater discharges; and

d. Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

2. For stormwater discharges from construction activity that does not meet the definition of a small construction activity, the board may include state permit conditions that incorporate qualifying state, tribal, or local erosion and sediment control program requirements by reference. A qualifying state, tribal or local erosion and sediment control program is one that includes the elements listed in subdivision 1 of this subsection and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the state permit writer.



**4VAC50-60-470. Calculating ~~VSMP~~ state permit conditions.**

A. ~~Permit~~ State 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 4VAC50-60-460.

B. All state 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 state 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, Stormwater Management Act and the State Water Control Law; or
3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

C. Discharges that are not continuous, as defined in 4VAC50-60-10, 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.

**D. Mass Limitations.**

1. All pollutants limited in state permits shall have limitations, standards or prohibitions expressed in terms of mass except:

- a. For pH, temperature, radiation, or other pollutants that 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 state 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 state 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 state permit shall require the state permittee to comply with both limitations.

**4VAC50-60-480. Duration of state permits.**

A. ~~VSMP~~ State permits shall be effective for a fixed term not to exceed five years.

B. Except as provided in 4VAC50-60-330, the term of a state permit shall not be extended by modification beyond the maximum duration specified in this section.

C. The board may issue any state permit for a duration that is less than the full allowable term under this section.

D. A state permit may be issued to expire on or after the statutory deadline set forth in §§ 301(b)(2) (A), (C), and (E) of the CWA, if the state permit includes effluent limitations to meet the requirements of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

**4VAC50-60-490. Schedules of compliance.**

A. The state permit may, when appropriate, specify a schedule of compliance leading to compliance with the Act, the CWA and regulations.

1. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

2. The first ~~VSMP~~ state permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge. For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

3. Schedules of compliance may be established in state permits for existing sources that are reissued or modified to contain new or more restrictive water quality-based effluent limitations. The schedule may allow a reasonable period of time, not to exceed the term of the state permit, for the discharger to attain compliance with the water quality-based limitations.

4. Except as provided in subdivision B 1 b of this section, if a state permit establishes a schedule of compliance that exceeds one year from the date of state permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

a. The time between interim dates shall not exceed one year.

b. If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the state permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

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5. The state permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the state permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

B. A VSMP state permit applicant or state permittee may cease conducting regulated activities (by terminating of direct discharge for VSMP sources) rather than continuing to operate and meet state permit requirements as follows:

1. If the state permittee decides to cease conducting regulated activities at a given time within the term of a state permit that has already been issued:

a. The state permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

b. The state permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the state permit;

2. If the decision to cease conducting regulated activities is made before issuance of a state permit whose term will include the termination date, the state permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline;

3. If the state permittee is undecided whether to cease conducting regulated activities, the board may issue or modify a state permit to contain two schedules as follows:

a. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

b. One schedule shall lead to timely compliance with applicable requirements no later than the statutory deadline;

c. The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements no later than the statutory deadline; and

d. Each state permit containing two schedules shall include a requirement that after the state permittee has made a final decision under subdivision 3 a of this subsection it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities; and

4. The state permit applicant's or state permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the board,

such as a resolution of the board of directors of a corporation.

## Part IX Public Involvement

### **4VAC50-60-500. Draft state permits.**

A. Once an application is complete, the board shall tentatively decide whether to prepare a draft state permit or to deny the application.

B. If the board tentatively decides to deny the state permit application, the owner shall be advised of that decision and of the changes necessary to obtain approval. The owner may withdraw the application prior to board action. If the application is not withdrawn or modified to obtain the tentative approval to issue, the board shall provide public notice and opportunity for a public hearing prior to board action on the application.

C. If the board tentatively decides to issue a VSMP general permit, a draft general permit shall be prepared under subsection D of this section.

D. If the board decides to prepare a draft state permit, the draft state permit shall contain the following information:

1. All conditions under 4VAC50-60-430 and 4VAC50-60-450;

2. All compliance schedules under 4VAC50-60-490;

3. All monitoring requirements under 4VAC50-60-460; and

4. Effluent limitations, standards, prohibitions and conditions under 4VAC50-60-430, 4VAC50-60-440, and 4VAC50-60-460, and all variances that are to be included.

### **4VAC50-60-510. Statement of basis.**

A statement of basis shall be prepared for every draft state permit for which a fact sheet under 4VAC50-60-520 is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the draft state permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the state permit applicant and, on request, to any other person.

### **4VAC50-60-520. Fact sheet.**

A. A fact sheet shall be prepared for every draft state permit for a major VSMP facility or activity, for every VSMP general permit, for every VSMP draft state permit that incorporates a variance or requires an explanation under subsection B 8 of this section, and for every draft state permit that the board finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft state permit. The board shall send this fact sheet to the state permit applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity that is the subject of the draft state permit;
2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
3. A brief summary of the basis for the draft state permit conditions including references to applicable statutory or regulatory provisions;
4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;
5. A description of the procedures for reaching a final decision on the draft state permit including:
  - a. The beginning and ending dates of the comment period for the draft state permit and the address where comments will be received;
  - b. Procedures for requesting a public hearing and the nature of that hearing; and
  - c. Any other procedures by which the public may participate in the final decision;
6. Name and telephone number of a person to contact for additional information;
7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;
8. When the draft state permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
  - a. Limitations to control toxic pollutants;
  - b. Limitations on indicator pollutants;
  - c. Technology-based limitations set on a case-by-case basis;
  - d. Limitations to meet the criteria for state permit issuance under 4VAC50-60-310; or
  - e. Waivers from monitoring requirements granted under 4VAC50-60-460 A; and
9. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application.

**4VAC50-60-530. Public notice of state permit actions and public comment period.**

A. Scope.

1. The board shall give public notice that the following actions have occurred:
  - a. A draft state permit has been prepared under 4VAC50-60-500D;

- b. A public hearing has been scheduled under 4VAC50-60-550; or
- c. A ~~VSMP~~ new source determination has been made under 4VAC50-60-420.

2. No public notice is required when a request for state permit modification, revocation and reissuance, or termination is denied under 4VAC50-60-610 B. Written notice of that denial shall be given to the requester and to the state permittee. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.
3. Public notices may describe more than one state permit or state permit actions.

B. Timing.

1. Public notice of the preparation of a draft state permit required under subsection A of this section shall allow at least 30 days for public comment.
2. Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft state permit and the two notices may be combined.)

C. Methods. Public notice of activities described in subdivision A 1 of this section shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this subdivision may waive his rights to receive notice for any classes and categories of permits):
  - a. The state permit applicant (except for ~~VSMP~~ general permits when there is no state permit applicant);
  - b. Any other agency that the board knows has issued or is required to issue a VPDES permit;
  - c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected states (Indian Tribes);
  - d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
  - e. Persons on a mailing list developed by:
    - (1) Including those who request in writing to be on the list;
    - (2) Soliciting persons for area lists from participants in past state permit proceedings in that area; and
    - (3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press, and in such publications as EPA regional and state

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funded newsletters, environmental bulletins, or state law journals. (The board may update the mailing list from time to time by requesting written indication of continued interest from those listed. The board may delete from the list the name of any person who fails to respond to such a request.);

f. (1) Any unit of local government having jurisdiction over the area where the facility is proposed to be located; and

(2) Each state agency having any authority under state law with respect to the construction or operation of such facility;

2. By publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the discharge. The cost of public notice shall be paid by the owner; and

3. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

## D. Contents.

1. All public notices issued under this part shall contain the following minimum information:

a. Name and address of the office processing the state permit action for which notice is being given;

b. Name and address of the state permittee or state permit applicant and, if different, of the facility or activity regulated by the state permit, except in the case of ~~V~~SMP draft general permits;

c. A brief description of the business conducted at the facility or activity described in the state permit application or the draft state permit, for ~~V~~SMP general permits when there is no application;

d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft state permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;

e. A brief description of the procedures for submitting comments and the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final state permit decision;

f. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map or description of the state permit area; and

g. Any additional information considered necessary or proper.

2. In addition to the general public notice described in subdivision 1 of this subsection, the public notice of a public hearing under 4VAC50-60-550 shall contain the following information:

a. Reference to the date of previous public notices relating to the state permit;

b. Date, time, and place of the public hearing;

c. A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and

d. A concise statement of the issues raised by the persons requesting the public hearing.

E. In addition to the general public notice described in subdivision D 1 of this section, all persons identified in subdivisions C 1 a through 1 d of this section shall be mailed a copy of the fact sheet or statement of basis, the state permit application (if any) and the draft state permit (if any).

### **4VAC50-60-540. Public comments and requests for public hearings.**

During the public comment period provided under 4VAC50-60-530, any interested person may submit written comments on the draft state permit and may request a public hearing, if no public hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the public hearing. All comments shall be considered in making the final decision and shall be answered as provided in 4VAC50-60-560.

### **4VAC50-60-550. Public hearings.**

A. 1. The board shall hold a public hearing whenever it finds, on the basis of requests, a significant degree of public interest in a draft state permit or state permits.

2. The board may also hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the state permit decision.

3. Public notice of the public hearing shall be given as specified in 4VAC50-60-530 of this chapter.

4. Any public hearing convened pursuant to this section shall be held in the geographical area of the proposed discharge, or in another appropriate area. Related groups of state permit applications may be considered at any such public hearing.

B. Any person may submit oral or written statements and data concerning the draft state permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period for the draft state permit shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the public hearing.

C. A tape recording or written transcript of the hearing shall be made available to the public.

**4VAC50-60-560. Response to comments.**

A. At the time that a final state permit is issued, the board shall issue a response to comments. This response shall:

1. Specify which provisions, if any, of the draft state permit have been changed in the final state permit decision, and the reasons for the change; and
2. Briefly describe and respond to all significant comments on the draft state permit raised during the public comment period, or during any public hearing.

B. The response to comments shall be available to the public.

**4VAC50-60-570. Conditions requested by the Corps of Engineers and other government agencies.**

A. If during the comment period for ~~an VSMP~~ a draft state permit, the district engineer advises the department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a state permit, the state permit shall be denied and the state permit applicant so notified. If the district engineer advised the department that imposing specified conditions upon the state permit is necessary to avoid any substantial impairment of anchorage or navigation, then the board shall include the specified conditions in the state permit. Review or appeal of denial of a state permit or of conditions specified by the district engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the ~~VSMP~~ state permit for the duration of that stay.

B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the state permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the board may include the specified conditions in the state permit to the extent they are determined necessary to carry out the provisions of this regulation, the Act and of the CWA.

C. In appropriate cases the board may consult with one or more of the agencies referred to in this section before issuing a draft state permit and may reflect their views in the statement of basis, the fact sheet, or the draft state permit.

**4VAC50-60-580. Decision on variances.**

A. The board may grant or deny requests for variances requested pursuant to 4VAC50-60-360 G 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 state permit applicant submitted pursuant to 4VAC50-60-360 G 2; or
2. A variance based on water quality related effluent limitations submitted pursuant to 4VAC50-60-360 G 3.

C. If the EPA approves the variance, the board may prepare a draft state permit incorporating the variance. Any public notice of a draft state 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 4VAC50-60-360 G 2.

E. If the administrator approves the variance, the board may prepare a draft state permit incorporating the variance. Any public notice of a draft state permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision.

**4VAC50-60-590. Appeals of variances.**

When the board issues a state permit on which EPA has made a variance decision, separate appeals of the ~~VSMP~~ state permit and of the EPA variance decision are possible.

## Part X

Transfer, Modification, Revocation and Reissuance, and Termination of ~~VSMP~~ State Permits**4VAC50-60-610. Modification, revocation and reissuance, or termination of state permits.**

A. ~~Permits~~ State permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the state permittee) or upon the board's initiative. When the department receives any information (for example, inspects the facility, receives information submitted by the state permittee as required in the state permit, receives a request for modification or revocation and reissuance, or conducts a review of the state permit file) it may determine whether one or more of the causes listed in this section for modification or revocation and reissuance, or both, exist. However, state permits may only be modified, revoked and reissued, or terminated for the reasons specified in 4VAC50-60-630 or 4VAC50-60-650. All requests shall be in writing and shall contain facts or reasons supporting the request. If cause does not exist under these sections, the board shall not modify, revoke and reissue or terminate the state permit. If a

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state permit modification satisfies the criteria for minor modifications, the state permit may be modified without a draft state permit or public review. Otherwise, a draft state permit must be prepared and other procedures in Part IX (4VAC50-60-500 et seq.) followed.

B. If the board decides the request is not justified, it shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or public hearings.

C. 1. If the board tentatively decides to modify or revoke and reissue a state permit, it shall prepare a draft state permit incorporating the proposed changes. The board may request additional information and, in the case of a modified state permit, may require the submission of an updated application. In the case of revoked and reissued state permits, the board shall require the submission of a new application.

2. In a state permit modification under this section, only those conditions to be modified shall be reopened when a new draft state permit is prepared. All other aspects of the existing state permit shall remain in effect for the duration of the unmodified state permit. When a state permit is revoked and reissued under this section, the entire state permit is reopened just as if the state permit had expired and was being reissued and the state permit is reissued for a new term. During any revocation and reissuance proceeding the state permittee shall comply with all conditions of the existing state permit until a new final state permit is reissued.

3. Minor modifications as defined in 4VAC50-60-640 are not subject to the requirements of this section.

D. If the board tentatively decides to terminate a state permit under 4VAC50-60-650, where the state permittee objects, it shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft state permit that follows the same procedures as any draft state permit.

## **4VAC50-60-620. Transfer of state permits.**

A. Except as provided in subsection B of this section, a state permit may be transferred by the state permittee to a new owner or operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new state permittee and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any ~~VSMP~~ state permit may be automatically transferred to a new state permittee if:

1. The current state permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;

2. The notice includes a written agreement between the existing and new state permittees containing a specific date

for transfer of state permit responsibility, coverage, and liability between them; and

3. The board does not notify the existing state permittee and the proposed new state permittee of its intent to modify or revoke and reissue the state permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.

## **4VAC50-60-630. Modification or revocation and reissuance of state permits.**

A. Causes for modification. The following are causes for modification but not revocation and reissuance of state permits except when the state permittee requests or agrees.

1. There are material and substantial alterations or additions to the permitted facility or activity that occurred after state permit issuance that justify the application of state permit conditions that are different or absent in the existing state permit.

2. The department has received new information. ~~Permits~~ State permits may be modified during their terms for this cause only if the information was not available at the time of state permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different state permit conditions at the time of issuance. For ~~VSMP~~ general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger ~~VSMP~~ state permits this cause shall include any significant information derived from effluent testing required on the state permit application after issuance of the state permit.

3. The standards or regulations on which the state permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the state permit was issued. ~~Permits~~ State permits may be modified during their terms for this cause only as follows:

a. For promulgation of amended standards or regulations, when:

(1) The state permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards;

(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the state permit condition was based, or has approved a state action with regard to a water quality standard on which the state permit condition was based; and

(3) A state permittee requests modification in accordance with this chapter within 90 days after Federal Register notice of the action on which the request is based;

b. For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the

remand and stay concern that portion of the regulations or guidelines on which the state permit condition was based and a request is filed by the state permittee in accordance with this chapter within 90 days of judicial remand; or

c. For changes based upon modified state certifications of VSMP state permits.

4. The board determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the state permittee has little or no control and for which there is no reasonably available remedy. However, in no case may a VSMP compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

5. When the state permittee has filed a request for a variance pursuant to 4VAC50-60-360 G within the time specified in this chapter.

6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or prohibition.

7. When required by the reopener conditions in a state permit that are established under 4VAC50-60-460 B.

8. Upon failure to notify another state whose waters may be affected by a discharge.

9. When the level of discharge of any pollutant that is not limited in the state permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the state permittee.

10. To establish a notification level as provided in 4VAC50-60-460 E.

11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining state permit conditions.

12. When the discharger has installed the treatment technology considered by the state permit writer in setting effluent limitations imposed under the Act and § 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified state permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

13. For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in 4VAC50-60-400 D 2 when:

a. The state permit does not include such measures based upon the determination that another entity was responsible for implementation of the requirements; and

b. The other entity fails to implement measures that satisfy the requirements.

B. Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a state permit:

1. Cause exists for termination under 4VAC50-60-650, and the board determines that modification or revocation and reissuance is appropriate; or

2. The department has received notification of a proposed transfer of the state permit. A state permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new state permittee.

#### **4VAC50-60-640. Minor modifications of state permits.**

Upon the consent of the state permittee, the board may modify a state permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part IX of this chapter. Any state permit modification not processed as a minor modification under this section must be made for cause and with draft state permit and public notice. Minor modifications may only:

1. Correct typographical errors;

2. Require more frequent monitoring or reporting by the state permittee;

3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing state permit and does not interfere with attainment of the final compliance date requirement;

4. Allow for a change in ownership or operational control of a facility where the board determines that no other change in the state permit is necessary, provided that a written agreement containing a specific date for transfer of state permit responsibility, coverage, and liability between the current and new state permittees has been submitted to the department;

5. a. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.

b. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with state permit limits.

#### **4VAC50-60-650. Termination of state permits.**

A. The following are causes for terminating a state permit during its term, or for denying a state permit renewal application, after public notice and opportunity for a public hearing by the board.

1. The state permittee has violated any regulation or order of the board or department, any order of the ~~permit issuing~~ VSMP authority, any provision of the Virginia Stormwater

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Management Act or this chapter, or any order of a court, where such violation results in the unreasonable degradation of properties, water quality, stream channels, and other natural resources, or the violation is representative of a pattern of serious or repeated violations that in the opinion of the board, demonstrates the state permittee's disregard for or inability to comply with applicable laws, regulations, state permit conditions, orders, rules, or requirements;

2. Noncompliance by the state permittee with any condition of the state permit;

3. The state permittee's failure to disclose fully all relevant material facts, or the state permittee's misrepresentation of any relevant material facts in applying for a state permit, or in any other report or document required under the Act or this chapter;

4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by state permit modification or termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge controlled by the state permit; or

6. The activity for which the state permit was issued causes unreasonable degradation of properties, water quality, stream channels, and other natural resources

7. There exists a material change in the basis on which the state permit was issued that requires either a temporary or a permanent reduction or elimination of any discharge or land-disturbing activity controlled by the state permit necessary to prevent unreasonable degradation of properties, water quality, stream channels, and other natural resources.

B. The board shall follow the applicable procedures in this chapter in terminating any VSMP state permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or disposal into a well), the board may terminate the state permit by notice to the state permittee. Termination by notice shall be effective 30 days after notice is sent, unless the state permittee objects within that time. If the state permittee objects during that period, the board shall follow the applicable procedures for termination under 4VAC50-60-610

D. Expedited state permit termination procedures are not available to state permittees that are subject to pending state or federal enforcement actions including citizen suits brought under state or federal law. If requesting expedited state permit termination procedures, a state permittee must certify that it is not subject to any pending state or federal enforcement actions including citizen suits brought under state or federal law.

## Part XI

### Enforcement of ~~VSMP~~ State Permits

#### 4VAC50-60-660. Enforcement.

A. The board may enforce the provisions of this chapter by:

1. Issuing directives in accordance with the Act;
2. Issuing special orders in accordance with the Act;
3. Issuing emergency special orders in accordance with the Act;
4. Seeking injunction, mandamus or other appropriate remedy as authorized by the Act;
5. Seeking civil penalties under the Act; or
6. Seeking remedies under the Act, the CWA or under other laws including the common law.

B. The board encourages citizen participation in all its activities, including enforcement. In particular:

1. The board will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the board's purview;
2. The board will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule; and
3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the board will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the discharge is located, and in The Virginia Register of Regulations. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. A consent special order is a special order issued without a public hearing and with the written consent of the affected owner. For the purpose of this chapter, an emergency special order is not a consent special order. The board shall consider all comments received during the comment period before taking final action.

C. When a state permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that, at the time of state permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

- a. The state permit amendment does not have to go to public notice; and
- b. The terms of the new consent order are the same as issued to the previous owner.

D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by agreement at a board meeting without further notice when a public hearing has been



scheduled to issue a special order to the affected owner, whether or not the public hearing is actually held.

**4VAC50-60-680. Transition.**

Upon the effective date of this chapter the following will occur:

1. All applications received after the effective date of this chapter will be processed in accordance with these procedures.
2. A National Pollutant Discharge Elimination System Permit issued by the board has the same effect as a ~~VSMP~~ state permit.
3. ~~Permits~~ State permits issued by the State Water Control Board allowing the discharge of stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities that have not expired or been revoked or terminated before or on the program transfer date to the board shall continue to remain in effect until their specified expiration dates.

Part XIII  
Fees

**4VAC50-60-700. Purpose.**

Sections 10.1-603.4 and 10.1-603.5 of the Code of Virginia authorize the establishment of a statewide fee schedule, including administrative charges for state agencies, for stormwater management for land-disturbing activities and for municipal separate storm sewer systems. This part establishes the fee assessment and the collection and distribution systems for those fees. The fees ~~associated with~~ shall be established for individual permits or coverage under the General Permit for Discharges of Stormwater From Construction Activities (~~permits for stormwater management for land disturbing activities~~) issued by a qualifying local program or a department administered local stormwater management program (state permits for stormwater management for land-disturbing activities) to cover all costs associated with the implementation of a VSMP by a VSMP authority that has been approved by the board shall include and by the department. Such fee attributes include the costs associated with plan review, registration statement review, permit review and issuance, state-coverage verification, inspections, enforcement, program administration and oversight, and reporting, database management, and compliance activities associated with the land-disturbing activities as well as for program oversight costs. Fees shall also be established for state permit maintenance, modification, and transfer.

Fees collected pursuant to this part shall be in addition to any general fund appropriations made to the department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the department and the VSMP authority to fully carry out their responsibilities under the Act, this chapter, local ordinances, or standards and specifications where applicable.

~~Should~~ When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in 4VAC50-60-820 as available to the department for program oversight responsibilities pursuant to § 10.1-603.4 A 5 a of the Code of Virginia. Accordingly, should a qualifying local program VSMP authority demonstrate to the board its ability to fully and successfully implement a qualifying local program VSMP without a full implementation of the fees set out in this part, the board may authorize the administrative establishment of a lower fee for that program provided that such reduction shall not reduce the amount of fees due to the department for its program oversight and shall not affect the fee schedules set forth herein.

A qualifying local program VSMP authority may establish greater fees than those base fees specified by this part should it be demonstrated to the board that such greater fees are necessary to properly administer the qualifying local program VSMP. Any fee increases established by the qualifying local program VSMP authority beyond those base fees established in this part shall not be subject to the fee distribution formula set out in 4VAC50-60-780. Nothing in this part shall prohibit a locality from establishing other local fees authorized by the Code of Virginia related to stormwater management within their jurisdictions.

A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under the Act, this chapter, ordinances, or annual standards and specifications.

As part of its program oversight, the department shall periodically assess the revenue generated by both the ~~localities~~ VSMP authorities and the department to ensure that the fees have been appropriately set and the fees may be adjusted through periodic regulatory actions should significant deviations become apparent.

**4VAC50-60-730. Applicability.**

A. This part applies to:

1. All persons seeking coverage of a MS4 under a new state permit. The fee due shall be as specified under 4VAC50-60-800.
2. All operators who request that an existing MS4 individual permit be modified, except as specifically exempt under 4VAC50-60-740. The fee due shall be as specified under 4VAC50-60-810.
3. All persons seeking coverage under the General Permit for Discharges of Stormwater From Construction Activities or a person seeking an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.
4. All state permittees who request modifications to or transfers of their existing registration statement for coverage under a General Permit for Discharges of

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Stormwater From Construction Activities or of an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-825 in addition to any additional fees necessary pursuant to 4VAC50-60-820 due to an increase in acreage.

5. Reinspection fees assessed by the department to recoup the costs associated with each visit to a land-disturbing project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection. The fee due shall be as specified under 4VAC50-60-790.

6. Business transaction costs assessed associated with processing credit card payments.

B. Persons who are applicants for an individual ~~VSMP~~ Municipal Separate Stormwater Sewer System permit as a result of existing state permit revocation shall be considered an applicant for a new state permit. The fee due shall be as specified under 4VAC50-60-800.

Persons whose coverage under the General Permit for Discharges of Stormwater From Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of Stormwater From Construction Activities. The fee due shall be as specified under 4VAC50-60-820.

C. ~~Permit State~~ and state permit coverage maintenance fees may apply to each ~~Virginia Stormwater Management Program (VSMP)~~ state permit holder. The fee due shall be as specified under 4VAC50-60-830.

## **4VAC50-60-740. Exemptions.**

A. No state permit application fees will be assessed to:

1. ~~Permittees State permittees~~ who request minor modifications to state permits as defined in 4VAC50-60-10 or other minor amendments at the discretion of the ~~local stormwater management program~~ VSMP authority.

2. ~~Permittees State permittees~~ whose state permits are modified or amended at the initiative request of the ~~permit-issuing VSMP authority or department by the board~~. This does not include errors in the registration statement identified by the ~~local stormwater management program~~ VSMP authority, department, or board or errors related to the acreage of the site.

B. ~~Permit State permit~~ modifications at the request of the state permittee resulting in changes to stormwater management plans that require additional review by the ~~local stormwater management program~~ VSMP authority shall not be exempt pursuant to this section and shall be subject to fees specified under 4VAC50-60-825.

## **4VAC50-60-750. Due dates for ~~Virginia Stormwater Management Program (VSMP) Permits state permits.~~**

A. Requests for a state permit, state permit modification, or general permit coverage shall not be processed until the fees

required pursuant to this part are paid in accordance with 4VAC50-60-760.

B. Individual permit or general permit coverage maintenance fees shall be paid annually to the department or the ~~qualifying local program~~ VSMP authority, as applicable, by the anniversary date of individual permit issuance or general permit coverage. No state permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

MS4 individual operators who currently pay a state permit maintenance fee that is due by October 1 of each year shall continue to pay the maintenance fee by October 1 until their current state permit expires. Upon reissuance of the MS4 individual permit, maintenance fees shall be paid on the anniversary date of the reissued state permit.

## **4VAC50-60-760. Method of payment.**

A. Fees shall be collected utilizing, where practicable, an online payment system. Until such system is operational, fees, as applicable, shall be, at the discretion of the department, submitted electronically or be paid by check, draft or postal money order payable to:

1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued by the department under the General Permit for Discharges of Stormwater From Construction Activities or Individual Permit for Discharges of Stormwater From Construction Activities, and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. The Department of Conservation and Recreation may provide a means to pay fees electronically. Fees not submitted electronically shall be sent to the following address until December 31, 2012:

Virginia Department of Conservation and Recreation  
Division of Finance, Accounts Payable  
203 Governor Street  
Richmond, VA 23219

Fees not submitted electronically shall be sent to the following address after December 31, 2012:

Virginia Department of Conservation and Recreation  
Division of Finance, Accounts Payable  
600 East Main Street  
24th Floor  
Richmond, VA 23219

2. The ~~qualifying local program~~ VSMP authority, for coverage authorized by VSMP operational costs of the qualifying local program VSMP authority under the General Permit for Discharges of Stormwater From Construction Activities, and must be in U.S. currency.

B. When fees are collected electronically pursuant to this part through credit cards, business transaction costs associated with processing such payments may be additionally assessed.

C. Required information for state permits or state permit coverage: All applicants, unless otherwise specified by the department, shall submit the following information along with the fee payment or utilize the Department of Conservation and Recreation Permit Application Fee Form:

1. Applicant name, address and daytime phone number.
2. Applicant Federal Identification Number (FIN), if applicable.
3. The name of the facility/activity, and the facility/activity location.
4. The type of state permit applied for.
5. Whether the application is for a new state permit issuance, state permit reissuance, state permit maintenance, or state permit modification.
6. The amount of fee submitted.
7. The existing state permit number, if applicable.
8. Other information as required by the ~~local stormwater management program VSMP authority.~~

**4VAC50-60-770. Incomplete payments and late payments.**

All incomplete payments will be deemed as nonpayments. The department or the ~~qualifying local program VSMP authority,~~ as applicable, shall provide notification to the state applicant of any incomplete payments.

Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

The department and the ~~qualifying local program VSMP authority~~ are entitled to all remedies available under the Code of Virginia in collecting any past due amount.

**4VAC50-60-780. Deposit and use of fees.**

A. All fees collected by the department or board pursuant to this chapter shall be deposited into the Virginia Stormwater Management Fund and shall be used and accounted for as specified in § 10.1-603.4:1 of the Code of Virginia. Fees collected by the department or board shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

B. All fees collected by a ~~qualifying local program VSMP authority~~ pursuant to this chapter shall be subject to accounting review and shall be used solely to carry out the ~~qualifying local program's VSMP authority's~~ responsibilities pursuant to the Act, Part II and Part III A of this chapter, local ordinances, or annual standards and specifications.

Pursuant to subdivision 5 a of § 10.1-603.4 of the Code of Virginia, whenever the board has authorized the administration of a ~~stormwater management program VSMP~~ by a ~~qualifying local program VSMP authority,~~ 28% of the total revenue generated by the statewide stormwater management fees collected ~~within the locality~~ in accordance with 4VAC50-60-820 shall be remitted on a ~~monthly basis~~ schedule determined by the department to the State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected electronically. If the ~~qualifying local program VSMP authority~~ waives or reduces any fee due in accordance with 4VAC50-60-820, the ~~qualifying local program VSMP authority~~ shall remit the 28% portion that would be due to the Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases established by the ~~qualifying local program VSMP authority~~ beyond the base fees established in this part shall not be subject to the fee distribution formula.

**4VAC50-60-790. General.**

A. The fees for individual permits, general permit coverage, state permit or registration statement modification, or state permit transfers are considered separate actions and shall be assessed a separate fee, as applicable.

B. Until July 1, 2014, the department is authorized to assess a \$125 reinspection fee for each visit to a project site that was necessary to check on the status of project site items noted to be in noncompliance and documented as such on a prior project inspection.

**4VAC50-60-800. Fee schedules for ~~VSMP~~ Municipal Separate Storm Sewer System new state permit issuance.**

The following fee schedule applies to state permit applications for issuance of a new individual ~~VSMP~~ Municipal Separate Storm Sewer System permit or coverage under a MS4 General Permit. All regulated MS4s that apply for joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below.

<del>VSMP</del> Municipal Stormwater / MS4 Individual (Large and Medium)	\$16,000
<del>VSMP</del> Municipal Stormwater / MS4 Individual (Small)	\$8,000
<del>VSMP</del> Municipal Stormwater / MS4 General Permit (Small)	\$4,000

**4VAC50-60-810. Fee schedules for major modification of MS4 individual permits requested by the operator.**

The following fee schedule applies to state applications for major modification of an individual MS4 permit requested by the state permittee:

<del>VSMP</del> Municipal Stormwater / MS4 Individual (Large and Medium)	\$5,000
<del>VSMP</del> Municipal Stormwater / MS4 Individual (Small)	\$2,500

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## 4VAC50-60-820. Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.

The following fees apply to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the department prior to a ~~qualifying local program or a department administered local stormwater management program~~ VSMP authority being approved by the board in the area where the applicable land-disturbing activity is located, or where the department has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency for which it has approved annual standards and specifications.

<del>VSMP</del> General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than five acres)	<del>\$500</del> <u>\$750</u>
<del>VSMP</del> General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	<del>\$300</del> <u>\$450</u>
<del>VSMP</del> General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) ( <u>Fee valid until July 1, 2014</u> )	\$200

The following fees apply to coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that does not file annual standards and specifications, or an individual permit issued by the board or coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by a ~~qualifying local program, or a department administered local stormwater management program that has been approved by the board.~~ For coverage under the General Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the base fee set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 4VAC50-60-108. The remaining base fee balance shall be due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.

When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by applicant" column) in accordance with the disturbed acreage of their site or sites according to the following table.

<u>Fee type</u>	<u>Total fee to be paid by applicant (includes both VSMP authority and department portions where applicable)</u>	<u>Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid *)</u>
<u>Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)</u>	\$290	\$0
<del>VSMP</del> General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)	\$290	-
<del>VSMP</del> General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	\$290	<u>\$81</u>
<del>VSMP</del> General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities	\$1,500	-

with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)		
<del>VSMP</del> General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$2,700	<u>\$756</u>
<del>VSMP</del> General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$3,400	<u>\$952</u>
<del>VSMP</del> General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500	<u>\$1,260</u>
<del>VSMP</del> General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	<u>\$1,708</u>

<del>VSMP</del> General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$9,600	<u>\$2,688</u>
<del>VSMP</del> Individual Permit for Discharges of Stormwater From Construction Activities ( <u>This will be administered by the department</u> )	\$15,000	<u>\$15,000</u>

\* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.

**4VAC50-60-825. Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.**

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by ~~a qualifying local program or a department administered local stormwater management program that has been approved by the board.~~ If the state permit modifications result in changes to stormwater management plans that require additional review by the ~~local stormwater management program~~ VSMP authority, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the state permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and the state permit fee that would have applied for the total disturbed acreage in 4VAC50-60-820. No modification or transfer fee shall be required until such board-approved programs exist. No modification fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects.

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<del>VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)</del>	\$20
<del>VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre)</del>	\$20
<del>VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 0.5 acre and less than one acre)</del>	\$100
<del>VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)</del>	\$200
<del>VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)</del>	\$250
<del>VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)</del>	\$300
<del>VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)</del>	\$450
<del>VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)</del>	\$700
<del>VSMP Individual Permit for Discharges of Stormwater From Construction Activities</del>	\$5,000

#### 4VAC50-60-830. Permit State permit maintenance fees.

The following annual permit maintenance fees apply to each VSMP state permit identified below, including expired state permits that have been administratively continued. With respect to the General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the state permit coverage is terminated, and shall only be

effective when assessed by a ~~qualifying local program or a department administered local stormwater management program~~ VSMP authority including the department when acting in that capacity that has been approved by the board. No maintenance fee shall be required for a General Permit for Discharges of Stormwater from Construction Activities until such board approved programs exist. No maintenance fee shall be required for the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but shall apply to all other state or federal agency projects. All regulated MS4s who are issued joint coverage under an individual permit or general permit registration shall each pay the appropriate fees set out below:

<del>VSMP Municipal Stormwater / MS4 Individual (Large and Medium)</del>	\$8,800
<del>VSMP Municipal Stormwater / MS4 Individual (Small)</del>	\$6,000
<del>VSMP Municipal Stormwater / MS4 General Permit (Small)</del>	\$3,000
<u>Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)</u>	<u>\$50</u>
<del>VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 0.5 acre)</del>	\$50
<del>VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)</del>	\$50
<del>VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)</del>	\$200
<del>VSMP General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)</del>	\$400
<del>VSMP General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)</del>	\$500

acreage equal to or greater than five acres and less than 10 acres)	
<del>VSMP</del> General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
<del>VSMP</del> General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
<del>VSMP</del> General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)	\$1,400
<del>VSMP</del> Individual Permit for Discharges from Construction Activities	\$3,000

Part XIV

General ~~Virginia Stormwater Management Program (VSMP)~~  
Permit for Discharges of Stormwater from Construction Activities

**4VAC50-60-1100. Definitions.**

The words and terms used in this part shall have the meanings defined in the Act and this chapter unless the context clearly indicates otherwise, except as otherwise specified in this section. Terms not defined in the Act, this chapter, or this section shall have the meaning attributed to them in the CWA. For the purposes of this part:

"Commencement of construction" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed ), mature enough to survive, and will inhibit erosion.
2. For individual lots in residential construction, final stabilization can occur by either:
  - a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or
  - b. The homebuilder establishing temporary stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and

informing the homeowner of the need for, and benefits of, final stabilization.

3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use must meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

"Minimize" means to prevent, reduce, or eliminate using practicable control measures to meet the conditions of this state permit.

**4VAC50-60-1110. Purpose.**

This general permit regulation authorizes stormwater discharges from regulated construction activities. For the purposes of this part, these discharges are defined as stormwater discharges associated with large construction activity, and stormwater discharges associated with small construction activity. Stormwater discharges associated with other types of industrial activity shall not have coverage under this general permit. This general permit covers only discharges through a point source to state waters or through a municipal or nonmunicipal separate storm sewer system to state waters. Stormwater discharges associated with industrial activity that originate from the site after construction activities have been completed and the site has undergone final stabilization are not authorized by this state permit. The goal of this state permit is to minimize the discharge of stormwater pollutants from construction activity by requiring that the operator plan and implement appropriate control measures.

**4VAC50-60-1130. Authorization to discharge.**

A. Any operator governed by this general permit is authorized to discharge to state waters of the Commonwealth of Virginia in accordance with 4VAC50-60-1150 A 4 provided that the operator has filed a complete and accurate registration statement in accordance with 4VAC50-60-1150, submitted any fees required by 4VAC50-60-700 et seq. (Part XIII) unless exempted pursuant to 4VAC60-60-1150 A 3 (a), complied with the requirements of 4VAC50-60-1150, complies with the requirements of 4VAC50-60-1180 through 4VAC50-60-1190, and:

1. Prior to commencing construction, the operator shall obtain approval of an erosion and sediment control plan from the VESCP authority in the locality in which the construction activity is to occur ~~or from another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulations, 4VAC50-30,~~ unless the operator receives from the ~~locality~~ VESCP authority an "agreement in lieu of a plan" as defined in 4VAC50-30-10, or is exempt from the

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requirement to submit an erosion and sediment control plan by the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and Erosion and Sediment Control Regulations (4VAC50-30);

2. The stormwater discharge authorized by this state permit may be combined with other sources of stormwater that are not required to be covered under a ~~VSMP~~ state permit, so long as the combined discharge is in compliance with this state permit. Any discharge authorized by a different ~~VSMP~~ state or a VPDES permit may be commingled with discharges authorized by this state permit so long as all such discharges comply with all applicable state permits;

3. Discharges to waters for which a "total maximum daily load" (TMDL) wasteload allocation has been established are not eligible for coverage under this general permit unless they are otherwise authorized in accordance with 4VAC50-60-1170 Section II D 6 and consistent with the requirements and assumptions of the wasteload allocations in the TMDL; and

4. Discharges to waters that have been identified as impaired in the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this general permit unless they are otherwise authorized in accordance with 4VAC50-60-1170 Section I H.

B. In addition to other prohibitions, the following discharges are not eligible for coverage under this general permit:

1. Discharges for which the operator has been required to obtain an individual permit according to 4VAC50-60-410 B;

2. Discharges to state waters specifically named in other State Water Control Board regulations or policies that prohibit such discharges; and

3. Stormwater discharges that the ~~permit issuing authority~~ department in consultation with the State Water Control Board determines cause, may reasonably be expected to cause, or contribute to a violation of water quality standards (9VAC25-260).

C. This state permit may also be used to authorize stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

1. The support activity is directly related to a construction site that is required to have ~~VSMP~~ state permit coverage for discharges of stormwater associated with construction activity;

2. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

3. Appropriate control measures that will be implemented to minimize pollutant discharges from the support activity are identified in a stormwater pollution prevention plan covering the discharges from the support activity areas.

D. Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another ~~VSMP~~ state or a VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

E. Receipt of this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

F. The ~~permit issuing authority~~ department may allow exceptions to technical criteria contained in the state permit in accordance with Part III of this chapter.

## **4VAC50-60-1140. Qualifying state and local Virginia erosion and sediment control programs.**

~~Qualifying state or local erosion and sediment control program~~ VESCP requirements may be incorporated by reference into the Stormwater Pollution Prevention Plan (SWPPP) required by 4VAC50-60-1170 of this state permit. Where a ~~qualifying state or local program~~ VESCP does not include one or more of the elements in this section, then the operator must include those elements as part of the SWPPP required by 4VAC50-60-1170 of this permit. A ~~qualifying state or local erosion and sediment control program~~ VESCP is one that is approved by the board, meets the requirements of 4VAC50-60-460 L and includes:

1. Requirements for construction site operators to implement appropriate erosion and sediment control measures;

2. Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; and

3. Requirements for construction site operators to develop and implement a SWPPP in accordance with 4VAC50-60-1170 Section II.

## **4VAC50-60-1150. Permit State permit application (registration statement).**

A. Deadlines for submitting registration statement.

1. Except as provided in subdivision 3 of this subsection, operators must submit a complete and accurate registration statement in accordance with the requirements of this section prior to the issuance of coverage under the general permit that authorizes the commencement of land-disturbing activities (i.e., the initial disturbance of soils



associated with clearing, grading, excavation activities, or other construction activities).

2. For stormwater discharges from construction activities where the operator changes, the new operator must submit a complete registration statement or transfer form prior to assuming operational control over site specifications or commencing work on-site.

3. In order to continue state permit coverage, operators of ongoing construction activity projects as of July 1, 2009, that received authorization to discharge for those projects under the construction stormwater general permit issued in 2004 must:

- a. Submit a complete and accurate registration statement by June 1, 2009. Provided that a complete and accurate registration statement is submitted by the June 1 reapplication date, the state permit application (registration statement) fee will be waived for land-disturbing activities for which the department initially issued state permit coverage on or after July 1, 2008; and
- b. Update their stormwater pollution prevention plan to comply with the requirements of this general permit within 30 days after the date of coverage under this general permit.

4. Effective date of state permit coverage. The operator of a construction activity is authorized to discharge stormwater under the terms and conditions of this state permit 15 business days following submission of a complete and accurate registration statement to the ~~permit-issuing VSMP~~ authority as the administering entity for the board unless notification of coverage is made by the ~~permit-issuing authority department~~ at an earlier time. For the purposes of this state permit, a registration statement that is mailed is considered to be submitted once it is postmarked. Operators are not authorized to discharge if the registration statement is incomplete or incorrect, or if the discharge(s) was not eligible for coverage under this state permit. NOTE: A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the ~~VSMP~~ General Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP has been prepared.

5. Late notifications. Operators are not prohibited from submitting registration statements after initiating clearing, grading, excavation activities, or other land-disturbing activities. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The ~~permit-issuing authority department~~ reserves the right to take enforcement action for any unpermitted discharges that occur between the commencement of construction and discharge authorization.

B. Registration statement. The operator shall submit a registration statement on the official department form that shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator. No more than one operator may receive coverage under each registration statement. (NOTE: The state permit will be issued to this operator, and the certification in subdivision 12 of this subsection must be signed by the appropriate person associated with this operator);
2. Name and location of the construction activity, including town, city, or county, and all off-site support activities to be covered under the state permit. If a street address is unavailable, provide latitude and longitude;
3. Status of the activity: federal, state, public, or private;
4. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);
5. Name of the receiving water(s) and HUC. Direct discharges to any receiving water identified as impaired on the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL WLA has been established for stormwater discharges from a construction activity shall be noted;
6. If the discharge is through a municipal separate storm sewer system (MS4), the name of the municipal operator of the storm sewer;
7. Estimated project start date and completion date;
8. Total land area of development and estimated area to be disturbed by the construction activity (to the nearest one-tenth of an acre);
9. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;
10. An indication of whether nutrient offsets are intended to be acquired in accordance with § 10.1-603.8:1 of the Code of Virginia;
11. A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the ~~VSMP~~ General Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP has been prepared; and
12. The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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

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are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 4VAC50-60-1170, Section III K.

D. Where to submit. The registration statement shall be submitted to the ~~permit-issuing~~ VSMP authority as the administering entity for the board.

E. Registration statements in the custody of the ~~permit-issuing~~ VSMP authority or the department are subject to requests made pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

## **4VAC50-60-1160. Termination of state permit coverage.**

A. Requirements. The operator shall submit a notice of termination on the official department form after one or more of the following conditions have been met:

1. Necessary postconstruction control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator is responsible;
2. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;
3. Coverage under an alternative VPDES or ~~VSMP~~ state permit has been obtained; or
4. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

The notice of termination must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted.

B. Notice of termination. The notice of termination shall contain the following information:

1. Name, mailing address and telephone number of the construction activity operator.
2. Name and location of the construction activity. If a street address is unavailable, latitude and longitude shall be provided.
3. The ~~VSMP~~ stormwater general permit number.
4. The basis for submission of the notice of termination, pursuant to subsection A.
5. Where applicable, a list of the permanent control measures (both structural and nonstructural) that were installed at the construction activity site. For each control measure that was installed, the following information shall be included:
  - a. Type of permanent control measure installed and the date that it became functional as a permanent control measure;

- b. Geographic location (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available;

- c. Waterbody the control measure discharges into; and

- d. Number of acres treated (to the nearest one-tenth of an acre).

6. Where applicable, the following information related to participation in a regional stormwater management plan:

- a. Type of regional facility or facilities to which the site contributes;

- b. Geographic location of any regional facility to which the site contributes (county or city and Hydrologic Unit Code);

- c. Geographic location of the site (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available; and

- d. Number of acres treated by a regional facility.

7. Where applicable, the following information related to nutrient offsets that were acquired in accordance with § 10.1-603.8:1 of the Code of Virginia:

- a. Name of the broker from which offsets were acquired;

- b. Geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility;

- c. Number of nutrient offsets acquired (lbs. per acre per year); and

- d. Nutrient reductions achieved on site (lbs. per acre per year).

8. The following certification: "I certify under penalty of law that I have read and understand this notice of termination and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated 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."

C. The notice of termination shall be signed in accordance with 4VAC50-60-1170 Section III K.

D. Where to submit. The notice of termination shall be submitted to the ~~permit-issuing~~ VSMP authority as the administering entity for the board.

E. Termination by the ~~permit-issuing~~ department in coordination with the VSMP authority. The ~~permit-issuing~~ department in coordination with the VSMP authority may terminate coverage under this state permit during its term and require application for an individual permit or deny a state

permit renewal application on its own initiative in accordance with the Act and this chapter.

#### 4VAC50-60-1170. General permit.

Any operator whose registration statement is accepted by the ~~permit issuing authority department~~ will receive the following state permit and shall comply with the requirements in it and be subject to all requirements of the Virginia Stormwater Management Act (Chapter 6, Article 1.1 (§ 10.1-603.1 et seq.) of Title 10.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60). No more than one operator may receive coverage under each registration statement.

General Permit No.: VAR10

Effective Date: July 1, 2009

Expiration Date: June 30, 2014

GENERAL PERMIT FOR DISCHARGES OF  
STORMWATER FROM CONSTRUCTION ACTIVITIES  
AUTHORIZATION TO DISCHARGE UNDER THE  
VIRGINIA STORMWATER MANAGEMENT PROGRAM  
AND THE VIRGINIA STORMWATER MANAGEMENT  
ACT

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and attendant regulations, operators of construction activities covered by this state permit with stormwater discharges are authorized to discharge to state waters, including discharges to a regulated MS4 system, within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Section I—Discharge Authorization and Special Conditions, Section II—Stormwater Pollution Prevention Plan, and Section III—Conditions Applicable To All ~~VSMP~~ State Permits as set forth herein.

SECTION I  
DISCHARGE AUTHORIZATION AND SPECIAL  
CONDITIONS

#### A. Coverage under this state permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the state permit's expiration date, the operator is authorized to discharge stormwater from construction activities.
2. This state permit may also authorize stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:
  - a. The support activity is directly related to the construction site that is required to have ~~VSMP~~ state

permit coverage for discharges of stormwater associated with construction activity;

b. The support activity is not a commercial operation serving multiple unrelated construction projects by different operators, and does not operate beyond the completion of the construction activity at the last construction project it supports; and

c. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas.

3. There shall be no discharge of floating solids or visible foam that contravenes established standards or interferes directly or indirectly with designated uses of surface waters.

#### B. Limitation on coverage.

1. Post-construction discharges. This state permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any temporary support activity site, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

2. Discharges mixed with nonstormwater. This state permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Section I D 2 (Exceptions to prohibition of nonstormwater discharges) and are in compliance with Section II D 5 (Nonstormwater discharge management).

3. Discharges covered by another state permit. This state permit does not authorize stormwater discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit.

4. TMDL limitation. Discharges to waters for which a wasteload allocation (WLA) for a pollutant has been established in a "total maximum daily load" (TMDL) approved by the State Water Control Board that would apply to stormwater discharges from a construction activity are not eligible for coverage under this state permit unless the stormwater pollution prevention plan (SWPPP) developed by the operator is consistent with the requirements related to TMDLs contained in Section II D 6.

5. Impaired waters limitation. Discharges to waters that have been identified as impaired in the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report are not eligible for coverage under this state permit unless the operator implements strategies and control measures consistent with Sections I H and II D 7.

C. Commingled discharges. Any discharge authorized by a different ~~VSMP~~ state or VPDES permit may be commingled with discharges authorized by this state permit.

D. Prohibition of nonstormwater discharges.

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1. Except as provided in Sections I A 2, I C and I D 2, all discharges covered by this state permit shall be composed entirely of stormwater associated with construction activity.

2. The following nonstormwater discharges from active construction sites are authorized by this state permit provided the nonstormwater component of the discharge is in compliance with Section II D 5 (Nonstormwater discharges):

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Waters used to wash vehicles where detergents are not used;
- d. Water used to control dust;
- e. Potable water sources, including uncontaminated waterline flushings;
- f. Routine external building wash down which does not use detergents;
- g. Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
- h. Uncontaminated air conditioning or compressor condensate;
- i. Uncontaminated ground water or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
- k. Uncontaminated excavation dewatering, and
- l. Landscape irrigation.

E. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharges from the construction site shall be prevented or minimized in accordance with the stormwater pollution prevention plan for the site. This state permit does not relieve the state permittee of the reporting requirements of 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) and 40 CFR Part 302 (2002) or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002), 40 CFR Part 302 (2002), or § 62.1-44.34.19 of the Code of Virginia occurs during a 24-hour period:

1. The operator is required to notify the Department of Environmental Quality, the department, and the ~~permit-issuing~~ VSM authority in accordance with the requirements of Section III G as soon as he has knowledge of the discharge;
2. Where a release enters a municipal separate storm sewer system (MS4), the operator shall also notify the operator of the MS4; and

3. The stormwater pollution prevention plan required under Section II D of this state permit must be reviewed by the operator to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate within seven calendar days of knowledge of a release.

F. Spills. This state permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill.

G. Termination of state permit coverage. Coverage under this state permit may be terminated in accordance with 4VAC50-60-1160.

H. Water quality protection.

1. The operator must select, install, implement and maintain control measures at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standards.

2. If it is determined by the ~~permit-issuing authority~~ department in consultation with the State Water Control Board at any time that the operator's stormwater discharges have reasonable potential to cause or contribute to an excursion above any applicable water quality standard, the ~~permit-issuing authority~~ department shall require the operator to:

- a. Modify control measures in accordance with Section II C to adequately address the identified water quality concerns;
- b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
- c. Cease discharges of pollutants from construction activity and submit an individual permit application according to 4VAC50-60-410 B 3.

All written responses required under this part must include a signed certification consistent with Section III K.

## SECTION II

### STORMWATER POLLUTION PREVENTION PLAN

A. Stormwater Pollution Prevention Plan Framework.

1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to submission of a registration statement and implemented for the construction activity covered by this state permit. SWPPPs shall be prepared in accordance with good engineering practices.

2. The SWPPP shall:

- a. Identify potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site;
- b. Describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site; and

c. Comply with the terms and conditions of this state permit.

3. The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other state or local plans such as (i) an erosion and sediment control (ESC) plan, (ii) an agreement in lieu of a plan as defined in 4VAC50-30-10, (iii) a stormwater management plan, (iv) a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or (v) best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Section II D. If an erosion and sediment control plan for the land-disturbing activity is being incorporated by reference, the referenced plan must be approved by the VESCP authority of the locality in which the construction activity is to occur ~~or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulations (4VAC50-30)~~ prior to the commencement of land disturbance.

4. All plans incorporated by reference into the SWPPP become enforceable under this state permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Section II D, the operator must develop the missing elements and include them in the required SWPPP.

5. Once a definable area has been finally stabilized, the operator may mark this on the SWPPP and no further SWPPP or inspection requirements apply to that portion of the site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally stabilized; one mile of a roadway or pipeline project is done and finally stabilized, etc.).

6. The SWPPP shall identify all properties that are no longer under the control of the operator and the dates on which the operator no longer had control over each property.

7. The operator must implement the SWPPP as written and updated in accordance with Section II C from commencement of construction activity until final stabilization is complete.

B. Signature, SWPPP review and making SWPPPs available.

1. The SWPPP shall be signed in accordance with Section III K.

2. The SWPPP shall be retained, along with a copy of this state permit, registration statement, and acknowledgement letter from the ~~permit-issuing authority~~ department, at the construction site or other location easily accessible during normal business hours from the date of commencement of construction activity to the date of final stabilization. Operators with day-to-day operational control over SWPPP

implementation shall have a copy of the SWPPP available at a central location on-site for the use of all operators and those identified as having responsibilities under the SWPPP whenever they are on the construction site. The SWPPP must be made available, in its entirety, to the department, the ~~permit-issuing~~ VSMP authority, and the operator of a municipal separate storm sewer system receiving discharges from the site for review at the time of an on-site inspection. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance at the construction site.

3. The operator shall make SWPPPs and all updates available upon request to the department; the ~~permit-issuing~~ VSMP authority; EPA; a state or local agency approving erosion and sediment control plans, grading plans, or stormwater management plans; local government officials; or the operator of a municipal separate storm sewer system receiving discharges from the site.

4. A sign or other notice must be posted conspicuously near the main entrance of the construction site. The sign or other notice must contain the following information:

- a. A copy of the state permit coverage letter than includes the registration number for the construction activity; and
- b. The Internet address at which a copy of the SWPPP may be found or the location of a hard copy of the SWPPP and name and telephone number of a contact person for scheduling viewing times.

For linear projects, the sign or other notice must be posted at a publicly accessible location near an active part of the construction project (e.g., where a pipeline project crosses a public road).

5. For discharges that commence on or after July 1, 2009, that have not previously held coverage under a ~~VSMP~~ state or VPDES permit, the operator shall make the SWPPP available to the public for review. A copy of the SWPPP for each site shall be made available on the Internet or in hard copy. The website address or contact person for access to the SWPPP shall be posted on the sign required by subdivision B 4 of this section. If not provided electronically, access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. If a reproduced copy of the SWPPP is provided to the requestor, the requestor shall be responsible for the costs of reproduction. Information excluded from disclosure under applicable law shall not be required to be released. Information not required to be contained within the SWPPP by this state permit is not required to be released.

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## C. Maintaining an updated SWPPP.

1. The operator shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP.

2. The SWPPP must be amended if during inspections or investigations by the operator's qualified personnel, or by ~~local~~ VESCP authority, VSMP authority, state or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in stormwater discharges from the construction site. Revisions to the SWPPP shall include additional or modified control measures designed to correct problems identified. If approval by a ~~plan-approving~~ VSMP authority is necessary for the control measure, revisions to the SWPPP shall be completed within seven calendar days of approval. Implementation of these additional or modified control measures must be accomplished as described in Section II D 3 b.

3. Revisions to the SWPPP must be dated and signed in accordance with Section III K 2, but are not required to be certified in accordance with Section III K 4.

4. The SWPPP must clearly identify the contractor(s) or subcontractor(s) that will implement and maintain each measure identified in the SWPPP. The SWPPP shall be revised to identify any new contractor that will implement a measure.

## D. Stormwater pollution prevention plan contents. The SWPPP shall include the registration statement, this state permit, and the following items:

1. Site and activity description. Each SWPPP shall provide the following information:

a. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);

b. The intended sequence and timing of activities that disturb soils at the site (e.g., grubbing, excavation, grading, utilities and infrastructure installation);

c. A record of the dates when major grading activities occur, when construction activities temporarily or permanently cease on a portion of the site, and when stabilization measures are initiated;

d. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities including off-site borrow and fill areas;

e. A description of any other potential pollutant sources, such as vehicle fueling, storage of fertilizers or chemicals, sanitary waste facilities, etc.;

f. Identification of the nearest receiving waters at or near the construction site that will receive discharges from disturbed areas of the project;

g. The location and description of any discharge associated with industrial activity other than construction at the site. This includes stormwater discharges from dedicated asphalt plants and dedicated concrete plants that are covered by this state permit;

h. A legible general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with sufficient detail to identify the location of the construction activity and surface waters within one mile of the construction activity; and

i. A legible site map identifying:

(1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;

(2) Areas of soil disturbance and areas of the site which will not be disturbed;

(3) Locations of major structural and nonstructural control measures identified in the SWPPP, including those that will be permanent after construction activities have been completed;

(4) Locations where stabilization practices are expected to occur;

(5) Locations of surface waters;

(6) Locations where concentrated stormwater discharges;

(7) Locations of off-site material, waste, borrow or equipment storage areas covered by the SWPPP;

(8) Locations of other potential pollutant sources, such as vehicle fueling, storage of chemicals, concrete wash-out areas, sanitary waste facilities, including those temporarily placed on the construction site, etc.; and

(9) Areas where final stabilization has been accomplished.

2. Controls to minimize pollutants. The SWPPP shall include a description of all control measures that will be implemented as part of the construction activity to minimize pollutants in stormwater discharges. For each major activity identified in the project description, the SWPPP shall clearly describe appropriate control measures, the general sequencing during the construction process in which the control measures will be implemented, and which operator is responsible for the control measure's implementation.

a. Erosion and sediment controls.

(1) An erosion and sediment control plan or an agreement in lieu of a plan shall be approved by the appropriate ~~plan-approving~~ VESCP authority for the land-disturbing activity in accordance with the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq.) and regulations (4VAC50-30). Where applicable, a plan shall be developed in accordance with board-approved

annual general erosion and sediment control specifications.

(2) All control measures required by the plan shall be designed, installed, and maintained in accordance with good engineering practices and the minimum standards of the Virginia Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and regulations (4VAC50-30).

b. Management practices.

(1) Plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the site are stabilized.

(2) All control measures must be properly selected, installed, and maintained in accordance with good engineering practices and, where applicable, manufacturer specifications. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the operator must replace or modify the control for site situations as soon as practicable and update the SWPPP in accordance with Section II C.

(3) If sediment escapes the construction site, off-site accumulations of sediment must be removed as soon as practicable to minimize off-site impacts. If approval by a ~~plan approving~~ VESCP authority is necessary, control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

(4) Construction debris and construction chemicals exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges.

(5) Litter exposed to stormwater shall be prevented from becoming a pollutant source in stormwater discharges and the construction site shall be policed daily to control litter.

c. Stormwater management.

(1) The operator shall ensure compliance with the requirements of 4VAC50-60-1180 through 4VAC50-60-1190 of the Virginia Stormwater Management Regulations, including but not limited to water quality and quantity requirements. The SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable ~~local~~ VESCP authority, VSMP authority, state, and federal requirements, and any necessary permits must be obtained.

(2) Control measures contained in Part II of the Virginia Stormwater Management Regulations, 4VAC50-60-1184, or on the Virginia BMP Clearinghouse may be utilized. Innovative or alternate control measures may be allowed by the department provided such measures effectively address water quality and quantity in accordance with the requirements of 4VAC50-60-1180 through 4VAC50-60-1190 and are not restricted by the locality.

(3) Where applicable, the SWPPP shall contain additional information related to participation in a regional stormwater management plan, including:

(a) Type of regional facility or facilities to which the site contributes;

(b) Geographic location of any regional facility to which the site contributes (county or city and Hydrologic Unit Code);

(c) Geographic location of the site (county or city and Hydrologic Unit Code). Latitude and longitude may additionally be included if available; and

(d) Number of acres treated by a regional facility.

(4) Where applicable, the SWPPP shall contain additional information related to nutrient offsets to be acquired in accordance with § 10.1-603.8:1 of the Code of Virginia, including:

(a) Name of the broker from which offsets will be acquired;

(b) Geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility;

(c) Number of nutrient offsets to be acquired (lbs. per acre per year); and

(d) Nutrient reductions to be achieved on site (lbs. per acre per year).

(5) Outflows from a stormwater management facility or stormwater conveyance system shall be discharged to an adequate channel as defined in the Virginia Erosion and Sediment Control Regulations (4VAC50-30). In addition, all control measures shall be employed in a manner that minimizes impacts on the physical, chemical and biological integrity of rivers, streams, and other state waters, is protective of water quality standards, and is consistent with Section II D 6 and D 7 and other applicable provisions of this state permit.

d. Other controls.

(1) The SWPPP shall describe measures to prevent the discharge of solid materials, including building materials, garbage, and debris to state waters, except as authorized by a Clean Water Act § 404 permit.

(2) The SWPPP shall describe control measures used to comply with applicable state or local waste disposal, sanitary sewer or septic system regulations.

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(3) The SWPPP shall include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP shall also include a description of controls including storage practices, to minimize exposure of the materials to stormwater, and for spill prevention and response.

(4) The SWPPP shall include a description of pollutant sources from off-site areas (including stormwater discharges from dedicated asphalt plants and dedicated concrete plants), and a description of control measures that will be implemented at those sites to minimize pollutant discharges.

e. Applicable state or local programs. The control measures implemented at the site shall be consistent with all applicable federal, state, or ~~local~~ VESCP or VSMP authority requirements for erosion and sediment control and stormwater management. The SWPPP shall be updated as necessary to reflect any revisions to applicable federal, state or ~~local~~ VESCP or VSMP authority requirements that affect the control measures implemented at the site.

### 3. Maintenance of controls.

a. All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If site inspections required by Section II D 4 identify control measures that are not operating effectively, maintenance shall be performed as soon as practicable to maintain the continued effectiveness of stormwater controls.

b. If site inspections required by Section II D 4 identify existing control measures that need to be modified or if additional control measures are necessary for any reason, implementation shall be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, the situation shall be documented in the SWPPP and alternative control measures shall be implemented as soon as practicable.

### 4. Inspections. The name and phone number of qualified personnel conducting inspections shall be included in the SWPPP.

a. Inspections shall be conducted (i) at least every seven calendar days or (ii) at least once every 14 calendar days and within 48 hours following any runoff producing storm event. Where areas have been temporarily stabilized or runoff is unlikely due to winter conditions (e.g., the site is covered with snow or ice, or frozen ground exists) such inspections shall be conducted at least once every month.

b. Inspections must include all areas of the site disturbed by construction activity, off-site areas covered by the state permit, and areas used for storage of materials that

are exposed to precipitation, but does not need to include areas identified pursuant to Section II A 5. Inspectors must look for evidence of, or the potential for, pollutants entering a stormwater conveyance system. Control measures identified in the SWPPP shall be inspected for proper installation, maintenance, and operation. Discharge locations, where accessible, shall be inspected to ascertain whether control measures are effective in minimizing impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

c. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Section II D 4 b. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction site for 0.25 miles above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction site and allows access to the areas described above. The conditions of the controls along each inspected 0.25-mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25-mile segment to either the end of the next 0.25-mile segment, or to the end of the project, whichever occurs first. Inspection locations must be listed in the report required by Section II D 4 d.

d. A report summarizing the scope of the inspection, names and qualifications of personnel making the inspection, the dates of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Section II D 4 d of the state permit shall be made and retained as part of the SWPPP in accordance with Section III B of this state permit. Major observations should include:

- (1) The location(s) of discharges of sediment or other pollutants from the site;
- (2) Location(s) of control measures that need to be maintained;
- (3) Location(s) of control measures that failed to operate as designed or proved inadequate for a particular location;
- (4) Location(s) where additional control measures are needed that did not exist at the time of inspection;



- (5) Corrective action required including any changes to the SWPPP that are necessary and implementation dates;
- (6) An estimate of the amount of rainfall at the construction site (in inches) from the runoff producing storm event requiring the inspection, or if inspecting on a seven-day schedule, the amount of rainfall (in inches) since the previous inspection; and
- (7) Weather information and a description of any discharges occurring at the time of inspection.

A record of each inspection and of any actions taken in accordance with Section II must be retained by the operator as part of the SWPPP for at least three years from the date that state permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this state permit. The report shall be signed in accordance with Section III K of this state permit.

5. Nonstormwater discharge management. The SWPPP shall identify all allowable sources of nonstormwater discharges listed in Section I D 2 of this state permit that are combined with stormwater discharges from the construction activity at the site, except for flows from fire fighting activities. The SWPPP shall identify and require the implementation of appropriate control measures for the nonstormwater components of the discharge.

6. Total maximum daily loads. A total maximum daily load (TMDL) approved by the State Water Control Board may include a wasteload allocation to the regulated construction activity that identifies the pollutant for which stormwater control measures are necessary for the surface waters to meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date of this state permit must be specified in the SWPPP. The SWPPP shall include strategies and control measures to ensure consistency with the assumptions and requirements of the TMDL WLA that apply to the operator's discharge. In a situation where a TMDL has specified a general wasteload allocation applicable to construction stormwater discharges, but no specific requirements for construction sites have been identified in the TMDL, the operator shall consult with the state or federal TMDL authority to confirm that meeting state permit requirements will be consistent with the approved TMDL. If the TMDL specifically precludes such discharges, the operator is not eligible for coverage under the general permit.

7. Impaired waters. In accordance with Section I H, control measures shall be protective of water quality standards for impaired waters identified as having impairments for pollutants that may be discharged from the construction activity in the 2008 § 305(b)/303(d) Water Quality Assessment Integrated Report.

### SECTION III CONDITIONS APPLICABLE TO ALL VSMP STATE PERMITS

NOTE: Discharge monitoring is not required for this state permit. If the operator chooses to monitor stormwater discharges or control measures, the operator must comply with the requirements of subsections A, B, and C, as appropriate.

#### A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this state permit.
3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

#### B. Records.

1. Monitoring records and reports shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - c. The date(s) and time(s) analyses were performed;
  - d. The individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this state permit, and records of all data used to complete the registration statement for this state permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

#### C. Reporting monitoring results.

1. The operator shall update the SWPPP to include the results of the monitoring as may be performed in accordance with this state permit, unless another reporting schedule is specified elsewhere in this state permit.
2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms provided, approved or specified by the department; or in any format provided that

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the date, location, parameter, method, and result of the monitoring activity are included.

3. If the operator monitors any pollutant specifically addressed by this permit more frequently than required by this state permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

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

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

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

F. Unauthorized stormwater discharges. Pursuant to § 10.1-603.2:2 A of the Code of Virginia, except in compliance with a state permit issued by the permit-issuing authority department, it shall be unlawful to cause a stormwater discharge from a construction activity.

G. Reports of unauthorized discharges. Any operator who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002), or 40 CFR Part 302 (2002) that occurs during a 24-hour period into or upon state waters or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters, shall notify the Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, the Department of

Environmental Quality, and the permit-issuing VSMP authority within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this state permit.

Discharges reportable to the department, the Department of Environmental Quality, and the permit-issuing VSMP authority under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or "upset", as defined herein, should occur from a facility and the discharge enters or could be expected to enter state waters, the operator shall promptly notify, in no case later than within 24 hours, the department, the Department of Environmental Quality, and the permit-issuing VSMP authority by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department, the Department of Environmental Quality, and the permit-issuing VSMP authority within five days of discovery of the discharge in accordance with Section III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service of some or all of the facilities; and
4. Flooding or other acts of nature.

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

1. An oral report to the department, the Department of Environmental Quality, and the permit-issuing VSMP authority shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
  - b. Any upset that causes a discharge to state waters.
2. A written report shall be submitted within five days and shall contain:
- a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The ~~permit-issuing authority department~~ may waive the written report on a case-by-case basis for reports of noncompliance under Section III I 1 if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The operator shall report all instances of noncompliance not reported under Section III I 1 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in Section III I 2.

NOTE: The reports required in Section III G, H and I shall be made to the department's Stormwater ~~Program Section of the Division of Soil and Water Conservation Management Division~~, appropriate Department of Environmental Quality's Regional Office Pollution Response Program, and the ~~permit-issuing~~ VSMP authority. Reports may be made by telephone or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registration statement, to the department or the ~~permit-issuing~~ VSMP authority, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the ~~permit-issuing department and the VSMP~~ authority as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required only when:
- a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in 4VAC50-60-420;
  - b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this state permit; or

2. The operator shall give advance notice to the ~~permit-issuing department and VSMP~~ authority of any planned changes in the permitted facility or activity, which may result in noncompliance with state permit requirements.

K. Signatory requirements.

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

- a. For a corporation: by a responsible corporate officer. For the purpose of this part, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this part, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by state permits, including SWPPPs, and other information requested by the board, or the department, ~~or the permit-issuing authority~~ shall be signed by a person described in Section III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- a. The authorization is made in writing by a person described in Section III K 1;
- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the operator. (A duly authorized representative may thus be either a named

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individual or any individual occupying a named position); and

c. The signed and dated written authorization is included in the SWPPP. A copy must be provided to the permit-issuing department and VSMP authority, if requested.

3. Changes to authorization. If an authorization under Section III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of Section III K 2 shall be submitted to the permit-issuing VSMP authority as the administering entity for the board prior to or together with any reports or information to be signed by an authorized representative.

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

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

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

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

M. Duty to reapply. If the operator wishes to continue an activity regulated by this permit after the expiration date of this state permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing state permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

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

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

P. Oil and hazardous substance liability. Nothing in this state permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

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

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

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

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

U. Bypass.

1. "Bypass," as defined in 4VAC50-60-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to

occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Section III U 2 and 3 herein.

2. Notice.

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

b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in Section III I herein.

3. Prohibition of bypass.

a. Except as provided in Section III U 1, bypass is prohibited, and the ~~permit-issuing authority board or department~~ may take enforcement action against an operator for bypass unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production;

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

(3) The operator submitted notices as required under Section III U 2.

b. The ~~permit-issuing authority department~~ may approve an anticipated bypass, after considering its adverse effects, if the ~~permit-issuing authority department~~ determines that it will meet the three conditions listed in Section III U 3 a.

V. Upset.

1. An upset, as defined in 4VAC50-60-10, means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

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

3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

4. An operator 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 operator can identify the cause(s) of the upset;

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

c. The operator submitted notice of the upset as required in Section III I herein; and

d. The operator complied with any remedial measures required under Section III S herein.

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

W. Inspection and entry. The operator shall allow the department as the board's designee, the ~~permit-issuing~~ VSMP authority, EPA, or an authorized representative of either entity (including an authorized contractor), upon presentation of credentials and other documents as may be required by law to:

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

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

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

4. Sample or monitor at reasonable times, for the purposes of ensuring state permit compliance or as otherwise authorized by the Clean Water Act or the Virginia Stormwater Management Act, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and

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whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

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

Y. Transfer of state permits.

1. ~~Permits~~ State permits are not transferable to any person except after notice to the ~~permit-issuing authority department~~. Except as provided in Section III Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Section III Y 1, this state permit may be automatically transferred to a new operator if:

a. The current operator notifies the ~~permit-issuing authority department~~ at least 30 days in advance of the proposed transfer of the title to the facility or property;

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

c. The ~~permit-issuing authority department~~ does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

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

## Part XV

### General ~~Virginia Stormwater Management Program (VSMP)~~ Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems

#### **4VAC50-60-1200. Definitions.**

The words and terms used in this part shall have the meanings defined in the Act and this chapter unless the

context clearly indicates otherwise, except that for the purposes of this part:

"Date brought on line" means the date when the operator determines that a new stormwater management facility is properly functioning to meet its designed pollutant load reduction.

"MS4 Program Plan" means the completed registration statement and all approved additions, changes and modifications detailing the comprehensive program implemented by the operator under this state permit to reduce the pollutants in the stormwater discharged from its municipal separate storm sewer system (MS4) that has been submitted and accepted by the department.

"Physically interconnected" means that a MS4 directly discharges to a second MS4.

#### **4VAC50-60-1210. Purpose; delegation of authority; effective date of the state permit.**

A. This ~~VSMP~~ general permit regulation governs stormwater discharges from regulated small municipal separate storm sewer systems (regulated small MS4s) to surface waters of the Commonwealth of Virginia.

1. Unless the small MS4 qualifies for a waiver under subdivision 3 of this subsection, operators are regulated if they operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and:

a. The small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; or

b. The small MS4 is designated by the board, including where the designation is pursuant to 40 CFR Part 123.35 (b)(3) or (b)(4) (2001), or is based upon a petition under 4VAC50-60-380 D.

2. A small MS4 may be the subject of a petition pursuant to 4VAC50-60-380 D to the board to require a ~~VSMP~~ state permit for their discharge of stormwater. If the board determines that a small MS4 needs a state permit and the operator applies for coverage under this general permit, the operator is required to comply with the requirements of Part XV (4VAC50-60-1180 et seq.) of this chapter.

3. The board may waive the requirements otherwise applicable to a regulated small MS4 if it meets the criteria of subdivision 4 or 5 of this subsection. If a waiver is received under this subsection, the operator may subsequently be required to seek coverage under a ~~VSMP~~ state permit in accordance with 4VAC50-60-400 C if circumstances change. (See also 40 CFR Part 123.35 (b) (2001))

4. The board may waive state permit coverage if the regulated small MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria:

- a. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the ~~VSMP~~ state stormwater program; and
- b. Pollutants are discharged that have been identified as a cause of impairment of any water body to which the regulated small MS4 discharges but stormwater controls are not needed based on wasteload allocations that are part of a State Water Control Board established and EPA approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The board may waive state permit coverage if the regulated small MS4 serves a population under 10,000 and meets the following criteria:

- a. The State Water Control Board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the regulated small MS4;
- b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of a State Water Control Board established and EPA approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed and approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;
- c. For the purpose of this subdivision, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the regulated small MS4; and
- d. The board has determined that future discharges from the regulated small MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

B. This general permit will become effective on July 9, 2008, and will expire five years from the effective date.

#### **4VAC50-60-1220. Authorization to discharge.**

A. Any operator governed by this general permit is hereby authorized to discharge stormwater from the regulated small MS4 to surface waters of the Commonwealth of Virginia provided that the operator files and receives acceptance of the registration statement of 4VAC50-60-1230 by the department and files the permit fees required by Part XIII (4VAC50-60-700 et seq.) of this chapter, and provided that the operator

shall not have been required to obtain an individual permit according to 4VAC50-60-410 B.

B. The operator shall not be authorized by this general permit to discharge to state waters specifically named in other State Water Control Board or board regulations or policies that prohibit such discharges.

C. Nonstormwater discharges or flows into the regulated small MS4 are authorized by this state permit and do not need to be addressed in the MS4 Program required under 4VAC50-60-1240, Section II B 3, if:

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or ~~VSMP~~ state permit for nonstormwater discharges;
2. The individual nonstormwater discharges or flows have been identified in writing by the Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and do not require a VPDES permit;
3. Nonstormwater discharges or flows in the following categories have not been identified by the operator, State Water Control Board, or by the board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities; or
4. The discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage. The operator shall take, or ensure that the responsible party takes, all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This state permit does not transfer liability for a spill itself from the party(ies) responsible for the spill to the operator nor relieve the party(ies) responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302 (2001).

In the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator's control, a written explanation of the circumstances that prevented state permit compliance shall be submitted to the department in the annual report. Circumstances beyond the control of the operator may include abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the operator (operator error is not a condition beyond the control of the operator). The failure to provide adequate program funding, staffing or equipment

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maintenance shall not be an acceptable explanation for failure to meet state permit conditions. The board will determine, at its sole discretion, whether the reported information will result in an enforcement action.

D. Discharges that are excluded from obtaining a ~~V~~**S**~~M~~**P** state permit pursuant to 4VAC50-60-300 are exempted from the regulatory requirements of this state permit.

E. Pursuant to 40 CFR Part 122.34 (c) (2001), for those portions of a regulated small MS4 that are covered under a VPDES permit for industrial stormwater discharges, the operator shall follow the conditions established under the VPDES permit. Upon termination of VPDES permit coverage, discharges from previously VPDES authorized outfalls shall meet the conditions of this state permit provided it has been determined by the board that an individual MS4 permit is not required.

F. Stormwater discharges from specific MS4 outfalls that have been granted conditional exclusion for "no exposure" of industrial activities and materials to stormwater under the VPDES permitting program shall obtain coverage under this ~~V~~**S**~~M~~**P** general permit. The Department of Environmental Quality is responsible for determining compliance with the conditional exclusion under the State Water Control Law and attendant regulations.

G. Receipt of this ~~V~~**S**~~M~~**P** general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

## **4VAC50-60-1230. Permit State permit application (registration statement).**

A. Deadline for submitting a registration statement.

1. Operators of regulated small MS4s designated under 4VAC50-60-1210 A 1 b, that are applying for coverage under this ~~V~~**S**~~M~~**P** general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the board grants a later date.

2. In order to continue uninterrupted coverage under the ~~V~~**S**~~M~~**P** general permit, operators of regulated small MS4s shall submit a new registration statement at least 90 days before the expiration date of the existing state permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

B. Registration statement.

The registration statement shall include the following information:

1. The name and location (county or city name) of the regulated small MS4 for which the registration statement is submitted;
2. The name, type (city, county, incorporated town, unincorporated town, college or university, local school

board, military installation, transportation system, federal or state facility, or other), and address of the operator of the regulated small MS4;

3. The Hydrologic Unit Code(s) as identified in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset (available online at [http://www.dcr.virginia.gov/soil\\_&\\_water/hu.shtml](http://www.dcr.virginia.gov/soil_&_water/hu.shtml)) currently receiving discharges or that have potential to receive discharges from the regulated small MS4;

4. The estimated drainage area, in acres, served by the regulated small MS4 directly discharging to any impaired receiving surface waters listed in the 2006 Virginia 305(b)/303(d) Water Quality Assessment Integrated Report, and a description of the land use for each such drainage area;

5. A listing of any TMDL wasteloads allocated to the regulated small MS4. This information may be found at: <http://www.deq.state.va.us/tmdl/develop.html>;

6. The name(s) of any regulated physically interconnected MS4s to which the regulated small MS4 discharges;

7. A copy of the MS4 Program Plan that includes:

a. A list of best management practices (BMPs) that the operator proposes to implement for each of the stormwater minimum control measures and their associated measurable goals pursuant to 4VAC50-60-1240, Section II B, that includes:

(1) A list of the existing policies, ordinances, schedules, inspection forms, written procedures, and other documents necessary for best management practice implementation; and

(2) The individuals, departments, divisions, or units responsible for implementing the best management practices;

b. The objective and expected results of each best management practice in meeting the measurable goals of the stormwater minimum control measures;

c. The implementation schedule including any interim milestones for the implementation of a proposed new best management practice; and

d. The method that will be utilized to determine the effectiveness of each best management practice and the MS4 Program as a whole;

8. A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures;

9. The name, address, telephone number and email address of either the principal executive officer or ranking elected official as defined in 4VAC50-60-370;



10. The name, position title, address, telephone number and email address of any duly authorized representative as defined in 4VAC50-60-370; and

11. 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."

C. The registration statement shall be signed by the principal executive officer or ranking elected official in accordance with 4VAC50-60-370.

D. An operator may file its own registration statement, or the operator and other operators of regulated small MS4s may jointly submit a registration statement. If responsibilities for meeting the stormwater minimum control measures will be shared with other municipalities or governmental entities, the registration statement must describe which stormwater minimum control measures the operator will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the regulated small MS4.

E. Where to submit. The registration statement shall be submitted to:

Department of Conservation and Recreation  
 Division of Soil and Water Conservation  
 Stormwater Permitting  
 203 Governor Street, Suite 206  
 Richmond, VA 23219

**4VAC50-60-1240. General permit.**

Any operator whose registration statement is accepted by the department will receive coverage under the following state permit and shall comply with the requirements therein and be subject to all applicable requirements of the Virginia Stormwater Management Act (Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60).

General Permit No.: VAR04

Effective Date: July 9, 2008

Expiration Date: July 8, 2013

GENERAL PERMIT FOR DISCHARGES OF  
 STORMWATER FROM SMALL MUNICIPAL SEPARATE  
 STORM SEWER SYSTEMS

AUTHORIZATION TO DISCHARGE UNDER THE  
 VIRGINIA STORMWATER MANAGEMENT PROGRAM  
 AND THE VIRGINIA STORMWATER MANAGEMENT  
 ACT

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant thereto, this state permit authorizes operators of small municipal separate storm sewer systems to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Section I—Discharge Authorization and Special Conditions, Section II—MS4 Program and Section III—Conditions Applicable To All ~~VSMP~~ State Permits, as set forth herein. The operator shall utilize all legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, contract, order or interjurisdictional agreements.

SECTION I  
 DISCHARGE AUTHORIZATION AND SPECIAL  
 CONDITIONS

A. Coverage under this state permit. During the period beginning with the date of coverage under this general permit and lasting until the expiration and reissuance of this state permit, the operator is authorized to discharge in accordance with this state permit from the small municipal separate storm sewer system identified in the registration statement into surface waters.

B. Special conditions. A total maximum daily load (TMDL) approved by the State Water Control Board may include a wasteload allocation to the regulated small MS4 that identifies the pollutant for which stormwater controls are necessary for the surface waters to meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date of this permit must be addressed through the measurable goals of the MS4 Program Plan. A wasteload allocation does not establish that the operator of a regulated small MS4 is in or out of compliance with the conditions of this permit.

1. The operator shall update its MS4 Program Plan to include measurable goals, schedules, and strategies to ensure MS4 Program consistency with the assumptions of the TMDL WLA within 18 months of permit coverage; or,

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within 18 months of the effective date of any reopening of this permit to include wasteloads allocated to the regulated small MS4 after issuance of permit coverage.

2. The measurable goals, schedules, strategies, and other best management practices (BMPs), required in an updated MS4 Program Plan to assure MS4 Program consistency with an approved TMDL for the pollutant identified in a WLA are, at a minimum:

a. The operator shall develop a list of its current ordinances and legal authorities, BMPs, policies, plans, procedures and contracts implemented as part of the MS4 Program that are applicable to reducing the pollutant identified in a WLA.

b. The operator shall evaluate existing ordinances and legal authorities, BMPs, policies, plans, procedures and contracts of the existing MS4 Program to determine the effectiveness of the MS4 Program in addressing reductions of the pollutant identified in the WLA. The evaluation shall identify any weakness or limitation in the MS4 Program to reduce the pollutant identified in the WLA in a manner consistent with the TMDL.

c. The operator shall develop a schedule to implement procedures and strategies that address the MS4 Program weaknesses such as timetables to update existing ordinances and legal authorities within two years, BMPs, policies, plans, procedures and contracts to ensure consistency with the assumptions of the TMDL WLA. When possible, source elimination shall be prioritized over load reduction.

d. The operator shall implement the schedule established in Section I B 2 c.

3. The operator shall integrate an awareness campaign into its existing public education and outreach program that promotes methods to eliminate and reduce discharges of the pollutant identified in the WLA. This may include additional employee training regarding the sources and methods to eliminate and minimize the discharge of the pollutant identified in the WLA.

4. The operator is encouraged to participate as a stakeholder in the development of any implementation plans developed to address the TMDL and shall incorporate applicable best management practices identified in the TMDL implementation plan in their MS4 Program Plan. The operator may choose to implement BMPs of equivalent design and efficiency instead of those identified in the TMDL implementation plan, provided that the rationale for any substituted BMP is provided and the substituted BMP is consistent with the TMDL and the WLA.

5. The operator shall develop and implement outfall reconnaissance procedures to identify potential sources of the pollutant identified in the WLA from anthropogenic

activities. The operator shall conduct reconnaissance in accordance with the following:

a. Should the operator have 250 or more total outfalls discharging to the surface water identified in the WLA, the operator shall perform reconnaissance on a minimum of 250 outfalls for each WLA assigned at least once during the five-year permit period and shall perform reconnaissance on a minimum of 35 outfalls per year.

b. Should the operator have less than 250 total outfalls discharging to an identified surface water, the operator shall perform reconnaissance on all outfalls during the five-year permit period and shall annually conduct reconnaissance on a minimum of 15% of its known MS4 outfalls discharging to the surface water for which the WLA has been assigned.

The department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments," EPA cooperative agreement number X-82907801-0, for guidance in implementing its outfall reconnaissance procedures. The operator shall implement procedures designed to reduce the discharge of the pollutant in a manner consistent with the TMDL. Physically interconnected MS4s may coordinate outfall reconnaissance to meet the requirements of this subdivision.

6. The operator shall evaluate all properties owned or operated by the MS4 operator that are not covered under a separate VPDES permit for potential sources of the pollutant identified in the WLA. Within three years of the required date for updating the MS4 Program Plan, the operator shall conduct a site review and characterize the runoff for those properties where it determines that the pollutant identified in the WLA is currently stored, or has been transferred, transported or historically disposed of in a manner that would expose it to precipitation in accordance with the following schedule:

a. As a part of the site review, the operator shall collect a total of two samples from a representative outfall for each identified municipal property. One sample shall be taken during each of the following six-month periods: October through March, and April through September.

b. All collected samples shall be grab samples and collected within the first 30 minutes of a runoff producing event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable (greater than 0.1 inch rainfall) storm event. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the property. The required 72-hour storm event interval may also be waived where the operator documents that less than a 72-hour interval is representative for local storm events

during the season when sampling is being conducted. Analytical methods shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved 40 CFR Part 136 method does not exist, the operator must use a method consistent with the TMDL.

c. For properties where there is found to be a discharge of the pollutant identified in the WLA, the operator shall develop and implement a schedule to minimize the discharge of the pollutant identified in the WLA in a manner consistent with the approved TMDL.

7. The operator shall conduct an annual characterization that estimates the volume of stormwater discharged, in cubic feet, and the quantity of pollutant identified in the WLA, in a unit consistent with the WLA, discharged by the regulated small MS4.

8. As part of the annual evaluation, the operator shall update the MS4 Program Plan to include any new information regarding the TMDL in order to ensure consistency with the TMDL.

9. Along with reporting requirements in Section II E, the operator shall include the following with each annual report:

a. Copies of any updates to the MS4 Program Plan completed during the reporting cycle and any new information regarding the TMDL in order to evaluate its ability to assure the consistency of its discharge with the assumptions of the TMDL WLA.

b. The estimate of the volume of stormwater discharged, in cubic feet, and the quantity of pollutant identified in the WLA, in a unit consistent with the WLA discharged by the regulated small MS4 for each WLA.

SECTION II

MUNICIPAL SEPARATE STORM SEWER SYSTEM MANAGEMENT PROGRAM

A. The operator of a regulated small MS4 must develop, implement, and enforce a MS4 Program designed to reduce the discharge of pollutants from the regulated small MS4 to the maximum extent practicable (MEP), to protect water quality, to ensure compliance by the operator with water quality standards, and to satisfy the appropriate water quality requirements of the Clean Water Act and regulations. The MS4 Program must include the minimum control measures described in paragraph B of this section. Implementation of best management practices consistent with the provisions of an iterative MS4 Program required pursuant to this section constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable", protects water quality in the absence of a TMDL wasteload allocation, ensures compliance by the operator with water quality standards, and satisfies the appropriate water quality requirements of the Clean Water Act and regulations in the

absence of a TMDL WLA. The requirements of this section and those special conditions set out in Section I B also apply where a WLA is applicable.

No later than January 9, 2009, the operator shall review its existing MS4 Program Plan and submit a schedule to develop and implement programs to meet the conditions established by this permit. For operators of regulated small MS4s that are applying for initial coverage under this general permit, the schedule to develop and implement the MS4 Program Plan shall be submitted with the completed registration statement.

B. Minimum control measures.

1. Public education and outreach on stormwater impacts. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff. The department recommends that the operator review the Environmental Protection Agency (EPA) publication entitled "Getting in Step: A Guide for Conducting Watershed Outreach Campaigns," publication number EPA 841-B-03-002, for guidance in developing a public education program.

The operator shall identify, schedule, implement, evaluate and modify, as necessary, BMPs to meet the following public education and outreach measurable goals:

a. Increased individual and household knowledge about the steps that they can take to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;

b. Increased public employee, business, and general public knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications;

c. Increased individual and group involvement in local water quality improvement initiatives including the promotion of local restoration and clean up projects, programs, groups, meetings and other opportunities for public involvement;

d. Diverse strategies to target audiences specific to the area serviced by the regulated small MS4;

e. Improved outreach program to address viewpoints and concerns of target audiences, with a recommended focus on minorities, disadvantaged audiences and minors; and

f. Targeted strategies towards local groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.

2. Public involvement/participation.

The operator shall comply with applicable state, tribal, and local public notice requirements and identify, schedule, implement, evaluate and modify, as necessary, BMPs to

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meet the following public involvement/participation measurable goals:

- a. Promote the availability of the operator's MS4 Program Plan and any modifications for public review and comment. Public notice shall be given by any method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Provide access to or copies of the MS4 Program Plan or any modifications upon request of interested parties in compliance with all applicable freedom of information regulations;
- b. Provide access to or copies of the annual report upon request of interested parties in compliance with all applicable freedom of information regulations; and
- c. Participate, through promotion, sponsorship, or other involvement, in local activities aimed at increasing public participation to reduce stormwater pollutant loads and improve water quality.

3. Illicit discharge detection and elimination. The MS4 Program shall:

- a. Develop, implement and enforce a program to detect and eliminate illicit discharges, as defined at 4VAC50-60-10, into the regulated small MS4. The department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments," Environmental Protection Agency (EPA) cooperative agreement number X-82907801-0, for guidance in implementing and evaluating its illicit discharge detection and elimination program;
- b. Develop, if not already completed, and maintain, an updated storm sewer system map, showing the location of all known outfalls of the regulated small MS4 including those physically interconnected to a regulated MS4, the associated surface waters and HUCs, and the names and locations of all impaired surface waters that receive discharges from those outfalls. The operator shall also estimate the acreage within the regulated small MS4 discharging to each HUC and impaired water;
- c. To the extent allowable under state, tribal or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, nonstormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

The following categories of nonstormwater discharges or flows (i.e., illicit discharges) must be addressed only if they are identified by the operator, the State Water Control Board, or by the board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows,

rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, discharges or flows from fire fighting activities, and flows that have been identified in writing by the Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and not requiring a VPDES permit;

- d. Develop and implement procedures to detect and address nonstormwater discharges, including illegal dumping, to the regulated small MS4;
- e. Prevent or minimize to the maximum extent practicable, the discharge of hazardous substances or oil in the stormwater discharge(s) from the regulated small MS4. In addition, the MS4 Program must be reviewed to identify measures to prevent the recurrence of such releases and to respond to such releases, and the program must be modified where appropriate. This permit does not relieve the operator or the responsible part(ies) of any reporting requirements of 40 CFR Part 110 (2001), 40 CFR Part 117 (2001) and 40 CFR Part 302 (2001) or § 62.1-44.34:19 of the Code of Virginia;
- f. Track the number of illicit discharges identified, provide narrative on how they were controlled or eliminated, and submit the information in accordance with Section II E 3; and
- g. Notify, in writing, any downstream regulated MS4 to which the small regulated MS4 is physically interconnected of the small regulated MS4's connection to that system.

4. Construction site stormwater runoff control.

- a. The operator shall develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more.

The procedures must include the development and implementation of, at a minimum:

- (1) An ordinance or other mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance with the Erosion and Sediment Control Law and attendant regulations, to the extent allowable under state, tribal, or local law. Such ordinances and other mechanisms shall be updated as necessary;
  - (2) Requirements for construction site owners and operators to implement appropriate erosion and sediment control best management practices as part of an erosion and sediment control plan that is consistent with the Erosion and Sediment Control Law and attendant regulations and other applicable requirements of state, tribal, or local law. Where determined appropriate by the operator, the operator shall encourage the use of structural and nonstructural design techniques to create a design that has the goal of maintaining or replicating predevelopment runoff characteristics and site hydrology;
  - (3) Requirements for construction site owners and operators to secure authorization to discharge stormwater from construction activities under a ~~VSMP~~ permit for construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, stormwater discharges from construction activity disturbing less than one acre must secure authorization to discharge under a ~~VSMP~~ state permit if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;
  - (4) Procedures for receipt and consideration of information submitted by the public; and
  - (5) Procedures for site inspection and enforcement of control measures.
    - b. The operator shall ensure that plan reviewers, inspectors, program administrators and construction site owners and operators obtain the appropriate certifications as required under the Erosion and Sediment Control Law;
    - c. The operator shall track regulated land-disturbing activities and submit the following information in accordance with Section II E 3:
      - (1) Total number of regulated land-disturbing activities; and
      - (2) Total disturbed acreage.
5. Post-construction stormwater management in new development and redevelopment.
- a. The operator shall develop, implement, and enforce procedures to address stormwater runoff to the regulated small MS4 from new development and redevelopment projects that disturb greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the regulated small MS4. The procedures must ensure that controls are in place that would prevent or minimize water quality and quantity impacts in accordance with this section.
    - b. The operator shall:
      - (1) Develop and implement strategies which include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for the operator's community. Where determined appropriate by the operator, the operator shall encourage the use of structural and nonstructural design techniques to create a design that has the goal of maintaining or replicating predevelopment runoff characteristics and site hydrology;
      - (2) Use an ordinance, regulation, or other mechanism to address post-construction runoff from new development and redevelopment projects to ensure compliance with the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia) and attendant regulations, and to the extent allowable under state, tribal or local law. Such ordinances and other mechanisms shall be updated as necessary;
      - (3) Require construction site owners and operators to secure authorization to discharge stormwater from construction activities under a ~~VSMP~~ permit for new development and redevelopment projects that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, stormwater discharges from construction activity disturbing less than one acre must secure authorization to discharge under a ~~VSMP~~ state permit if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;
      - (4) Require adequate long-term operation and maintenance by the owner of structural stormwater management facilities through requiring the owner to develop a recorded inspection schedule and maintenance agreement to the extent allowable under state, tribal or local law or other legal mechanism. The operator shall additionally develop, through the maintenance agreement or other method, a mechanism for enforcement of maintenance responsibilities by the operator if they are neglected by the owner;

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(5) Conduct site inspection and enforcement measures consistent with the Virginia Stormwater Management Act and attendant regulations; and

(6) Track all known permanent stormwater management facilities that discharge to the regulated small MS4 and submit the following information in accordance with Section II E 3:

(a) Type of structural stormwater management facility installed as defined in the Virginia Stormwater Management Handbook;

(b) Geographic location (HUC);

(c) Where applicable, the impaired surface water that the stormwater management facility is discharging into; and

(d) Number of acres treated.

6. Pollution prevention/good housekeeping for municipal operations. Develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials including those available from EPA, state, tribe, or other organizations, the program shall include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and MS4 maintenance. The operator is encouraged to review the Environmental Protection Agency's (EPA's) National Menu of Stormwater Best Management Practices for ideas and strategies to incorporate into its program. The menu can be accessed at <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>.

The operator shall identify, implement, evaluate and modify, as necessary, BMPs to meet the following pollution prevention/good housekeeping for municipal operations measurable goals:

a. Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the regulated small MS4 and receiving surface waters;

b. Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities;

c. Waste materials shall be disposed of properly;

d. Materials that are soluble or erodible shall be protected from exposure to precipitation;

e. Materials, including but not limited to fertilizers and pesticides, that have the potential to pollute receiving surface waters shall be applied according to manufacturer's recommendations; and

f. For state agencies with lands where nutrients are applied, nutrient management plans shall be developed and implemented in accordance with the requirements of § 10.1-104.4 of the Code of Virginia.

C. If an existing program requires the implementation of one or more of the minimum control measures of Section II B, the operator, with the approval of the board, may follow that program's requirements rather than the requirements of Section II B. A program that may be considered includes, but is not limited to, a local, state or tribal program that imposes, at a minimum, the relevant requirements of Section II B.

The operator's MS4 Program Plan shall identify and fully describe any program that will be used to satisfy one or more of the minimum control measures of Section II B.

If the program the operator is using requires the approval of a third party, the program must be fully approved by the third party, or the operator must be working towards getting full approval. Documentation of the program's approval status, or the progress towards achieving full approval, must be included in the annual report required by Section II E 3.

D. The operator may rely on another entity to satisfy the ~~VSMP~~ state permit obligations to implement a minimum control measure if: (i) the other entity, in fact, implements the control measure; (ii) the particular control measure, or component thereof, is at least as stringent as the corresponding ~~VSMP~~ state permit requirement; and (iii) the other entity agrees to implement the control measure on behalf of the operator. The agreement between the parties must be documented in writing and retained by the operator with the MS4 Program Plan for the duration of this state permit.

In the annual reports that must be submitted under Section II E 3, the operator must specify that another entity is being relied on to satisfy some of the state permit obligations.

If the operator is relying on another governmental entity regulated under 4VAC50-60-380 to satisfy all of the state permit obligations, including the obligation to file periodic reports required by Section II E 3, the operator must note that fact in the registration statement, but is not required to file the periodic reports.

The operator remains responsible for compliance with the state permit obligations if the other entity fails to implement the control measure (or component thereof).

E. Evaluation and assessment.

1. Evaluation.

a. The operator must annually evaluate:

(1) Program compliance;

(2) The appropriateness of the identified BMPs (as part of this evaluation, the operator shall evaluate the effectiveness of BMPs in addressing discharges into waters that are identified as impaired in the 2006

305(b)/303(d) Water Quality Assessment Integrated Report); and

(3) Progress towards achieving the identified measurable goals.

b. The operator must evaluate its MS4 Program once during the permit cycle using the "Municipal Stormwater Program Evaluation Guidance," Environmental Protection Agency EPA-833-R-07-003. Such information shall be utilized when reapplying for permit coverage. Results of this evaluation shall be kept on file and made available during audits and inspections.

2. Recordkeeping. The operator must keep records required by the NPDES state permit for at least three years. These records must be submitted to the NPDES permitting authority only upon specific request. The operator must make the records, including a description of the stormwater management program, available to the public at reasonable times during regular business hours.

3. Annual reports. The operator must submit an annual report for the reporting period of July 1 through June 30 to the department by the following October 1. The reports shall include:

a. Background Information.

(1) The name and state permit number of the program submitting the annual report;

(2) The annual report permit year;

(3) Modifications to any operator's department's roles and responsibilities;

(4) Number of new MS4 outfalls and associated acreage by HUC added during the permit year; and

(5) Signed certification.

b. The status of compliance with state permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

c. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

d. A summary of the stormwater activities the operator plans to undertake during the next reporting cycle;

e. A change in any identified best management practices or measurable goals for any of the minimum control measures including steps to be taken to address any deficiencies;

f. Notice that the operator is relying on another government entity to satisfy some of the state permit obligations (if applicable);

g. The approval status of any programs pursuant to Section II C (if appropriate), or the progress towards achieving full approval of these programs;

h. Information required pursuant to Section I B 9;

i. The number of illicit discharges identified and the narrative on how they were controlled or eliminated pursuant to Section II B 3 f;

j. Regulated land-disturbing activities data tracked under Section II 4 c;

k. All known permanent stormwater management facility data tracked under Section II B 5 b (6) submitted in a database format to be prescribed by the department. Upon filing of this list, subsequent reports shall only include those new stormwater management facilities that have been brought online;

l. A list of any new or terminated signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures; and

m. Copies of any written comments received during a public comment period regarding the MS4 Program Plan or any modifications.

F. Program Plan modifications. The board may require modifications to the MS4 Program Plan as needed to address adverse impacts on receiving surface water quality caused, or contributed to, by discharges from the regulated small MS4. Modifications required by the board shall be made in writing and set forth the time schedule to develop and implement the modification. The operator may propose alternative program modifications and time schedules to meet the objective of the required modification. The board retains the authority to require any modifications it determines are necessary.

SECTION III

CONDITIONS APPLICABLE TO ALL ~~VSMP~~ STATE PERMITS

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this state permit.

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

B. Records.

1. Monitoring records/reports shall include:

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

b. The individual(s) who performed the sampling or measurements;

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- c. The date(s) and time(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

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

### C. Reporting monitoring results.

- 1. The operator shall submit the results of the monitoring required by this state permit with the annual report unless another reporting schedule is specified elsewhere in this state permit.
- 2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR); on forms provided, approved or specified by the department; or in any format provided the date, location, parameter, method, and result of the monitoring activity are included.
- 3. If the operator monitors any pollutant specifically addressed by this state permit more frequently than required by this state permit using test procedures approved under 40 CFR Part 136 (2001) or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this state permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
- 4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this state permit.

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

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and

final requirements contained in any compliance schedule of this state permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized stormwater discharges. Pursuant to § 10.1-603.2:2 A of the Code of Virginia, except in compliance with a state permit issued by the board, it shall be unlawful to cause a stormwater discharge from a MS4.

G. Reports of unauthorized discharges. Any operator of a regulated small MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) that occurs during a 24-hour period into or upon surface waters; or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters, shall notify the Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department of Environmental Quality and the Department of Conservation and Recreation, within five days of discovery of the discharge. The written report shall contain:

- 1. A description of the nature and location of the discharge;
- 2. The cause of the discharge;
- 3. The date on which the discharge occurred;
- 4. The length of time that the discharge continued;
- 5. The volume of the discharge;
- 6. If the discharge is continuing, how long it is expected to continue;
- 7. If the discharge is continuing, what the expected total volume of the discharge will be; and
- 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this state permit.

Discharges reportable to the Department of Environmental Quality and the Department of Conservation and Recreation under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or "upset," as defined herein, should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the Department of Environmental Quality and the Department of Conservation and Recreation by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the Department of Environmental Quality



and the Department of Conservation and Recreation within five days of discovery of the discharge in accordance with Section III I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the facilities; and
4. Flooding or other acts of nature.

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

1. An oral report shall be provided within 24 hours to the Department of Environmental Quality and the Department of Conservation and Recreation from the time the operator becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

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

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board or its designee may waive the written report on a case-by-case basis for reports of noncompliance under Section III I if the oral report has been received within 24 hours and no adverse impact on surface waters has been reported.

3. The operator shall report all instances of noncompliance not reported under Sections III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Section III I 2.

NOTE: The immediate (within 24 hours) reports required to be provided to the Department of Environmental Quality in Sections III G, H and I may be made to the appropriate Department of Environmental Quality's Regional Office Pollution Response Program as found at <http://www.deq.virginia.gov/prep/homepage.html#>.

Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report to the department or the Department of Environmental Quality, it shall promptly submit such facts or correct information.

J. Notice of planned changes.

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

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

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

b. The operator plans alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this state permit; or

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

K. Signatory requirements.

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

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

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

c. For a municipality, state, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a public agency includes:

(1) The chief executive officer of the agency, or

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by state permits, and other information requested by the board shall be signed by a person described in Section III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Section III K 1;

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

c. The written authorization is submitted to the department.

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

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to 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."

L. Duty to comply. The operator shall comply with all conditions of this state permit. Any state permit noncompliance constitutes a violation of the Virginia

Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this state permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. ~~Permit~~ State permit noncompliance is grounds for enforcement action; for state permit termination, revocation and reissuance, or modification; or denial of a state permit renewal application.

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

M. Duty to reapply. If the operator wishes to continue an activity regulated by this state permit after the expiration date of this state permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing state permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

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

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

P. Oil and hazardous substance liability. Nothing in this state permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

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

similar systems, which are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this state permit.

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

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

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

U. Bypass.

1. "Bypass," as defined in 4VAC50-60-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Sections III U 2 and U 3.

2. Notice.

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

b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in Section III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board or its designee may take enforcement action against an operator for bypass, unless:

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

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

(3) The operator submitted notices as required under Section III U 2.

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

V. Upset.

1. An upset, as defined in 4VAC50-60-10, constitutes an affirmative defense to an action brought for noncompliance with technology based state permit effluent limitations if the requirements of Section III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. 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.

3. An operator 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 operator can identify the cause(s) of the upset;

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

c. The operator submitted notice of the upset as required in Section III I; and

d. The operator complied with any remedial measures required under Section III S.

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

W. Inspection and entry. The operator shall allow the department as the board's designee, 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 operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this state permit;

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

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

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

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours,

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and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

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

Y. Transfer of state permits.

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

2. As an alternative to transfers under Section III Y 1, this state permit may be automatically transferred to a new operator if:

- a. The current operator notifies the department at least two days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new operators containing a specific date for transfer of state permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Section III Y 2 b.

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

**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 (4VAC50-60)

[Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1, DCR 199-149 \(August 1990\).](#)

[Department of Conservation and Recreation Permit Fee Form, DCR 199-145 \(10/09\).](#)

[Department of Conservation and Recreation Construction Activity Operator Permit Fee Form, DCR 199-213 \(09/12\).](#)

~~VSMP~~ [General Permit for Discharges of Stormwater from Construction Activities \(VAR10\) - Registration Statement, DCR 199-146 \(03/09\).](#)

~~VSMP~~ [General Permit Notice of Termination - Construction Activity Stormwater Discharges \(VAR10\), DCR 199-147 \(03/09\).](#)

~~VSMP~~ [General Permit for Discharges of Stormwater from Construction Activities \(VAR10\) - Transfer Agreement, DCR199-191 \(03/09\).](#)

~~VSMP~~ [General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems \(VAR04\), DCR 199-148 \(07/08\).](#)

VA.R. Doc. No. R13-3319; Filed October 3, 2012, 8:54 a.m.

## Final Regulation

**REGISTRAR'S NOTICE:** Chapters 785 and 819 of the 2012 Acts of Assembly abolished the Chesapeake Bay Local Assistance Board and transferred its regulations to the Virginia Soil and Water Conservation Board effective July 1, 2012. The following action transfers the Chesapeake Bay Local Assistance Board regulation numbered 9VAC10-20 to the Virginia Soil and Water Conservation Board and renumbers the regulation as 4VAC50-90.

The Virginia Soil and Water Conservation Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors and (ii) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Virginia Soil and Water Conservation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **4VAC50-90. Chesapeake Bay Preservation Area Designation and Management Regulations (adding 4VAC50-90-10 through 4VAC50-90-270).**

**Statutory Authority:** §§ 10.1-2103 and 10.1-2107 of the Code of Virginia.

**Effective Date:** November 21, 2012.

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

Summary:

*The amendments change references to the Chesapeake Bay Local Assistance Board to the Virginia Soil and Water Conservation Board (VSWCB) and renumber the sections to place the regulation under the VSWCB in the Virginia Administrative Code.*

*Additional amendments modify the general performance criteria to:*

- 1. Remove the requirement that best management practice maintenance be ensured by the local government through a maintenance agreement with the owner or developer or some other mechanism that achieves an equivalent objective. This requirement is duplicative of requirements already embodied under the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and attendant regulations.*
- 2. Stipulate that enforcement for noncompliance with the erosion and sediment control requirements referenced in subdivision 5 of 4VAC50-90-130 shall be conducted under the provisions of the Erosion and Sediment Control Act (§ 10.1-560 et seq. of the Code of Virginia) and attendant regulations.*
- 3. Remove requirements associated with stormwater management criteria. These requirements are duplicative of requirements already embodied under the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and attendant regulations. Also, the amendments clarify that any stormwater management facilities constructed in a resource protection area shall be constructed in accordance with the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and its attendant regulations and clarify that the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 4VAC50-60-92 of the Virginia Stormwater Management Program (VSMP) Permit regulations.*
- 4. Stipulate the details of a compliance review process to be conducted under these regulations, including the use of corrective action agreements.*

CHAPTER ~~20~~ 90CHESAPEAKE BAY PRESERVATION AREA  
DESIGNATION AND MANAGEMENT REGULATIONS

## Part I

## Introduction

**9VAC10-20-10. 4VAC5-90-10. Application.**

The board is charged with the development of regulations which establish criteria that will provide for the protection of water quality, and that also will accommodate economic development. All counties, cities and towns in Tidewater Virginia shall comply with this chapter. Other local governments not in Tidewater Virginia may use the criteria and conform their ordinances as provided in this chapter to

protect the quality of state waters in accordance with § 10.1-2110 of the Code of Virginia.

**9VAC10-20-20. 4VAC50-90-20. Authority for chapter.**

This chapter is issued under the authority of § 10.1-2107 of ~~Chapter 21 of Title 10.1~~ of the Code of Virginia (the Chesapeake Bay Preservation Act, hereinafter "the Act").

**9VAC10-20-30. 4VAC50-90-30. Purpose of chapter.**

A. The purpose of this chapter is to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by minimizing the effects of human activity upon these waters and implementing the Act, which provides for the definition and protection of certain lands called Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries.

B. This chapter establishes the criteria that counties, cities and towns (hereinafter "local governments") shall use to determine the extent of the Chesapeake Bay Preservation Areas within their jurisdictions. This chapter establishes criteria for use by local governments in granting, denying or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas. This chapter identifies the requirements for changes which local governments shall incorporate into their comprehensive plans, zoning ordinances and subdivision ordinances and employ to ensure that the use and development of land in Chesapeake Bay Preservation Areas shall be accomplished in a manner that protects the quality of state waters pursuant to §§ 10.1-2109 and 10.1-2111 of the Act.

**9VAC10-20-40. 4VAC50-90-40. Definitions.**

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 10.1-2101 of the Act.

"Act" means the Chesapeake Bay Preservation Act found in Chapter 21 (§ 10.1-2100 et seq.) of Title 10.1 of the Code of Virginia.

"Best management practice" means a practice, or combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

"Board" means the ~~Chesapeake Bay Local Assistance Board~~ Virginia Soil and Water Conservation Board.

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (~~9VAC10-20-70 4VAC50-90-70~~ et seq.) of this chapter and

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§ 10.1-2107 of the Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Department" means the ~~Chesapeake Bay Local Assistance Department~~ Department of Conservation and Recreation.

"Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures.

"Director" means the ~~executive director of the Chesapeake Bay Local Assistance Department~~ Director of the Department of Conservation and Recreation.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula  $RKLS/T$ , where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

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

"Infill" means utilization of vacant land in previously developed areas.

"Intensely Developed Areas" means those areas designated by the local government pursuant to ~~9VAC10-20-100~~ 4VAC50-90-100.

"Local governments" means counties, cities and towns. This chapter applies to local governments in Tidewater Virginia, as defined in § 10.1-2101 of the Act, but the provisions of this chapter may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and this chapter.

"Local program adoption date" means the date a local government meets the requirements of subdivisions 1 and 2 of ~~9VAC10-20-60~~ 4VAC50-90-60.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and

that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act, in 33 CFR § 328.3b.

"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with § 10.1-2109 of the Act and this chapter, prior to issuance of a building permit.

"Public road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and (ii) the Virginia Stormwater Management Act (§ 10.1-603.1 et seq. of the Code of Virginia). This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

"Redevelopment" means the process of developing land that is or has been previously developed.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

"Silvicultural activities" means forest management activities, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

"Substantial alteration" means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

"Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § 10.1-2101 of the Act.

"Use" means an activity on the land other than development including, but not limited to, agriculture, horticulture and silviculture.

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, but are not limited to (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.

Part II  
Local Government Programs

~~9VAC10-20-50.~~ 4VAC50-90-50. Local program development.

Local governments shall develop measures (hereinafter called "local programs") necessary to comply with the Act and this chapter. Counties and towns are encouraged to cooperate in the development of their local programs. In conjunction with other state water quality programs, local programs shall encourage and promote: (i) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, which might reasonably be expected to inhabit them; (ii) safeguarding the clean waters of the Commonwealth from pollution; (iii) prevention of any increase in pollution; (iv) reduction of existing pollution; and (v) promotion of water resource conservation in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

~~9VAC10-20-60.~~ 4VAC50-90-60. Elements of program.

Local programs shall contain the elements listed below.

1. A map delineating Chesapeake Bay Preservation Areas.
2. Performance criteria applying in Chesapeake Bay Preservation Areas that employ the requirements in Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) of this chapter.
3. A comprehensive plan or revision that incorporates the protection of Chesapeake Bay Preservation Areas and of the quality of state waters, in accordance with criteria set forth in Part V (~~9VAC10-20-170~~ 4VAC50-90-160 et seq.) of this chapter.
4. A zoning ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in Part VI (~~9VAC10-20-181~~ 4VAC50-90-180 et seq.) of this chapter, and (ii) requires compliance with all criteria set forth in

Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) of this chapter.

5. A subdivision ordinance or revision that (i) incorporates measures to protect the quality of state waters in Chesapeake Bay Preservation Areas, as set forth in Part VI (~~9VAC10-20-181~~ 4VAC50-90-180 et seq.) of this chapter, and (ii) assures that all subdivisions in Chesapeake Bay Preservation Areas comply with the criteria set forth in Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) of this chapter.

~~6. An erosion and sediment control ordinance or revision that requires compliance with the criteria in Part IV (~~9VAC10-20-110~~ et seq.) of this chapter.~~

~~7.~~ 6. A plan of development process prior to the issuance of a building permit to assure that use and development of land in Chesapeake Bay Preservation Areas is accomplished in a manner that protects the quality of state waters.

Part III

Chesapeake Bay Preservation Area Designation Criteria

~~9VAC10-20-70.~~ 4VAC50-90-70. Purpose.

The criteria in this part provide direction for local government designation of the ecological and geographic extent of Chesapeake Bay Preservation Areas. Chesapeake Bay Preservation Areas are divided into Resource Protection Areas and Resource Management Areas that are subject to the criteria in Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) and the requirements in Part V (~~9VAC10-20-170~~ 4VAC50-90-160 et seq.) of this chapter. In addition, the criteria in this part provide guidance for local government identification of areas suitable for redevelopment that are subject to the redevelopment criteria in Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) of this chapter.

~~9VAC10-20-80.~~ 4VAC50-90-80. Resource Protection Areas.

A. At a minimum, Resource Protection Areas shall consist of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction or assimilation of sediments, nutrients and potentially harmful or toxic substances in runoff entering the bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.

B. The Resource Protection Area shall include:

1. Tidal wetlands;
2. Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;
3. Tidal shores;

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4. Such other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters; and

5. A buffer area not less than 100 feet in width located adjacent to and landward of the components listed in subdivisions 1 through 4 above, and along both sides of any water body with perennial flow. The full buffer area shall be designated as the landward component of the Resource Protection Area notwithstanding the presence of permitted uses, encroachments, and permitted vegetation clearing in compliance with Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) of this chapter.

C. Designation of the components listed in subdivisions 1-4 of subsection B of this section shall not be subject to modification unless based on reliable, site-specific information as provided for in ~~9VAC10-20-105~~ 4VAC50-90-110 and subdivision 6 of ~~9VAC10-20-130~~ 4VAC50-90-140.

D. For the purpose of generally determining whether water bodies have perennial flow, local governments may use one of the following methods as long as the methodology is adopted into the local program and applied consistently: (i) designation of water bodies depicted as perennial on the most recent U.S. Geological Survey 7½ minute topographic quadrangle map (scale 1:24,000) or (ii) use of a scientifically valid system of in-field indicators of perennial flow. However, site-specific determinations shall be made or confirmed by the local government pursuant to ~~9VAC10-20-105~~ 4VAC50-90-110.

## **~~9VAC10-20-90.~~ 4VAC50-90-90. Resource Management Areas.**

A. Resource Management Areas shall include land types that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

B. A Resource Management Area shall be provided contiguous to the entire inland boundary of the Resource Protection Area. The following land categories shall be considered for inclusion in the Resource Management Area and, where mapping resources indicate the presence of these land types contiguous to the Resource Protection Area, should be included in designations of Resource Management Areas:

1. Floodplains;
2. Highly erodible soils, including steep slopes;
3. Highly permeable soils;
4. Nontidal wetlands not included in the Resource Protection Area;
5. Such other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters.

C. Resource Management Areas shall encompass a land area large enough to provide significant water quality protection through the employment of the criteria in Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) and the requirements in Parts II (~~9VAC10-20-50~~ 4VAC50-90-50 et seq.) and V (~~9VAC10-20-170~~ 4VAC50-90-160 et seq.) of this chapter.

1. Local governments with few or no Resource Management Area land types evident from available mapping resources should evaluate the relationships of the following land categories to water quality protection in making their Resource Management Area designations. The board will consider the degree to which these land categories are included when evaluating the consistency of a locality's Resource Management Area designation for achievement of significant water quality protection:

- a. Known Resource Management Area land types;
- b. Developable land within the jurisdiction;
- c. Areas targeted for redevelopment; and
- d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.

2. Localities with no mapping resources or with mapping resources for only portions of their jurisdiction should evaluate the relationships of the following land categories to water quality protection in making their Resource Management Area designations. The board will consider the degree to which these land categories are included when evaluating the consistency of a local government's Resource Management Area designation for achievement of significant water quality protection. Furthermore, such designations may be considered an interim designation until such time as appropriate mapping resources become available if such resources are considered by the board to be useful in determining the Resource Management Area boundaries, in which case the board will reevaluate the interim Resource Management Area designations at a later date:

- a. Known Resource Management Area land types;
- b. Developable land within the jurisdiction;
- c. Areas targeted for redevelopment; and
- d. Areas served by piped or channelized stormwater drainage systems which provide no treatment of stormwater discharges.

3. Local governments should consider extending the Resource Management Area boundary to the remainder of the lot, parcel, or development project upon which Resource Management Area-type features are present.

4. Local governments shall demonstrate how significant water quality protection will be achieved within designated Resource Management Areas, as well as by each local program as a whole, and to explain the rationale for



excluding eligible Resource Management Area components that are not designated.

5. It is not the intent of the board, nor is it the intent of the Act or this chapter, to require that local governments designate all lands within their jurisdiction as Chesapeake Bay Preservation Areas. It is also not the intent of the board to discourage or preclude jurisdiction-wide designations of Resource Management Areas when the local government considers such designations appropriate, recognizing that greater water quality protection will result from more expansive implementation of the performance criteria. The extent of the Resource Management Area designation should always be based on the prevalence and relation of Resource Management Area land types and other appropriate land areas to water quality protection.

**~~9VAC10-20-100.~~ 4VAC50-90-100. Intensely Developed Areas.**

A. At their option, local governments may designate Intensely Developed Areas as an overlay of Chesapeake Bay Preservation Areas within their jurisdictions. For the purposes of this chapter, Intensely Developed Areas shall serve as redevelopment areas in which development is concentrated as of the local program adoption date. Areas so designated shall comply with the performance criteria for redevelopment in Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) of this chapter.

B. Local governments exercising this option shall examine the pattern of residential, commercial, industrial and institutional development within Chesapeake Bay Preservation Areas. Areas of existing development and infill sites where little of the natural environment remains may be designated as Intensely Developed Areas provided at least one of the following conditions existed at the time the local program was originally adopted:

1. Development has severely altered the natural state of the area such that it has more than 50% impervious surface;
2. Public sewer and water systems, or a constructed stormwater drainage system, or both, have been constructed and served the area by the original local program adoption date. This condition does not include areas planned for public sewer and water or constructed stormwater drainage systems;
3. Housing density is equal to or greater than four dwelling units per acre.

**~~9VAC10-20-105.~~ 4VAC50-90-110. Site-specific refinement of Chesapeake Bay Preservation Area boundaries.**

Local governments shall, as part of their plan-of-development review process pursuant to subdivision 1 e of ~~9VAC10-20-231~~ 4VAC50-90-240 or during their review of a water quality impact assessment pursuant to subdivision 6 of ~~9VAC10-20-130~~ 4VAC50-90-140, ensure or confirm that (i) a reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site

have perennial flow and (ii) Resource Protection Area boundaries are adjusted, as necessary, on the site, based on this evaluation of the site. Local governments may accomplish this by either conducting the site evaluations themselves or requiring the person applying to use or develop the site to conduct the evaluation and submit the required information for review.

Part IV

Land Use and Development Performance Criteria

**~~9VAC10-20-110.~~ 4VAC50-90-120. Purpose.**

A. The purpose of this part is to achieve the goals of the Act and ~~9VAC10-20-50~~ 4VAC50-90-50 by establishing criteria to implement the following objectives: prevent a net increase in nonpoint source pollution from new development and development on previously developed land where the runoff was treated by a water quality protection best management practice, achieve a 10% reduction in nonpoint source pollution from development on previously developed land where the runoff was not treated by one or more water quality best management practices, and achieve a 40% reduction in nonpoint source pollution from agricultural and silvicultural uses.

B. In order to achieve these goals and objectives, the criteria in this part establish performance standards to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, maximize rainwater infiltration, and ensure the long-term performance of the measures employed.

C. The criteria in this part become mandatory upon the local program adoption date. They are supplemental to the various planning and zoning concepts employed by local governments in granting, denying, or modifying requests to rezone, subdivide, or to use and develop land in Chesapeake Bay Preservation Areas.

D. Local governments shall incorporate the criteria in this part into their comprehensive plans, zoning ordinances and subdivision ordinances, and may incorporate the criteria in this part into such other ordinances and regulations as may be appropriate, in accordance with §§ 10.1-2108 and 10.1-2111 of the Act and Parts V (~~9VAC10-20-170~~ 4VAC50-90-160 et seq.), VI (~~9VAC10-20-181~~ 4VAC50-90-180 et seq.), and VII (~~9VAC10-20-211~~ 4VAC50-90-200 et seq.) of this chapter. The criteria may be employed in conjunction with other planning and zoning concepts to protect the quality of state waters.

**~~9VAC10-20-120.~~ 4VAC50-90-130. General performance criteria.**

Through their applicable land use ordinances, regulations and enforcement mechanisms, local governments shall require that any use, development or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the proposed use or development.

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2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed.

~~3. Where the best management practices utilized require regular or periodic maintenance in order to continue their functions, such maintenance shall be ensured by the local government through a maintenance agreement with the owner or developer or some other mechanism that achieves an equivalent objective.~~

4. ~~3.~~ All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with § 15.2-2286 A 8 of the Code of Virginia and subdivision 1 e of ~~9VAC10-20-234~~ 4VAC50-90-240.

~~5.~~ 4. Land development shall minimize impervious cover consistent with the proposed use or development.

~~6.~~ 5. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks and drainfields, but otherwise as defined in § 10.1-560 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this criterion shall be conducted under the provisions of the Erosion and Sediment Control Act (§ 10.1-560 et seq. of the Code of Virginia) and attendant regulations.

7. ~~6.~~ On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:

a. Have pump-out accomplished for all such systems at least once every five years.

(1) If deemed appropriate by the local health department and subject to conditions the local health department may set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.

(2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments may allow owners of on-site sewage treatment systems to submit documentation every five years, certified by a sewage handler permitted by the Virginia Department of Health, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an on-site sewage treatment system which operates under a permit issued by the State Water Control Board. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the 100% reserve sewage disposal site, local governments may offer the owners of such systems the option of installing an alternating drainfield system meeting the following conditions:

(1) Each of the two alternating drainfields in the system shall have, at a minimum, an area not less than 50% of the area that would otherwise be required if a single primary drainfield were constructed.

(2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved for subsurface absorption systems that utilize a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system will require an expansion of this reserve area.

(3) The two alternating drainfields shall be connected by a diversion valve, approved by the local health department, located in the pipe between the septic (aerobic) tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one drainfield or the other at a time. However, diversion valves shall not be used for the following types of treatment systems:

(a) Sand mounds;

(b) Low-pressure distribution systems;

(c) Repair situations when installation of a valve is not feasible; and

(d) Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local health department.

(4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage and leakproof and designed so that the effluent from the tank can be directed to flow into either one of the two distribution boxes).

(5) There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.

(6) The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.

(7) In lieu of the aforementioned diversion valve, any device that can be designed and constructed to conveniently direct the flow of effluent from the tank into either one of the two distribution boxes may be approved if plans are submitted to the local health department and found to be satisfactory.

(8) The local government shall require that the owner(s) alternate the drainfields every 12 months to permit the yearly resting of half of the absorption system.

(9) The local government shall ensure that the owner(s) are notified annually of the requirement to switch the valve to the opposite drainfield.

~~8. Stormwater management criteria consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4VAC50-60) shall be satisfied.~~

~~a. The following stormwater management options shall be considered to comply with this subsection of this chapter:~~

~~(1) Incorporation on the site of best management practices that meet the water quality protection requirements set forth in this subsection. For the purposes of this subsection, the "site" may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single best management practice will be utilized by those projects to satisfy water quality protection requirements;~~

~~(2) Compliance with a locally adopted regional stormwater management program, which may include a Virginia Stormwater Management Program (VSMP) permit issued by the Virginia Soil and Water Conservation Board to a local government for its municipally owned separate storm sewer system discharges, that is reviewed and found by the board to achieve water quality protection equivalent to that required by this subsection; and~~

~~(3) Compliance with a site specific VSMP permit issued by the Virginia Soil and Water Conservation Board, provided that the local government specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by this subsection.~~

~~b. Any maintenance, alteration, use or improvement to an existing structure that does not degrade the quality of surface water discharge, as determined by the local government, may be exempted from the requirements of this subsection.~~

~~c. Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is~~

~~located within an Intensely Developed Area designated by a local government.~~

~~9. 7. Land upon which agricultural activities are being conducted, including but not limited to crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.~~

~~a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:~~

~~(1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.~~

~~(2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15).~~

~~(3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.~~

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b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation District Board, which will be the plan-approving authority.

~~10.~~ 8. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 edition of "Forestry Best Management Practices for Water Quality in Virginia Technical Guide." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

~~11.~~ 9. Local governments shall require evidence of all wetlands permits required by law prior to authorizing grading or other on-site activities to begin.

## **~~9VAC10-20-130.~~ 4VAC50-90-140. Development criteria for Resource Protection Areas.**

In addition to the general performance criteria set forth in ~~9VAC10-20-120~~ 4VAC50-90-130, the criteria in this section are applicable in Resource Protection Areas.

1. Land development may be allowed in the Resource Protection Area, subject to approval by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (vi) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1 e of this section.

a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required for any proposed land disturbance.

b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:

- (1) It does not conflict with the comprehensive plan;
- (2) It complies with the performance criteria set forth in ~~9VAC10-20-120~~ 4VAC50-90-130;

(3) Any nonwater-dependent component is located outside of Resource Protection Areas; and

(4) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of imperious cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater management criteria set forth in ~~subdivisions 6 and 8, respectively, of 9VAC10-20-120~~ the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.

d. Roads and driveways not exempt under subdivision B 1 of ~~9VAC10-20-150~~ 4VAC50-90-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:

(1) The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;

(2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;

(3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter, including submission of a water quality impact assessment; and

(4) The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision and plan of development approvals.

e. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia) and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a

stormwater management program that has been approved by the board as a Phase I modification to the local government's program comprehensive stormwater management plan developed and approved in accordance with 4VAC50-60-92 of the Virginia Stormwater Management Program (VSMP) Permit regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the Virginia Department of Conservation and Recreation, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails and pathways; and (iii) historic preservation and archaeological activities:

- a. Local governments shall establish administrative procedures to review such exemptions.
- b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subdivision 6 ~~5~~ of ~~9VAC10-20-120~~ 4VAC50-90-130.

3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of ~~9VAC10-20-80~~ 4VAC50-90-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from shall be retained if present and established where it does not exist.

- a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.
- b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to

provide woody vegetation that assures the buffer functions set forth in this chapter.

4. Permitted encroachments into the buffer area.

a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

- (1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
- (2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.
- (3) The encroachment may not extend into the seaward 50 feet of the buffer area.

b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989 and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

- (1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;
- (2) Conditions or mitigation measures imposed through a previously approved exception shall be met;
- (3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
- (4) The criteria in subdivision 4 a of this section shall be met.

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

- (1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.
- (2) Any path shall be constructed and surfaced so as to effectively control erosion.

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(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation.

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC5-15) administered by the Virginia Department of Conservation and Recreation. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the

equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or his agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with this part and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by each local government. Local governments should notify the board of all development requiring such an assessment. Upon request, the board will provide review and comment

regarding any water quality impact assessment in accordance with the advisory state review requirements of § 10.1-2112 of the Act.

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation.

**~~9VAC10-20-150.~~ 4VAC50-90-150. Nonconformities, exemptions, and exceptions.**

A. Nonconforming uses and noncomplying structures.

1. Local governments may permit the continued use, but not necessarily the expansion, of any structure in existence on the date of local program adoption. Local governments may establish an administrative review procedure to waive or modify the criteria of this part for structures on legal nonconforming lots or parcels provided that:

- a. There will be no net increase in nonpoint source pollutant load; and
- b. Any development or land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

2. This chapter shall not be construed to prevent the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas from occurring as a result of casualty loss unless otherwise restricted by local government ordinances.

B. Public utilities, railroads, public roads, and facilities exemptions.

1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-optic, and telephone transmission lines, railroads, and public roads and their appurtenant structures in accordance with (i) regulations promulgated pursuant to the Erosion and Sediment Control Law (§ 10.1-560 et seq. of the Code of Virginia) and the Stormwater Management Act (§ ~~10.1-603.1~~ 10.1-603.2 et seq. of the Code of Virginia), (ii) an erosion and sediment control plan and a stormwater management plan approved by the Virginia Department of Conservation and Recreation, or (iii) local water quality protection criteria at least as stringent as the above state requirements will be deemed to constitute compliance with this chapter. The exemption of public roads is further conditioned on the following:

a. Optimization of the road alignment and design, consistent with other applicable requirements, to prevent or otherwise minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality; and

b. Local governments may choose to exempt (i) all public roads as defined in ~~9VAC10-20-40~~ 4VAC50-90-40, or (ii) only those public roads constructed by the Virginia Department of Transportation.

2. Construction, installation and maintenance of water, sewer, natural gas, and underground telecommunications and cable television lines owned, permitted, or both, by a local government or regional service authority shall be exempt from the criteria in this part provided that:

- a. To the degree possible, the location of such utilities and facilities should be outside Resource Protection Areas;
- b. No more land shall be disturbed than is necessary to provide for the proposed utility installation;
- c. All such construction, installation and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal permits and designed and conducted in a manner that protects water quality; and
- d. Any land disturbance exceeding an area of 2,500 square feet complies with all erosion and sediment control requirements of this part.

C. Exceptions.

1. Exceptions to the requirements of ~~9VAC10-20-120~~ 4VAC50-90-130 and ~~9VAC10-20-130~~ 4VAC50-90-140 may be granted, provided that a finding is made that:

- a. The requested exception to the criteria is the minimum necessary to afford relief;
- b. Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated;
- c. The exception is in harmony with the purpose and intent of this part and is not of substantial detriment to water quality;
- d. The exception request is not based upon conditions or circumstances that are self-created or self-imposed;
- e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent the allowed activity from causing a degradation of water quality; and
- f. Other findings, as appropriate and required by the local government, are met.

2. Each local government shall design and implement an appropriate process or processes for the administration of exceptions. The process to be used for exceptions to ~~9VAC10-20-130~~ 4VAC50-90-140 shall include, but not be limited to, the following provisions:

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a. An exception may be considered and acted upon only by the local legislative body; the local planning commission; or a special committee, board or commission established or designated by the local government to implement the provisions of the Act and this chapter.

b. Local governments implementing this chapter through the local zoning code may provide for specific provisions that allow for consideration of exceptions that comply with subdivision 2 of this subsection.

c. The provision of subdivision 2 b of this subsection notwithstanding, no exception shall be authorized except after notice and a hearing, as required by § 15.2-2204 of the Code of Virginia, except that only one hearing shall be required. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the notice may be given by first-class mail rather than by registered or certified mail.

3. Exceptions to other provisions of this part may be granted, provided that:

a. Exceptions to the criteria shall be the minimum necessary to afford relief; and

b. Reasonable and appropriate conditions upon any exception granted shall be imposed, as necessary, so that the purpose and intent of the Act is preserved.

4. Notwithstanding the provisions of subdivisions 2 a through 2 c of this subsection, additions and modifications to existing legal principal structures may be processed through an administrative review process, as allowed by subsection A of this section, subject to the findings required by subdivision 1 of this subsection but without a requirement for a public hearing. This provision shall not apply to accessory structures.

## Part V

### Comprehensive Plan Criteria

#### ~~9VAC10-20-170.~~ 4VAC50-90-160. Purpose.

The purpose of this part is to assist local governments in the development of a comprehensive plan or plan component that is consistent with the Act, and to establish guidelines for determining the consistency of the local comprehensive plan or plan component with the Act.

#### ~~9VAC10-20-171.~~ 4VAC50-90-170. Comprehensive plans.

Local governments shall review and revise their comprehensive plans, as necessary, for compliance with § 10.1-2109 of the Act and this chapter. As a minimum, the comprehensive plan or plan component shall consist of the following basic elements: (i) a summary of data collection; (ii) analysis and policy discussion(s); (iii) land use plan map(s); and (iv) implementing measures, including specific objectives and a time frame for accomplishment.

1. Local governments shall establish and maintain, as appropriate, an information base from which policy choices are made about future land use and development that will protect the quality of state waters. This element of the plan should be based upon the following, as applicable to the locality:

a. The location and extent of Chesapeake Bay Preservation Areas;

b. Physical constraints to development, including soil limitations;

c. The character and location of commercial and recreational fisheries and other aquatic resources;

d. Shoreline and streambank erosion problems;

e. Existing and proposed land uses;

f. Catalog of existing and potential water pollution sources;

g. Public and private waterfront access areas, including the general locations of or information about docks, piers, marinas, boat ramps, and similar water access facilities;

h. A map or map series accurately representing the above information.

2. As part of the comprehensive plan, local governments shall clearly indicate local policy on land use issues relative to water quality protection based on an analysis of the data referred to in subdivision 1 of this section. Local governments shall ensure consistency among the policies developed.

a. Local governments shall discuss each component of Chesapeake Bay Preservation Areas in relation to the types of land uses considered appropriate and consistent with the goals and objectives of the Act, this chapter, and their local programs.

b. As a minimum, local governments shall prepare policy statements for inclusion in the plan on the following issues, as applicable to the locality:

(1) Physical constraints to development, including a discussion of the relationship between soil limitations and existing and proposed land use, with an explicit discussion of soil suitability for septic tank use;

(2) Protection of potable water supply, including groundwater resources and threats to the water supply or groundwater resources from existing and potential pollution sources;

(3) Relationship of land use to commercial and recreational fisheries and other aquatic resources;

(4) Siting of docks and piers;

(5) Public and private access to waterfront areas and effect on water quality;

(6) Mitigation of the impacts of land use and its associated pollution upon water quality;



- (7) Shoreline and streambank erosion problems; and
- (8) Potential water quality improvement through reduction of existing pollution sources and the redevelopment of Intensely Developed Areas and other areas targeted for redevelopment.

c. For each of the policy issues listed above, the plan shall contain a discussion of the scope and importance of the issue, the policy adopted by the local government for that issue, and a description of how the local policy will be implemented.

d. Within the policy discussion, local governments shall address the relationship between the plan, existing and proposed land use, public services, and capital improvement plans and budgets to ensure a consistent local policy.

Part VI

Land Development Ordinances

**~~9VAC10-20-181.~~ 4VAC50-90-180. Purpose.**

The purpose of this part is to assist local governments in the preparation of land use and development ordinances and regulations adopted pursuant to § 10.1-2109 and Articles 1 (§ 2.2-2200 et seq.), 2 (§ 2.2-2210 et seq.), 4 (§ 2.2-2233 et seq.), 5 (§ 1.1-2239), 6 (§ 2.2-2240 et seq.), and 7 (§ 2.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia that are consistent with the Act and this chapter, and to establish guidelines for determining the consistency of such ordinances and regulations with the Act and this chapter. Such ordinances and regulations include, but are not limited to, subdivision ordinances and zoning ordinances.

**~~9VAC10-20-191.~~ 4VAC50-90-190. Land development ordinances regulations and procedures.**

A. Local governments shall review and revise their land development regulations, as necessary, to comply with § 10.1-2109 of the Act. To achieve this:

1. Local zoning ordinances shall ensure that the uses permitted by the local zoning regulations are consistent with the Act and this chapter;
2. Local land development ordinances and regulations shall incorporate either explicitly or by direct reference the performance criteria in Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) of this chapter. Specific development standards that implement the performance criteria from subdivisions 1, 2 and ~~5~~ 4 of ~~9VAC10-20-120~~ 4VAC50-90-130 (minimizing land disturbance and impervious cover and preserving existing vegetation, ~~respectively~~) shall be included;
3. Local land development ordinances and regulations shall protect the integrity of Chesapeake Bay Preservation Areas by incorporating standards to ensure (i) the protection of water quality; (ii) the preservation of Resource Protection Area land categories, as set forth in ~~9VAC10-20-80~~ 4VAC50-90-80, including the 100-foot wide buffer area; and (iii) the compatibility of development with Resource

Management Area land categories, as set forth in ~~9VAC10-20-90~~ 4VAC50-90-90;

4. Local land development ordinances and regulations shall provide for (i) depiction of Resource Protection Area and Resource Management Area boundaries on plats and site plans, including a notation on plats of the requirement to retain an undisturbed and vegetated 100-foot wide buffer area, as specified in subdivision 3 of ~~9VAC10-20-130~~ 4VAC50-90-140 (ii) a plat notation of the requirement for pump-out and 100% reserve drainfield sites for onsite sewage treatment systems, when applicable; and (iii) a plat notation of the permissibility of only water dependent facilities or redevelopment in Resource Protection Areas, including the 100-foot wide buffer area; and

5. Local governments shall require, during the plan of development review process, the delineation of the buildable areas that are allowed on each lot. The delineation of buildable areas shall be based on the performance criteria specified in Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) of this chapter, local front and side yard setback requirements, and any other relevant easements or limitations regarding lot coverage.

B. Local governments shall undertake the following as necessary, to comply with § 10.1-2109 of the Act:

1. Local governments shall evaluate the relationship between the submission requirements, performance standards, and permitted uses in local land development ordinances and regulations to identify any obstacles to achieving the water quality goals of the Act and this chapter as set forth in § 10.1-2107 B of the Act, ~~9VAC10-20-50~~ 4VAC50-90-50 and ~~9VAC10-20-110~~ 4VAC50-90-120. Local governments shall revise these ordinances and regulations, as necessary, to eliminate any obstacles identified in the submission requirements or development standards.

2. Local governments shall review and revise their land development ordinances and regulations adopted pursuant to § 10.1-2109 and Article 1 (§ 2.2-2200 et seq.), 2 (§ 2.2-2210 et seq.), 4 (§ 2.2-2233 et seq.), 5 (§ 2.2-2239), 6 (§ 2.2-2240 et seq.), and 7 (§ 2.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia to assure that their subdivision ordinances, zoning ordinances, and all other components of their local Chesapeake Bay Preservation Act programs are consistent in promoting and achieving the protection of state waters. In addition, local governments shall identify and resolve any conflicts among the components of the local programs and with other local ordinances, regulations and administrative policies, to assure that the intent of the Act and this chapter is fulfilled.

3. Local governments shall review and revise their land development ordinances and regulations to ensure consistency with the water quality protection goals,

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objectives, policies, and implementation strategies identified in the local comprehensive plan.

## Part VII

### Local Assistance and Local Program Consistency Review Process

#### ~~9VAC10-20-211~~, 4VAC50-90-200. Purpose.

The purpose of this part is to assist local governments in the timely preparation of local programs to implement the Act and to establish an administrative procedure for determining local program consistency with the Act.

#### ~~9VAC10-20-215~~, 4VAC50-90-210. Local assistance manual.

A. The department will prepare a manual to provide guidance to assist local governments in the preparation of local programs in order to implement the Act and this chapter. The manual will be updated periodically to reflect the most current planning and zoning techniques and effective best management practices. The manual will be made available to the public.

B. The manual will recommend a schedule for the completion of local program elements and their submission to the board for its information to ensure timely achievement of the requirements of the Act and timely receipt of assistance. The board will consider compliance with the schedule in allocating financial and technical assistance.

C. The manual is for the purpose of guidance only.

#### ~~9VAC10-20-221~~, 4VAC50-90-220. Board to establish liaison.

The board will establish liaison with each local government to assist the local government in developing and implementing its local program, in obtaining technical and financial assistance, and in complying with the Act and this chapter.

#### ~~9VAC10-20-225~~, 4VAC50-90-230. Planning district comments.

Local governments are encouraged to enlist the assistance and comments of regional planning district agencies early in the development of their local programs.

#### ~~9VAC10-20-231~~, 4VAC50-90-240. Preparation and submission of management program.

Local governments must adopt the full management program, which will consist of Phases I-III as defined in this section and including any revisions to comprehensive plans, zoning ordinances, subdivision ordinances, and other local authorities necessary to implement the Act. Prior to adoption, local governments may submit any proposed revisions to the board for comments. Criteria are provided below for local government use in preparing local programs and the board's use in determining local program consistency.

1. Phase I shall consist of the designation of Chesapeake Bay Preservation Areas and adoption of the performance criteria. This phase of designating Chesapeake Bay

Preservation Areas as an element of the local program should include:

a. Utilizing existing data and mapping resources to identify and describe tidal wetlands, nontidal wetlands, tidal shores, water bodies with perennial flow, flood plains, highly erodible soils including steep slopes, highly permeable areas, and other sensitive environmental resources as necessary to comply with Part III (~~9VAC10-20-70~~ 4VAC50-90-70 et seq.) of this chapter;

b. Determining, based upon the identification and description, the extent of Chesapeake Bay Preservation Areas within the local jurisdiction;

c. Preparing an appropriate map or maps delineating Chesapeake Bay Preservation Areas;

d. Preparing amendments to local ordinances that incorporate the performance criteria of Part IV (~~9VAC10-20-110~~ 4VAC50-90-120 et seq.) of this chapter or the model ordinance prepared by the board;

e. Establishing, if necessary, and incorporating a plan of development review process. Local governments shall make provisions as necessary to ensure that any development of land within Chesapeake Bay Preservation Areas shall be accomplished through a plan of development procedure pursuant to § 15.2-2286 A 8 of the Code of Virginia to ensure compliance with the Act and this chapter. Any exemptions from those review requirements shall be established and administered in a manner that ensures compliance with this chapter.

f. Conducting a public hearing. Prior to adopting Chesapeake Bay Preservation Areas and the performance criteria, each local government shall hold a public hearing to solicit public comment regarding these local program components.

g. Providing copies of the adopted program documents and subsequent changes thereto to the board for consistency review, as set forth in subdivision 5 of this section.

2. Phase II shall consist of local governments reviewing and revising their comprehensive plans, as necessary, for compliance with § 10.1-2109 of the Act, in accordance with the provisions set forth in Part V (~~9VAC10-20-170~~ 4VAC50-90-160 et seq.) of this chapter.

3. Phase III shall consist of local governments reviewing and revising their land development regulations and processes, which include but are not limited to zoning ordinances, subdivision ordinances, ~~erosion and sediment control ordinances~~, and the plan of development review process, as necessary, to comply with § 10.1-2109 of the Act and to be consistent with the provisions set forth in Part VI (~~9VAC10-20-181~~ 4VAC50-90-180 et seq.) of this chapter.

4. Consistent with §§ 10.1-2108, 10.1-2109, and 10.1-2113 of the Act local governments may use civil penalties to enforce compliance with the requirements of local programs.

5. Review by the board.

a. The board will review proposed elements of a program phase within 60 days according to review policies adopted by the board. If the proposed program phase is consistent with the Act, the board will schedule a conference with the local government to determine what additional technical and financial assistance may be needed and available to accomplish the proposed program phase. If the proposed program phase or any part thereof is not consistent, the board will notify the local government in writing, stating the reasons for a determination of inconsistency and specifying needed changes. Copies of the adopted program documents and subsequent changes thereto shall be provided to the board.

b. The board will review locally adopted elements of a program phase according to review policies adopted by the board and as set forth in ~~9VAC10-20-250~~ 4VAC50-90-260.

Part VIII

Implementation and Enforcement

~~9VAC10-20-240.~~ 4VAC50-90-250. **Applicability.**

The Act requires that the board ensure that local governments comply with the Act and regulations and that their comprehensive plans, zoning ordinances and subdivision ordinances are in accordance with the Act. To satisfy these requirements, the board has adopted this chapter and will monitor each local government's compliance with the Act and this chapter.

~~9VAC10-20-250.~~ 4VAC50-90-260. **Administrative proceedings.**

~~Section 10.1-2103.8~~ Subdivision 8 of § 10.1-2103 and § 10.1-2104.1 of the Act ~~provides~~ provide that the board shall ensure that local government comprehensive plans, subdivision ordinances and zoning ordinances are in accordance with the provisions of the Act, and that it shall determine such compliance in accordance with the provisions of the Administrative Process Act. When the board determines to decide such compliance, it will give the subject local government at least 15 days notice of its right to appear before the board at a time and place specified for the presentation of factual data, argument and proof as provided by § 2.2-4019 of the Code of Virginia. The board will provide a copy of its decision to the local government. If any deficiencies are found, the board will establish a schedule for the local government to come into compliance.

1. In order to carry out its mandated responsibilities under ~~§ 10.1-2103.10~~ subdivision 10 of § 10.1-2103 and § 10.1-2104.1 of the Act, the board will:

a. Require that each Tidewater local government submit an annual implementation report outlining the implementation of the local program. The board will develop reporting criteria which outline the information to be included in the reports and the time frame for their submission. The board will use the information in these reports to assess local patterns of compliance with the Act and this chapter and to evaluate the need for an administrative proceeding to more closely review any individual local government's compliance. All proceedings of this nature will be developed and conducted in accordance with this section.

b. Develop a compliance review process. Reviews will occur on a five-year cycle, and, when feasible, will be conducted as part of the local government's comprehensive plan review and update process. The department may also conduct a comprehensive or partial program compliance review and evaluation of a local government program more frequently than the standard schedule. The review process shall consist of a self-evaluation by each local government of local program implementation and enforcement as well as an evaluation by department staff. Based on these evaluations, ~~the board will make a consistency finding regarding the implementation of each local program~~ department shall provide the results and compliance recommendations to the board in the form of a corrective action agreement should deficiencies be found; otherwise, the board may find the program compliant. When deficiencies are found, the board will establish a schedule for the local government to come into compliance. The board shall provide a copy of its decision to the local government that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule. If the local government has not implemented the necessary compliance actions identified by the board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the compliance actions, then the board shall have the authority to issue a special order to any local government imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per day per violation for noncompliance with the state program, to be paid into the state treasury and deposited into the Virginia Stormwater Management Fund established by § 10.1-603.4:1 of the Code of Virginia.

(1) The self-evaluation shall be conducted by each local government according to procedures developed by the board.

(2) At a minimum, the department staff's evaluation will include a review of previous annual reports and site visits.

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2. Certification of a local program. Upon a satisfactory finding resulting from the compliance review process, the board will certify that the local program is being implemented and enforced by the local government consistent with the Act and this chapter and is, therefore, in compliance. Such a certification shall be valid for a period of five years until the local government's next scheduled review, unless the board finds a pattern of noncompliance during the interim period of time, pursuant to subdivision 1 of this section.

## ~~9VAC10-20-260, 4VAC50-90-270.~~ **Legal proceedings.**

~~Sections 10.1-2103.10~~ Subdivision 10 of § 10.1-2103 and § 10.1-2104.1 of the Act ~~provides~~ provide that the board shall take administrative and legal actions to ensure compliance by local governments with the provisions of the Act. Before taking legal action against a local government to ensure compliance, the board shall, unless it finds extraordinary circumstances, initiate an administrative proceeding under the Act and ~~9VAC10-20-250 4VAC50-90-260~~ to obtain such compliance and give the local government at least 15 days notice of the time and place at which it will decide whether or not to take legal action. If it finds extraordinary circumstances, the board may proceed directly to request the Attorney General to enforce compliance with the Act and this chapter. Administrative actions will be taken pursuant to ~~9VAC10-20-250 4VAC50-90-260~~.

VA.R. Doc. No. R13-3317; Filed October 3, 2012, 9:10 a.m.

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### DEPARTMENT OF CORRECTIONS

#### Proposed Regulation

Title of Regulation: **6VAC15-26. Regulations for Human Subject Research (amending 6VAC15-26-10, 6VAC15-26-20, 6VAC15-26-30, 6VAC15-26-50, 6VAC15-26-120, 6VAC15-26-130; adding 6VAC15-26-61, 6VAC15-26-71, 6VAC15-26-81, 6VAC15-26-91, 6VAC15-26-101, 6VAC15-26-102; repealing 6VAC15-26-40, 6VAC15-26-60, 6VAC15-26-70, 6VAC15-26-80, 6VAC15-26-90, 6VAC15-26-100, 6VAC15-26-110, 6VAC15-26-140).**

Statutory Authority: §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 21, 2012.

Agency Contact: John Britton, Director, Research and Management Services, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-

3268 ext. 1241, FAX (804) 674-3590, or email john.britton@vadoc.virginia.gov.

Basis: Section 53.1-5 of the Code of Virginia authorizes the Board of Corrections to make, adopt and promulgate such rules and regulations as may be necessary to carry out the provisions of Title 53.1 of the Code of Virginia and other laws of the Commonwealth pertaining to local, regional and community correctional facilities.

Section 53.1-5.1 of the Code of Virginia requires the board to promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia for human research.

Purpose: These regulations establish conditions, standards, and procedures that facilitate the Department of Corrections' review and approval of human research, on an informed consent basis, of offenders and employees. These regulations apply to any individual, group, or agency conducting research using human participants within the Virginia Department of Corrections, including any facility, program, or organization owned, operated, funded, or licensed by the department. The provisions protect the health, safety, and welfare of participants in human research.

Substance: 6VAC15-26-10 Definitions: Definitions have been inserted or amended to address the amendments and additions of specific information within the regulation, including "Human Subject Research Review Committee" or "HSRRC," "Organizational work unit," "Research Agreement," "Research Proposal," and "Voluntary informed consent."

6VAC15-26-30 Policy: Adding and amending requirements that all participation in human subject research is voluntary, precautions will be exercised to avoid any known risk to participants, and that such research shall not be conducted without documentation of appropriate review and approval.

6VAC15-26-40 Certification process: Repealing section.

6VAC15-26-50 Composition: Amending to set the composition and functions of the HSRRC.

6VAC15-26-60 Elements of each committee's review process: Repealing section; requirements incorporated into 6VAC15-26-61.

6VAC15-26-61 Duties and responsibilities: Adding section to set the duties and responsibilities of the HSRRC including requirements of 6VAC15-26-60.

6VAC15-26-70 Kinds of research exempt from committee review: Repealing section; requirements moved to 6VAC15-26-101.

6VAC15-26-71 Reports: Adding section to require interim and final reports from the researcher to the HSRRC; reporting requirements previously in 6-VAC15-26-60.

6VAC15-26-80 Expedited review procedures for certain kinds of research involving no more than minimal risk: Repealing section; no longer applicable.

6VAC15-26-81 Records maintenance: Adding section requiring maintenance of certain records by the principal researcher.

6VAC15-26-90 Informed consent: Repealing section; some requirements moved to 6VAC15-26-102, other requirements duplicate 6VAC15-26-30.

6VAC15-26-91 Publication rights: Adding section setting the rights of the researcher, the HSRRC, and the Department of Corrections to access, use, and disseminate research findings.

6VAC15-26-100 Committee records: Repealing section; requirements moved to 6VAC15-26-61.

6VAC15-26-101 Research exempt from HSRRC review: New section; updates the requirements of 6VAC15-26-70.

6VAC15-26-102 Waiver of signed voluntary informed consent form: New section; sets the requirements and conditions when signed informed consent forms are not needed.

6VAC15-26-110 Mandatory reporting: Repealing section.

6VAC15-26-130 Applicability of state and federal policies: Moves exemption for research studies subject to federal regulation from 6VAC15-26-140.

6VAC15-26-140 Applicability of federal policies: Repealing section; requirements moved to 6VAC15-26-130.

Issues: This action poses no disadvantages to the public or the Commonwealth. The amendments affect internal operational practices, and serve to protect research subjects, the Department of Corrections, and researchers. These regulations should prove advantageous by providing the opportunity to gather and develop knowledge to advance correctional and social sciences.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Corrections proposes to 1) reduce the number of the Human Subject Research Review Committee (HSRRC) members from five to three and 2) require that all research proposals, research agreements, accompanying documentation and reports must be submitted to HSRRC electronically.

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

Estimated Economic Impact. These regulations establish rules for research projects involving the offenders housed by and the employees working for the Virginia Department of Corrections (DOC). These rules apply to any individual, group, or agency conducting research using human participants within the DOC, including any facility, program, or organization owned, operated, funded, or licensed by DOC.

One of the proposed changes will reduce the number of the HSRRC members from five to three. The members of HSRRC do not receive any compensation and perform their duties as a professional courtesy. DOC has had some difficulty finding enough volunteers to serve on this committee. Thus, the proposed changes will reduce the number of members that make up the committee from five to three. While this change is procedurally significant, no significant economic effect is expected.

Another proposed change will require that all research proposals, research agreements, accompanying documentation, and reports must be submitted to HSRRC electronically. DOC Economic impact of 6VAC15-26 2 notes that the current state of the communication technology makes it much easier to transfer information electronically compared to 1994 when these regulations were drafted. As a result the Board of Corrections proposes that all documents involving human subject research projects are communicated through electronic means. According to DOC, approximately 15 to 20 research proposals are received per year primarily from students or faculty associated with institutions of higher learning. The provision for electronic submission of research proposal documents is expected to reduce printing, handling, and postage costs that would have otherwise been incurred by the researchers in dealing with the paper copies.

According to DOC, all of the remaining changes merely clarify the practices already followed under these regulations. Since the remaining changes are not expected to affect the way these regulations are currently enforced, no significant economic effect is expected other than improving the clarity of the regulations.

Businesses and Entities Affected. DOC receives approximately 15 to 20 research proposals per year almost all of which are from students or faculty associated with institutions of higher learning.

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

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. The proposed changes do not impose cost or other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed changes do not impose adverse impact on small businesses.

Real Estate Development Costs. No significant impact on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the

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Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency Response to Economic Impact Analysis: The Department of Corrections concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget regarding the proposed amendments to 6VAC15-26, Regulations for Human Subject Research.

Summary:

*The proposed amendments update the regulations governing the form and review process for research to be conducted on human subjects with the Department of Corrections. The proposed amendments define the proposed research project information for the researcher to submit, the review process for approval, the agreements and conditions required for conducting an approved research project, the consent required from research subjects, the security of data collected, and the use of research findings.*

*The proposed amendments also reduce the number of Human Subject Research Review Committee(HSRRC) members from five to three and establish and define the HSRRC as the Department of Corrections committee responsible for (i) reviewing all submitted research projects for completeness and compliance with the Regulations for Human Subject Research, with all applicable Department of Corrections' operating procedures, and with all applicable state and federal regulations pertaining to human subject research; (ii) approving or denying submitted research proposals; (iii) monitoring all approved research projects for adherence to the scope of the research that was approved; and (iv) reporting on all research projects approved, all research*

*projects denied and the findings of all approved research projects.*

Part I  
General Provisions

**6VAC15-26-10. Definitions.**

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

"Board" means the Board of Corrections.

"Department" means the Department of Corrections.

"Director" means the Director of the Department of Corrections.

"Human research" means any systematic investigation utilizing human subjects which may expose such human subjects to physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs.

"Human Subject Research Review Committee" or "HSRRC" means the Department of Corrections committee responsible for (i) reviewing all submitted research projects for completeness and compliance, with the Regulations for Human Subject Research, with all applicable Department of Corrections operating procedures, and with all applicable state and federal regulations pertaining to human subject research; (ii) approving or denying submitted research proposals; (iii) monitoring all approved research projects for adherence to the scope of the research that was approved; and (iv) reporting on all research projects approved, all research projects denied and the findings of all approved research projects. The composition of the HSRRC and its responsibilities shall be as stated in Part II (6VAC15-26-50 et seq.) of this chapter.

"Legally authorized representative" means (i) the parent or parents having custody of a prospective subject, (ii) the legal guardian of a prospective subject, or (iii) any person or judicial body authorized by law or regulation to consent on behalf of a prospective subject to such subject's participation in the particular human research. For the purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective participant to his participation in the particular human research shall include an attorney-in-fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney-in-fact shall not be employed by the person, organizational unit or agency conducting the human research and shall not be authorized to consent to nontherapeutic medical research. No official or employee of the organizational unit or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability

and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the human subject.

"Organizational work unit" means any unit, facility, office, or district within the Department of Corrections, such as prisons, correctional centers, correctional field units, correctional work centers, probation and parole districts or offices, detention centers, diversion centers, or units supervised by a manager who reports directly to the Deputy Director of Administration. Each organizational work unit is managed by an organizational unit head such as a warden, superintendent, chief probation and parole officer, or manager.

"Participant" or "human participant" means a living individual whether ~~personnel or inmate, probationer, or parolee~~ employee or offender about whom an investigator or researcher (whether professional or student) conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. "Intervention" includes both physical procedures by which data are gathered and manipulations of the participant or participant's environment that are performed for research purposes. "Interaction" includes communication or interpersonal contact between ~~investigator~~ researcher and participant.

"Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public. Private information must be individually identifiable in order for obtaining the information to constitute research involving human participants.

"Research" means the systematic development of knowledge essential to effective planning and rational decision making. It involves the assessment of current knowledge on conceptual problems selected, statement of those problems in researchable format, design of methodologies appropriate to the problems, and the application of appropriate analytical techniques to the data. Research findings should provide valuable information to management for policy options.

"Research agreement" means the document signed by the principal researcher, research project supervisor, or advisor and the HSRRC indicating the principal researcher and research project supervisor or advisor agree to conduct their research project in the manner in which the research project was approved by the HSRRC, including compliance with this chapter, all applicable Department of Corrections' operating procedures, all applicable state and federal laws and regulations, the research project timeline, and any conditions

imposed by the HSRRC. The research agreement is governed by and must comply with the provisions of this chapter.

"Researcher" means an individual who has professional standing in the pertinent field or is supervised directly by such an individual.

"Research project" means the systematic collection of information, analysis of data, and preparation of a report of findings.

"Research proposal" means the document or documents completed by the principal researcher outlining: (i) information about the researchers, including contact information, affiliations, and funding sources; (ii) the human research to be performed, including purpose, methodology, informed consent, time frame, and Department of Corrections resources required; and (iii) any endorsements. The research proposal must be submitted to and approved by the HSRRC. Research proposals are to be limited to twenty pages (not including bibliographies, curriculum vitae, letters of endorsement, copies of surveys or instruments to be used, copies of external Institutional Review board approvals, and voluntary informed consent forms.) A suggested template for a research proposal is incorporated by reference with this chapter.

"Voluntary informed consent" means the knowing consent of an individual so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. Voluntary informed consent forms shall not include any language through which the human subject waives or appears to waive any of his legal rights, including any release of any individual, facility, agency, or agents thereof, from liability or negligence. The human participant shall sign all voluntary consent forms confirmed by an acceptable witness. With regard to the conduct of human research, the basic elements of information necessary to such voluntary informed consent shall include:

1. A fair explanation to the individual of any procedures to be followed and their purposes, including identification of any procedures which are experimental;
2. A description of any attendant discomforts and risks reasonably to be expected;
3. A description of any benefits reasonably to be expected;
4. A disclosure of any appropriate alternative procedures that might be advantageous for the individual;
5. An offer to answer any inquiries by the individual concerning the procedure; and
6. An instruction that the individual is free to withdraw his voluntary informed consent and to discontinue participation in the human research at any time without prejudice ~~to him~~.

A copy of the Voluntary Informed Consent form is incorporated by reference with this chapter.

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## 6VAC15-26-20. Applicability.

This chapter shall apply to any individual, group, or agency conducting research ~~which that~~ uses human participants within the Virginia Department of Corrections, including any facility, program or organization owned, operated, funded, or licensed by the department.

## 6VAC15-26-30. Policy.

A. No human research may be conducted without informing the participant or his legally authorized representative in writing of the risks, procedures, and discomforts of the research. The voluntary informed consent of the participant or his legally authorized representative to participate in the research must be documented in writing and supported by signature of a witness not involved in the conduct of the research, except as provided in ~~6VAC15-26-90 F~~ 6VAC15-26-102. Arrangements shall be made for those who need special assistance in understanding the consequences of participating in the research.

~~B. Each human research review activity shall be approved by a committee composed of representatives of varied backgrounds who shall assure the competent, complete and professional review of human research activities. No offender shall be subjected to experimentation or participation in research against his will.~~

C. Nontherapeutic research using institutionalized participants ~~shall be~~ is prohibited unless it is determined by the ~~research review committee~~ HSRRC that such nontherapeutic research will not present greater than minimal risk.

~~D. The individuals conducting the research shall be required to notify all participants of research of the risks caused by the research which are discovered after the research has concluded. Research involving known and substantive physical, mental, or emotional risk to the participants, including the withholding of any prescribed program or treatment, is specifically prohibited.~~

~~E. Department of Corrections studies, program evaluations, and routine data analyses for management purposes are exempt from this policy. Medical research shall only be conducted in accordance with Department of Corrections Operating Procedure 701.1, Health Services Administration, which is incorporated by reference with this chapter.~~

~~F. The burden of proof for review by any committee shall be with the principal researcher. Research shall not interfere with the rights of offenders or Department of Corrections' employees.~~

G. Proper precautions must be exercised for the protection of the research participants rights and for the overall safety and security of the public, the researcher, and the Department of Corrections.

H. Research shall not interfere significantly with ongoing programs or operations of the Department of Corrections.

I. The research findings shall not identify individual participants. The confidentiality and anonymity of all offenders and other parties engaged in the research will be maintained.

J. Researchers are required to notify all participants of risks caused by the research that are discovered after the research has concluded.

K. Each human research activity shall be reviewed and approved by the HSRRC.

L. No human research activity involving the Department of Corrections shall be initiated without a research proposal reviewed and approved by the HSRRC.

M. Each submitted research proposal must be accompanied by a research agreement signed by the principal researcher, or research project supervisor or advisor.

N. All research proposals, research agreements, and accompanying documentation must be submitted to the HSRRC electronically via email.

O. The burden of proof for review by the HSRRC shall be with the principal researcher.

P. Research shall not commence until all procedural and applicable human research reviews and approvals are completed and the director or applicable deputy director signs an approval memorandum on behalf of the department. This approval memorandum and necessary information describing the project shall be sent to the appropriate Department of Corrections organizational unit head, regional director, and principal researcher.

Q. This chapter does not apply to Department of Corrections studies, program evaluations, and routine data analyses for management purposes.

## Part II

### Human Research Review Committees

## ~~6VAC15-26-40. Certification process. (Repealed.)~~

~~A. Organizational units seeking to conduct or sponsor human research are required to submit statements to the department assuring that all human research activities will be reviewed and approved by a human research review committee. Organizational units shall report annually to the director giving assurance that a committee exists and is functioning. These reports should include a list of committee members, their qualifications for service on the committee, their organizational unit affiliation and a copy of the minutes of committee meetings.~~

~~B. Prior to the initiation of a human research project, organizational units shall also send to the director a one page summary containing the following information:~~

- ~~1. Name, address, telephone numbers, and title and affiliation of principal researcher;~~
- ~~2. Name of person who will supervise the project, if different from the principal researcher;~~
- ~~3. Funding source, if any;~~



4. ~~Date the proposal was submitted to the appropriate human research review committee;~~
5. ~~Title of project;~~
6. ~~An objectives statement of the proposed project with anticipated results;~~
7. ~~Methodology describing in a concise manner the research design, sampling strategy, and analytical techniques to be used and indicating the effects of the research methodology, if any, on existing programs and organizational unit operations;~~
8. ~~The voluntary informed consent statement;~~
9. ~~Time frame indicating proposed beginning and ending dates;~~
10. ~~Department resources required, including personnel, supplies and materials, equipment, workspaces, access to participants and files, and any other resources that the researcher will require from the department or its subsidiaries; and~~
11. ~~Project endorsement for student research. Letters or other documents must be attached to indicate endorsement of the project by the academic advisor or other appropriate persons.~~

~~C. Each person engaged in the conduct of human research or proposing to conduct human research shall associate himself with any organizational unit having a committee, and such human research shall be subject to review and approval by the committee in the manner set forth in this section.~~

~~D. The director may inspect the records of the committee.~~

~~E. The chairman of the committee shall report as soon as possible to the head of the organizational unit and to the director any violation of the research protocol which led the committee to either suspend or terminate the research.~~

Part II

Human Subject Research Review Committee (HSRRC)

**6VAC15-26-50. Composition of ~~research review committees~~ the HSRCC.**

~~A. Each committee~~ The HSRRC shall have at least ~~five~~ three members, appointed by the ~~organizational unit head~~ director or designee, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the ~~organizational unit~~ researchers. The ~~committee~~ HSRRC shall be sufficiently qualified through the experience and diversity of its members, ~~including consideration of race, gender and cultural background. In addition to possessing the professional competence necessary to review specific activities, the committee must be able to ascertain the acceptability of applications and proposals in terms of organizational unit commitments and regulations, if applicable by law; standards of professional conduct and practice; and community attitudes. If a committee regularly reviews research that has an impact on an institutionalized or other vulnerable category of participants, the committee shall~~

~~have in its membership one or more individuals who are primarily concerned with the welfare of these participants and who have appropriate experience to serve in that capacity.~~

1. The HSRRC shall not be comprised entirely of men or of women.

2. The HSRRC shall not be comprised entirely of members from one organizational work unit.

3. The HSRRC shall have at least one member who is not otherwise affiliated with the Department of Corrections and is not an immediate family member of a person who is affiliated with the department.

~~B. No committee shall consist entirely of men or women, or entirely of members of one profession. At least one member shall be an individual whose primary concerns are in non-scientific areas (e.g., lawyers, ethicists, members of the clergy). At least three members shall be individuals who are not otherwise connected with the department. In addition to possessing the professional competence necessary to review research proposals, the HSRRC must be able to ascertain the acceptability of research proposals in terms of organizational work unit commitments, this chapter, applicable Department of Corrections' operating procedures, any applicable state and federal law or regulation, standards of professional conduct and practice, and community attitudes.~~

~~C. Each committee shall include at least one member who is not otherwise affiliated with the organizational unit and who is not part of the immediate family of a person who is affiliated with the organizational unit.~~

~~D. C.~~ No member of a ~~committee~~ the HSRRC shall participate in the ~~committee's~~ HSRRC's initial or continuing review of any research project in which the member has a conflict of interest (defined as having direct involvement in or department approval authority over the proposed human research or otherwise having a conflict of interest under applicable Virginia law). The ~~committee~~ HSRRC has responsibility for determining whether a member has a conflicting interest.

~~E. A committee~~ D. The HSRRC may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues ~~which that~~ which require expertise beyond or in addition to that available ~~on the committee~~ to the HSRRC. These individuals may not vote with the ~~committee~~ HSRRC.

~~F. E.~~ A quorum of the ~~committee~~ HSRRC shall consist of a majority of its members ~~including at least one member whose primary concerns are in non-scientific areas. If a quorum cannot be established (or cannot meet within the established time frames) from the existing committee~~ HSRRC, the ~~organizational unit head~~ director or designee may replace temporarily an active committee member with an alternate to the degree needed to establish a quorum.

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~~G. One member of the committee shall be designated as secretary of the committee and shall take and prepare formal minutes of each meeting.~~

~~H. The committee and the organizational unit shall establish procedures and rules of operation necessary to fulfill the requirements of this chapter.~~

~~**6VAC15-26-60. Elements of each committee's review process. (Repealed.)**~~

~~A. No human research shall be conducted or authorized by an organizational unit or agency unless such committee has reviewed and approved the proposed human research project giving consideration to:~~

- ~~1. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;~~
- ~~2. The degree of the risk and, if the research is nontherapeutic, whether it presents greater than minimal risk;~~
- ~~3. Whether the rights and welfare of the participants are adequately protected;~~
- ~~4. Whether the risks to the participants are outweighed by the potential benefits to them;~~
- ~~5. Whether the voluntary informed consent is to be obtained by methods that are adequate and appropriate, and whether the written consent form is adequate and appropriate in both content and language for both the research and participants of the research;~~
- ~~6. Whether the persons proposing to supervise or conduct the particular human research are appropriately competent and qualified;~~
- ~~7. Whether criteria for selection of participants are equitable, especially in research regarding the future development of mental or physical illness;~~
- ~~8. Whether the research conforms with such other requirements as the board may establish; and~~
- ~~9. Whether appropriate studies in the nonhuman systems have been conducted prior to the involvement of human participants.~~

~~B. Each committee shall review and approve projects to ensure conformity with the approved proposal at least annually.~~

~~C. Research shall be approved by the committee which has jurisdiction over the participant. When cooperating organizational units conduct some or all of the research involving some or all of the participants, each cooperating organizational unit is responsible for safeguarding the rights and welfare of human participants and for complying with this chapter, except that in complying with this chapter organizational units may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. Such arrangements may be made by the committee chairperson~~

~~with the approval of a majority of the members present at a meeting of the committee.~~

~~D. The committee shall consider completed research proposals within 60 days after submission to the committee's chairman. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. A committee shall notify investigators and the organizational unit in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee approval.~~

~~E. The committee shall develop a written procedure to be followed by a participant who has a complaint about a research project in which he is participating or has participated.~~

~~F. Any participant who has a complaint about a research project in which he is participating or has participated shall be referred to the chairperson of the committee who shall refer it to the committee to determine if there has been a violation of the protocol.~~

~~G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.~~

~~**6VAC15-26-61. Duties and responsibilities.**~~

~~A. The HSRRC shall establish procedures and rules of operation necessary to fulfill the requirements of this chapter.~~

~~B. The HSRRC shall review all submitted research proposals for the following:~~

~~1. Completeness, including:~~

~~a. Researcher information.~~

~~(1) Name of principal researcher~~

~~(2) Affiliation~~

~~(3) Mailing address~~

~~(4) Telephone number~~

~~(5) Email address~~

~~(6) Names of all other researchers participating in the research project~~

~~(7) Name of research project supervisor or advisor, if different from subdivision 1 a (1) of this subsection~~

~~(a) Telephone number~~

~~(b) Email address~~

~~(8) Funding source~~

~~(9) Curriculum vitae of principal researcher, all persons named as researchers and research project supervisor or advisor~~

~~b. Research proposal information.~~

~~(1) Date research proposal submitted to HSRRC~~

~~(2) Title of research proposal~~

~~(3) Purpose of research proposal~~

- (4) Methodology
    - (a) Research design
    - (b) Sampling methods
    - (c) Methods of analysis
  - (5) Discussion of the research proposal in the context of relevant literature
  - (6) Discussion of the benefits to the Department of Corrections as well as the field of study
  - (7) Copies of any surveys or instruments to be used
  - (8) Voluntary informed consent forms
  - (9) Timeline for the research project
  - (10) Department of Corrections resources required (including personnel, supplies, materials, equipment, workspace, access to participants and files, etc.)
  - (11) External Institutional Review Board (IRB) approval (including academic IRBs, research group IRBs, and government IRBs); all external IRB approvals must be received before the HSRRC will initiate review of a submitted research proposal
- c. Letters of endorsement.

2. Compliance with this chapter and all applicable state and federal laws and regulations. Compliance includes, but is not limited to:

- a. The researchers' ability to obtain the appropriate security clearances to enter an organizational work unit.
- b. The researchers' adherence to an organizational work unit's standards for appropriate attire, including dress or wardrobe, jewelry, hair, grooming, body piercings and tattoos.
- c. The researchers' ability to pass an organizational work unit's security screening process for contraband, including weapons of any kind, alcohol, drugs of any kind, cellular phones, other electronic devices, tobacco products (including lighters and matches), and any other items deemed as potentially adversely impacting the safety and security of the Department of Corrections, organizational work unit, department staff, research participants or other offenders, the researchers, or the general public.

3. Adherence to basic research standards, including:

- a. Credentials. The principal researcher shall have academic or professional standing in the pertinent field or job-related experience in the areas of study or be directly supervised by such a person.
- b. Ethics. The research shall conform to the appropriate standards of ethics of professional societies such as the American Psychological Association, the American Sociological Association, the National Association of Social Workers, or other equivalent society.
- c. Protection of rights. The principal researcher is responsible for the conduct of his staff and assumes

responsibility for the protection of the rights of participants involved in the research project.

d. Confidentiality or anonymity. Research project information given by participants to the researcher or researchers shall be confidential or anonymous depending on the study design. This does not preclude the reporting of results in aggregated form that protects the identity of individuals, or the giving of raw data to the Department of Corrections for further analysis. The confidentiality of any such raw data shall be monitored by the department. Persons who breach confidentiality or anonymity shall be subject to sanctions in accordance with applicable laws, policies, and procedures.

e. Participant incentives. The opportunity to participate in research is considered sufficient incentive for participation. The offering of additional incentives is prohibited without specific written approval from the applicable Department of Corrections deputy director. Sentence reduction or pecuniary compensation are always prohibited as incentives.

4. Determination if the research proposal is subject to the human research review requirements of §§ 32.1-162.16 through 32.1-162.20 of the Code of Virginia.

5. Agreement with Department of Corrections research procedures.

a. The principal researcher and research project supervisor or advisor must submit a separate, signed written research agreement when submitting their research proposal indicating that the principal researcher, research project supervisor or advisor, and all other researchers and staff under their supervision who are associated with the research project have read, understand, and agree to abide by Department of Corrections research procedures.

b. The research agreement shall establish a timeline for the research project and the specific date when the principal researcher shall submit the final report to the HSRRC.

c. In the case of student research, the student's academic advisor must sign the research agreement indicating endorsement of the research project.

C. After reviewing each submitted, complete research proposal, research agreement and accompanying documentation, the HSRCC will vote to approve or deny the research proposal.

D. A research proposal shall be approved by the HSRRC when a majority of the quorum of the HSRRC votes to approve the research proposal.

E. In the event a research proposal is denied, the HSRRC shall notify the principal researcher of the reason or reasons for denial and any requested clarifications, edits, updates, or additions that can be made to the research proposal. The principal researcher may resubmit a revised research proposal

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with these requested clarifications, edits, updates, or additions. The HSRRC will then review the resubmitted revised, complete research proposal in accordance with 6VAC15-26-50 B.

F. Upon approval of a research proposal by the HSRRC, the HSRRC shall prepare a research brief summarizing the research proposal with any comments. The research brief will be provided to the director or the appropriate deputy director for review and approval.

G. Upon approval of the research brief by the director or the appropriate deputy director, the HSRRC shall provide an approval memorandum and necessary information describing the research project to the organizational work unit head, regional director, and principal researcher.

H. The HSRRC shall retain a separate electronic file for each submitted research proposal. Each electronic file shall contain:

1. The original submitted research proposal.
2. The research agreement.
3. Any accompanying documentation.
4. Any resubmitted revised research proposals.
5. The research brief.
6. The approval memorandum.
7. Any progress reports.
8. The final report.
9. All communication between the HSRRC, principal researcher, research project supervisor or advisor, the Department of Corrections Director, and the applicable deputy director, regional director, and organizational unit head pertaining to the research project.

I. At the time the research agreement is signed, the HSRRC shall establish due dates for progress reports to be provided by the principal researcher. These progress reports will inform the HSRRC of the status of the research project and any difficulties encountered that might delay or preclude completion of the research project.

J. The HSRRC shall establish research priorities consistent with the needs of the Department of Corrections.

K. The HSRRC shall regulate the number and timetable of research projects so as to not disrupt the normal functioning of any Department of Corrections operational work unit.

L. Upon receipt of a complaint from an organizational unit head or participant, the HSRRC will investigate to determine if there has been a violation of these regulations, Department of Corrections operating procedures, the research proposal, the research agreement or any applicable state or federal laws or regulations.

M. If the HSRRC determines that a principal researcher, researcher, research project supervisor or advisor, or staff supervised by them has violated any provisions of this chapter, Department of Corrections operating procedures, the

research proposal, the research agreement, or any applicable state or federal laws or regulations, the HSRRC may terminate the research project at any time.

N. The HSRRC shall submit to the Governor, the General Assembly, and the director or his designee at least annually a report on the human research projects reviewed and approved by the HSRRC, including any significant deviations from the approved research projects.

## **6VAC15-26-70. Kinds of research exempt from committee review. (Repealed.)**

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from this chapter unless the research is covered by other sections of this chapter:

1. Research conducted in established or commonly accepted educational settings, involving commonly used educational practices, such as:
  - a. Research on regular and special education instructional strategies; or
  - b. Research on the effectiveness of, or the comparison among, instructional techniques, curriculum or classroom management methods.
2. Research involving solely the use and analysis of the results of standardized psychological, educational, diagnostic, aptitude, or achievement tests, if information taken from these sources is recorded in such a manner that participants cannot be reasonably identified directly or through identifiers linked to the participants.
3. Research involving survey or interview procedures, unless responses are recorded in such a manner that participants can be identified directly or through identifiers linked to the participants, and either:
  - a. The participants' responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participants' financial standing, employability, or reputation; or
  - b. The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, illegal conduct, or family planning.
4. Research involving solely the observation (including observation by participants) of public behavior, unless observations are recorded in such a manner that participants can be identified directly or through identifiers linked to the participants, and either:
  - a. The observations recorded about the individual, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or

b. The research deals with sensitive aspects of the participant's own behavior such as sexual behavior, drug or alcohol use, illegal conduct, or family planning.

5. Research involving solely the collection or study of existing data, documents, records, or pathological or diagnostic specimens, if these sources are publicly available or if the information taken from these sources is recorded in such a manner that participants cannot be identified directly or through identifiers linked to the participants.

6. Research involving solely a combination of any of the activities described in this section.

**6VAC15-26-71. Reports.**

A. The principal researcher must submit progress reports to the HSRRC by the dates agreed upon in the research agreement. These progress reports must be submitted electronically via email.

B. The principal researcher must submit a final report to the HSRRC. The final report must be submitted electronically via email.

C. The HSRRC reserves the right to reproduce the final report for official Department of Corrections use only.

**6VAC15-26-80. Expedited review procedures for certain kinds of research involving no more than minimal risk. (Repealed.)**

A. The committee may conduct an expedited review of a human research project which involves no more than minimal risk to the participants if (i) another institution's or agency's human research review committee has reviewed and approved the project or (ii) the review involves only minor changes in previously approved research and the changes occur during the approved project period. Under an expedited review procedure, the review may be carried out by the committee chairperson or one or more experienced reviewers designated by the chairperson from among members of the committee. In reviewing the research, the reviewers may exercise all of the authorities of the committee except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in 6VAC15-26-60.

B. Each committee which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

C. Research activities involving no more than minimal risk and in which the involvement of human participants will only be in one or more of the following categories (carried out through standard methods) may be reviewed by the research review committee through the expedited review procedure.

1. The study of existing data in the form of records on department personnel or inmates, probationers, or parolees, automated or other records.

2. Research on individual or group behavior or characteristics of individuals, such as studies of perception, attitudes or interaction patterns, where the investigator does not manipulate participants' behavior and the research will not involve stress to participants.

**6VAC15-26-81. Records maintenance.**

A. The principal researcher shall maintain records adequate to enable the Department of Corrections to ascertain the status of the research project at any given time.

B. The principal researcher shall maintain completed voluntary informed consent forms in a secure location for at least three years.

**6VAC15-26-90. Informed consent. (Repealed.)**

A. No human research may be conducted in the absence of voluntary informed consent subscribed to in writing by the participant or by the participant's legally authorized representative except as provided for in subsection F of this section. If the participant is a minor otherwise capable of rendering voluntary informed consent, the consent shall be subscribed to by both the minor and his legally authorized representative. An investigator shall seek such consent only under circumstances that (i) provide the prospective participant or the representative sufficient opportunity to consider whether or not to participate and (ii) minimize the possibility of coercion or undue influence. The information that is given to the participant or the representative shall be in understandable language.

B. No individual shall participate in research unless subsection A of this section is met for each individual. The consent by a legally authorized representative shall be subject to the provisions of subsection C of this section. No voluntary informed consent shall include any language through which the participant waives or appears to waive any of his legal rights, including any release of any individual, institution, agency or any agents thereof from liability for negligence. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any research project. Each participant shall be given a copy of the signed consent form required by 6VAC15-26-30 A except as provided for in subsection F of this section.

C. No legally authorized representative may consent to nontherapeutic research unless it is determined by the committee that such nontherapeutic research will present no more than a minor increase over minimal risk to the participant. No nontherapeutic research shall be performed without the consent of the participant.

D. The committee may approve a consent procedure which omits or alters some or all of the elements of informed consent set forth in 6VAC15-26-10, or waives the requirement to obtain informed consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the participants;

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~~2. The omission, alteration or waiver will not adversely affect the rights and welfare of the participants;~~

~~3. The research could not practicably be performed without the omission, alteration or waiver; and~~

~~4. Whenever appropriate, the participants will be provided with additional pertinent information after participation.~~

~~E. Except as provided in subsection F of this section, the consent form may be either of the following:~~

~~1. A written consent document that embodies the elements of informed consent required by 6VAC15-26-10. This form may be read to the participant or the participant's legally authorized representative, but in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed; or~~

~~2. A short form written consent document stating that the elements of informed consent required by 6VAC15-26-10 have been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the participant or the representative in addition to a copy of the short form.~~

~~F. The committee may waive the requirement for the investigator to obtain a signed consent form for some or all participants if it finds that the only record linking the participant and the research would be the consent document and that the principal risk would be potentially harmful resulting from a breach of confidentiality. Each participant will be asked whether he wants documentation linking him to the research, and the participant's wishes will govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement explaining the research.~~

## **6VAC15-26-91. Publication rights.**

~~A. Researchers are not permitted to publish beyond the approved research proposal without further review and approval from the HSRRC.~~

~~B. The researcher shall furnish the HSRRC with an electronic copy of the published research findings.~~

~~C. The Department of Corrections shall be permitted to use the data collected in the research project and to reproduce the materials as they are published.~~

~~D. Without the explicit written approval of the researcher, the Department of Corrections should not publicly distribute any dissertation or thesis material that the researcher has not published or presented publicly or professionally.~~

~~E. Without prior approval from the HSRRC, research conducted by employees or agents (including but not limited to interns, volunteers, contractors, and vendors) of the department is the property of the department and cannot be published without the approval of the director or the appropriate deputy director.~~

## **6VAC15-26-100. Committee records. (Repealed.)**

~~A. Documentation of all committee activities shall be prepared and maintained and shall include the following:~~

~~1. Copies of all research proposals reviewed, evaluations that may accompany the proposals, approved sample consent documents, progress reports submitted by researchers, reports of injuries to participants, and correspondence related to the research;~~

~~2. Minutes of committee meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on these actions, including the number of members voting for, against, and abstaining; the basis for requiring changes in or for disapproving research; and a written summary of the discussion of controversial issues and their resolution;~~

~~3. Records of continuing review activities;~~

~~4. Copies of all correspondence between the committee and the investigators;~~

~~5. A list of committee members;~~

~~6. Written procedures for the committee; and~~

~~7. Statements of significant new findings provided to the participants.~~

~~B. The records required by this chapter shall be retained for at least three years, and records relating to research which is conducted shall be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of the department at reasonable times and in a reasonable manner.~~

## **6VAC15-26-101. Research exempt from HSRRC review.**

~~The following are exempt from HSRRC review:~~

~~1. Department of Corrections' studies, program evaluations and routine data analyses for management purposes.~~

~~2. Research conducted by the Department of Corrections, Division of Education in established or commonly accepted educational settings, involving commonly used educational practices, such as:~~

~~a. Research on regular and special education instructional strategies.~~

~~b. Research on the effectiveness of, or the comparison among, instructional techniques, curriculum or classroom management methods.~~

~~3. Research involving required agency survey procedures, unless responses are recorded in such a manner that~~

participants can be identified, directly or through identifiers linked to the participants, and either:

- a. The participants' responses, if they become known outside the research, could reasonably place a participant at risk of criminal or civil liability or be damaging to a participant's financial standing, employability, or reputation; or
- b. The research deals with sensitive aspects of a participant's own behavior, such as sexual behavior, drug or alcohol use, illegal conduct, or family planning.

4. Research involving solely the collection or study of existing data, documents, records, or pathological or diagnostic specimens, if these sources are publically available or if the information taken from these sources is recorded in such a manner that participants cannot be identified, either directly or through identifiers linked to the participants.

**6VAC15-26-102. Waiver of signed voluntary informed consent form.**

A. The HSRRC may waive the requirement for the researcher to obtain a signed voluntary informed consent form for some or all participants in a research project if it finds that the only record linking the participant and the research would be the consent form and that the principal risk would be potentially harmful resulting from a breach of confidentiality.

B. Each participant will be asked whether he wants documentation linking him to the research, and the participant's wishes will govern.

C. In cases where the documentation requirement is waived, the HSRRC shall require the researcher to provide participants with a written statement explaining the research.

**6VAC15-26-110. Mandatory reporting. (Repealed.)**

~~Each research review committee shall submit to the governor, the General Assembly, and the director or his designee at least annually a report on the human research projects reviewed and approved by the committee, including significant deviations from the proposals as approved.~~

Part III

Role of the Department, Director, and the Board

**6VAC15-26-120. Role of the department, director, and the board.**

A. The director, or his designee, shall establish and maintain records of organizational unit the HSRRC assurances, annual reports, and summary descriptions of research projects to be reviewed by the board.

B. The director, or his designee, shall review communications from committees the HSRRC reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of rights of human research participants. The board shall be kept informed.

C. The director shall arrange for the printing and dissemination of copies of this chapter.

Part IV

Applicability of State and Federal Policies

**6VAC15-26-130. Applicability of state and federal policies.**

A. No statement in this chapter shall be construed as limiting in any way the rights of participants in research under regulations promulgated by the board pursuant to §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

B. Human research that is subject to policies and regulations for the protection of human participants promulgated by any agency of the federal government shall be exempted from this chapter. Annual certification shall be made that exempted projects have complied with the policies and regulations of federal agencies to the director and the board.

**6VAC15-26-140. Applicability of federal policies. (Repealed.)**

~~Human research which is subject to policies and regulations for the protection of human participants promulgated by any agency of the federal government shall be exempted from this chapter. Annual certification shall be made to the director and the board that exempted projects have complied with the policies and regulations of federal agencies.~~

**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 (6VAC15-26)

[Research Proposal - Sample \(Operating Procedure 020.1\), Attachment 1, effective April 1, 2010 \(rev. 1/10\).](#)

[Research Agreement \(Operating Procedure 020.1\), Attachment 2, effective April 1, 2010 \(rev. 1/10\).](#)

[Voluntary Informed Consent to Participate in Research \(Operating Procedure 020.1\), Attachment 3, effective April 1, 2010 \(rev. 1/10\).](#)

DOCUMENTS INCORPORATED BY REFERENCE (6VAC15-26)

[Operating Procedure 701.1 - Health Services Administration, Effective Date January 1, 2012, Amended March 29, 2012, Virginia Department of Corrections.](#)

VA.R. Doc. No. R11-2246; Filed October 2, 2012, 10:03 a.m.

**Final Regulation**

**Title of Regulation: 6VAC15-40. Minimum Standards for Jails and Lockups (amending 6VAC15-40-10, 6VAC15-40-30, 6VAC15-40-40, 6VAC15-40-60, 6VAC15-40-90 through 6VAC15-40-130, 6VAC15-40-150 through**

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6VAC15-40-250, 6VAC15-40-280, 6VAC15-40-290, 6VAC15-40-300, 6VAC15-40-320, 6VAC15-40-330, 6VAC15-40-340, 6VAC15-40-360 through 6VAC15-40-420, 6VAC15-40-440, 6VAC15-40-450, 6VAC15-40-480, 6VAC15-40-510, 6VAC15-40-520, 6VAC15-40-550, 6VAC15-40-560, 6VAC15-40-600 through 6VAC15-40-670, 6VAC15-40-690, 6VAC15-40-720, 6VAC15-40-730, 6VAC15-40-740, 6VAC15-40-760, 6VAC15-40-770, 6VAC15-40-790, 6VAC15-40-810 through 6VAC15-40-840, 6VAC15-40-870, 6VAC15-40-880, 6VAC15-40-910 through 6VAC15-40-980, 6VAC15-40-1000 through 6VAC15-40-1050, 6VAC15-40-1080, 6VAC15-40-1090, 6VAC15-40-1100, 6VAC15-40-1150, 6VAC15-40-1180, 6VAC15-40-1193, 6VAC15-40-1195, 6VAC15-40-1210, 6VAC15-40-1220, 6VAC15-40-1240 through 6VAC15-40-1280, 6VAC15-40-1300, 6VAC15-40-1310, 6VAC15-40-1330 through 6VAC15-40-1360; adding 6VAC15-40-5, 6VAC15-40-405, 6VAC15-40-545, 6VAC15-40-831, 6VAC15-40-945, 6VAC15-40-1045, 6VAC15-40-1111, 6VAC15-40-1315, 6VAC15-40-1380; repealing 6VAC15-40-460, 6VAC15-40-1320).

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-131 of the Code of Virginia.

Effective Date: November 22, 2012.

Agency Contact: William Wilson, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3499, FAX (804) 674-3587, or email william.t.wilson@vadoc.virginia.gov.

Summary:

*The amendments (i) clarify current standards to include terminology and procedures, extensive modification of chapter definitions, and incorporation by reference of two model plans (payment of costs associated with prisoner keep and jail prisoner medical treatment programs); and (ii) add sections to address compliance documentation, Automated External Defibrillator devices, standards for inmate food service workers, fees for inmate keep, tools, supervisions of inmates, and self-contained breathing apparatus.*

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

Part I  
General Provisions

**6VAC15-40-5. Compliance documentation.**

The elements listed in the compliance documentation shall be interpreted as part of the standard. If facility policy exceeds the requirement of the standard, the facility will be held to the content of such policy.

Part I  
General Provisions

**6VAC15-40-10. Definitions.**

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

"Administrative segregation" means a form of separation from the general population when the continued presence of the inmate in the general population would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly running of the institution facility. Inmates pending investigation for trial on a criminal act or pending transfer can also be included.

"~~Annually~~" "Annual" means an action performed each calendar year.

"Appeal" means the procedure for review of an action by a higher authority.

"Audit" means the determination of facility compliance with standards through an examination of records and operations by a team of qualified professionals.

"Automated External Defibrillator" or "AED" means a device that automatically analyzes the heart rhythm and permits a shock to be delivered to restore a normal heart rhythm if a problem is detected.

"Board" means the Board of Corrections.

"Certification" means an official approval by the Board of Corrections that allows a facility to operate.

"Chief executive officer" means the elected or appointed individual who by law or position, has the overall responsibility for the facility's administration and operation.

"Civilian personnel" means [ non-sworn nonsworn ] facility employees who have been provided with on-the-job training in facility security procedures and emergency plans and communications, and are assigned to posts that do not require direct inmate contact and supervision.

"Classification" means the process for determining inmate housing, custody and program assignments.

"Communication system" means a mechanical audio transmission such as telephone, intercom, walkie talkie or T.V. monitor.

"Compliance and Accreditation Unit" means the unit within the Department of Corrections responsible for conducting triennial certification audits and yearly unannounced life, health, safety inspections of local and regional jails and lockups.

"Compliance documentation" means the required documentation in conjunction with the requirements of this chapter used to determine compliance during triennial certification audits and yearly unannounced life, health, safety inspections.



"Contraband" means any item possessed by inmates found in the possession of an inmate or found within the jail or lockup that is illegal by law or not specifically approved for inmate possession by the facility administrator of the facility.

"Correctional status information" means records and data concerning a convicted person's custodial status, including probation, confinement, work release, study release, escape [ , ] or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information [ , ] or other formal charges and any disposition arising there from. The term shall not include juvenile record information, which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 of the Code of Virginia, criminal justice investigative information or correctional status information.

"Culinary items" means utensils used in a kitchen to prepare and serve food, including knives.

"Current" means unexpired.

"Daily log" means a written or electronic record for the recording of daily activities or unusual incidents.

~~"Department" means the Department of Corrections.~~

"Detainee" means any person confined but not serving a sentence.

"Director" means the Director of the Department of Corrections.

"Disciplinary detention" means the separation of an inmate from the general population for misconduct and/or violations of regulations.

"Disposition" as referenced in 6VAC15-40-410 and 6VAC15-40-420 means the removal of an inmate from a medical treatment facility or the physician's discharge plan.

"Disposition" as referenced in 6VAC15-40-710 means how an inmate's clothing and personal possessions are inventoried, and where an inmate's clothing and personal possessions are stored until the inmate is released or transferred.

"Disposition" as referenced in 6VAC15-40-910 means the end result of items found during searches of the facility (returned to property, disposed of, etc.).

"Duty post" means a fixed or mobile work location in which the safety and security of the facility and inmates is carried out.

"Educational release" means an approved absence from the facility for the purpose of participating in an educational program.

"Emergency plan" [ or "emergency plans" ] means the written procedures for staff responsibility in the event of fire, hazardous material release, loss of utilities, natural disaster, hostage situations, riots, disturbances, escapes, bomb threats, and mass arrest.

"Erroneous release" means the inadvertent release of an inmate or detainee from the physical plant of the facility.

"Facility" means the actual physical setting in which a program or agency functions.

~~"Fire prevention practices and emergency plans" means the activities and written procedures utilized and rehearsed to ensure the safety of staff, inmates and public.~~

"Fire prevention practices" means maintaining smoke detection equipment, servicing fire extinguishers, keeping living areas free of clutter, and storing combustible materials in the proper manner.

~~"Fire safety inspection" means an inspection conducted by the Office of State Fire Marshal State Fire Marshal's Office or local fire department approved fire marshal.~~

"Formal count" means a personal observation and counting of each inmate.

"Furlough" means an approved leave of absence from the facility granted to an inmate.

"Good time" means earned credits that will reduce an inmate's time served.

"Grievance procedure" means the method by which inmates may formally address complaints to the facility administration.

"Health care personnel" means individuals whose primary duties are to provide health services to inmates.

~~"Health inspection" means an inspection conducted by the local or state Department of Health.~~

"Impartial officer or committee" means individual(s) who are unbiased and are not directly involved in the particular incident or situation being reviewed.

"Indigent inmate" means an inmate having less than the equivalent of the cost of five first class stamps in his account for 15 days.

"Inmate" means any person classified and confined inside the secure perimeter of the facility.

"Inmate handbook" means a manual, pamphlet or handout that contains information describing facility rules, inmate activities, and conduct.

"Inmate records" means written or electronic information concerning the individual's an inmate's personal, criminal and medical history, behavior, and activities while in custody.

"Inmate worker" means an inmate classified and assigned to perform various duties and tasks inside and outside the facility under supervision of staff.

"Juvenile" means a person less than 18 years of age who is not adjudicated as an adult.

"Legal mail" means mail addressed to or received from an attorney or court.

~~"Local offender" means an individual who has a conviction but who is not a state offender in accordance with § 53.1-20 of the Code of Virginia.~~

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"Lockup" means a temporary detention facility where detainees are held for not more than 12 hours.

"Material Safety Data Sheet" or "MSDS" means a document containing information on potential health effects [ ~~of~~ from ] exposure to chemicals or other potentially dangerous substances, and on safe procedures when handling chemical products.

"Medical authority" means physician or nurse.

"Medical co-payment" means the amount (dictated by facility policy; to be a portion of the costs) an inmate pays for medical services.

"Medical screening" means an observation and interview process within the booking procedure designed to obtain pertinent information regarding an individual's medical or mental health condition.

"Model Plan for Jail Prisoner Medical Treatment Programs" means the model plan for medical treatment fees developed by the Board of Corrections to serve as a guide for the establishment of a medical treatment program per § 53.1-133.01 of the Code of Virginia.

"Orientation" means information for newly admitted inmates pertaining to facility rules and regulations, access to medical services, medical services fees and payment procedures, and programs available.

"Permanent record" means a written or electronic record of a facility's activities that cannot be altered or destroyed subject to state law.

"Pharmaceuticals" means prescription and nonprescription drugs.

"Policy" means a [definitive statement of position on an issue concerning the organization's effective operation.

"Policy and procedures manual" means a written or electronic record containing all policies and procedures needed for the operation of the facility in accordance with the law and the minimum standards for local jails and lockups.

"Post order" means a list of specific job functions and responsibilities required of each duty post or position.

"Procedure" means a detailed, step-by-step description of the activities necessary to fulfill the policy. A procedure describes how, when, where, and by whom the organization will implement and fulfill the policy.

"Program" means the plan or system through which a correctional agency works to meet its goals; often the program requires a distinct physical setting.

"Protective custody" means a form of separation from the general population for inmates requesting or requiring protection from other inmates.

"Quarterly" means an action that occurs once every three months within a calendar year.

"Recognized certifying agency" means an agency, such as the American Red Cross, the American Heart Association, or

a local hospital or fire department, that is approved and recognized as being qualified to instruct first aid and CPR courses.

"Recreational activities" means any out-of-cell activity ranging from scheduled outside or inside recreation to informal tabletop games.

"Regional jail" (as defined in § 53.1-82 of the Code of Virginia) means three or more counties or cities, or any combination thereof, that are authorized to contract for services for the detention and confinement of categories of offenders in single or regional jail facilities operated by the contracting jurisdictions. In addition (i) any three or more counties, cities, or towns, or any combination thereof, operating a jail facility pursuant to an agreement for cooperative jailing established on or before January 31, 1993; (ii) any existing regional jail facility established by only two counties, counties, or towns on or before June 30, 1982; and (iii) any regional jail facility established by only two contiguous counties whose boundaries are not contiguous by land with the boundaries of any other county in the Commonwealth, may participate under the provisions of this section. The board shall promulgate regulations specifying the categories of offenders that may be served pursuant to the contracts provided for herein.

"Rehabilitation release" means an approved absence from the facility for the purposes of participating in a rehabilitation program.

"Security staff" means those officers who have completed on-the-job training and whose primary responsibilities are the safety and security of the facility and inmates.

"Sharps" means any medical or dental instrument (lancet, needle, syringe, scalpel, etc.) stored and used within the facility.

"State offender" means an individual sentenced to a term of incarceration in accordance with § 53.1-20 of the Code of Virginia. For the purpose of 6VAC15-40-230 and 6VAC15-40-240 relative to work release, educational release or ~~rehabilitative~~ rehabilitation release, a state offender shall be defined in terms of the intake schedule pursuant to § 53.1-20 of the Code of Virginia.

"Trained" means completion of on-the-job training including, at a minimum, the following topics: key control, count procedures, emergency plans, first aid and CPR, universal precautions, suicide prevention, use of force, emergency communication, and security operations. A supervisor or field training officer current in Basic Jail Training shall verify in writing the individual has received on-the-job training and is competent in said training. The scope and breadth of the training shall be at the discretion of the sheriff or facility administrator.

"Twelve months" means no later than the last day of the same month each year.

"Universal precautions" means a set of procedural directives and guidelines detailing placing barriers between staff and all blood and ~~body~~ bodily fluids. These directives include ~~provision of provisions for~~ protective barrier devices, standardized labeling of biohazards, mandatory training of employees in universal precautions, management of exposure incidents, and the availability to employees of immunization for employees against Hepatitis B.

"Virginia Department of Health inspection" or "VDH inspection" means the required 12-month inspection conducted by the VDH.

"Volunteer" means an individual who provides services to the ~~detention~~ facility without compensation.

~~"Work day" means Monday through Friday.~~

"Work release" means full-time employment or participation in suitable vocational training programs.

**6VAC15-40-30. Requirement for written statement.**

The facility shall have a written statement and policy discussing its philosophy, goals and objectives. The written statement shall be reviewed every 12 months by administrative staff.

**6VAC15-40-40. Policy and procedures manual.**

Written policy and procedures shall be maintained and ~~shall~~ be available 24 hours a day to all staff. The facility's policies and procedures shall be reviewed every 12 months by ~~the administration~~ administrative staff and updated to keep current with changes.

**6VAC15-40-60. Annual report.**

A written annual report of the availability of services and programs to inmates ~~in a facility~~ shall be reviewed by the facility administrator and provided to the sentencing courts and may be provided to relevant community agencies.

**6VAC15-40-90. Content of personal inmate records.**

Personal records shall be maintained on all inmates committed or assigned to the facility. Inmate records shall be kept confidential, securely maintained, and in good order to facilitate timely access by staff. These Inmate records shall contain, but not be limited to:

1. Inmate data form;
2. Commitment form or court order, or both;
3. Records developed as a result of classification;
4. All disciplinary actions, or unusual incidents;
5. Work record and program involvement; and
6. Copies of inmates' property expenditure records and receipts; and
7. Victim notification ~~when required,~~ if applicable.

**6VAC15-40-100. Daily logs.**

The facility shall maintain a daily log(s) that records the following information:

1. Inmate count and location, to be verified with a minimum of one formal count per shift, observing flesh and movement;
2. Intake and release of inmates;
3. Entries and exits of physicians, attorneys, ministers, and other nonfacility personnel; and
4. Any unusual incidents ~~such as those~~ that result in physical harm to, or threaten the safety of, any person; or the security of the facility.

**6VAC15-40-110. Serious incident report reports.**

A report setting forth in detail the pertinent facts of deaths, discharging of firearms, erroneous releases, escapes, fires requiring evacuation of inmates, hostage situations, and discharging firearms recapture of escapees shall be reported to the ~~local facilities unit~~ Local Facilities Supervisor of the Compliance and Accreditation Unit, Department of Corrections (DOC), or designee. The initial report ~~should~~ shall be made within 24 hours ~~with~~ and a full report submitted at the end of the investigation.

**6VAC15-40-120. Classification.**

A. Written policy, procedure, and practice shall ensure the following:

1. Classification of inmates as to level of housing assignment and participation in correctional programs;
2. Separate living quarters for males, females, and juveniles;
3. Inmates are not segregated by race, color, creed or national origin;
4. Security permitting, equal access to all programs and activities, through separate scheduling, or other utilization of combined programs under supervision; and
5. Any exception to the above ~~to be~~ is documented ~~in writing.~~

B. If the facility is using objective classification, then the provisions of this subsection shall be followed:

1. Classification is conducted upon intake and prior to final housing assignment;
2. Classification determines the custody level and housing assignment;
3. Classification is conducted through ~~prisoner~~ inmate interviews and the use of data collection instruments or forms, which are maintained on file;
4. Classification instruments enable objective evaluation and/or scoring of:
  - a. Current offenses.
  - b. Prior convictions.
  - c. History of assaultive behavior.
  - d. Escape history.
  - e. Prior institutional adjustment.
  - f. Court status and pending charges.

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- g. Mental health or medical treatment history or needs.
- h. Identified stability factors.

5. The classification system includes administrative review of decisions and periodic ~~reclassifications~~ reclassification and override procedures that are documented and maintained on file.

6. The classification system addresses both the potential security risks posed and treatment needs of the inmate.

7. ~~Male, female and juvenile inmates are housed separately.~~ Separate living quarters for males, females, and juveniles.

8. Inmates are not segregated by race, color, creed, or national origin.

## **6VAC15-40-130. Written grievance procedure.**

A written grievance procedure shall be developed and made available to all inmates with the following ~~elements~~:

1. ~~Grievance shall be responded to within nine work days of receipt; Inmates shall be given a grievance form after exhausting all prerequisites of the grievance procedure. Prerequisites shall be documented.~~

2. ~~Written responses, including the reason for the decision, shall be made to all grievances; Grievances shall be responded to within nine work days of receipt.~~

3. ~~A review shall be made by someone not directly involved in the grievance; Written responses, including the reason for the decision, shall be made to all grievances.~~

4. ~~All inmates shall have access to the procedures with guaranty against reprisal; and A review shall be made by a staff member not directly involved in the grievance.~~

5. ~~All inmates shall be afforded the opportunity to appeal the decision. All inmates shall have access to the grievance procedure with guaranty against reprisal.~~

6. All inmates shall be afforded the opportunity to appeal the decision.

## **6VAC15-40-150. Inmate exercise.**

Written policy, procedure, and practice shall provide that all inmates have access to ~~regular~~ physical exercise. Facilities with specified exercise areas shall provide inmate exercise a minimum of one hour per week. Facilities without specified exercise areas shall provide equipment or an area within the dayroom for inmates to exercise large muscle groups on a daily basis. Shortage of staff shall not hinder inmate access to physical exercise. [ Any exception Exceptions for inclement weather or risk to security ] shall be documented in writing.

## **6VAC15-40-160. Written procedures for release program eligibility criteria.**

Written procedures outlining the eligibility criteria for participation in a work release, educational release, electronic monitoring, or rehabilitation release program shall be developed by each facility with a work release, educational release, electronic monitoring, or rehabilitation release program. ~~Offenders~~ Inmates shall meet the established

eligibility requirements prior to being released to participate in the program.

## **6VAC15-40-170. Written procedures for accountability of inmate participants.**

Written procedures shall ensure the accountability of inmate participants and provide for supervision in the community. Such procedures shall include, at a minimum:

1. Provisions for a daily inmate count;

2. Methods for determining and identifying inmates who are authorized to leave the facility;

3. Provisions for a controlled sign-out and sign-in process; and

4. ~~Methods of verifying the inmate's location within the community, both by telephone and random field visits~~ Provisions that require that a minimum of one staff-initiated telephone contact per calendar week and a minimum of one random field visit per month [ or GPS monitoring ] shall be [ conducted and documented used ] to verify the inmate's location within the community.

## **6VAC15-40-180. Conditions for offender inmate participation in a work release program.**

~~Offender~~ Inmate participation in a work release program shall conform to the following specific conditions unless ordered otherwise by an appropriate court:

1. Participation by the inmate shall be on a voluntary basis.

2. The following conditions shall be met where the employer has a federal contract:

a. Representatives of local union central bodies or similar labor union organizations shall have been consulted;

b. Employment shall not result in the displacement of employed workers, or be applied in skills, crafts or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

c. Rates of pay and other conditions of employment shall not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.

## **6VAC15-40-190. Conditions for offender inmate participation in educational release or rehabilitative rehabilitation release program programs.**

~~Offender~~ Inmate participation in an educational release or rehabilitative rehabilitation release program shall conform to the following specific conditions unless ordered otherwise by an appropriate court:

1. Participation by the inmate may be voluntary or court ordered;

2. Meetings or classes shall be on a regularly scheduled basis; and

3. Other conditions shall not be more restrictive on the offender inmate than those required by other participants.

**6VAC15-40-200. Furlough.**

~~Participants~~ Inmate participants in the a work release, educational release, or ~~rehabilitative~~ rehabilitation release ~~programs~~ program may be considered for furlough, as prescribed by the facility policy, not to exceed three days in length at any one time. Written procedures shall govern the granting of furloughs in accordance with the provisions of ~~§§ 53.1-37 and § 53.1-132~~ of the Code of Virginia.

**6VAC15-40-210. Earnings.**

Written procedures shall be developed to ensure the accountability of all earnings received, disbursed, to whom and reason on behalf of the inmate participant. Procedures shall be in accordance with § 53.1-131 of the Code of Virginia.

**6VAC15-40-220. Removing inmate participants from program.**

Written procedures shall establish the criteria and process for removing ~~a participant~~ inmate participants from the program.

1. Procedures shall include provisions for an impartial hearing for the ~~participant~~ inmate participants.
2. Procedures shall include provisions for ~~the appeal of~~ appealing the removal.
3. Documentation shall reflect that this information was explained to all inmate participants ~~when they were assigned upon assignment~~ to the program.

**6VAC15-40-230. Written agreement with director.**

Each facility having a work release, educational release, or rehabilitation release program that includes state offenders as defined in § 53.1-20 of the Code of Virginia shall have a written agreement with the director, or his designee.

**6VAC15-40-240. Offender participation in compliance with appropriate criteria and approval.**

State offenders assigned to a work release, educational release, or rehabilitation release program shall meet the ~~Department of Corrections work release~~ appropriate criteria ~~and set forth by the Department of Corrections (DOC),~~ be approved by the ~~department's~~ DOC Central Classification ~~Board~~ Services and the ~~department's~~ management review process pursuant to a written agreement as provided for in accordance with § 53.1-131 of the Code of Virginia.

**6VAC15-40-250. Participation in religious services or counseling.**

Written policy, procedure, and practice shall allow inmates to participate voluntarily in available religious services or counseling of their choice during scheduled hours within the facility. The constitutional right to pursue any lawful and legitimate religious practice shall be guaranteed to all inmates consistent with maintaining the order and security of the facility.

**6VAC15-40-280. Availability and administration of educational services.**

Written policy, procedure, and practice shall govern the availability and administration of educational services for inmates, including a written agreement with the local school authority for the provision of special education. The facility administrator shall coordinate ~~and cooperate~~ with local authorities for the provision of ~~local~~ community services and resources utilized for this purpose, where ~~they are~~ available.

**6VAC15-40-290. Provisions of reading materials.**

The facility shall provide reading materials that include current periodicals ~~(not more than one year old).~~

**6VAC15-40-300. Permission of reading materials.**

Reading materials, including newspapers, magazines and books, shall be permitted in the ~~joint~~ facility unless the material poses a threat to security or is not in compliance with other ~~joint~~ facility restrictions or guidelines.

**6VAC15-40-320. Licensed physician.**

A licensed physician shall supervise the facility's medical and health care services. Facilities that contract with private medical facilities or vendors shall maintain a current copy of the agreement, unless employed by the facility.

**6VAC15-40-330. Restrictions on physician.**

No restrictions shall be imposed on the physician by the facility in the practice of medicine; ~~however.~~ However, administrative and security regulations applicable to facility personnel shall apply to medical personnel as well.

**6VAC15-40-340. Licensing and Health care provider and licensing, certification, and qualification of health care personnel.**

Each facility shall have a minimum of one licensed or qualified health care provider who is accessible to inmates a minimum of one time per week. Health care personnel shall meet appropriate and current licensing ~~or,~~ certification, or qualification requirements.

**6VAC15-40-360. Twenty-four-hour emergency medical and mental health care.**

Written policy, procedure, and practice shall provide 24-hour emergency medical and mental health care availability.

**6VAC15-40-370. Receiving and medical screening of inmates.**

Written policy, procedure, and practice shall provide that receiving and medical screening be performed on all inmates upon admission to the facility. The medical screening shall:

1. Specify screening for current illnesses, health problems and conditions, and past history of communicable diseases;
2. Specify screening for current symptoms regarding the inmate's mental health, dental problems, allergies, present medications, special dietary requirements, and symptoms of venereal disease;

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3. Include inquiry into past and present drug and alcohol abuse, mental health status, depression, suicidal tendencies, and skin condition; ~~and~~

4. For female inmates, include inquiry into possible pregnancy or gynecological problems; ~~and~~

5. All inmates shall receive a tuberculosis (TB) skin test within seven days of admission to the facility.

## **6VAC15-40-380. Inmate access to medical services.**

Written policy, procedure, and practice shall be developed whereby inmates ~~can~~ shall be informed, at the time of admission to the facility, of the procedures for gaining access to medical services.

## **6VAC15-40-390. Training and competency of staff.**

All ~~certified~~ security staff shall be trained and competent in rendering basic first aid and CPR by a recognized certifying agency. All training shall be documented.

## **6VAC15-40-393. Universal precautions.**

All ~~regularly assigned facility~~ staff who have contact with inmates shall be trained, competent, and knowledgeable in the use of universal precautions. All training shall be documented and completed every 12 months.

## **6VAC15-40-395. Management of sharps.**

Written policy, procedure, and practice shall govern the control, storage, and use of sharps including at a minimum needles, scalpels, ~~lancets~~ lancets, and dental tools.

## **6VAC15-40-400. Management of pharmaceuticals.**

Written ~~standard operating~~ procedures for the management of pharmaceuticals shall be established and approved by the ~~facility's physician or pharmacist~~ medical authority or pharmacist, if applicable. Written policy, procedure, and practice shall provide for the proper management of pharmaceuticals, including receipt, storage, dispensing, and distribution of drugs. ~~Such~~ These procedures shall be reviewed every 12 months by the medical authority or pharmacist. Such reviews shall be documented.

## **6VAC15-40-405. Automated External Defibrillator (AED).**

There shall be a minimum of one AED unit available in the facility. All security staff shall receive training in the operation of the unit.

## **6VAC15-40-410. Inmate medical ~~record~~ records.**

The medical record for each inmate shall be kept separate from other facility records and shall include the following:

1. The completed screening form; and
2. All findings, diagnoses, treatment, dispositions, prescriptions, and administration of medication.

## **6VAC15-40-420. Transfer of summaries of medical record.**

~~Summaries of the medical record file shall be forwarded to the facility to which the inmate is transferred.~~ Medical record

summaries shall be transferred to the same facility to which the inmate is being transferred. Required information shall include: vital signs, current medications, current medical/dental problems, mental health screening, mental health problems, TB skin test date and results, special inmate needs/accommodations, pending medical appointments, medical dispositions, overall comments, health care provider/personnel signature and date, and any additional pertinent medical information such as lab work, x-rays, etc.

## **6VAC15-40-440. Medical care provided by personnel other than physician.**

Medical care ~~performed~~ provided by personnel other than a physician shall be pursuant to a written protocol or order. Protocols or orders shall be reviewed and signed by the supervising physician every 12 months.

## **6VAC15-40-450. Suicide prevention and intervention plan.**

There shall be a written suicide prevention and intervention plan. These procedures shall be reviewed and documented by an appropriate medical or mental health authority prior to implementation and every three years thereafter. These procedures shall be reviewed every 12 months by all staff having contact with inmates. These Such reviews shall be documented.

## **~~6VAC15-40-460. Applicability of medical treatment program standards. (Repealed.)~~**

~~The standards in this part apply only to those facilities that have established a medical treatment program in which prisoners pay a portion of the costs per § 53.1-133.01 of the Code of Virginia.~~

## **6VAC15-40-480. Set fees required.**

Inmate payment for medical services shall be ~~in accordance with set fees based upon only a portion of the costs of these services up to, but shall not exceed, those fees established by the Board of Corrections in the Model Plan for Jail Prisoner Medical Treatment Programs per § 53.1-133.01 of the Code of Virginia.~~

## **6VAC15-40-510. Ability to pay.**

Written policy, procedure, and practice shall ~~provide~~ ensure that no inmate will be denied access to medically necessary services based upon ability to pay.

## **6VAC15-40-520. Acknowledgment in writing.**

Medical ~~service~~ services fee debits to inmate accounts shall be acknowledged by the inmate in writing. The acknowledgement shall be signed by a witness if the inmate refuses to sign.

## **6VAC15-40-545. Standards for inmate food service workers.**

Written policy, procedure, and practice shall ensure that a visual medical examination of each inmate assigned to food service occurs no more than 30 days prior to assignment and quarterly thereafter. Each inmate shall be given a TB skin test

prior to food service assignment. Such tests shall be documented. If an inmate tests positive for TB, that inmate shall not be granted assignment to food service.

**6VAC15-40-550. Food service program.**

Written policy, procedure, and practice shall ensure a food service program that meets the following:

1. The menu meets the dietary allowances as stated in the Recommended Dietary Allowances (RDA), National Academy of Sciences;
2. There is at least a one-week advance menu preparation; and
3. Modifications in menus are based on inmates' medical or reasonable religious requirements. Medical or dental diets shall be prescribed by the facility's medical authority;
4. RDA evaluation of facility menus shall be completed by an independent registered dietitian or certified nutritionist every three years; and
5. Additional evaluations shall be completed when a substantive change in the menu or food service provider occurs.

**6VAC15-40-560. Meals prepared, delivered, and served under direct supervision of staff.**

Written policy, procedure, and practice shall ensure meals are prepared, delivered, and served under the direct supervision of staff.

**6VAC15-40-600. Correspondence privileges.**

Written policy, procedure, and practice shall ensure that all inmates, regardless of their jail status, shall be afforded the same correspondence privileges;—correspondence. Correspondence privileges shall not be withdrawn as punishment.

**6VAC15-40-610. Volume and content of inmate mail.**

Written policy, procedure, and practice shall ensure that there is no limit on the volume of letter mail an inmate may send or receive, or on the length, language, content, or source of such letter mail, except where there is clear and convincing evidence to justify such limitations.

**6VAC15-40-620. Postage allowance.**

Written policy, procedure, and practice shall make available, when requested by an indigent inmate (as defined by local jail policy), a postage allowance of at least five first-class rate (one ounce) letters per week, including legal mail, to indigent inmates. An indigent inmate shall be defined as an inmate having less than the cost of five first class stamps in his account for 15 days.

**6VAC15-40-630. Outgoing and incoming letters mail.**

Written policy, procedure, and practice shall ensure that outgoing letters shall be mail is collected and sent daily except Saturdays, Sundays, and holidays during normal United States Postal Service (USPS) days of operation. Incoming letters mail to inmates shall be delivered no later

than 24 hours after arrival at the facility (contingent upon normal USPS days of operation), or shall be forwarded or returned to sender.

**6VAC15-40-640. Incoming general General and legal correspondence.**

In accordance with United States Postal Regulations, all incoming general correspondence will be opened, searched and may be read by authorized staff where there is a reasonable suspicion that a particular item of correspondence threatens the safety and security of the facility, the safety of any person, or is being used for furtherance of illegal activities. All incoming legal correspondence shall be opened and searched in the presence of the inmate. All general correspondence may be opened, examined, and censored by authorized personnel as per the USPS Administrative Support Manual, Section 274.96. If searched, all legal correspondence shall be opened in the presence of the inmate.

**6VAC15-40-650. Notice of seizures seizure of mail contraband.**

Written policy, procedure, and practice shall assure that ensure notice of the seizures seizure of mailed mail contraband be is given to the inmate and the sender together with the written reason for the seizure in writing. [ The sender shall be allowed the opportunity to appeal the seizure to the facility administrator or a designee empowered to reverse seizure. ] Unless it is needed for a criminal investigation or prosecution, property that can legally be possessed outside the facility shall be stored, returned to sender, if known, or destroyed.

**6VAC15-40-660. Access and expense of to telephone facilities.**

Written policy, procedure, and practice shall ensure inmates have reasonable access to telephone facilities, except where safety and security considerations are documented.

**6VAC15-40-670. Delivery of emergency messages to inmates.**

Written policy, procedure, and practice shall ensure that emergency messages to inmates are delivered promptly and recorded documented.

**6VAC15-40-690. Approved items that visitors may bring into facility.**

The facility shall have a posted list of approved items that visitors may bring into the facility. Items brought into the facility by visitors for inmates shall be subject to inspections and approval.

**6VAC15-40-720. Inmates confined to jail.**

Written policy, procedure, and practice for those inmates to be confined in the jail shall address the following:

1. Shower/search;
2. Issue Issuance of clean clothing/hygiene items/linen;
3. Classification and housing assignment; and

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4. Orientation; and

5. Provision of mattresses.

## **6VAC15-40-730. Telephone calls during the booking process.**

Written policy, procedure, and practice shall specify that newly admitted inmates who are physically capable are permitted to complete at least two local or long-distance telephone calls during the booking process. Reasonable accommodations shall be made for non-English speaking inmates, as well as hearing impaired and visually impaired inmates.

## **6VAC15-40-740. Requirements for clothing, linens , and towels.**

Written policy, procedure, and practice shall provide that a record is kept to show that clean ~~linen~~ linens and towels ~~be~~ are supplied once a week, a clean change of clothing ~~be~~ is provided twice a per week, and inmates shall be held accountable for their use.

## **6VAC15-40-760. Bathing.**

There shall be sufficient hot and cold water for bathing. Each inmate shall be ~~required~~ allowed to bathe twice a week.

## **6VAC15-40-770. Provision of hygiene ~~articles~~ items.**

The facility shall provide soap, a toothbrush, and toothpaste or toothpowder to each inmate upon admission to the general population. Feminine hygiene items (as defined by facility policy) shall be provided upon reasonable request to each female inmate assigned to the general population. Notwithstanding security considerations, shaving equipment, including a mirror, and haircuts shall be made available, and the hygiene needs of all inmates shall be met.

## **6VAC15-40-790. Inventory of cash and personal property.**

A written itemized inventory of cash and personal property of each inmate shall be made at the time of initial booking. A copy signed by both staff and inmate shall be furnished to the inmate. Computerized officer identification shall not substitute for a signature.

## **6VAC15-40-810. Return of inmate property and funds.**

~~Inmate's~~ Inmate property and funds shall be returned ~~to him~~ upon ~~his~~ release or transfer and receipted for by the inmate in writing, ~~when practical.~~

## **6VAC15-40-820. Conduct.**

Written policy, procedure, and practice shall govern inmate discipline ~~to~~ and shall include:

1. Rules of conduct, including sanctions for rule violations;
2. Procedures and provisions for pre-hearing disciplinary detention; and
3. Procedures for processing violators that may include plea agreements that may waive the inmates' right to appeal.

## **6VAC15-40-830. Inmate handbook.**

Upon initial housing assignment ~~to a housing status and~~ following intake and reception processing, each inmate shall be informed of, receive, and sign for:

1. A copy of the inmate rules of conduct, including sanctions; and
2. The policy and procedures governing inmate discipline.

## **6VAC15-40-831. Fee for inmate keep.**

If the facility has elected to establish a program to charge a fee for inmate keep, such fee shall be up to, but shall not exceed, the fee stated in the Board of Corrections Model Plan for Payment of Costs Associated with Inmate Keep per § 53.1-131.3 of the Code of Virginia. Written policy, procedure, and practice shall include, at a minimum, the following:

1. Provisions requiring the facility to notify the inmate of such fee in writing upon admission/orientation;
2. Payment and refund procedures;
3. Accounting procedures;
4. Provisions designating which, if any, inmates are exempt;
5. If the release date and the date of arrival are within 24 hours, provisions to charge the inmate only the equivalent of one day's fee; and
6. Whenever an inmate has been charged the fee, provisions specifying that the deduction shall be reflected on the inmate's account.

## **6VAC15-40-833. Discipline.**

~~The minimum procedural requirements whenever~~ Whenever an inmate may be deprived of good time, or placed on disciplinary segregation the minimum procedural requirements shall include:

1. The accused inmate shall be given written notice of the charge and the factual basis for it at least 24 hours prior to hearing of the charge;
2. The charge shall be heard in the inmate's presence by an impartial officer or committee unless that right is waived in writing by the inmate or through the inmate's behavior. The accused inmate may be excluded during the testimony of any inmate whose testimony must be given in confidence. The reasons for the inmate's absence or exclusion shall be documented;
3. The accused inmate shall be given an opportunity to have the assistance of a staff member or fellow inmate in defending the charge;
4. The inmate shall be given a written statement by the fact finders as to the evidence relied upon and the reasons for the disciplinary action; and
5. The inmate shall be permitted to appeal any finding of guilt to the facility administrator or designee.



**6VAC15-40-835. Sanctions.**

~~The minimum procedural requirements whenever~~ Whenever an inmate is punished, such as ~~reprimand~~ reprimands or loss of privileges, the minimum procedural requirements shall include:

1. The accused inmate shall have an opportunity to explain or deny the charge; and
2. The inmate shall have the opportunity to appeal any finding of guilt to the facility administrator or designee.

**6VAC15-40-840. Post to control security of jail.**

The facility shall maintain a designated post, staffed 24 hours a day, that controls activities and flow of people in and out of the secure area of the jail. Main facility control posts may be staffed by civilian personnel who have been provided on-the-job training in facility security procedures ~~and~~, emergency plans, ~~which~~ and communications. Such training shall be documented in writing with the same frequency as required by standards for all facility employees. Civilian personnel assigned to control posts shall not be assigned to other posts requiring direct ~~prisoner~~ inmate contact and supervision.

**6VAC15-40-870. Security and storage of security devices.**

Written policy, procedure, and practice shall govern the security, storage, and use of firearms, ammunition, chemical agents, and related security devices that are stored in and assigned to the facility to ensure that:

1. The facility shall provide secure storage for firearms, ammunition, chemical agents, and related security ~~equipment~~ devices accessible to authorized personnel only and located outside the security perimeter or the inmate housing and activity areas; and
2. Personnel who carry firearms and ammunition are assigned positions that are inaccessible to inmates (with the exception of emergencies); and
3. Personnel who discharge firearms or use chemical agents other than for training purposes, submit written reports to the facility administrator or ~~designated subordinate~~ designee no later than the conclusion of the shift during which same are discharged or used.

**6VAC15-40-880. Officer entry.**

Written policy and procedures shall specify the conditions under which an officer can enter a security cell or cell block during an emergency situation.

**6VAC15-40-910. Searches of facility and inmates.**

Written policy, procedure, and practice provide for searches of facilities and inmates to control contraband and provide for the disposition of contraband. A schedule of searches shall be developed to ensure all housing areas of the facility have been searched on a random, but at least quarterly, basis. These procedures are not made available to inmates.

**6VAC15-40-920. ~~Policy for searches of contraband~~ Contraband.**

The facility shall ~~post the~~ have a policy regarding searches for the control of contraband ~~or otherwise make it.~~ The policy shall be available to staff and inmates via the inmate handbook or orientation.

**6VAC15-40-930. Key and door control.**

Written policy, procedure, and practice shall govern key and door control. Perimeter security door keys shall not be issued to staff unless authorized as per the approved emergency plans.

**6VAC15-40-940. ~~Tools and culinary~~ Culinary items.**

Written policy, procedure, and practice shall govern the control and use of ~~tools and~~ culinary items.

**6VAC15-40-945. Tools.**

Written policy, procedure, and practice shall govern the control and use of tools.

**6VAC15-40-950. Flammable, toxic, and caustic materials.**

Written policy, procedure, and practice shall specify the control and storage of cleaning equipment and use of all flammables, toxic, and caustic materials. Inmate access shall be limited and closely supervised.

**6VAC15-40-960. Functions of duty post.**

~~Written post orders or position descriptions shall clearly describe the functions of each duty post in the facility and include copies in the policy and procedures manual.~~ Each duty post or position shall maintain a clear description of the functions of that duty post or position. A copy of the post orders shall be readily available.

**6VAC15-40-970. Restriction of physical force.**

Written policy, procedure, and practice shall restrict the use of physical force to instances of justifiable self-defense, protection of others, protection of property, orderly operation of the facility and prevention of escapes. In no event is physical force justifiable as punishment. A written report shall be prepared following all such incidents described above and shall be submitted to the facility administrator, or designee, for review and justification.

**6VAC15-40-980. Restraint equipment.**

Written policy, procedure and practice shall govern the use of restraint equipment. A written protocol pertaining to the monitoring of inmates in restraint equipment shall be established and approved by the medical authority.

**6VAC15-40-1000. Physical living conditions for disciplinary detention and administrative segregation.**

Written policy, procedure, and practice shall ensure that, inmate behavior permitting, the disciplinary detention and administrative segregation units provide physical living conditions that approximate those offered in the general ~~inmate~~ population.

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## **6VAC15-40-1010. Mental health inmates.**

Written policy, procedure, and practice shall specify the handling of mental health inmates ~~to include an~~, including a current agreement to utilize mental health services from either a private contractor or the community services board.

## **6VAC15-40-1020. Record of activities in disciplinary detention and administrative segregation units.**

Written policy, procedure, and practice shall ensure that a record is kept of scheduled activities in disciplinary detention and administrative segregation units. Documented activities shall include the following: admissions, visits, showers, exercise periods, meals, unusual behavior, mail, and release.

## **6VAC15-40-1030. Assessment of inmate inmates in disciplinary detention or administrative segregation or disciplinary detention.**

Written policy, procedure, and practice shall require that a documented assessment by medical personnel that shall include a personal interview and medical evaluation of vital signs, is conducted when an inmate remains in ~~administrative segregation or disciplinary detention beyond~~ or administrative segregation for 15 days and every 15 days thereafter. If an inmate refuses to be evaluated, such refusal shall be documented.

## **6VAC15-40-1040. Supervision of inmates Staff training.**

The facility shall provide for 24-hour supervision of all inmates by trained personnel. ~~All inmate housing areas shall be inspected a minimum of twice per hour at random intervals between inspections. All inspections and unusual incidents shall be documented. No obstructions shall be placed in the bars or windows that would prevent the ability of jail staff to view inmates or the entire housing area.~~

## **6VAC15-40-1045. Supervision of inmates.**

All inmate housing areas shall be inspected a minimum of twice per hour at random intervals between inspections. All inspections and unusual incidents shall be documented. No obstructions shall be placed in the bars or windows that would prevent the ability of staff to view inmates or the entire housing area.

## **6VAC15-40-1050. Institution Supervisory inspection.**

Supervisory staff shall ~~inspect~~ conduct a general, daily inspection of the institution daily facility. Such inspections shall be documented. Unusual findings shall be ~~indicated in writing~~ documented and submitted to the senior supervisor or designee on duty for review.

## **6VAC15-40-1080. Emergency situations plans and fire drills.**

There shall be fire prevention practices and written emergency plans that outline duties of staff, procedures and evacuation routes. Emergency plans shall include responses in the event of fire, ~~chemical hazardous material~~ release, loss of utilities, natural disaster, ~~taking of hostages~~ hostage situations, riots, disturbances, ~~escape escapes~~, bomb threats,

and mass arrest. Emergency plans shall be reviewed every 12 months by all staff. These reviews shall be documented. Each facility shall conduct and document quarterly fire drills.

## **6VAC15-40-1090. Release of inmate inmates.**

Written policy, procedure, and practice shall require that, prior to ~~an inmate's release~~ the release of an inmate, positive identification is made of the releasee, authority for release is verified, and a check for holds in other jurisdictions is completed.

### Part VI Jail Physical Plant

## **6VAC15-40-1100. Fire safety inspection.**

The facility shall have a state or local fire safety inspections conducted every 12 months. Localities that do not enforce the Virginia Statewide Fire Prevention Code (~~VSEPC~~) shall have the inspections performed by the ~~Office of the State Fire Marshal~~ State Fire Marshal's Office. Written reports of the fire safety inspection shall be on file with the facility administrator.

## **6VAC15-40-1111. Self-contained breathing apparatus.**

If the facility is equipped with one or more self-contained breathing apparatus, security staff shall be trained and quarterly drills shall be conducted and documented in the use of this equipment.

## **6VAC15-40-1150. Vermin and pest control.**

The facility shall control vermin and pests and shall be serviced at least quarterly by ~~professional pest control personnel or personnel certified by the Virginia Pesticide Control Board~~ a licensed pest control business or personnel certified by the Virginia Department of Agriculture and Consumer Services.

## **6VAC15-40-1180. Special purpose area.**

The facility shall have a special purpose area to provide for the temporary detention and care of persons under the influence of alcohol or narcotics ~~or for persons~~, who are uncontrollably violent or self-destructive ~~and~~ or those requiring medical supervision.

## **6VAC15-40-1193. Separation of juveniles.**

Juveniles shall be so housed as to be separated by a wall or other barrier that would result in preventing visual contact and normal verbal communication with adult ~~prisoners~~ inmates.

## **6VAC15-40-1195. Contact with juveniles.**

The facility shall have one or more ~~persons~~ employees on duty at all times responsible for auditory and visual contact with each juvenile at least every 30 minutes. Contact shall be at least every 15 minutes when juveniles exhibit self-destructive or violent behavior.

Part VIII  
Lockups

**6VAC15-40-1210. Responsibility.**

The chief of police, town sergeant, or, in case of a county's operating a lockup, the sheriff shall be responsible for ~~seeing that~~ ensuring the lockup is operated in full conformity with this chapter.

**6VAC15-40-1220. Coverage.**

When the lockup is occupied, at least one employee shall be ~~on duty at the lockup~~ present at all times.

**6VAC15-40-1240. Inspection requirements.**

Weekly inspections shall be ~~made and recorded~~ conducted and documented of bars, locks, and all security devices. ~~Weekly inspections shall be documented.~~

**6VAC15-40-1250. Commitment and release.**

A written record shall be maintained to ~~include name, date, and time of commitment and release of all detainees confined in the lockup of all detainees confined in the lock-up. The written record shall include name, date, and times of commitment and release.~~

**6VAC15-40-1260. Property and funds.**

Written policy, procedure, and practice shall govern the inventory and control of detainee property and funds. The detainee shall sign for all property and funds taken upon admission and returned ~~to him~~ upon his release. If the detainee refuses to sign, this shall be witnessed and documented.

**6VAC15-40-1270. Telephone calls during the admissions process.**

Written policy, procedure, and practice shall specify that newly admitted ~~inmates~~ detainees who are physically capable are permitted ~~the opportunity~~ to complete at least two local or long distance telephone calls during the admissions process. Reasonable accommodations shall be made for non-English speaking detainees as well as hearing and visually impaired detainees.

**6VAC15-40-1280. Juvenile detention.**

A lockup shall detain juveniles in strict compliance with § 16.1-249 of the Code of Virginia, and shall include continuous, direct supervision.

**6VAC15-40-1300. Protection of ~~inmates~~ detainees.**

~~There shall be written~~ Written policy ~~for~~ shall ensure the protection of ~~inmates~~ detainees appearing to be vulnerable to physical or sexual attack.

**6VAC15-40-1310. Emergency medical and mental health care.**

Written policy and procedures shall provide ~~for~~ 24-hour emergency medical and mental health care availability.

**6VAC15-40-1315. Supervision of detainees.**

All detainee housing areas shall be inspected a minimum of twice per hour at random intervals between inspections. All inspections and unusual incidents shall be documented. No obstructions shall be placed in the bars or windows that would prevent the ability of staff to view detainees or the entire housing area.

**6VAC15-40-1320. Log of medical activities. (Repealed.)**

~~A permanent log shall be maintained on all medical findings, diagnoses, treatment, dispositions, prescriptions and administration of medications, as disclosable by the Code of Virginia.~~

**6VAC15-40-1330. Visiting Attorney visits.**

Written policy and procedures shall ensure that: attorneys are permitted to have confidential visits with detainees.

- ~~1. There are visiting opportunities limited only by facility schedules, security, space and personnel constraints;~~
- ~~2. Visitors register upon entry into the facility;~~
- ~~3. Circumstances and methods under which visitors may be searched are delineated;~~
- ~~4. Attorneys are permitted to have confidential visits with their clients; and~~
- ~~5. Any exception to the above is documented in writing.~~

**6VAC15-40-1340. Inmate Detainee control.**

Written ~~policies~~ policy and procedures shall ensure that punishment ~~shall is not be~~ utilized as a means of control or discipline in lockups. ~~Tear gas, chemical mace, or similar devices~~ Chemical agents shall not be used as punishment and may only be used to control detainees ~~where~~ when there is an imminent threat of physical injury or property damage.

**6VAC15-40-1350. ~~Incident~~ Serious incident report.**

A report setting forth in detail the pertinent facts of deaths, discharging of firearms, erroneous releases, escapes, fires requiring evacuation of detainees, hostage situations, and discharging firearms recapture of escapees shall be reported to the local facilities ~~unit~~ supervisor of the Compliance and Accreditation Unit, Department of Corrections, or designee. The initial report ~~should shall~~ be made ~~by the end of the next work day with~~ within 24 hours and a full report submitted at the end of the investigation.

**6VAC15-40-1360. Inmate Detainee cleanliness.**

A detainee shall have access to a wash basin and toilet facility.

**6VAC15-40-1380. Fire safety inspection.**

The facility shall have a state or local fire safety inspection conducted every 12 months. Localities that do not enforce the Virginia Statewide Fire Prevention Code shall have the inspection performed by the State Fire Marshal's Office. Written reports of the fire safety inspection shall be on file with the facility administrator.

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# Regulations

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DOCUMENTS INCORPORATED BY REFERENCE  
(6VAC15-40)

[ ~~USPS Administrative Support Manual, Section 274.96 – Mail Addressed to Prisoners, ASM 13, July 1999 (Updated with Postal Bulletins through November 2009), United States Postal Service.~~

[ ~~Model Plan for Jail Prisoner Medical Treatment Programs, Virginia Department of Corrections.~~

[ ~~Model Plan for Payment of Costs Associated with Prisoner Keep, Virginia Department of Corrections.~~

[USPS Administrative Support Manual, Section 274.96 - Mail Addressed to Prisoners, ASM 13, July 1999 \(Updated with Postal Bulletins through December 1, 2011\), United States Postal Service.](#)

[Model Plan for Jail Prisoner Medical Treatment Programs, revised May 2009, Virginia Department of Corrections.](#)

[Model Plan for Payment of Costs Associated with Prisoner Keep, revised May 2010, Virginia Department of Corrections.](#) ]

VA.R. Doc. No. R09-1738; Filed September 19, 2012, 3:51 p.m.

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Proposed Regulation

**Titles of Regulations:** **8VAC20-670. Regulations Governing the Operation of Private Day Schools for Students with Disabilities (repealing 8VAC20-670-10 through 8VAC20-670-440).**

**8VAC20-671. Regulations Governing the Operation of Private Schools for Students with Disabilities (adding 8VAC20-671-10 through 8VAC20-671-780).**

**Statutory Authority:** §§ 22.1-16 and 22.1-321 of the Code of Virginia.

**Public Hearing Information:**

November 29, 2012 - 11 a.m. - James Monroe Bldg., 101 North 14th Street, 22nd Floor Conference Room, Richmond, VA

**Public Comment Deadline:** December 21, 2012.

**Agency Contact:** Dr. Sandra Ruffin, Director, Federal Program Monitoring, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2768, FAX (804) 225-2524, or email [sandra.ruffin@doe.virginia.gov](mailto:sandra.ruffin@doe.virginia.gov).

**Basis:** Chapter 873 of the 2008 Acts of Assembly (SB 472) amended certain sections of the Code of Virginia, §§ 22.1-323.2, 37.2-408, 63.2-1737, and 66-24, concerning the interdepartmental regulation of children's residential facilities, thus, changing the interdepartmental licensing model.

Section 22.1-321 of the Code of Virginia states: The Board of Education shall make regulations not inconsistent with law for the management and conduct of schools. The regulations may include standards for programs offered by the schools.

Section 22.1-323 of the Code of Virginia states: No person shall open, operate or conduct any school for students with disabilities in this Commonwealth without a license to operate such school issued by the Board of Education. A license shall be issued for a school if it is in compliance with the regulations of the Board.

**Purpose:** Pursuant to legislation passed by the 2008 General Assembly, new regulations are needed to govern the operation of educational programs and services in children's residential facilities and group homes. The new regulations will provide provisions for the operation of schools for students with disabilities and provide consistency in operation and management of these private schools. The regulations are needed to protect the health and safety of students served in private schools for students with disabilities and to protect contractual rights of parents and other contracting parties.

**Substance:** The new regulations provide provisions for the operation of private schools for students with disabilities. The regulations provide clarity to provisions for school administration, including school and instructional leadership; a philosophy, goals, and objectives that will serve as the basis for all policies and practices and student achievement expectations; a program of instruction that promotes individual student academic achievement in the essential academic disciplines (English, mathematics, science, and history/social science); licensure for school personnel; maintenance of student education records; and school facilities and safety.

The new regulations provide clarity to the provisions for obtaining a license to operate and denial, revocation or suspension of a license, and renewal of licenses; application fees; application commitments; license restrictions; monitoring; and investigation of complaints and serious incidents.

**Issues:** If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

Promulgation of these regulations would be an advantage for public schools that cannot serve a student because of his or her disability. Private school options would be available if parents chose not to educate their child in a public school.

Currently, there is no single set of regulations applicable to the educational programs in private residential facilities as is currently offered to day school providers. It is necessary to refer to several sets of regulations. The proposed regulations outline all applicable requirements for both private day schools and education programs in residential facilities, including group homes.

The regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapter 670 (8VAC20-670) is titled Regulations Governing the Operation of Private Day Schools for Students with Disabilities. As the name implies, the regulations govern the operation of private day schools for students with disabilities, but not private residential schools for students with disabilities. Currently there is no single set of regulations applicable to the educational programs in private residential facilities. It is necessary to refer to several sets of regulations. The Board of Education proposes to repeal Chapter 670 and promulgate Chapter 671 (8VAC20-671), Regulations Governing the Operation of Private Schools for Students with Disabilities, to address all applicable requirements for both private day schools and education programs in residential facilities, including group homes. Other than location within the administrative code, the only change in requirements from the current regulations would be an increase in the amount of the required guaranty instrument.

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

Estimated Economic Impact. Under the current regulations, all applicants for a new license to operate shall provide a surety bond, irrevocable letter of credit, or certificate of deposit and maintain the guaranty instrument. The minimum guaranty for up to 50 students is \$5,000. The minimum increases incrementally by \$5,000 for each additional 50 students or portion thereof. If after three full years of operation the school shows that it collects no advance tuition other than equal monthly installments or is paid after services have been rendered, the school may become exempt from the guaranty requirement.

Under the proposed regulations, the minimum guaranty becomes \$10,000 for up to 25 students and \$5,000 for each additional 25 students. The guaranty exemption language remains the same.

Of the 85 existing licensed day schools, 62 are exempt from the guaranty requirement and 11 are not yet eligible for exemption.<sup>1</sup> Some day schools that could be exempt have requested to continue with the guaranty. Only 21 day schools have private pay students; all other schools are reimbursed monthly through the Comprehensive Services Act. Of these 21 day schools, we believe all claim reimbursements after services are rendered.

An informal survey conducted by the Department of Education (Department) of 10 of the existing 43 private residential facilities revealed that each one would qualify for exemption because payments are made through reimbursements after services are provided.

The Department estimates that schools who currently maintain guaranty instruments pay approximately \$100 to \$150 annually. Under the proposed regulations the cost would likely approximately double. The schools have been notified

of the proposed regulations and none are known to have expressed objections.

Businesses and Entities Affected. The proposed amendments affect the 132 public school divisions in the Commonwealth.

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 will not affect most of the private schools for students with disabilities. For those for whom the guaranty instrument applies, costs will likely increase by about \$100 annually.

Small Businesses: Costs and Other Effects. The proposed amendments will not affect most of the private schools for students with disabilities. For those for whom the guaranty instrument applies, costs will likely increase by about \$100 annually. All of the private schools for students with disabilities are likely small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no alternative method that would reduce the modest increase in costs for small private schools for students with disabilities that would still meet the policy goal of covering a more than marginal but still modest portion of the potential lost tuition if schools were to close.

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

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the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

<sup>1</sup> Source: Department of Education

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis completed 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 APA process.

## Summary:

*In response to Chapter 803 of the 2008 Acts of Assembly, the proposed action repeals the Regulations Governing the Operation of Private Day Schools for Students with Disabilities (8VAC20-670) and creates a new chapter, Regulations Governing the Operation of Private Schools for Students with Disabilities (8VAC20-671), to address all applicable requirements for both private day schools and education programs in residential facilities, including group homes. The only change in requirements is an increase in the amount of the required guaranty instrument.*

## CHAPTER 671

### REGULATIONS GOVERNING THE OPERATION OF PRIVATE SCHOOLS FOR STUDENTS WITH DISABILITIES

#### **8VAC20-671-10. Definitions.**

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

"Applicant" means the person, partnership, corporation, or association that has completed and submitted an application to the licensing agency for approval for a license to operate a school for students with disabilities in Virginia.

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c)(1))

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that (i) interfere with the learning of students with disabilities or with the learning of others or (ii) require disciplinary action.

"Behavioral support" means those principles and methods employed by a school to help a student achieve positive behavior and to address and correct a student's behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, educational and treatment goals, safety and security, and the student's Individualized Education Program (IEP) or Individual Instruction Plan (IIP).

"Board" means the State Board of Education, which has general supervision of the public school system.

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days).

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day that is not a Saturday, Sunday, or federal or state holiday.

"Complaint" means an accusation that a school has violated one or more of the requirements of this chapter or other applicable regulation.

"Consent" means:

1. The parent(s) or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's or eligible student's native language or other mode of communication;
2. The parent(s) or eligible student understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
3. The parent(s) or eligible student understands that the granting of consent is voluntary on the part of the parent(s) or eligible student and may be revoked any time.

If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.)

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the school about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The school should document their agreement.

"Controlled substance" means a drug or other substance identified under Schedules I, II, III, IV, or V in § 202(c) of the Controlled Substances Act, 21 USC § 812(c). (34 CFR 300.530 (i)(1))

"Corrective action plan" means the school's plan of action to correct a finding of noncompliance. The plan must identify specific timelines and the person(s) responsible for implementation.

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(3))

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3))

"Department" means the Virginia Department of Education.

"Developmental delay" means a disability affecting a child age two by September 30 through six, inclusive: (34 CFR 300.8(b) and 34 CFR 300.306(b))

1. Who (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development or (ii) has an established physical or mental condition that has a high probability of resulting in developmental delay;

2. The delay is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and

3. The presence of one or more documented characteristics of the delay has an adverse effect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

"Disability category" means a listing of special education eligibility classifications for students served including: autism, deaf-blindness, developmental delay, emotional disability, hearing impairment (including deafness), intellectual disability, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment (including blindness). § 22.1-213 of the Code of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii).

"Education records," also known as scholastic records, mean those records that are directly related to a student and maintained by the school or by a party acting for the school. Education records may be recorded in any manner including, but not limited to, handwriting, print, computer media, video or audiotape, film, microfilm, or microfiche. Education records include discipline and medical records. Education records include electronic exchanges between school

personnel and parent(s) regarding matters associated with the child's educational program.

"Eligible student" means a student who has reached 18 years of age.

"Emotional disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (34 CFR 300.8(c)(4))

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability as defined by the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81).

"Guaranty instrument" means a surety bond, irrevocable letter of credit, or certificate of deposit.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in the Regulations Governing Special Education Programs for Children with Disabilities (8VAC20-81). (34 CFR 300.8(c)(5))

"Illegal drug" means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC § 812(c), or under any other provision of federal law.

"Individualized Education Program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised at least annually in a team meeting in accordance with the Regulations Governing Special Education for Children with Disabilities in Virginia (8VAC20-81). The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.22)

"Individualized Instruction Plan" or "IIP" means a written statement (plan) for a child who is privately placed or for a child who has not been determined eligible for special education services that is developed, reviewed, and revised at

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least annually in a team meeting that includes the parent. The IIP specifies the student's academic level, course of study, individual educational needs, and the educational services the child will receive.

"Intellectual disability" means the definition formerly known as "mental retardation" and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6))

"Licensee," also known as the sponsor, means the person, partnership, corporation, or association to whom a license is issued and who is legally responsible for compliance with this chapter.

"License to operate" or "license" means a document issued by the State Superintendent of Public Instruction that verifies approval to operate a school for students with disabilities and that indicates the status of the school regarding compliance with applicable regulations.

"Licensing agency" means the Virginia Department of Education.

"Multiple disabilities" mean simultaneous impairments (such as intellectual disability with blindness or intellectual disability with orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

"Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome that adversely affects a child's educational performance. (34 CFR 300.8(c)(9))

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter.

"Parent" means (§ 22.1-213.1 of the Code of Virginia):

1. A person who is:
  - a. A biological or adoptive parent of a child;

- b. A foster parent, even if the biological or adoptive parent's rights have not been terminated, but subject to subdivision 2 of this definition;

- c. A guardian generally authorized to act as the child's parent or make educational decisions for the child (but not the Commonwealth if the child is a ward of the Commonwealth);

- d. An individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

- e. If no party qualified under subdivisions 1 a through d of this definition can be identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with 8VAC20-81-80.

2. The biological or adoptive parent, when attempting to act as the parent pursuant to this section and when more than one party is qualified under subdivision 1 of this definition to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent has had his residual parental rights and responsibilities terminated pursuant to § 16.1-277.01, 16.1-277.02, or 16.1-283 of the Code of Virginia or a comparable law in another state.

3. The local school division shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent pursuant to this section, and the local school division is entitled to rely upon the actions of the foster parent pursuant to this section until such time that the biological or adoptive parent attempts to act as the parent.

4. If a judicial decree or order identifies a specific person or persons among subdivisions 1 a through e of this definition to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of the special education identification, evaluation, and placement of a child and the provision of a free appropriate public education to a child.

"Personally identifiable information" means information that includes, but is not limited to:

1. The student's name, the child's parent, or other family member;
2. The address of the child;
3. A personal identifier, such as the child's social security number or student number; or
4. A list of personal characteristics that would make the student's identity easily traceable.

"Physical restraint" means the use of approved physical interventions or "hands-on" holds by trained staff to prevent a student from moving his body to engage in a behavior that



places him or others at risk of physical harm. Physical restraint does not include:

1. Briefly holding a student in order to calm or comfort the student; or
2. Holding a student's hand or arm to escort the student safely from one area to another. (Board of Education's Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations)

"Privately placed student" means a student placed in a private school for students with disabilities by his parent(s).

"Publicly placed student" means a student placed in a private school for students with disabilities by a local school division or Comprehensive Services Act team or by court order.

"Qualified personnel" or "qualified staff" means personnel who have met Virginia Department of Education approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service and Virginia licensure requirements as designated by Virginia law or regulations.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services and medical services for diagnostic or evaluation purposes. Related services also includes school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy, if they are required to assist a child with a disability to benefit from special education. (§ 22.2-213 of the Code of Virginia; 34 CFR 300.34(a) and (b))

"School" means a school for students with disabilities that has a license to operate issued by the Superintendent of Public Instruction.

"School for students with disabilities," "school," or "schools" means a privately owned and operated preschool, school or educational organization, no matter how titled, maintained, or conducting classes for the purpose of offering instruction, for a consideration, profit or tuition, to persons

determined to have autism, deaf-blindness, developmental delay, a hearing impairment including deafness, multiple disabilities, orthopedic impairment, other health impairment, an emotional disturbance, a severe disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment including blindness. (§ 22.1-319 of the Code of Virginia)

"Seclusion" means the confinement of a student alone in a room from which the student is physically prevented from leaving. (Board of Education's Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations)

"Section 504" means that section of the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance.

"Serious incident" means:

1. Any accident or injury requiring medical attention by a licensed physician;
2. Any illness that requires hospitalization;
3. Any runaway; or
4. Any event that affects, or potentially may affect, the health, safety, or welfare of any student being served at the school or school-related activity.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Special education" means specially designed instruction to meet the unique needs of a child with a disability. There is no cost to the parent(s) for special education for a child who is placed in a school for students with disabilities by a school division, the Department of Social Services, or court order. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.39)

The term includes:

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;
2. Vocational education; and
3. Travel training.

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction to: (34 CFR 300.39(b)(3))

1. Address the unique needs of the child that result from the child's disability; and
2. Ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

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"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of (i) visual, hearing, or motor disabilities; (ii) intellectual disabilities; (iii) emotional disabilities; or (iv) environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment, that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

"Standard precautions" mean precautions designed to prevent transmission of HIV, hepatitis B virus (HBV), and other bloodborne pathogens when providing first aid or health care. Standard cautions apply to blood; all body fluids, secretions, and excretions except sweat, regardless of whether or not they contain blood; nonintact skin; and mucous membranes. The precautions are designed to reduce the risk of transmission of microorganisms from both recognized and unrecognized sources of infection when providing first aid or health care. Standard precautions include protective barriers such as gloves, gowns, aprons, masks, or protective eye wear that can reduce the risk of exposure with materials that may contain infectious microorganisms.

"Standards of Learning" or "SOL" means Virginia's rigorous academic standards established by the Board of Education.

"Strip search" means a visual inspection of the body of a student when that student's outer clothing or total clothing is removed, and there is an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Superintendent" means the State Superintendent of Public Instruction.

"Teacher of record" means the teacher who is responsible for the delivery of instruction. The teacher of record shall hold a license issued by the State Board of Education.

"Time-out" means assisting a student to regain control by removing the student from his immediate environment to a different open location until the student is calm or the problem behavior has subsided. (Board of Education's Guidelines for the Development of Policies and Procedures for Managing Student Behaviors in Emergency Situations)

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13))

"Volunteer" means any individual who of his own free will and without compensation provides goods or services to the school.

"Virtual learning" means the delivery of instruction through emerging technologies such as satellite, streaming video, or the Internet.

## **8VAC20-671-20. Exemptions.**

This chapter shall not apply to any of the following at § 22.1-320 of the Code of Virginia:

1. Any school that is licensed or approved pursuant to other statutes of the Commonwealth;
2. Any public or private high school accredited or recognized by the Board of Education that has offered or may offer programs for students with disabilities covered in this chapter, if any tuition, fees, and charges made by the school are collected in accordance with the regulations prescribed by the governing body of such school;
3. Tutorial instruction given in a private home or elsewhere as supplemental to regular classes for students enrolled in any public or private school or in preparation of an individual for an examination for professional practice or higher education;
4. A program through which persons with disabilities are provided employment and training primarily in simple skills in a sheltered or protective environment;

5. Any privately owned or operated preschool, or elementary, middle, or secondary school that operates primarily to provide educational services to students without disabilities, although the school may serve children with disabilities in a regular academic setting; or

6. Any private school for students with disabilities that operates in or on the premises of an elementary, middle, or secondary public school in a regular school setting during a typical school day.

### **8VAC20-671-30. Licenses generally.**

A. The Board of Education has established general requirements for a license to operate a private school for students with disabilities and has authorized the Superintendent of Public Instruction to issue licenses. The following applies in accordance with § 22.1-323 of the Code of Virginia:

1. No person shall open, operate, or conduct any school for students with disabilities in this Commonwealth without a license to operate.

2. A license to operate shall be restricted to the disability categories specifically indicated on the license, which may include one or more of the disability categories in the definition of a school for students with disabilities in this chapter.

3. A license to operate may be issued for a period of up to three successive years.

4. The term of a school's license may be reduced at any time during the licensure period based on a change in the school's compliance with these requirements.

5. A license to operate shall be prominently displayed on the premises of the school in a place open for inspection by any interested person during the hours of operation.

6. A license to operate shall be restricted to the approved conditions as printed on the license. Such conditions include, but are not limited to, the maximum number of students that can be enrolled, the disability category or categories of students that can be served, and the age range and gender.

B. An individual seeking to operate a school for students with disabilities shall file an application with the licensing agency.

### **8VAC20-671-40. Advertising.**

The following provisions consistent with § 22.1-323 of the Code of Virginia regarding advertisement of a school shall apply:

1. No school may use the seal of the Commonwealth in any advertisement, publication, or document, including diplomas, certificates, and other awards.

2. The advertisement of a school shall be in a form and manner that is free from misrepresentation, deception, or fraud and shall conform to the following:

a. The complete school name as listed on the license to operate shall be used in all publicity, publications, or promotions or for marketing purposes.

b. Advertisement shall not expressly or by implication indicate by any means that the license to operate represents an endorsement by the Virginia Department of Education or the Board of Education.

c. No fraudulent or misleading statement shall be in print or nonprint about the school's admission policy, tuition and fees; programs and services; size and location; or any other information concerning the school.

d. Endorsements, commendations, or recommendations by students, individuals, manufacturers, business establishments, or organizations are prohibited except with their written consent and without any offer of financial compensation.

e. The accrediting agency shall be named, if accreditation is used, as part of a school's promotional materials.

3. Prospective applicants may advertise projected services and staff positions while in the application process but shall not misrepresent licensure status and shall not enroll students prior to receiving a license to operate from the Superintendent of Public Instruction.

### **8VAC20-671-50. Types of licenses.**

The following shall apply consistent with § 22.1-323.1 of the Code of Virginia:

1. A conditional license shall be issued to a new school that demonstrates compliance with administrative and policy requirements but has not demonstrated compliance with all requirements of this chapter.

a. A conditional license may be renewed.

b. The issuance of a conditional license and any renewals thereof shall be for no longer a period than six successive months.

2. A provisional license may be issued to a school that has demonstrated an inability to maintain compliance with this chapter or other applicable regulations.

a. A provisional license may be issued at any time.

b. A provisional license may be renewed.

c. The issuance of a provisional license and any renewal thereof shall be for no longer a period than six successive months.

3. An annual license may be issued under the following conditions and may be extended for a period not to exceed six successive months:

a. A school applies for renewal while holding a conditional or provisional license substantially meets the requirements of this chapter;

b. The licensing agency determines that a major violation has occurred that impacts the overall operation of the school; or

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c. The school makes significant changes in its operation.

4. A triennial license shall be issued when a school:

a. Applies for renewal while holding an annual or triennial license; and

b. Substantially meets or exceeds the requirements of this chapter and other applicable regulations.

5. The term of a school's license may be modified at any time during the licensure period based on a change in the school's compliance with this chapter and other applicable regulations.

## **8VAC20-671-60. Change in condition.**

A. A condition of a license may be modified during the term of the license with respect to: capacity of the school or classrooms; disability category or categories of students served; age range of students; change in location; change in services; change in ownership; merger of schools; and enrollment of day student(s) in a residential setting.

B. A change in a condition shall not be implemented prior to approval by the licensing agency. The licensing agency shall respond to the request and provide approval or denial in 10 calendar days following the date the request was received.

C. A change in a condition may not be approved during a provisional or conditional licensure period.

## **8VAC20-671-70. License to operate is nontransferable.**

A change of ownership occurs when control of a school changes from one owner to another. If there is a change in ownership, the following shall apply:

1. The licensee shall notify the licensing agency at least 30 calendar days prior to the proposed change.

2. The new owner shall submit an initial application for a license to operate to the licensing agency within 30 calendar days following the effective date of the change in ownership.

3. The school may operate under the existing license for 60 calendar days from the effective date of the change in ownership at which time a conditional license may be issued.

## **8VAC20-671-80. Penalty for noncompliance in obtaining a license to operate.**

Failure to obtain a license to operate a school for students with disabilities shall result in the following penalties allowed in § 22.1-331 of the Code of Virginia:

1. Any person who opens, operates, or conducts a school without first obtaining a license to operate may be found guilty of a Class 2 misdemeanor.

2. Each day the school remains open without a license to operate, the owner or board of directors shall incur a separate offense.

3. The licensing agency shall refer to the Office of the Attorney General any alleged or known violation of this chapter. The Office of the Attorney General shall refer the

matter to the Commonwealth's attorney of proper jurisdiction.

## **8VAC20-671-90. Directory of private schools for students with disabilities.**

The licensing agency shall maintain a directory of schools holding valid licenses to operate that shall be available to the public (§ 22.1-332 of the Code of Virginia). The directory shall identify other applicable state licensing agencies over the school and may include additional information to inform the public about the school's operation.

## **8VAC20-671-100. Initial application.**

To obtain a license to operate a school for students with disabilities, an application shall be filed with the Department of Education. A completed initial application shall include the following:

1. Complete name and physical address of the school;

2. Name and address of owners, controlling officials, and managing employees;

3. Evidence that the applicant has conducted a needs assessment;

4. Evidence of the applicant's compliance with the applicable regulations of the State Corporation Commission when the school is owned by a partnership or corporation;

5. Narrative description of building and scale drawing or copy of all floor plans including room use and dimensions;

6. Certificate of occupancy with educational use group or other report from the appropriate government agency or agencies indicating that the location meets applicable zoning, building code, use permit, business license, fire safety, and sanitation requirements;

7. Copy of the deed, lease, or other legal instrument authorizing the school to occupy such location;

8. Proposed working budget for the year showing projected revenue and expenses for the first year of operation and a balance sheet showing assets and liabilities; a three-year financial plan; and documentation of sufficient operating capital or line of credit to carry the school through the first year of operation;

9. Original signed surety bond, irrevocable letter of credit, or certificate of deposit to protect the contractual rights of parents and students;

10. Schedule of tuition and other fees and the procedure for collecting and refunding tuition;

11. Copies of all proposed advertisements;

12. Description of the education program to include disability category or categories to be served, enrollment capacity, age range, gender, and course offerings;

13. Listing of instructional resources and equipment;

14. Description of related services;

15. School's policy manual;

16. Proposed staffing and organizational chart;
17. Job description for each position;
18. Parent/student handbook;
19. Statement of transportation services if the school provides transportation for students;
20. Statement regarding provision of student lunches; and
21. Any other information necessary to complete the application process.

### **8VAC20-671-110. Applicant commitments.**

Each application for a license to operate a school for students with disabilities shall contain the following commitments:

1. To conduct the school in accordance with all applicable regulations of the board;
2. To permit the board or department to inspect the school or classes being conducted therein at any time and to make available to the board or department, when requested to do so, all information pertaining to the activities of the school required for the administration of this chapter, including its financial condition;
3. To advertise the school at all times in a form and manner that is free from misrepresentation, deception, or fraud and to conform to provisions of the board governing such advertising;
4. To ensure that all representations made by an agent of the school are free from misrepresentation, deception, or fraud and to conform to provisions of the board governing such advertising;
5. To display the current license to operate prominently where it may be inspected by students, visitors, and the board or department; and
6. To maintain all premises, equipment, and facilities of the school in an adequate, safe, and sanitary condition.

### **8VAC20-671-120. Assessment of application.**

A. The licensing agency shall evaluate each application within 60 calendar days from the date received and advise the applicant in writing of approval or deficiencies.

B. The applicant shall correct all deficiencies within 30 calendar days from the date of the written assessment of the application. The licensing agency may grant an extension for a reasonable period of time.

C. Any application that has not been approved within the allotted time period shall be denied and returned to the applicant. The applicant may reapply for a license 90 calendar days following the date of the returned application.

D. The licensing agency may require the applicant to appear before a review committee for final approval of the application.

### **8VAC20-671-130. On-site inspection.**

Before a license can be issued, the licensing agency shall conduct an on-site inspection or equivalent virtual inspection of the school building and grounds to determine its suitability for the operation of a school for students with disabilities.

### **8VAC20-671-140. Renewal of licenses.**

A. Sixty calendar days prior to the expiration of a license to operate, the licensee shall submit to the licensing agency notification of intent for continued operation of the school.

B. The license of each school that continues to operate as such shall be renewed on or before the anniversary date set by the licensing agency.

C. Each license that has not been renewed in accordance with this chapter shall expire and a new license shall be obtained from the board before such school may continue to operate. A new application must be submitted to the licensing agency.

### **8VAC20-671-150. Monitoring.**

The licensing agency shall:

1. Make at least one announced or unannounced visit during the effective dates of the license to operate for the purpose of monitoring the school's compliance with this chapter;

2. Notify relevant local governments and placing and funding agencies of health and safety or human rights violations.

3. Cooperate with other licensing agencies, specifically, the Department of Social Services and the Department of Behavioral Health and Developmental Services, in fulfilling licensing responsibilities. The licensing agency shall notify relevant local governments and placing and funding agencies when a school's licensure status is lowered to provisional.

### **8VAC20-671-160. Complaint resolution procedures.**

A. A complaint may be filed with the licensing agency by any individual or organization and shall address an action that occurred not more than one year prior to the date the complaint is received by the licensing agency.

B. A complaint must provide a statement of some disagreement with procedures or process regarding any matter relative to this chapter or other applicable regulations.

C. Upon receipt of a complaint, the licensing agency shall initiate an investigation to determine whether the school is in compliance with applicable laws and regulations in accordance with the following procedures:

1. Within seven business days of the receipt of a complaint, the licensing agency shall provide written notification to each complainant and the private school.

a. The notification sent to the school shall include:

(1) A copy of the complaint;

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(2) An offer of technical assistance in resolving the complaint;

(3) A statement that the school has the opportunity to propose a resolution of the complaint;

(4) A request that the school submit within 10 business days of receipt of the letter of notification either:

(a) Written documentation that the complaint has been resolved; or

(b) If the complaint was not resolved, a written response including all requested documentation.

2. The licensing agency shall review the complaint and the school's response and determine the need for any further investigation or corrections.

3. The licensing agency shall notify appropriate agencies of serious violations.

4. During the course of the investigation, the licensing agency shall:

a. Conduct an investigation of the complaint that shall include a complete review of all relevant documentation and may include interviews with appropriate individuals and an independent on-site investigation, if necessary.

b. Consider all facts and issues presented and the applicable requirements specified in this chapter or other applicable regulations.

c. Make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable regulations and notify the parties in writing of the findings and the bases for such findings. The licensing agency has 60 calendar days after the written complaint is received to carry out the investigation and to resolve the complaint. An extension of the 60 calendar day time limit may occur if exceptional circumstances exist with respect to a particular complaint.

d. Ensure that the final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance.

e. Notify the parties in writing of any needed corrective actions and the specific steps that shall be taken by the school to bring it into compliance with applicable timelines.

E. Parties to the complaint procedures shall have the right to appeal the final decision to the licensing agency within 30 calendar days of the issuance of the decision.

F. When the school develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action shall include a description of all changes contemplated and shall be subject to approval of the licensing agency.

G. If the school does not come into compliance within the period of time set forth in the notification, the licensing agency may reduce or revoke the school's license to operate.

## **8VAC20-671-170. Denial, revocation, or suspension of license.**

A. The superintendent may refuse to issue or renew a license to operate or may revoke or suspend a license issued to any school pursuant to this chapter for the following causes (§ 22.1-329 of the Code of Virginia):

1. Violating any provision of this chapter or regulation of the board;

2. Furnishing false, misleading, or incomplete information to the board or department or failure to furnish information requested by the board or department;

3. Violating any commitment made in an application for a license;

4. Presenting either by the school or by any agent of the school to prospective students information relating to the school which is false, misleading, or fraudulent;

5. Failing to provide or maintain premises or equipment in a safe and sanitary condition as required by law;

6. Making any false promises through agents or by advertising or otherwise of a character likely to influence, persuade, or induce enrollments;

7. Paying a commission or valuable consideration to any person for any act of service performed in willful violation of this chapter;

8. Failing to maintain financial resources adequate for the satisfactory conduct of courses of instruction offered or to retain a sufficient or qualified instructional staff;

9. Demonstrating unworthiness or incompetency to conduct the school in a manner calculated to safeguard the interests of the public;

10. Failing within a reasonable time to provide information requested by the board or department as a result of a formal or informal complaint to or by the board or department that would indicate a violation of these requirements;

11. Attempting to use or employ any enrolled students in any commercial activity whereby the school receives any compensation whatsoever without reasonable remuneration to the student, except to the extent that employment of students in such activities is necessary or essential to their training and is permitted and authorized by the board; or

12. Engaging in or authorizing any other conduct, whether of the same or of a different character from that specified in this section, that constitutes fraudulent or dishonest dealings.

## **8VAC20-671-180. Summary or final order of suspension.**

The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall be applicable to

proceedings under this section. In compliance with § 22.1-329 of the Code of Virginia, the following shall apply:

1. In addition to the authority for other disciplinary actions provided in this chapter, the Superintendent of Public Instruction may issue a summary order of suspension of a license of a residential or day school for students with disabilities in conjunction with any proceeding for revocation, denial, or other action when conditions or practices exist in the school that pose an immediate and substantial threat to the health, safety, and welfare of the students who are residing or attending the school and the Superintendent of Public Instruction believes the operation of the school should be suspended during the pendency of such proceeding.

2. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Superintendent of Public Instruction or designee.

3. After such hearing, the Superintendent of Public Instruction may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Superintendent of Public Instruction's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Superintendent of Public Instruction had reasonable grounds to require the licensee to cease operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

4. The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Superintendent of Public Instruction may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of students who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to students.

### **8VAC20-671-190. Timeline for correction of unsatisfactory conditions.**

In compliance with § 22.1-330 of the Code of Virginia, the board or department:

1. May, upon its own motion, and shall, upon the verified complaint in writing of any person setting forth facts that, if proved, would constitute grounds for refusal, suspension, or revocation of a license, investigate the actions of any applicant for or any person or persons holding or claiming to hold a license to operate.

2. Before refusing to renew, revoking, or suspending any license, may grant such period of time as it deems reasonable to correct any unsatisfactory condition.

### **8VAC20-671-200. Governing body.**

A. Each school shall use its complete name as listed on the license to operate for all publicity, publications, promotions, or marketing purposes.

B. Any governing board, body, entity, or person to whom it delegates the legal responsibilities and duties of the licensee shall be clearly identified.

### **8VAC20-671-210. Responsibilities of the licensee.**

The licensee shall:

1. Appoint an individual(s) to whom it delegates the authority and responsibility to assume the administrative direction of the school. The appointment shall be in writing.

2. Develop and implement a written decision-making plan that shall include provision for a staff person with the qualifications of the school administrator or education program director to be designated to assume the temporary responsibility for the operation of the school in the absence of the school administrator. The plan shall include a current organizational chart.

3. Ensure that staff positions and responsibilities meet the needs of the population served.

4. Develop a written statement of the objectives of the school including a description of the target population and the program offerings.

5. Develop and implement written policies and procedures to monitor and evaluate the effectiveness of the education program on a systematic and ongoing basis and implement improvements when the need is determined.

6. Ensure compliance with applicable child labor laws.

7. Develop a written policy prohibiting the consumption of tobacco products, drugs, and alcohol or being under the influence of intoxicating or hallucinogenic agents while on campus and at school-sponsored activities.

8. Require as a condition of employment that any applicant who accepts employment full-time or part-time, permanent or temporary, including interns and volunteers, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through Virginia's Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. In addition, where the applicant

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has resided in another state within the last five years, the school shall as a condition of employment determine if there are any founded complaints of child abuse or neglect in such state(s) pursuant to §§ 22.1-296.3 and 22.1-296.4 of the Code of Virginia.

9. Require as a condition of employment that any applicant who accepts employment requiring direct contact with students, whether full-time or part-time, permanent or temporary, including interns and volunteers, provide written consent and necessary personal information for the school to obtain a search of the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515 of the Code of Virginia.

10. Notify the licensing agency within five calendar days of any change in administration or newly appointed individual responsible for the day-to-day administration or operation of the school.

11. Ensure that all staff members receive annual professional development related to their job responsibilities.

12. Report to the licensing agency within 10 business days lawsuits, settlements, or criminal charges relating to the operation of the school.

13. Develop and implement an accessible policy and procedures to handle grievances from students, parents, and employees.

## **8VAC20-671-220. Fiscal accountability.**

A. The licensee shall prepare at the end of each fiscal year:

1. An operating statement to include a month-to-month accounting of revenue and expenses for the fiscal year just ended;

2. A working budget showing projected revenue and expenses for the next fiscal year that gives evidence of sufficient funds to operate; and

3. A balance sheet showing assets and liabilities for the fiscal year just ended.

B. There shall be a system of financial recordkeeping that shows a separation of the school's accounts from all other records.

C. There shall be written policies and procedures that address the day-to-day handling of the school's funds.

D. The licensing agency reserves the right to call for one of these two types of statements:

1. An audited financial statement certified by an outside independent certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants; or

2. A financial statement that has been reviewed by an outside independent certified public accountant in accordance with principles established for reviews by the American Institute of Certified Public Accountants.

## **8VAC20-671-230. Protection of contractual rights.**

In compliance with § 22.1-324 of the Code of Virginia, provisions for the protection of contractual rights shall include the following:

1. With each application, the applicant shall submit and maintain a guaranty instrument payable to the Commonwealth of Virginia to protect the contractual rights of students and other contracting parties.

2. The guaranty instrument shall be based on the school's approved capacity. A minimum guaranty of \$10,000 for up to 25 students and \$5,000 for each additional 25 students shall apply.

3. In the event a guaranty instrument is terminated, the license to operate will terminate within 30 calendar days if a replacement bond or other instrument is not filed with the licensing agency.

4. If a school collects no advance tuition other than equal monthly installments or receives payment after services have been rendered, the school may apply to the licensing agency for exemption from the guaranty requirements.

## **8VAC20-671-240. Insurance.**

A. The licensee shall maintain liability insurance covering the premises and the school's operation.

B. The licensee shall maintain liability insurance on all vehicles used to transport students, including vehicles owned by staff.

C. The members of the governing body and staff who are authorized to handle school or students' funds shall be bonded.

## **8VAC20-671-250. Fundraising.**

Written consent of the parent(s) or legal guardian and of a child age 14 or older shall be obtained before participating in any school fundraising activity.

## **8VAC20-671-260. Relationship to the licensing agency.**

The licensee shall make information available to the licensing agency upon the requested due date in order to make a timely determination of compliance with this chapter and other applicable regulations and statutes. The licensing agency may alter the term of a license if the school fails to comply in a reasonable time period.

## **8VAC20-671-270. Personnel policies and procedures.**

A. The licensee shall have written personnel policies and procedures that include, but are not limited to, job qualifications, job descriptions, staff supervision, evaluation, grievance, and termination.

1. The licensee shall develop and implement written policies and procedures that persons appointed or designated to assume the responsibilities of each position possess the education, experience, knowledge, skills, and abilities specified in the job description.



2. The licensee shall make written personnel policies and procedures accessible to each employee.

B. The licensee shall maintain a current organizational chart of all full-time and part-time positions.

### **8VAC20-671-280. Job qualifications.**

A person who assumes or is designated to assume the responsibilities of a position or any combination of positions described in this chapter shall meet the qualifications of the position, comply with all applicable regulations for each function, and demonstrate a working knowledge of the policies and procedures applicable to the position.

### **8VAC20-671-290. Job descriptions.**

A. There shall be a written job description for each position that includes job title; duties and responsibilities; job title of the immediate supervisor; and minimum education, experience, knowledge, skills, and abilities required for entry-level performance of the job.

B. A copy of the job description shall be given to each person assigned to a position at the time of employment or assignment.

### **8VAC20-671-300. School administrators.**

A. The licensee shall designate one or more individuals responsible for the administrative operation of the school who serves as the instructional leader and is responsible for effective school management that promotes positive student achievement, and a safe and secure environment in which to teach and learn.

B. As the instructional leader, the school administrator is responsible for ensuring that students are provided an opportunity to learn and shall:

1. Protect the academic instructional time from unnecessary interruptions and disruptions and enable the professional teaching staff to spend the maximum time possible in the teaching/learning process by keeping to a minimum clerical responsibility and the time students are out of class;
2. Seek to maintain a safe and secure school environment;
3. Involve the staff of the school in identifying the types of staff development needed to improve student achievement and ensure that the staff participate in those activities;
4. Analyze classroom practices and methods for improvement of instruction;
5. Ensure that students' education records are maintained and that criteria used in making placement and promotion decisions, as well as any instructional interventions used to improve the student's performance, are included in the record; and
6. Monitor and evaluate the quality of instruction, provide staff development, and provide support that is designed to improve instruction.

C. The instructional leader shall hold a valid five-year renewable postgraduate professional license issued by the board with an endorsement in school administration and supervision or special education and have at least three years of experience working with students with disabilities.

D. The instructional leader or designee shall at all times be on the premises of the school while the school is in operation.

E. All staff on duty must know who is responsible for the administration of the school at any given time.

### **8VAC20-671-310. Teachers and staffing.**

A. Each teacher shall meet the requirements of the Licensure Regulations for School Personnel (8VAC20-22).

B. Staffing shall be in accordance with the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81) in the following settings:

1. A student with an Individualized Education Program (IEP) may be instructed with students without disabilities, as appropriate, and in accordance with the IEP.
2. A student with an IEP may receive services with children with the same disability or with children with different disabilities.

C. Teacher personnel assignments shall be in accordance with Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81).

1. General education qualified personnel who are knowledgeable about the students and their special education may implement special services in collaboration with special education personnel.
2. Special education services include those services provided directly to the student and those provided indirectly.

D. Teacher caseloads shall be assigned in accordance with the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81).

1. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.
2. When special education personnel are assigned to provide services for students who do not have a disability under this chapter or are assigned to administrative duties, there shall be a reduction in the caseload specified in proportion to the percentage of school time on such assignment.
3. Special education personnel may be assigned to serve children who are not eligible for special education and related services as long as they hold appropriate licenses and endorsements for such assignments.

E. Staffing for early childhood special education shall be in accordance with the Regulations Governing Special

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Education Programs for Children with Disabilities in Virginia (8VAC20-81).

1. Children of preschool ages (two to five, inclusive) who are eligible for special education may receive early childhood special education.

2. Students receiving early childhood special education may receive services together with other preschool-aged children with the same or with different disabilities.

F. A school may offer for consideration of approval an alternative staffing plan in accordance with the department's procedures. The department may grant approval for alternative staffing levels upon request from private schools for students with disabilities seeking to implement innovative programs that are not consistent with the staffing levels outlined in the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81).

## **8VAC20-671-320. Substitute teachers.**

A. No substitute teacher shall be used to fill a vacant teaching position for more than 90 teaching days in such vacancy during one school year.

B. Substitute teachers shall be at least 18 years of age, hold a high school diploma or a general educational diploma (GED), have two years of full-time postsecondary education or two years of successful work experience with children with disabilities or equivalent, and attend orientation to the school's policies and procedures.

## **8VAC20-671-330. Support staff.**

A. School support personnel, including contractual service providers, shall meet the Board of Education's Licensure Regulations for School Personnel (8VAC20-22) or the requirements of another state or national accrediting agency.

B. Paraprofessionals and other ancillary staff shall be at least 18 years of age (21 years of age preferred), hold a high school diploma or a general educational diploma (GED), have two years of full-time successful work experience with children or completed two years of coursework in a related field, complete orientation conducted by the school administrator or designee regarding school policies and procedures and characteristics of students served, and work under the supervision of qualified staff.

C. No support staff shall be used as replacement for teachers or related service staff unless they meet the qualifications of the position.

D. Support staff who do not meet licensure or certification requirements shall not be given misleading work titles or titles that infer that they meet required credentials.

## **8VAC20-671-340. Staff supervision.**

The licensee shall develop and implement written policies and procedures regarding the supervision of employees and all other individuals working with children, including volunteers and interns.

## **8VAC20-671-350. Staff development.**

A. Within seven calendar days following their begin date, each staff member responsible for working with students shall receive orientation of the school's philosophy, goals and objectives; duties and responsibilities of their position; and the school's policy and procedures for behavior intervention.

B. Within 14 calendar days following their begin date, all staff shall receive emergency preparedness and response training that shall include: alerting emergency personnel and sounding alarms; implementing evacuation procedures with particular attention to students with special needs; using, maintaining, and operating emergency equipment; accessing emergency information for students including medical information; and utilizing community support services.

C. Within 14 calendar days following their begin date, all staff shall receive professional development on confidentiality; the school's administrative decision-making plan; and policies and procedures that are applicable to their positions, duties, and responsibilities.

D. Within 30 calendar days following their begin date, all staff shall receive training on the school's policy and procedures, including standard precautions, child abuse and neglect, and mandatory reporting.

E. Within 30 calendar days following their begin date, all staff responsible for medication administration shall have successfully completed an approved medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medications. Staff shall meet this requirement before administering any medication to students and shall receive annual retraining.

F. All staff shall receive annual professional development and refresher in emergency preparedness and response to include alerting emergency personnel and sounding alarms; implementing evacuation procedures with particular attention to students with special needs; and using, maintaining, and operating emergency equipment.

G. All staff shall receive annual professional development and refresher on behavior supports, child abuse and neglect, and mandatory reporting.

H. Each full-time staff person shall complete an additional 15 hours of annual training applicable to his job duties.

## **8VAC20-671-360. Personnel records.**

A. Separate up-to-date personnel records shall be maintained for each full-time and part-time employee, student intern, and volunteer for whom background investigations are required by Virginia statute. Content of personnel records of volunteers, student interns, and contractual service providers shall include, at a minimum, documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations.

B. A record shall be maintained for each staff to include:

1. A completed employment application or other documentation providing the individual's name, address, and telephone number;
2. Documentation of qualifications;
3. Employment history;
4. Written references or notations of oral references;
5. Reports of required health examinations;
6. Annual performance evaluations;
7. Date of employment for each position held and date of separation;
8. Documentation of compliance with requirements of Virginia laws regarding child protective services and criminal history background investigations;
9. Documentation of Department of Motor Vehicles checks and a current copy of the driver's license for all staff who transport students;
10. Documentation of all training required by this chapter and any other training or professional development received by individual staff; and
11. A current job description.

C. All personnel records shall be maintained confidentially and retained in their entirety for a minimum of three years after staff's separation from the school.

### **8VAC20-671-370. School facilities and safety.**

A. Each school shall be maintained in a manner ensuring compliance with the Virginia Uniform Statewide Building Code (13VAC5-63). Each school shall:

1. Maintain a physical plant that is accessible, barrier free, safe, and clean;
2. Provide 50 net square feet per occupant space for classrooms and suitable space for administrative staff, pupil personnel services, library and media services, and physical education with consideration given to safety;
3. Provide adequate, safe, and properly equipped classrooms, laboratories, play areas, and dining areas that meet the needs of students and instruction; and
4. Provide space for safe storage of items such as first aid equipment, medication, household supplies, school supplies, and equipment.

B. After the initial application, the school shall document annually that buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) and maintain records of regular safety, health, and fire inspections conducted and certified by local health and fire departments.

C. Building plans and specifications for new construction, change in use of existing buildings, and any structural modifications or additions to existing buildings shall be submitted in advance to the licensing agency for approval.

D. Animals allowed on the premises shall be tested, inoculated, and licensed as required by law.

E. Smoking shall be prohibited at all times and in all school buildings, on all school grounds, and during off campus school-sponsored activities.

F. Swimming pools shall be inspected annually by the state or local health authorities or by a swimming pool business.

G. There shall be a written policy concerning safeguards for aquatic-related activities to include supervision by a certified lifeguard.

H. There shall be a written policy regarding safeguards for school-sponsored activities including adventure and wilderness activities.

I. There shall be an electronic two-way communication system available to staff at all times in the classroom and during school-sponsored activities.

### **8VAC20-671-380. Contingency plans.**

A. A school shall have contingency plans for emergencies that include staff certification in cardiopulmonary resuscitation (CPR), abdominal thrust (Heimlich maneuver), and emergency first aid.

B. The school administration shall ensure that the school has:

1. Written procedures to follow in emergencies such as fire, injury, illness, and violent or threatening behavior. Contingency plans should be developed with the assistance of state or local public safety authorities. Such plans shall be outlined in the student handbook and discussed with staff and students during the first week of each school year;
2. Space for the proper care of students who become ill; and
3. A written procedure for responding to violent, disruptive, or illegal activities by students on school property or during a school-sponsored activity.

C. Each school shall have at least three tornado drills every school year in order that students may be practiced in such drills.

D. The school shall have a written emergency preparedness and response plan for all locations that addresses:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks, (ii) communitywide plans to address different disasters and emergency situations, and (iii) assistance, if any, that the local emergency management office will provide to the school in an emergency.
2. Analysis of the school's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, workplace violence or terrorism, missing persons, riot, severe injuries, or other emergencies that would disrupt the normal course of service delivery.

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3. Written emergency management policies outlining specific responsibilities for provision of administrative direction and management of response activities; coordination of logistics during the emergency; communications; life safety of students, employees, contractors, student interns, volunteers, and visitors; property protection; community outreach; and recovery and restoration.

4. Written emergency response procedures for assessing the situation; protecting students, employees, contractors, student interns, volunteers, and visitors; equipment and education records; and restoring services.

5. Emergency procedures, which shall address:

a. Communicating with employees, contractors, and community responders;

b. Warning and notification of students;

c. Providing emergency access to secure areas and opening locked doors;

d. Conducting evacuations to emergency shelters or alternative sites and accounting for all students;

e. Relocating students and staff, if necessary;

f. Notifying family members and legal guardians;

g. Alerting emergency personnel and sounding alarms; and

h. Locating and shutting off utilities when necessary.

6. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated escape routes, and list of major resources such as local emergency shelters.

7. Schedule for testing the implementation of the plan and conducting emergency preparedness drills.

8. Children who use wheelchairs, crutches, canes, or other mechanical devices for assistance in walking shall be provided with a planned, personalized means of effective egress for use in emergencies.

E. The school shall have emergency preparedness and response training for all employees, contractors, student interns, and volunteers that shall include responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures including evacuation of students with special needs (i.e., deaf, blind, nonambulatory);

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for students including medical information; and

5. Utilizing community support services.

F. There shall be documented review of the emergency preparedness plan annually and revisions made if necessary.

G. Employees, contractors, student interns, and volunteers shall be prepared to implement the emergency preparedness plan in the event of an emergency.

H. Floor plans showing primary and secondary means of egress shall be posted on each floor in locations where they can easily be seen by staff and students.

I. The procedures and responsibilities reflected in the emergency procedures shall be communicated to all students within seven days following admission or a substantive change in the procedures.

J. At least one evacuation drill (the simulation of the school's emergency procedures) shall be conducted each week during the first month of school and one each month thereafter in each building occupied by students.

K. Evacuation drills shall include, at a minimum:

1. Sounding of emergency alarms;

2. Practice in evacuating buildings and buses or vans;

3. Practice in alerting emergency authorities;

4. Simulated use of emergency equipment; and

5. Practice in securing student emergency information.

L. A record shall be maintained for each evacuation drill and shall include the following:

1. Buildings and buses or vans in which the drill was conducted;

2. Date and time of drill;

3. Amount of time to evacuate the buildings;

4. Specific problems encountered;

5. Staff tasks completed including head count and practice in notifying emergency authorities; and

6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

M. The record for each evacuation drill shall be retained for three years after the drill.

N. At least one staff member shall be assigned the responsibility for ensuring that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

O. In the event of a disaster, fire, emergency, or any other condition that may jeopardize the health, safety, and welfare of students, the school shall notify the parent(s), the student's public school, placing agency, and licensing agency as soon as possible, but no later than 24 hours after the incident occurs.

## **8VAC20-671-390. Weapons.**

The licensee shall develop written policies and procedures governing prohibition of the possession and use of firearms, pellet guns, air guns, and other weapons on the school's premises and during school-related activities unless the

weapons are in the possession of licensed security personnel or law-enforcement officers.

### **8VAC20-671-400. Strip searches.**

A. Strip searches and body cavity searches are prohibited.

B. A school that does not conduct pat downs shall have a written policy prohibiting them.

C. A school that conducts pat downs shall develop and implement written policies and procedures that shall provide the following:

1. Pat downs shall be limited to instances where they are necessary to prohibit contraband;
2. Pat downs shall be conducted by personnel of the same gender as the student being searched;
3. Pat downs shall be conducted only by personnel who are specifically authorized to conduct searches by the school's written policies and procedures; and
4. Pat downs shall be conducted in such a way as to protect the subject's dignity and in the presence of one or more witnesses.

### **8VAC20-671-410. Student application and admission.**

A. The school's written admission policy shall include:

1. A description of the population to be served;
2. A description of the types of services offered;
3. Admission procedures;
4. Exclusion criteria that identify behaviors or conditions the school will not accept; and
5. A description of how educational services will be delivered.

B. A summary of each school's admissions policy, course offerings at each grade level, and behavioral management program shall be made available to students, parents, and placing and licensing agencies.

C. Each school's admissions process shall be designed to determine the suitability of enrolling a student. The school shall accept and serve only those students whose needs are compatible with the services provided by the school.

D. The school shall provide written notification for a student's education records within five business days of the student's enrollment. Notification shall be made to the superintendent of the school division where the student last attended. The school shall request current information pertinent to the student's educational growth to include, but not limited to, the IEP, 504 Plan, or career development plan; plan of study; assessments; grades or transcript; discipline records; and health records.

E. An application for admission is not to be construed as a binding instrument on the part of the student or the school.

F. A school may require the payment of a reasonable nonrefundable initial application fee to cover expenses in connection with processing a student's application provided it

retains a signed statement in which the parties acknowledge their understanding that the fee is nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.

G. Any contract or enrollment agreement used by the school shall be in writing and clearly specify the following:

1. Complete name and physical address of the school;
2. Itemized cost of the program to include tuition, scholarships, and all other charges; and
3. The school's contingency, cancellation, and refund policies.

H. Any contract or enrollment agreement used by the school becomes a legally binding instrument upon the school's written acceptance.

I. Each school that serves privately placed students shall offer access to a tuition insurance plan if the school financially obligates students for more than quarterly increments of annual tuition.

### **8VAC20-671-420. Standard school year and school day.**

A. Each school shall have a standard school year of at least 180 instructional days. The standard school day for students in grades 1 through 12 shall average at least 5-1/2 instructional hours (990 hours annual instructional time), excluding breaks for meals and recess, and a minimum of three hours for kindergarten.

B. All students in grades 1 through 12 shall maintain a full day schedule of classes (5-1/2 hours) unless otherwise stated in the child's Individualized Education Program (IEP), Individualized Instruction Plan (IIP), 504 Plan, or other documentation.

C. Each school shall have policies and procedures that address make-up days when the school is unable to meet the required instructional time.

### **8VAC20-671-430. School and community communications.**

A. Each school shall promote communications and foster mutual understanding with parents and the community and use information from parents, citizens, business, and industry in evaluating the educational program.

B. At the beginning of each school year, the school shall provide to parents or guardians information on the availability of and source for receiving the curriculum for their child's core subjects and a copy of the school's promotion and retention policies and access to the school's policies and procedures.

### **8VAC20-671-440. Philosophy, goals, and objectives.**

A. Each school shall have a current philosophy, goals, and objectives that serve as the basis for all policies and practices and shall be developed using the following criteria:

1. The philosophy, goals, and objectives shall be developed with the advice of professional and lay people who represent the various populations served by the school and

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in consideration of the needs of the community and shall serve as a basis for an annual self-evaluation of the school.

2. The goals and objectives shall (i) be written in plain language so as to be understandable to noneducators, including parents; (ii) to the extent possible, be stated in measurable terms; and (iii) consist primarily of measurable objectives to raise student and school achievement in the core academic areas, to increase graduation rates, and to increase the quality of instruction through professional staff development and licensure.

B. Copies of the school's philosophy, goals, and objectives shall be available upon request.

## **8VAC20-671-450. Student achievement expectations.**

A. A process to identify and recommend strategies to address the learning, behavior, communication, or development of individual students who are having difficulty in the educational setting shall be developed at each school.

B. Participation in the Virginia assessment program by students with disabilities shall be prescribed by provisions of their IEPs or 504 Plans. All students with disabilities shall be assessed with appropriate accommodations and alternate assessments when required.

C. Each school that serves students who anticipate earning a diploma and graduating from a Virginia high school must follow the requirements for graduation outlined in the Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131).

D. The school shall cooperate with the public school in the administration of SOL tests to students with disabilities and students who need verified credits to graduate from a public high school in Virginia, and the administration of any other SOL tests.

E. The school shall use testing and evaluation materials that are not racially or culturally discriminatory and do take into consideration the student's disabling condition(s), racial background, and cultural background.

## **8VAC20-671-460. Program of instruction and learning objectives.**

A. Each school's instructional program shall reflect the written philosophy of the school. The methods, procedures, and practices shall reflect an understanding of and meet the applicable academic, vocational, therapeutic, recreational, and socialization needs of the students served.

B. The instructional program shall be designed to meet the needs of all students enrolled and shall educate students with age-appropriate peers.

C. Services shall be delivered in accordance with the student's IEP, IIP, or 504 Plan.

D. Each school serving students 14 years of age and older shall provide opportunities for students to gain knowledge and occupational readiness skills necessary for successful

transition to training, employment, and independent living, as appropriate.

E. Each school shall provide opportunities for students to gain knowledge and occupational readiness skills necessary for successful transition to postsecondary training, education, employment and independent living skills, as appropriate.

F. Each school shall provide a program of instruction that supports the SOL for the core subjects: English, mathematics, science, and history/social science.

G. Each school shall require students to participate in a program of health and physical fitness during the regular school year unless the student is unable to participate due to a medical condition.

H. Each school shall provide students with opportunities to gain appreciation for art and music.

I. Each school shall provide an instructional program that promotes the individual student's developmental growth and academic achievement at successive grade levels, as appropriate.

J. The services provided by a private school shall be provided by personnel meeting the same licensure requirements as personnel providing services in the public school, outlined in Licensure Regulations for School Personnel (8VAC20-22).

K. The school shall equitably serve the needs and interests of all students, taking into consideration age appropriateness, cultural norms, physical abilities, and cognitive abilities.

## **8VAC20-671-470. Individualized Education Program (IEP).**

A. When a child is presently receiving the services of a private school, a representative of the private school shall attend IEP meetings upon the request of the student's school division. If a representative is not able to attend, the school shall use other methods to ensure participation by the private school including individual or conference telephone calls.

B. After a child with a disability enters a private school, any meetings to review and revise the child's IEP may be initiated and conducted by the private school at the discretion of the student's school division.

C. If the private school initiates and conducts these meetings, the student's school division and the parent(s) shall:

1. Be involved in any decision affecting the child's IEP;
2. Agree to any proposed changes in the program before those changes are implemented; and
3. Be involved in any meetings that are held regarding reevaluation.

D. A parent(s) does not include local or state agencies or their agents, including local departments of social services, if the child is in the custody of such an agency.

E. When a child with a disability is placed by a local school division or a Comprehensive Services Act team in a private

school, all rights and protections under state and federal regulations shall be extended to the child.

**8VAC20-671-480. Individualized Instruction Program (IIP).**

A. Students without disabilities and those placed by parents for educational reasons shall have an Individualized Instruction Program (IIP) developed within 30 days of admission that describes strengths and needs of the student, current level of functioning, goals and objectives, timelines, course of study, and postsecondary goals for students 14 years of age and older.

B. Each school shall request with consent of the parent(s) the student's education records from the last school attended, and information from other agencies as appropriate. This information should be used in developing the student's IIP.

C. The IIP shall provide a beginning and ending date of services.

D. The IIP shall be reviewed at least annually by a team that includes the student and the parent.

E. Student progress reports shall be provided to the parent or guardian at least quarterly.

**8VAC20-671-490. 504 Plans.**

Each school admitting students with 504 Plans shall implement the plan and cooperate with the school division in its annual review.

**8VAC20-671-500. Instructional program for elementary school grades.**

A. The elementary school grades shall provide each student a program of instruction that supports the SOL for English, mathematics, science, and history/social science. In addition, each school shall provide opportunities for students to gain an appreciation for art and music. Students shall be required to participate in a program of health and physical fitness during the regular school year.

B. In kindergarten through grade 3, reading, writing, spelling, and mathematics shall be the focus of the instructional program.

C. To provide students with sufficient opportunity to learn, a minimum of 75% of the annual instructional time of 990 hours shall be given to instruction in the disciplines of English, mathematics, science, and history/social science. Students who are not successfully progressing in early reading proficiency or who are unable to read with comprehension the materials used for instruction shall receive additional instructional time in reading.

**8VAC20-671-510. Instructional program for middle school grades.**

A. The middle school grades shall provide each student a program of instruction that supports the SOL for English, mathematics, science, and history/social science. Each school shall provide opportunities for appreciation of art and music and an introduction to career and technical exploration and

require students to participate in a program of health and physical fitness during the regular school year.

B. English, mathematics, science, and history/social science shall be required.

C. To provide students a sufficient opportunity to learn, each student shall be provided 140 clock hours per year of instruction in each of the four disciplines of English, mathematics, science, and history/social science.

D. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading.

**8VAC20-671-520. Instructional program for secondary school grades.**

A. The secondary school grades shall provide each student a program of instruction that supports the SOL in English, mathematics, science, and history/social science.

B. To provide students a sufficient opportunity to learn, each student shall be provided 140 clock hours per year of instruction in each of the four disciplines.

C. Students in secondary education programs who plan to graduate with a standard or advanced diploma from a Virginia public high school should have the opportunity to complete credits in foreign languages, fine arts, and career and technical training.

D. Classroom driver education may count for 36 class periods of health education. Students shall not be removed from classes other than health and physical education for the in-car phase of driver education.

E. Each school shall ensure that students who are unable to read with comprehension the materials used for instruction receive additional instruction in reading.

F. Guidance and counseling shall be provided for students to ensure that a program of studies contributing to the student's academic achievement and meeting graduation requirements is being followed.

**8VAC20-671-530. Alternative education.**

Schools may provide students, 16 years of age to 18 years of age, an Individualized Student Alternative Education Plan (ISAEP), a program that includes career guidance counseling; mandatory enrollment in a GED preparation program; and career and technical education. Implementation of the ISAEP requires submission of an application and approval by the Department of Education.

**8VAC20-671-540. Transition services.**

A. Schools shall cooperate with the public schools to ensure that the transition plan for each student with a disability, beginning at 14 years of age (or younger), is implemented according to the child's IEP.

B. Schools shall provide evidence of transition services designed within an outcome-oriented process for all students, as appropriate, that promotes movement from the private school to a public school the child would normally attend;

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movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

## **8VAC20-671-550. Extracurricular and other school activities, and recess.**

A. School-sponsored extracurricular activities shall be under direct supervision of the staff and shall contribute to the educational objectives of the school. Extracurricular activities must be organized to avoid interrupting the instructional program.

B. School-sponsored extracurricular activities shall have at least one person certified in CPR for every 10 students.

C. Schools that take students on adventure activities shall develop policies and procedures to ensure supervision, health and safety, and medical management.

## **8VAC20-671-560. Family life.**

A. Schools may use the Standards of Learning for the family life education program or other education program, which shall have the goals of reducing the incidence of pregnancy and sexually transmitted diseases and substance abuse.

B. Schools offering family life shall obtain written consent from the parent or guardian for the child's enrollment in the course.

## **8VAC20-671-570. Student work-study or on-the-job training.**

A. Each school that places students on work-study, on-the-job training, or any other form of employment shall ensure compliance with the applicable laws governing the employment of children.

B. Work assignments that are paid or unpaid shall be in accordance with the age, health, ability, and education program of the student.

C. Work assignments or employment outside the school, including reasonable rates of pay, shall be approved by the school administrator with the knowledge and consent of the parent or legal guardian.

## **8VAC20-671-580. Virtual learning.**

A. Schools are encouraged to pursue alternative means to deliver instruction to accommodate student needs through virtual learning. A school shall ensure that each virtual education course is provided by an institution accredited by a nationally recognized accrediting body or is authorized by a public school or school division.

B. A school shall ensure that virtual learning courses meet the following requirements:

1. The content, instruction, and assessment of each course is comparable in rigor and breadth to the course that is traditionally delivered;

2. The course content is appropriate for the school's grade levels and age range; and

3. The virtual learning shall be supervised by a licensed teacher or a person eligible to hold a Virginia teaching license. The individual shall be available to the student.

## **8VAC20-671-590. Equipment, instructional materials, and library media.**

A. Each school shall provide a variety of current grade-level materials and equipment to support the instructional program, including functional life skills programs.

B. Each school shall provide access to computers and library media necessary to meet research inquiry and reading requirements of the instructional program and general student interest.

C. Each student, as appropriate, shall be provided instruction on the use of instructional equipment and shall demonstrate understanding before access to laboratories.

D. Each school shall provide textbooks and instructional materials that support Virginia's Standards of Learning.

E. Each school shall establish written policy on the use of computers, including the use of the Internet and email.

## **8VAC20-671-600. School records.**

Each school shall maintain up-to-date records to include the school's academic calendar, class roster, class schedule, course descriptions, course curriculum, individual student schedules, student progress reports, and student transcript or other documentation of grades.

## **8VAC20-671-610. Diplomas.**

A. No school shall use the seal of Virginia in its diploma design.

B. Each school that offers a diploma upon graduation shall have written policy and procedures that address the following:

1. The requirements for a diploma shall be those in effect when the student enters the ninth grade for the first time.

2. The requirements for a diploma shall be based upon completion of program requirements that demonstrate academic rigor.

## **8VAC20-671-620. Student conduct.**

A. Each school shall have written policies and procedures that address standards of student conduct and procedures for enforcement to include attendance, truancy, suspension, expulsion, alcohol, drugs, weapons, fighting, bullying, sexual and disability harassment, pornography, and other areas as appropriate.

B. When a student is suspended, including in-school suspension, or expelled, the school shall notify the student's home school division within 24 hours.

## **8VAC20-671-630. Behavior intervention.**

A. Each school shall develop and implement written policies and procedures that emphasize positive behavior



interventions that focus on teaching and supporting students to practice methods to manage their own behavior.

B. Behavior techniques that are used or available for use shall be listed in the order of their relative degree of restrictiveness and specify the staff members who may authorize the use of each technique.

C. Staff shall consider behavior management data in their annual review of the school's policies and procedures.

D. When substantive revisions are made to policies and procedures governing management of student behavior, written information concerning the revisions shall be provided to students, parents, placing agencies, and the licensing agency prior to implementation.

### **8VAC20-671-640. Time-out.**

A. The school shall have written policy and procedures governing the conditions under which a student may use time-out and the maximum period of time-out not to exceed 30 minutes per episode. The conditions and maximum period of time-out shall be based on the student's chronological and developmental level. The school's policy and procedures shall include provisions that address the following:

1. Each student is entitled to be completely free from any unnecessary use of time-out.
2. The areas in which a student is placed shall not be locked nor the door secured in a manner that prevents the student from opening it.
3. A student in time-out shall be able to communicate with staff.
4. Staff shall check on the student in the time-out area at least every 15 minutes and more often depending on the nature of the student's disability, condition, and behavior.
5. Procedures shall be implemented for documenting the use of time-out and staff checks on the student.
6. Staff shall review procedures when a student consistently chooses to stay in time-out beyond the determined time limit to determine that it has not become reinforcement.

### **8VAC20-671-650. Prohibitions.**

A. The following actions are prohibited:

1. Restraint and seclusion, except when it is necessary to protect the student or others from personal harm, injury, or death and other less restrictive interventions were unsuccessful;
2. Prone "face down" restraints, mechanical restraints, and pharmacological restraints;
3. Deprivation of drinking water or food;
4. Limitation on contacts and visits with the student's probation officer, regulators, or placing agency representative;
5. Any action that is humiliating, degrading, or abusive;
6. Corporal punishment;

7. Deprivation of approved prescription medication or other necessary services and treatment;

8. Denial of access to toilet facilities;

9. Application of aversive stimuli;

10. Strip and body cavity searches; and

11. Discipline, restraint, or implementation of behavior management plans by other students.

### **8VAC20-671-660. Managing student behavior in emergency situations.**

A. Application of a formal behavior management program designed to reduce or eliminate severely maladaptive, violent, or self-injurious behavior contingent upon the exhibition of such behaviors is allowed only as part of an individually approved time specific plan that is consistent with sound therapeutic practice. Written consent of the student, parent or guardian, and the student's school division is required.

B. Each school shall have written policies and procedures that include, but are not limited to:

1. Methods for preventing student violence, self-injurious behavior, and suicide, including de-escalation of potentially dangerous behavior occurring among groups of students or with an individual student.
2. A policy stating that corporal punishment and abusive techniques and interventions are not authorized, permitted, or condoned.

C. Each school shall develop and implement behavior management techniques in order of their relative degree of intrusiveness or restrictiveness and the conditions under which they may be used by trained school personnel.

D. While the use of restraint and seclusion is prohibited, a school that finds it absolutely necessary can only do so under the following conditions:

1. Physical restraint or seclusion is allowed only in an emergency situation for a time period that is necessary to contain the behavior of the student so that the student no longer presents an immediate threat of causing physical injury to self or others or causing severe property damage.
2. Physical restraint or seclusion shall not be used as a punishment, retaliation, or for staff's convenience.
3. The school shall have written policies and procedures governing use of physical restraint and seclusion incidents that shall include the following:
  - a. Each student is entitled to be completely free from any unnecessary use of physical restraint or seclusion. Physical restraint and seclusion are allowed only in an emergency situation for a time period that is necessary to contain the behavior of the student so that the student no longer presents an immediate threat of causing physical injury to self or others or causing severe property damage.

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b. The school shall provide written notice of its behavior management program to students, parent(s), and placing agency at the time of the student's enrollment.

c. Staff shall monitor the use of restraint and seclusion through continuous face-to-face observation, not solely by an electronic surveillance device.

d. Restraints may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of restraint, including hands-on techniques.

e. Students must be supervised by staff members trained in behavior intervention.

f. Schools shall inform the parent and placing agency of each incident of physical restraint or seclusion on the day of the occurrence and make available to the licensing agency upon request.

g. Each application of physical restraint or seclusion shall be fully documented in the student's record including date, time, staff involved, justification for the restraint or seclusion, less restrictive interventions that were unsuccessfully attempted prior to using physical restraint or seclusion, duration, description of method or methods of physical restraint techniques used, signature of the person completing the report and date, and reviewer's signature and date.

## **8VAC20-671-670. Videotaping.**

A. Schools shall have written policy and procedures regarding videotaping students while in school and any school-sponsored activity, including those used for staff training.

B. No student shall be videotaped without written consent of the parent and eligible student.

C. Any videotaping of students shall be maintained confidentially unless there is explicit written permission to release or disclose from the parent(s) and eligible student.

D. Buildings and grounds surveillance is not considered videotaping for the purpose of this chapter.

## **8VAC20-671-680. Referral for evaluation.**

A. When a student, including those placed by their parent(s) or from out-of-state, is suspected of having a disability, the school shall make a referral to the division superintendent of the school division where the private school is located. Documentation of the referral notice shall be maintained in the student's record.

B. The school shall cooperate with the school division on child find activities.

## **8VAC20-671-690. Suspected child abuse and neglect.**

A. Written policies and procedures related to child abuse and neglect shall comply with the requirements of § 63.2-1509 of the Code of Virginia and distributed to all staff members. Policies and procedures shall include:

1. Handling accusations against staff; and

2. Promptly referring suspected cases of child abuse and neglect to the local child protective services unit and for cooperating with the unit during any investigation.

B. Any case of suspected child abuse or neglect occurring at the school or on a school-sponsored event or excursion shall be reported immediately to the student's parent, guardian, or both if appropriate, and the placing and licensing agencies.

C. When a case of suspected child abuse or neglect is reported to child protective services, the school shall document the following:

1. The date and time the suspected abuse or neglect occurred;

2. A description of the suspected abuse or neglect;

3. Action taken as a result of the suspected abuse or neglect;

4. The name of the person who made the report to child protective services; and

5. The name of the person to whom the report was made at the local child protective services unit.

D. Suspected child abuse shall be handled and reported as a serious incident.

## **8VAC20-671-700. Serious incident reports.**

A. Any serious incident, accident, or injury to a student or medication error that occurs at the school or a school-sponsored activity shall be reported immediately, no later than the end of the school day, to the parent, student's public school, placing agency, and licensing agency.

B. The school shall document the following:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the incident report; and

5. The date and name of the person who made the report to the proper authorities.

C. The licensing agency shall review all reports of serious incidents and investigate as appropriate using the complaint resolution procedures of this chapter.

## **8VAC20-671-710. Medication and health.**

A. Each student shall have on file evidence of a comprehensive physical examination prescribed by the State Health Commissioner from a qualified licensed (i) physician, (ii) nurse practitioner, or (iii) physician assistant acting under the supervision of a licensed physician. The examination must contain, at a minimum, information required on the Commonwealth of Virginia School Entrance Health Form.

B. Each student shall have an up-to-date certificate of immunization documenting the immunizations required by the Code of Virginia and State Board of Health's Regulations for the Immunization of School Children (12VAC5-110).

C. Any student or staff with a disease or medical condition that is contagious or infectious shall be excluded from school while in that condition unless attendance is approved by a qualified healthcare provider. Conditions meeting this requirement must be provided in the parent/student handbook or other print materials.

D. A first aid kit shall be maintained and readily accessible for minor injuries and medical emergencies in each building used for instruction or other school activity.

E. All medications shall be accepted only in the original container with written permission signed and dated by the parent to administer to his child. The use of all prescriptive medication must be authorized in writing by a licensed prescriber.

F. All medication and medical paraphernalia shall be securely locked and properly labeled.

G. A program of medication administration shall be initiated for a student only when prescribed in writing by a person authorized by law to prescribe medication and written consent from the parent is obtained to administer.

H. An individual medication administration record shall be maintained for each medication a student receives and shall include student name, date the medication is to begin, drug name, schedule for administration, strength, route, identification of the individual who administered the medication, and dates the medication was discontinued or changed.

I. The provider shall develop and implement written policies and procedures regarding:

1. Managing medication errors to include the following: administering first aid; contacting the poison control center; notifying the prescribing physician; taking action as directed; documenting the incident; reviewing medication errors and staff responses; and reporting errors to the parent and placing agency.
2. Handling adverse drug reactions;
3. Revising procedures as events may warrant;
4. Disposing of medication and medical supplies such as needles, syringes, lancets, etc.;
5. Storing of controlled substances;
6. Distributing medication off campus; and
7. Medication refusal to include who is responsible for documentation, where it will be documented and action taken by staff.

J. The telephone number of a regional poison control center and other emergency numbers shall be posted on or near the phone.

K. Medication training.

1. All staff responsible for medication administration shall have successfully completed a medication training program approved by the Board of Nursing or be licensed by the

Commonwealth of Virginia to administer medication before they can administer medication.

2. Training shall be provided to all staff in medication procedures and effects and infection control measures, including the use of standard precautions.

3. There shall be a ratio of one staff member to 10 students certified in first aid and CPR and available at all times on the school grounds and during any school-sponsored activity.

4. Documentation of medication training must be maintained in personnel files.

5. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

L. Monitoring the supply of medications.

1. Upon receiving any medication, staff members handling medication shall count individual tablets and measure the level of liquid medicine in the presence of the parent(s) or another staff member and record the count on the medication log.

2. The medication log shall include the signature or initials of the staff member who counted the medication and the parent or staff who witnessed the occurrence. When initials are used, the medication administration record must contain the full name of the staff with corresponding initials for identification purposes.

3. Students shall be prohibited from transporting medication.

## **8VAC20-671-720. School nutrition.**

A. Schools with internal food service shall serve to each student on a daily basis a daily diet that (i) consists of nutritionally balanced meals, (ii) includes an adequate variety and quantity of food for the age of students, and (iii) meets the minimum requirements and the U.S. Dietary Guidelines.

B. Schools with internal food service shall ensure that all food safety and sanitation procedures are followed in accordance with state and federal regulations.

C. Records of menus for all meals served shall be kept on file for six months.

D. Special diets shall be provided when prescribed by a physician or requested by the student or parent because of the student's established religion.

E. In schools where students are required to bring their own lunch, provisions shall be made to ensure a meal for all students.

## **8VAC20-671-730. Transportation.**

A. Each school shall have on file evidence that any vehicles used for the purpose of transporting students to and from school and school-related activities meet federal and state regulations, including:

1. Vehicle safety and maintenance;

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2. Licensure of vehicles;
3. Licensure of drivers;
4. Vehicle liability insurance;
5. Child passenger safety, including requiring students to wear seat belts or restraints; and
6. Safety measures that take into consideration the age and disabling conditions of students.

B. All vehicles used to transport students to school activities shall be equipped with first aid kits, a fire extinguisher, and two-way communication devices.

C. Individual student emergency information including currently prescribed and over-the-counter medications, significant medical problems, and any allergies shall accompany students when they are being transported.

### **8VAC20-671-740. Treatment services.**

Licensed providers of treatment services shall coordinate those services to allow students to receive the required hours of instruction to the extent possible. When treatment services are not prescribed by a licensed mental health professional, the student shall receive the required number of hours of instruction.

### **8VAC20-671-750. Student discharge.**

A. Each school shall have policies and procedures that address conditions for which a student may be discharged from the school.

B. The school's criteria for discharge shall be made available to prospective students, parents, and placing agencies before their enrollment.

C. The student's education record shall be documented with the date of discharge and reason for discharge.

D. Students shall be discharged only to the parent or legally authorized representative.

### **8VAC20-671-760. Maintenance of student records.**

A. The school shall have written policy and procedures for the management of all records, print and nonprint, regarding confidentiality, accessibility, security, and retention.

B. Student education records shall be maintained in fireproof cabinets and protected from unauthorized disclosure.

C. Each student's education record shall contain information pertinent to the educational growth and development to include a completed enrollment sheet; a current IEP, 504 Plan, or IIP; student transcript; course of studies; and progress reports. Other information should include disciplinary records, health records, and achievement and test data.

D. A school shall obtain written consent from the child's parent before disclosure of information from a student's education record to unauthorized parties. Authorized parties shall be limited to school employees, including contracted employees, and representatives of state licensing agencies

who need access to the student's records to carry out their work responsibilities.

E. A school may disclose information in an emergency to any person who needs that particular information for the purpose of preventing injury to a student or staff. The school shall not disclose any information that is not needed for this specific purpose. The school may disclose any records if they are properly subpoenaed, if a court orders them to be produced, to the school's own legal counsel, or to anyone working on behalf of their legal counsel in providing representation to the school.

F. The school shall permit a parent or parents to inspect and review any education records relating to their child that are collected, maintained, or used by the school. The school shall comply with a request without unnecessary delay and before any meeting regarding an IEP or 504 Plan or in no case more than 14 calendar days after the request has been made. The right to inspect and review education records under this section includes:

1. The right to a response from the school to reasonable requests for explanations and interpretations of the records;
2. The right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records;
3. The right to have a representative of the parent inspect and review the records; and
4. A school may presume that a parent has authority to inspect and review records relating to his child unless the school has been advised that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

G. Each school shall keep a record of parties, except parents and authorized employees of the school, obtaining access to education records collected or maintained, including the name of the party, the date of access, and the purpose of the access.

H. If any education record includes information on more than one child, the parent(s) of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested.

I. Schools may charge a fee for copies of records that are made for a parent(s) under this chapter if the fee does not effectively prevent the parent(s) from exercising their right to inspect and review those records. A school may not charge a fee to search for or to retrieve information under this section.

J. A parent(s) who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the school that maintains the information to amend the information.

1. The school shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

2. If the school decides to refuse to amend the information in accordance with the request, it shall inform the parent(s) of the refusal and inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school.

3. Any explanation placed in the records of the child under this section must:

- a. Be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school; and
- b. If the records of the child or the contested portion is disclosed by the school to any party, the explanation must also be disclosed to the party.

**K. Records retention.**

1. Each school shall maintain all education records, including discipline and medical records for as long as the student continues enrollment at the school.

2. When a student transfers to another school, the student's complete education record shall be transferred within five business days from the date of request and notification of the transfer to the parent, guardian, and placing agency.

3. When a student graduates or leaves school, the school shall offer all records to the eligible student or parent(s). The records of a publicly placed student who graduates or leaves school shall be transferred to the child's public school.

4. Each school shall maintain a permanent record of attendance to include the following:

- a. Name and address of school;
- b. Name, address, and birth date of student;
- c. Name and address of parent or parents;
- d. Student ID;
- e. Dates of attendance;
- f. Verification of immunizations;
- g. Scholastic work completed; and
- h. Academic transcript.

**8VAC20-671-770. Participation of students in human research.**

A. No human research involving students shall be conducted or authorized by any school unless in compliance with the Board of Education's regulation, 8VAC20-565, or other applicable law, including 45 CFR Part 46.

B. No such research shall be conducted or authorized unless the student and the student's legally authorized representative give their informed consent. Such informed consent shall be by a signed and witnessed informed consent form. Such form shall comply with § 32.1-162 of the Code of Virginia.

C. Any such research shall be approved and conducted under the review of a human research committee, which shall

be established by the school conducting or authorizing the research. Any such committee shall comply with the provisions of § 32.1-162.19 of the Code of Virginia. The committee shall submit to the Governor, the General Assembly, and the Superintendent of Public Instruction or designee at least annually a report on the student projects reviewed and approved by the committee, which shall state significant deviations from the proposals as approved.

D. There shall be excluded from the operation of this chapter those categories of research in § 32.1-162.17 of the Code of Virginia that exempt research or student learning outcomes as conducted in educational settings involving regular or special education instructional strategies; the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods; or the use of educational tests, whether cognitive, diagnostic, aptitude, or achievement, if the data from such tests are recorded in a manner so that subjects cannot be identified, directly or through identifiers linked to the subjects.

**8VAC20-671-780. Procedures for school closing.**

A. A school that ceases operation shall provide written notice as early as possible to all enrolled students, the parent(s), the student's public school, and licensing agencies.

B. All advertisements of the school's operation shall cease immediately, and the current license to operate shall be returned promptly to the licensing agency.

C. If privately placed students are unable to complete the academic year due to the school's closing, the school's guaranty instrument shall be used for tuition reimbursement to the fullest extent allowable.

D. All education records of privately placed students shall be provided to the parent or student who has reached 18 years of age and acknowledgement of such to the licensing agency.

E. All education records of publicly placed students shall be returned to the school division of the parent's residence and acknowledgement of such to the parent or student who has reached 18 years of age, and the licensing agency.

VA.R. Doc. No. R11-2536; Filed October 2, 2012, 7:50 a.m.

**RADFORD UNIVERSITY**

**Final Regulation**

**REGISTRAR'S NOTICE:** Radford University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

**Title of Regulation:** **8VAC75-20. Weapons Regulation (adding 8VAC75-20-10 through 8VAC75-20-40).**

**Statutory Authority:** § 23-155.7 of the Code of Virginia.

**Effective Date:** October 1, 2012.

**Agency Contact:** Lisa H. Ridpath, Associate Vice President for Finance and Administration, Radford University, P.O.

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# Regulations

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Box 6923, Radford, VA 24142, telephone (540) 831-6404, FAX (540) 831-6471, or email Iridpath@radford.edu.

## Summary:

*This action implements the prohibition of weapons on Radford University property.*

### CHAPTER 20 WEAPONS REGULATION

#### **8VAC75-20-10. Definitions.**

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

"Firearms" are defined as any gun, rifle, pistol, or handgun designed to fire any projectile including but not limited to bullets, BBs, pellets, or shots, including paint balls, regardless of the propellant used.

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

"University property" means any property owned, leased, or controlled by Radford University.

"Weapons" are defined as any instrument of combat, or any object not designed as an instrument of combat but carried for the purpose of inflicting or threatening bodily injury. Examples include but are not limited to firearms, knives with fixed blades or pocket knives with blades longer than four inches, razors, metal knuckles, blackjacks, hatchets, bows and arrows, nun chahkas, foils, stun weapons, or any explosive or incendiary device. Stun weapon is defined as any device that emits a momentary or pulsed output that is electrical, audible, optical, or electromagnetic in nature and that is designed to temporarily incapacitate a person.

#### **8VAC75-20-20. Possession of weapons prohibited.**

The university's employees, students, and volunteers are prohibited from carrying, maintaining, or storing a firearm or weapon on any university property. Any visitor or other third party attending a sporting, entertainment, or educational event, or visiting an academic or administrative office building, dining facility, or residence hall, is prohibited from carrying, maintaining, or storing a firearm or weapon on any university facility, even if the owner has a valid permit. This prohibition also applies to all events on campus where people congregate in any public or outdoor areas.

Any such individual who is reported or discovered to possess a firearm or weapon on university property will be asked to remove it immediately from university property.

Failure to comply may result in a student conduct referral, an employee disciplinary action, or arrest.

#### **8VAC75-20-30. Exceptions to prohibition.**

The following groups are exempted from this regulation:

1. Employees may possess or carry a firearm or weapon only if the employee is:

- a. Required to possess the firearm or weapon as a part of the employee's job duties with Radford University;
- b. Using the firearm or weapon in conjunction with training received by the employee in order to perform the responsibilities of his job with the university;
- c. A certified and sworn police officer employed by the Radford University Police Department;
- d. Currently a sworn and certified state or federal law enforcement officer who carries proper identification; or
- e. Participating in a program sponsored by the Radford University Police Department, wherein the firearms are provided by the department and utilized only during supervision by the department.

2. Students may possess and use appropriate tools, such as saws, knives, and other such implements, necessary for the performance of their job duties or school work, or for student recreational purposes approved under university policy or while participating in a program sponsored by the Radford University Police Department wherein the firearms are provided by the department and utilized only during supervision by the department.

3. The Chief of the Radford University Police Department, or his designee, may authorize in writing a student or employee to store a firearm or weapon covered by this chapter with the Radford University Police Department. A request for permission pursuant to this exception shall be addressed in advance to the Chief of the Radford University Police Department, or his designee, where it will be evaluated on a case-by-case basis in accordance with state and federal law, university policy and procedure, and the safety of the university community.

4. Contractors and others on campus whose duties require possession and use of construction equipment, including but not limited to pneumatic nail guns, may possess and use such equipment only in performance of their job duties through a valid contractual or legal relationship with Radford University.

#### **8VAC75-20-40. Person lawfully in charge.**

In addition to individuals authorized by university policy, Radford University police officers, and other police officers acting pursuant to a mutual aid agreement or by concurrent jurisdiction, are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property while possessing or carrying weapons in violation of this prohibition.

VA.R. Doc. No. R13-3422; Filed October 1, 2012; 10:21 p.m.

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## 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 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:** **9VAC5-20. General Provisions (amending 9VAC5-20-204).**

**9VAC5-30. Ambient Air Quality Standards (amending 9VAC5-30-55).**

**Statutory Authority:**

9VAC5-20-204: § [10.1-1308](#) of the Code of Virginia; § 110 and 182 of the Clean Air Act; 40 CFR Part 51.

9VAC5-30-55: § [10.1-1308](#) of the Code of Virginia; §§ 108, 109 and 302 of the Clean Air Act; 40 CFR Parts 50, 53 and 58.

**Effective Date:** November 21, 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](mailto:karen.sabasteanski@deq.virginia.gov).

**Summary:**

*The Northern Virginia ozone nonattainment area was originally classified as moderate for the 1997 8-hour (0.08 parts per million) ozone standard. The 8-hour ozone standard was revised to 0.075 parts per million in 2008, and on May 21, 2012, the U.S. Environmental Protection Agency (EPA) accordingly established air quality designations for this standard (77 FR 30088). As part of this designation process, Northern Virginia has been classified as marginal for the 2008 standard. In addition, on May 21, 2012, EPA provided for the revocation of the 1997 standard for transportation conformity purposes (77 FR 30160). The list of nonattainment areas in 9VAC5-20-204 and the 1997 standards for ozone specified in 9VAC5-30-55 are amended to reflect these new federal requirements.*

#### **9VAC5-20-204. Nonattainment areas.**

A. Nonattainment areas are geographically defined below by locality for the criteria pollutants indicated. Following the name of each ozone nonattainment area, in parentheses, is the classification assigned pursuant to § 181(a) of the federal Clean Air Act (42 USC § 7511(a)) ~~and~~, 40 CFR 51.903(a), and 40 CFR 51.1103(a).

1. Ozone (1-hour).

Northern Virginia Ozone Nonattainment Area (severe).

Arlington County  
Fairfax County  
Loudoun County  
Prince William County  
Stafford County  
Alexandria City  
Fairfax City  
Falls Church City  
Manassas City  
Manassas Park City

2. Ozone (~~8-hour~~) (8-hour, 0.08 ppm).

Northern Virginia Ozone Nonattainment Area (moderate).

Arlington County  
Fairfax County  
Loudoun County  
Prince William County  
Alexandria City  
Fairfax City  
Falls Church City  
Manassas City  
Manassas Park City

3. Ozone (8-hour, 0.075 ppm)

Northern Virginia Ozone Nonattainment Area (marginal).

Arlington County  
Fairfax County  
Loudoun County  
Prince William County  
Alexandria City  
Fairfax City  
Falls Church City  
Manassas City  
Manassas Park City

3. 4. PM<sub>2.5</sub> (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers).

Northern Virginia PM<sub>2.5</sub> Nonattainment Area.

Arlington County  
Fairfax County  
Loudoun County  
Prince William County  
Alexandria City  
Fairfax City

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Falls Church City  
Manassas City  
Manassas Park City

4. 5. All other pollutants.

None.

B. Subdivision A 1 of this section shall not be effective after June 15, 2005.

## **9VAC5-30-55. Ozone (8-hour, 0.08 ppm).**

A. The primary and secondary ambient air quality standard is 0.08 parts per million, daily maximum 8-hour average.

B. Ozone shall be measured by the reference method described in Appendix D of 40 CFR Part 50, or other method designated as such, or by an equivalent method.

C. The 8-hour primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, as determined in accordance with Appendix I of 40 CFR Part 50.

D. The standard set forth in subsection A of this section shall no longer apply to an area for transportation conformity purposes after July 20, 2013. The standard set forth in subsection A of this section shall continue to remain applicable to all areas for all other purposes notwithstanding the standard set forth in 9VAC5-30-56 A or the designation of areas for the standard set forth in 9VAC5-30-56 A 3. Area designations and classifications with respect to the standard set forth in subsection A of this section are set forth in 9VAC5-20-204 A 2.

VA.R. Doc. No. R13-3232; Filed September 19, 2012, 3:10 p.m.

## **CHESAPEAKE BAY LOCAL ASSISTANCE BOARD (ABOLISHED)**

### **Final Regulation**

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

**Title of Regulation:** **9VAC10-11. Public Participation Guidelines (repealing 9VAC10-11-10 through 9VAC10-11-110).**

**Statutory Authority:** § 10.1-2103 of the Code of Virginia.

**Effective Date:** November 21, 2012.

**Agency Contact:** David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone

(804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

### **Summary:**

*Chapters 785 and 819 of the 2012 Acts of Assembly abolished the Chesapeake Bay Local Assistance Board and transferred its powers and duties to the Virginia Soil and Water Conservation Board. This regulatory action repeals the Public Participation Guidelines of the former Chesapeake Bay Local Assistance Board.*

VA.R. Doc. No. R13-3392; Filed October 3, 2012, 9:13 a.m.

## **STATE WATER CONTROL BOARD**

### **Forms**

**NOTICE:** Forms used in administering the following regulation have been filed by the State Water Control Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

**Titles of Regulations:** **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.**

**9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation.**

**Contact Information:** Debra A. Miller, Policy 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](mailto:debra.miller@deq.virginia.gov).

FORMS (9VAC25-31)

~~[VPDES Sewage Sludge Permit Application Form \(rev. 2000\).](#)~~

[VPDES Sewage Sludge Permit Application Form \(rev. 9/12\).](#)

[VPDES Sewage Sludge Permit Application for Permit Reissuance \(eff. 8/12\).](#)

~~[Instructions for VPDES Sewage Sludge Permit Application Form \(rev. 2000\).](#)~~

[Instructions for VPDES Sewage Sludge Permit Application Form \(rev. 9/12\).](#)

[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. 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).

FORMS (9VAC25-32)

Virginia Pollution Abatement Permit Application, General Instructions (rev. 4/09).

Virginia Pollution Abatement Permit Application, Form A, All Applicants (rev. 4/09).

Virginia Pollution Abatement Permit Application, Form B, Animal Waste (rev. 10/95).

Virginia Pollution Abatement Permit Application, Form C, Industrial Waste (rev. 10/95).

~~Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids (rev. 4/09).~~

Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids (rev. 9/12).

Application for Land Application Supervisor Certification (rev. 2/11).

Application for Renewal of Land Application Supervisor Certification (rev. 2/11).

VA.R. Doc. No. R13-3400; Filed September 19, 2012, 3:19 p.m.

## Final Regulation

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

conducts at least one public hearing on the proposed general permit.

**Title of Regulation:** 9VAC25-120. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests (amending 9VAC25-120-10, 9VAC25-120-20, 9VAC25-120-50, 9VAC25-120-60, 9VAC25-120-70, 9VAC25-120-80; adding 9VAC25-120-15).

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

**Effective Date:** February 26, 2013.

**Agency Contact:** Burton Tuxford, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4086, FAX (804) 698-4032, or email burton.tuxford@deq.virginia.gov.

### Summary:

*The changes to the regulation make the general VPDES permit similar to other general permits issued recently and clarify and update permit limits and conditions.*

*The amendments (i) add coverage under the permit for hydrostatic tests of water storage tanks and pipelines; (ii) add two reasons why a facility's discharge would not be eligible for coverage under the permit; (iii) add language to allow for administrative continuance of coverage under the general permit; (iv) add a provision that allows specified short term projects (14 days or less in duration) and hydrostatic test discharges to be automatically covered under the permit without the requirement to submit a registration statement, and require that the owner notify the department within 14 days of the discharge's completion; (v) consolidate the permit Part I A Effluent Limitations and Monitoring Requirements for "Gasoline Contaminated Discharges" into one limits table, and discharges "Contaminated by Petroleum Products Other Than Gasoline" into one limits table; and recalculate the effluent limits in the combined tables to be at the most protective levels for the discharge type and to protect all receiving waters based on an analysis of water quality criteria, toxicity data, and best professional judgment; and (vi) add permit special conditions for: (a) the required number of significant digits for reporting monitoring results, (b) controlling discharges as necessary to meet water quality standards, (c) the permittee's responsibility to comply with any other federal, state, or local statute, ordinance, or regulation, (d) a requirement to submit discharge monitoring reports to the owner of the municipal storm sewer system (MS4) if it discharges to the MS4, and (e) a requirement to implement measures and controls consistent with a TMDL requirement when the facility is subject to an approved TMDL.*

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*Substantive changes to the regulation since publication of the proposed amendments (i) clarify the late registration statement provision; (ii) more clearly define when an owner qualifies for "administrative continuance" of the general permit coverage; (iii) change the flow reporting units from MGD to GPD in 9VAC25-120-80, Part I, Tables 2 through 5; (iv) modify test method information by (a) adding the test method reference date back in for EPA SW 846 Method 8021B, (b) adding the test method information for ethylene dibromide (EDB) in discharges to public water supplies, and (c) adding EPA SW 846 Method 8015C (2000) to the list of acceptable methods for analyzing ethanol and TPH; and (iv) clarify that the chlorine monitoring and limit only apply where chlorinated water is used for the hydrostatic test.*

## **9VAC25-120-10. Definitions.**

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

"Central wastewater treatment facilities" means any facility that treats (for disposal, recycling, or recovery of materials) or recycles hazardous or nonhazardous waste, hazardous or nonhazardous industrial wastewater, or used material from offsite. This includes both a facility that treats waste received from off-site exclusively, and a facility that treats waste generated on-site as well as waste received from off site.

"Chlorinated hydrocarbon solvents" means solvents containing carbon, hydrogen, and chlorine atoms and the constituents resulting from the degradation of these chlorinated hydrocarbon solvents.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

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

"Petroleum products" means petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. "Petroleum products" does not include hazardous waste as defined by the Virginia Hazardous Waste Regulations (9VAC20-60).

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

## **9VAC25-120-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) 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, 2012, with the effective date as published in the Federal Register notice or February 26, 2013, whichever is later.

## **9VAC25-120-20. Purpose.**

This general permit regulation governs the discharge of wastewaters from sites contaminated by petroleum products, chlorinated hydrocarbon solvents, ~~and~~ the hydrostatic testing of petroleum and natural gas storage tanks and pipelines, ~~and the hydrostatic testing of water storage tanks and pipelines.~~ These wastewaters may be discharged from the following activities: excavation dewatering, ~~purging groundwater monitoring wells,~~ conducting aquifer tests to characterize site conditions, ~~hydrostatic tests of natural gas and petroleum storage tanks or pipelines, hydrostatic tests of underground and above ground storage tanks,~~ pumping contaminated groundwater to remove free product from the ground, ~~or~~ discharges resulting from another petroleum product or chlorinated hydrocarbon solvent cleanup activity approved by the ~~department~~ board, ~~hydrostatic tests of natural gas and petroleum storage tanks or pipelines, hydrostatic tests of underground and above ground storage tanks, and hydrostatic tests of water storage tanks and pipelines.~~ Discharges not associated with petroleum-contaminated water, water contaminated by chlorinated hydrocarbon solvents, or hydrostatic tests are not covered under this general permit.

## **9VAC25-120-50. Effective date of the permit.**

This general permit will become effective on February 26, ~~2008~~ 2013. This general permit will expire ~~five years from the effective date on February 25, 2018.~~ This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-120-60 ~~and the receipt of this general permit.~~

## **9VAC25-120-60. Authorization to discharge.**

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters within the Commonwealth of Virginia provided that ~~the~~:

1. The owner files and receives acceptance by the board of the submits a registration statement of, if required to do so, in accordance with 9VAC25-120-70, and that registration statement is accepted by the board;

2. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-120-80; and provided that:

3. The board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

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

1. Individual permit. The owner has not been is required to obtain an individual permit according to in accordance with 9VAC25-31-170 B of the VPDES Permit Regulation;
2. Prohibited discharge locations. The owner shall not be authorized by this general permit is proposing to discharge within five miles upstream of a public water supply intake or to state waters specifically named in other board regulations or policies which prohibit such discharges; and
3. Central wastewater treatment facilities. The owner shall not be authorized by this general permit is proposing to discharge to surface waters where there are permitted central wastewater treatment facilities reasonably available, as determined by the board;
4. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; or
5. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

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

D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the petroleum contaminated sites, groundwater remediation, and hydrostatic tests general permit issued in 2008 and that submits a complete registration statement on or before February 26, 2013, is authorized to continue to discharge under the terms of the 2008 general permit until such time as the board either:
  - a. Issues coverage to the owner under this general permit; or
  - b. Notifies the owner that the discharge is not eligible for coverage under this general permit.
2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:
  - a. Initiate enforcement action based upon the general permit that has been continued;
  - b. Issue a notice of intent to deny coverage under the amended general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued general permit or

be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

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

**9VAC25-120-70. Registration statement.**

The owner shall file a complete VPDES general permit registration statement for discharges from petroleum contaminated sites, ground water remediation, and hydrostatic tests. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing discharge covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing discharge not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information:

A. Any owner seeking coverage under this general permit who is required to submit a registration statement shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges from petroleum contaminated sites, ground water remediation, and hydrostatic tests.

B. Owners of the following types of proposed or existing discharges are not required to submit a registration statement to apply for coverage under this general permit:

1. Short term projects (14 days or less in duration) including:
  - a. Emergency repairs;
  - b. Dewatering projects;
  - c. Utility work and repairs in areas of known contamination;
  - d. Tank placement or removal in areas of known contamination;
  - e. Pilot studies or pilot tests, including aquifer tests; and
  - f. New well construction discharges of groundwater;
2. Hydrostatic testing of petroleum and natural gas storage tanks and pipelines; and
3. Hydrostatic testing of water storage tanks and pipelines.

Owners of these types of discharges are authorized to discharge under this permit immediately upon the permit's effective date of February 26, 2013.

Owners shall notify the department's regional office in writing within 14 days of the completion of the discharge. The notification shall include the owner's name and address.

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the type of discharge that occurred, the physical location of the discharge work, and the receiving stream. If the discharge is to a municipal separate storm sewer system (MS4), the owner shall also notify the MS4 owner within 14 days of the completion of the discharge.

Owners of these types of discharges are not required to submit a notice of termination at the completion of the discharge.

## C. Deadlines for submitting registration statements.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge, unless exempted by subsection B of this section.

### 2. Existing facilities.

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

b. Any owner that was authorized to discharge under the petroleum contaminated sites, ground water remediation, and hydrostatic tests general VPDES permit that became effective on February 26, 2008, who is not exempted under subsection A of this section and who intends to continue coverage under this general permit shall submit a complete registration statement to the board on or before January 27, 2013.

D. Late registration statements. [~~Late registration~~ Registration ] statements will be accepted [ after February 26, 2013 ], but authorization to discharge will not be retroactive. Owners described in subdivision C 2 b of this section that submit [~~late~~] registration statements [ after January 27, 2013, ] are authorized to discharge under the provisions of 9VAC25-120-60 D if a complete registration statement is submitted on or before February 26, 2013.

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

1. Legal name of facility;
2. Location of facility, address, ~~and~~ telephone number, and email address (if available);
3. Facility owner name, address, ~~and~~ telephone number, and email address (if available);
4. Nature of business conducted at the facility;
5. Type of petroleum or natural gas products, or chlorinated hydrocarbon solvents causing or that caused the contamination;
6. Identification of activities that will result in a point source discharge from the contaminated site;
7. Whether a site characterization report for the site has been submitted to the Department of Environmental Quality;

8. Characterization or description of the wastewater or nature of contamination including analytical data;

9. The location of the discharge point and identification of the waterbody into which the discharge will occur. For linear projects, the location of all the proposed discharge points along the project length and the associated waterbody for each discharge point;

10. The frequency with which the discharge will occur (i.e., daily, monthly, continuously);

11. An estimate of how long each discharge will last;

12. An estimate of the total volume of wastewater to be discharged;

13. An estimate of the flow rate of the discharge;

14. A diagram of the proposed wastewater treatment system identifying the individual treatment units;

15. A USGS 7.5 minute topographic map or ~~other~~ equivalent computer generated map that indicates the receiving waterbody name or names, the discharge point or points, the property boundaries, as well as springs, other surface waterbodies, drinking water wells, and public water supplies that are identified in the public record or are otherwise known to the applicant within a 1/2 mile radius of the proposed discharge or discharges;

16. Whether the facility will discharge to a municipal separate storm sewer system (MS4). If so, the name of the MS4 owner. The owner of the facility shall notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under the general permit and shall copy the DEQ regional office with the notification. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number;

17. Whether central wastewater facilities are available to the site, and if so, whether the option of discharging to the central wastewater facility has been evaluated and the results of that evaluation;

~~17.~~ 18. Whether the facility currently has a permit issued by the board, and if so, the permit number;

~~18.~~ 19. Any applicable pollution complaint number;

~~19.~~ 20. A statement as to whether the material being treated or discharged is certified as a hazardous waste under the Virginia Hazardous Waste Regulation (9VAC20-60); and

~~20.~~ 21. 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. I do also hereby grant duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit.

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

**9VAC25-120-80. General permit.**

Any owner whose ~~request for coverage under this general permit registration statement~~ is accepted by the board, or who is automatically authorized to discharge under this permit, shall comply with the requirements of the general permit and be subject to all requirements of 9VAC25-31-170 B of the VPDES permit regulation. Not all pages of Part I A of the general permit will apply to every permittee. The determination of which pages apply will be based on the type of contamination at the individual site and the nature of the waters receiving the discharge. Part I B and all pages of Part II apply to all permittees.

General Permit No.: VAG83

Effective Date: February 26, ~~2008~~ 2013

Expiration Date: February 25, ~~2013~~ 2018

GENERAL VPDES PERMIT FOR DISCHARGES FROM  
PETROLEUM CONTAMINATED SITES,  
GROUNDWATER REMEDIATION, AND  
HYDROSTATIC TESTS

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

In compliance with the provisions of the Clean Water Act, as amended, the State Water Control Law and regulations adopted pursuant thereto, the owner is authorized to discharge to surface waters ~~at the locations identified in the accepted registration statement~~ within the boundaries of the Commonwealth of Virginia, except to designated public water supplies or waters specifically named in other board regulations ~~or policies~~ which prohibit such discharges.

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

If there is any conflict between the requirements of a ~~Department of Environmental Quality board~~ approved cleanup plan and this permit, the requirements of this permit shall govern.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. SHORT TERM PROJECTS.

The following types of short term projects (14 days or less in duration) are authorized under this permit:

- a. Emergency repairs;
- b. Dewatering projects<sup>(1)</sup>;
- c. Utility work and repairs in areas of known contamination;
- d. Tank placement or removal in areas of known contamination;
- e. Pilot studies or pilot tests, including aquifer tests; and
- f. New well construction discharges of groundwater.

Effluent limits for short term projects correspond to the type of contamination at the project site and are given in Tables A 2 through A 5 below. The sampling frequency for these projects shall be once per project term. Discharge monitoring reports for these projects are not required to be submitted to the department, but shall be retained by the owner for a period of at least three years from the completion date of the project.

Owners shall notify the department's regional office in writing within 14 days of the completion of the project discharge. The notification shall include the owner's name and address, the type of discharge that occurred, the physical location of the project work, and the receiving stream. If the discharge is to a municipal separate storm sewer system (MS4), the owner shall also notify the MS4 owner within 14 days of the completion of the discharge.

<sup>(1)</sup>Dewatering projects shall be managed to ensure that they are discharging to an adequate channel or pipe and do not cause erosion in the receiving stream.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

~~1. 2. GASOLINE CONTAMINATION -- FRESHWATER RECEIVING WATERS NOT LISTED AS PUBLIC WATER SUPPLIES~~ ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge ~~to freshwater receiving waterbodies~~ from outfall serial number XXXX. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

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EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow [ <del>(MGD)</del> (GPD) ]	NA	NL	<del>1/Month</del> <sup>(4)</sup>	Estimate
Benzene (µg/l) <sup>(1)</sup>	NA	<del>50.0</del> <u>12.0</u>	<del>1/Month</del> <sup>(4)</sup>	Grab
Toluene (µg/l) <sup>(1)</sup>	NA	<del>175.0</del> <u>43.0</u>	<del>1/Month</del> <sup>(4)</sup>	Grab
Ethylbenzene (µg/l) <sup>(1)</sup>	NA	<del>320.0</del> <u>4.3</u>	<del>1/Month</del> <sup>(4)</sup>	Grab
Total Xylenes (µg/l) <sup>(1)</sup>	NA	33.0	<del>1/Month</del> <sup>(4)</sup>	Grab
MTBE (methyl tert-butyl ether) (µg/l) <sup>(1)</sup>	<del>NA</del>	<del>1,840.0</del>	<del>1/Month</del>	<del>Grab</del>
<u>Freshwaters not listed as public water supplies and saltwater</u>	<u>NA</u>	<u>440.0</u>	<u>1/Month</u> <sup>(4)</sup>	<u>Grab</u>
<u>Freshwaters listed as public water supply</u>	<u>NA</u>	<u>15.0</u>	<u>2/Month</u> <sup>(4)</sup>	<u>Grab</u>
pH (standard units)	6.0	9.0	<del>1/Month</del> <sup>(4)</sup>	Grab
Total Recoverable Lead (µg/l) <sup>(2)</sup>	<del>NA</del>	<del><math>e^{(1.273(\ln \text{hardness}) - 3.259)}</math></del>	<del>1/Month</del>	<del>Grab</del>
<u>Freshwaters not listed as public water supplies and saltwater</u>	<u>NA</u>	<u><math>e^{(1.273(\ln \text{hardness}) - 3.259)}</math></u>	<sup>(4)</sup>	<u>Grab</u>
<u>Freshwaters listed as public water supply</u>	<u>NA</u>	<u>Lower of <math>e^{(1.273(\ln \text{hardness}) - 3.259)}</math> or 15</u>	<sup>(4)</sup>	<u>Grab</u>
Hardness (mg/l CaCO <sub>3</sub> ) <sup>(2)</sup>	NL	NA	<del>1/Month</del> <sup>(4)</sup>	Grab
Ethylene Dibromide (µg/l) <sup>(2)</sup>	<del>NA</del>	<del>5.3</del>	<del>1/Month</del>	<del>Grab</del>
<u>Freshwaters not listed as public water supplies and saltwater</u>	<u>NA</u>	<u>1.9</u>	<u>1/Month</u> <sup>(4)</sup>	<u>Grab</u>
<u>Freshwaters listed as public water supply</u>	<u>NA</u>	<u>0.161</u>	<u>2/Month</u> <sup>(4)</sup>	<u>Grab</u>
1,2 Dichloroethane (µg/l) <sup>(2)</sup>	NA	<del>990.0</del> <u>3.8</u>	<del>1/Month</del> <sup>(4)</sup>	Grab
Ethanol (µg/l) <sup>(3)</sup>	NA	4100.0	<del>1/Month</del> <sup>(4)</sup>	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (~~40 CFR Part 136, 2007~~) (40 CFR Part 136) or EPA SW 846 Method 8021B [ (1996) ].

<sup>(2)</sup>Monitoring for this parameter is required only when contamination results from leaded fuel. Lead shall be analyzed according to a current and appropriate EPA Wastewater Method (~~40 CFR Part 136, 2007~~) or EPA SW 846 Method 9040C (2004) (40 CFR Part 136). The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l. 1,2 dichloroethane and [ ~~EDB ethylene dibromide (EDB)~~ ] shall be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136 (~~2007~~). [ EDB in wastewaters discharged to public water supplies shall be analyzed using EPA SW 846 Method 8011 (1992) or EPA Drinking Water Method 504.1 (1995). ]

<sup>(3)</sup>Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to [ EPA SW 846 Method 8015C (2000) or ] EPA SW 846 Method 8015C (2007) or EPA SW 846 Method 8260B (1996). ~~Monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 1/month, upon issuance of the letter~~

or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October and January.

(4) The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation, or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 1/month upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first year's results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced to 1/quarter and the other parameters to 1/month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol shall be reduced to 1/quarter and the other parameters to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### ~~2. GASOLINE CONTAMINATION — FRESHWATER RECEIVING WATERS LISTED AS PUBLIC WATER SUPPLIES.~~

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	2/Month <sup>4</sup>	Estimate
Benzene (µg/l) <sup>1</sup>	NA	12.0	2/Month <sup>4</sup>	Grab
Toluene (µg/l) <sup>1</sup>	NA	175.0	2/Month <sup>4</sup>	Grab
Ethylbenzene (µg/l) <sup>1</sup>	NA	320.0	2/Month <sup>4</sup>	Grab
Total Xylenes (µg/l) <sup>1</sup>	NA	33.0	2/Month <sup>4</sup>	Grab
MTBE (methyl tert-butyl ether) (µg/l) <sup>1</sup>	NA	15.0	2/Month <sup>4</sup>	Grab
pH (standard units)	6.0	9.0	2/Month <sup>4</sup>	Grab
Total Recoverable Lead (µg/l) <sup>2</sup>	NA	Lower of e <sup>(1.273(ln hardness)) - 3.259</sup> or 15	2/Month <sup>4</sup>	Grab
Hardness (mg/l CaCO <sub>3</sub> ) <sup>2</sup>	NL	NL	2/Month <sup>4</sup>	Grab
Ethylene Dibromide (µg/l) <sup>2</sup>	NA	169	2/Month <sup>4</sup>	Grab
1,2-Dichloroethane (µg/l) <sup>2</sup>	NA	3.8	2/Month <sup>4</sup>	Grab
Ethanol (µg/l) <sup>3</sup>	NA	4100.0	2/Month <sup>5</sup>	Grab

NL = No limitation, monitoring required

# Regulations

NA = Not applicable

<sup>1</sup>Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Method (40 CFR Part 136, 2007) or EPA SW 846 Method 8021B (1996).

<sup>2</sup>Monitoring for this parameter is required only when contamination results from leaded fuel. Lead shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136, 2007). The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l. EPA SW 846 Method 8011 (1992) or EPA Drinking Water Method 504.1 (1995) shall be used to analyze ethylene dibromide (EDB) in wastewaters discharged to public water supplies. 1,2 dichloroethane shall be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136 (2007).

<sup>3</sup>Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015C (2007) or EPA SW 846 Method 8260B (1996).

<sup>4</sup>Monitoring frequency shall be 2/month for the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date.

<sup>5</sup>If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced from 2/month to 1/quarter. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### 3. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE -- ~~FRESHWATER RECEIVING WATERS NOT LISTED AS PUBLIC WATER SUPPLIES~~ ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to ~~freshwater receiving waterbodies~~ from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow [ <del>(MGD)</del> (GPD) ]	NA	NL	<del>1/Month</del> <sup>(4)</sup>	Estimate
Naphthalene (µg/l) <sup>(1)</sup>	NA	<del>10.0</del> <u>8.9</u>	<del>1/Month</del> <sup>(4)</sup>	Grab
Total Petroleum Hydrocarbons (mg/l) <sup>(2)</sup>	NA	15.0	<del>1/Month</del> <sup>(4)</sup>	Grab
pH (standard units)	6.0	9.0	<del>1/Month</del> <sup>(4)</sup>	Grab
<u>Benzene (µg/l)<sup>(3)</sup></u>	<u>NA</u>	<u>12.0</u>	<u>2/Month</u> <sup>(4)</sup>	<u>Grab</u>
<u>MTBE (methyl tert-butyl ether) (µg/l)<sup>(3)</sup></u>	<u>NA</u>	<u>15.0</u>	<u>2/Month</u> <sup>(4)</sup>	<u>Grab</u>

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Naphthalene shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part 136 (2007) or a current and appropriate EPA SW 846 Method.



<sup>(2)</sup>TPH shall be analyzed using [ EPA SW 846 Method 8015C (2000) or ] EPA SW 846 Method 8015C (2007) for diesel range organics, or by EPA SW 846 Method 8270D (2007). If Method 8270D (2007) is used, the lab must report the total of diesel range organics and polynuclear aromatic hydrocarbons.

<sup>(3)</sup>Monitoring for benzene and MTBE is only required for discharges into freshwaters listed as public water supplies. Benzene and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136) or EPA SW 846 Method.

<sup>(4)</sup>The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month.

The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first year's results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced to once per month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol shall be reduced to 1/quarter or the other parameters to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

~~4. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE — FRESHWATER RECEIVING WATERS LISTED AS PUBLIC WATER SUPPLIES.~~

~~During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.~~

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	2/Month <sup>4</sup>	Estimate
Naphthalene (µg/l) <sup>1</sup>	NA	10.0	2/Month <sup>4</sup>	Grab
Benzene (µg/l) <sup>2</sup>	NA	12.0	2/Month <sup>4</sup>	Grab
MTBE (methyl tert-butyl ether)(µg/l) <sup>2</sup>	NA	15.0	2/Month <sup>4</sup>	Grab
Total Petroleum Hydrocarbons (mg/l) <sup>3</sup>	NA	15.0	2/Month <sup>4</sup>	Grab
pH (standard units)	6.0	9.0	2/Month <sup>4</sup>	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>1</sup>Naphthalene shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part 136 (2007) or a current and appropriate EPA SW 846 Method.

<sup>2</sup>Benzene and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136, 2007) or EPA SW 846 Method.

<sup>3</sup>TPH shall be analyzed using EPA SW 846 Method 8015C (2007) for diesel range organics, or by EPA SW 846 Method 8270D (2007). If Method 8270D is used, the lab must report the total of diesel range organics and polynuclear aromatic hydrocarbons.

<sup>4</sup>Monitoring frequency shall be 2/month for the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring

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frequency shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

#### 5. ~~4.~~ DISCHARGES OF HYDROSTATIC TEST WATERS -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS <sup>(2)</sup>	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow [ <del>(MGD)</del> (GPD) ]	NA	NL	1/discharge	Estimate
pH (standard units)	6.0	9.0	1/discharge	Grab
Total Petroleum Hydrocarbons (TPH, mg/l) <sup>(1)</sup>	NA	15.0	1/discharge	Grab
Total Organic Carbon (TOC, mg/l)	NA	NL	1/discharge	Grab
Total Residual Chlorine (TRC, mg/l) [ <sup>(3)</sup> ]	NA	0.011 [ <sup>(3)</sup> ]	1/discharge	Grab
Total Suspended Solids (TSS)	NA	NL	1/discharge	Grab

NL = No limitation, monitoring required

NA = Not applicable

The equipment being tested shall be substantially free of debris, raw material, product, or other residual materials.

The discharge flow shall be controlled in such a manner that prevents flooding, erosion, or excessive sediment influx into the receiving water body.

<sup>(1)</sup>TPH is the sum of individual gasoline range organics and diesel range organics or TPH-GRO and TPH-DRO to be measured by [ EPA SW 846 Method 8015C (2000) or ] EPA SW 846 Method 8015C (2007) for gasoline and diesel range organics, or by EPA SW 846 Methods 8260B (1996) and 8270D (2007). ~~If the combination of Methods 8260B and 8270D is used, the lab must report the total of gasoline range organics, diesel range organics and polynuclear aromatic hydrocarbons .~~

<sup>(2)</sup>Discharge monitoring reports for hydrostatic test discharges are not required to be submitted to the department, but shall be retained by the owner for a period of at least three years from the completion date of the hydrostatic test.

Owners shall notify the department's regional office in writing within 14 days of the completion of the hydrostatic test discharge. The notification shall include the owner's name and address, the type of hydrostatic test that occurred, the physical location of the test work, and the receiving stream.

[ <sup>(3)</sup>Total Residual Chlorine limitation of 0.011 mg/l and chlorine monitoring only apply to discharges of test water that have been chlorinated or come from a chlorinated water supply. ]

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### 6. ~~GASOLINE CONTAMINATION — SALTWATER RECEIVING WATERS.~~

~~During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.~~

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Benzene (µg/l) <sup>1</sup>	NA	50.0	1/Month	Grab
Toluene (µg/l) <sup>1</sup>	NA	500.0	1/Month	Grab
Ethylbenzene (µg/l) <sup>1</sup>	NA	4.3	1/Month	Grab
Total Xylenes (µg/l) <sup>1</sup>	NA	74.0	1/Month	Grab
MTBE (methyl tert butyl ether) (µg/l) <sup>1</sup>	NA	440.0	1/Month	Grab
pH (standard units)	6.0	9.0	1/Month	Grab
Total Recoverable Lead (µg/l) <sup>2</sup>	NA	8.5	1/Month	Grab
Ethylene Dibromide (µg/l) <sup>2</sup>	NA	5.3	1/Month	Grab
1,2 Dichloroethane (µg/l) <sup>2</sup>	NA	990.0	1/Month	Grab
Ethanol (µg/l) <sup>3</sup>	NA	4100.0	1/Month <sup>3</sup>	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>1</sup>Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method 602 (40 CFR Part 136, 2007) or EPA SW 846 Method 8021B (1996).

<sup>2</sup>Monitoring for this parameter is required only when contamination results from leaded fuel. Lead shall be analyzed according to a current and appropriate EPA Wastewater Method 200.8 or 200.9 (40 CFR Part 136, 2007) or EPA SW 846 Method 7010 (2007). 1,2 dichloroethane and EDB (surface waters that are not public water supplies) should be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136 (2007).

<sup>3</sup>Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015C (2007) or EPA SW 846 Method 8260B (1996). Monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 1/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October and January.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### ~~7. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE -- SALTWATER RECEIVING WATERS.~~

~~During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.~~

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

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EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Naphthalene ( $\mu\text{g/l}$ ) <sup>1</sup>	NA	8.9	1/Month	Grab
Total Petroleum Hydrocarbons (mg/l) <sup>2</sup>	NA	15.0	1/Month	Grab
pH (standard units)	6.0	9.0	1/Month	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>1</sup>Naphthalene shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part 136 (2007) or a current and appropriate EPA SW 846 Method.

<sup>2</sup>TPH shall be analyzed using EPA SW 846 Method 8015C (2007) for diesel range organics or EPA SW 846 Method 8270D. If Method 8270D (2007) is used, the lab must report the total of diesel range organics and polynuclear aromatic hydrocarbons.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### 8. 5. CONTAMINATION BY CHLORINATED HYDROCARBON SOLVENTS -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow [ <del>(MGD)</del> (GPD) ]	NA	NL	1/Month <u>2/Month if public water supply<sup>(2)</sup></u>	Estimate <u>Estimate</u>
Chloroform (CAS # 67663), ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	<del>400.0</del> <u>80.0</u>	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
1,1 Dichloroethane (CAS # 75343) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	<del>4.0</del> <u>2.4</u>	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
1,2 Dichloroethane (CAS # 107062) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	3.8	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
1,1 Dichloroethylene (CAS # 75354) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	7.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
cis-1,2 Dichloroethylene (CAS # 159592) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	70.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab

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trans 1,2 Dichloroethylene (CAS # 156605) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	100.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
Methylene Chloride (CAS # 75092) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	5.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
Tetrachloroethylene (CAS # 127184) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	5.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
1,1,1 Trichloroethane (CAS # 71556) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	<del>112.0</del> <u>54.0</u>	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
1,1,2 Trichloroethane (CAS # 79005) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	5.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
Trichloroethylene (CAS # 79016) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	5.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
Vinyl Chloride (CAS # 75014) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	2.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
Carbon Tetrachloride (CAS # 56235) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	<del>2.5</del> <u>2.3</u>	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
1,2 Dichlorobenzene (CAS # 95501) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	15.8	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
Chlorobenzene (CAS # 108907) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	<del>3.0</del> <u>3.4</u>	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
Trichlorofluoromethane (CAS # 75694) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	5.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
Chloroethane (CAS # 75003) ( $\mu\text{g/l}$ ) <sup>(1)</sup>	NA	3.6	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab
pH (standard units)	6.0	9.0	1/Month 2/Month if public water supply <sup>(2)</sup>	Grab Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>This constituent shall be analyzed by a current and appropriate gas chromatograph/mass spectroscopy method from EPA SW 846 or the EPA Wastewater Method series from 40 CFR Part 136 (~~2007~~).

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<sup>(2)</sup>Monitoring frequency for discharges into surface waters listed as public water supplies shall be 2/month for the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations, or a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date.

## Part I

### B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. The permittee shall sample each permitted outfall each calendar month in which a discharge occurs. When no discharge occurs from an outfall during a calendar month, the discharge monitoring report for that outfall shall be submitted indicating "No Discharge."
3. O & M Manual. If the permitted discharge is through a treatment works, within 30 days of coverage under this general permit, the permittee shall develop and maintain on site, an Operations and Maintenance (O & M) Manual for the treatment works permitted herein. This manual shall detail practices and procedures which will be followed to ensure compliance with the requirements of this permit. The permittee shall operate the treatment works in accordance with the O & M Manual. The manual shall be made available to the department upon request.
4. Operation schedule. The permittee shall construct, install and begin operating the treatment works described in the registration statement prior to discharging to surface waters. The permittee shall notify the department's regional office within five days after the completion of installation and commencement of operation.
5. Materials storage. Except as expressly authorized by this permit or another permit issued by the board, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.
6. If the permittee discharges to surface waters through a municipal separate storm sewer system, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system in writing of the existence of the discharge and provide the following information: the name ~~and location~~ of the facility, a contact person and ~~telephone~~ phone number, the location of the discharge, the nature of the discharge, and the ~~number of outfalls~~ facility's VPDES general permit number. A copy of such notification shall be provided to the department. Discharge Monitoring Reports (DMRs) required to be submitted under this permit

shall be submitted to both the department and the owner of the municipal separate storm sewer system.

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

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

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

10. Discharges to waters with an approved "total maximum daily load" (TMDL). Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

11. Termination of coverage. Provided that the ~~department~~ board agrees that the discharge covered under this general permit is no longer needed, the permittee may request termination of coverage under the general permit, for the entire facility or for specific outfalls, by submitting a request for termination of coverage. This request for termination of coverage shall be sent to the department's regional office with appropriate documentation or references to documentation already in the department's possession. Upon the permittee's receipt of the regional director's approval, coverage under this general permit will be terminated. Termination of coverage under this general permit does not relieve the permittee of responsibilities under other board regulations or directives.

## Part II

### Conditions Applicable To All VPDES Permits

#### A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

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

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

## B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place, and time of sampling or measurements;
- b. The individuals who performed the sampling or measurements;
- c. The dates and times analyses were performed;
- d. The individual or individuals who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

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

## C. Reporting monitoring results.

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

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

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

submitted in the DMR or reporting form specified by the department.

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

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

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

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

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;

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

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

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

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

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

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

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

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

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

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone ~~or by~~ FAX, \_\_\_\_\_ or \_\_\_\_\_ online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/PollutionReportingForm.aspx>. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

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

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

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

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

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

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

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

K. Signatory requirements.



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

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

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

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

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

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

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

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual

or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~480~~ 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act.

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Except as provided in permit conditions on "bypassing" (Part II U) and "upset" (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

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

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

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

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

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

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

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

a. An upset occurred and that the permittee can identify the 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 Part II I; and

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

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

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

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

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law any substances or parameters at any location.

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

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

Y. Transfer of permits.

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

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

- a. The current permittee notifies the department ~~at least~~ within 30 days ~~in advance~~ of the ~~proposed~~ transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

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

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-120)

Method	Cite
<del>200.8</del>	<del>40-CFR-136 (2007)</del>
<del>200.9</del>	<del>40-CFR-136 (2007)</del>
<del>504.1</del>	<del>EPA 600/R-95-131 (1995)</del>
<del>7010</del>	<del>EPA SW 846 (2007)</del>
<del>8011</del>	<del>EPA SW 846 (1992)</del>
<del>8015C</del>	<del>EPA SW 846 (2007)</del>
<del>8021B</del>	<del>EPA SW 846 (1996)</del>
<del>8260B</del>	<del>EPA SW 846 (1996)</del>
<del>8270D</del>	<del>EPA SW 846 (2007)</del>
<del>9040C</del>	<del>EPA SW 846 (2004)</del>

Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, U.S. Environmental Protection Agency, Third Edition as amended by Final Updates I, II, IIA, IIB, IIIA, IIIB, IVA, and IVB, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847, <http://www.epa.gov/SW-846>.

[Method 7010 \(February 2007\)](#)

[Method 8011 \(July 1992\)](#)

[ [Method 8015C \(November 2000\)](#) ]

[Method 8015C \(February 2007\)](#)

[Method 8021B \(December 1996\)](#)

[Method 8260B \(December 1996\)](#)

[Method 8270D \(February 2007\)](#)

[Method 9040C \(November 2004\)](#)

[ Methods for the Determination of Organic Compounds in Drinking Water, Supplement III, EPA Publication 600/R-95/131 (August 1995), U.S. Environmental Protection Agency, Office of Research and Development, Washington, D.C. 20460.

[Method 504.1, rev. 1.1 \(August 1995\)](#) ]

VA.R. Doc. No. R11-2774; Filed September 28, 2012, 4:10 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and

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receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

**Title of Regulation: 9VAC25-196. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less (amending 9VAC25-196-10 through 9VAC25-196-70; adding 9VAC25-196-15).**

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

**Effective Date:** March 2, 2013.

**Agency Contact:** Burton Tuxford, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4086, FAX (804) 698-4032, TTY (804) 698-4021, or email burton.tuxford@deq.virginia.gov.

**Summary:**

*This rulemaking revises and reissues the existing general permit, which expires on March 1, 2013, to continue its availability as a permitting option for this type of discharger. This general permit establishes effluent limitations and monitoring requirements for point source discharges of 50,000 gallons per day or less of noncontact cooling water and cooling equipment blow down to surface waters. The changes to the regulation make this general permit similar to other general permits issued recently and clarify and update permit limits and conditions.*

*Substantive changes (i) add two reasons why a facility's discharge would not be eligible for coverage; (ii) add language to allow for administrative continuation of coverage; (iii) add effluent limitations for copper, zinc, and silver for both freshwater and saltwater receiving streams; (iv) add special conditions for the required number of significant digits for reporting monitoring results, a requirement to implement measures and controls consistent with a TMDL requirement when the facility is subject to an approved TMDL, the notice of termination requirements, a requirement to control discharges as necessary to meet water quality standards, and the permittee's responsibility to comply with any other federal, state, or local statute, ordinance, or regulation; and (v) modify the municipal storm sewer system (MS4) notification special condition to require the permittee to submit discharge monitoring reports to the owner of the MS4 if the permittee discharges to the MS4.*

**9VAC25-196-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in § 62.1-44.2 et seq. of the Code of Virginia (State Water Control Law), and 9VAC25-31-10 et seq. (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Blowdown" means a discharge of recirculating water from any cooling equipment or cooling process in order to maintain a desired quality of the recirculating water. Boiler blowdown is excluded from this definition.

"Cooling water" means water used for cooling which does not come into direct contact with any raw product, intermediate product (other than heat) or finished product. For the purposes of this general permit, cooling water can be generated from any cooling equipment blowdown or produced as a result of any noncontact cooling process through either a single pass (once through) or recirculating system.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

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

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

**9VAC25-196-15. Applicability of incorporated references based on the dates that they became effective.**

Except as noted, when a regulation of the U.S. 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, 2012, with the effective date as published in the Federal Register notice or March 2, 2013, whichever is later.

**9VAC25-196-40. Effective date of the permit.**

This general permit will become effective on March 2, 2008 2013. This general permit will expire ~~five years from the effective date~~ on March 1, 2018. This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-196-50 ~~and the receipt of this general permit.~~

**9VAC25-196-50. Authorization to discharge.**

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner ~~files~~ submits and receives acceptance by the board of the registration statement of 9VAC25-196-60, ~~files~~ submits the required permit fee, and complies with the effluent limitations and other requirements of 9VAC25-196-70, and provided that: ~~the board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.~~

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

1. The owner ~~has not been~~ is required to obtain an individual permit ~~according to~~ in accordance with 9VAC25-31-170 B 3- of the VPDES Permit Regulation;
2. The owner ~~shall not~~ is proposing to discharge to Class V stockable trout waters, Class VI natural trout waters, or any state waters specifically named in other board regulations ~~or policies which that~~ prohibit such discharges. ~~Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.;~~
3. The owner ~~shall neither use tributyltin and any chemical additives containing tributyltin, nor use any hexavalent chromium based water treatment chemicals in the cooling water systems. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30;~~
4. The owner ~~shall not use groundwater remediation wells as the source of cooling water~~ The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

D. The owner shall not use tributyltin, any chemical additives containing tributyltin, or any hexavalent chromium-based water treatment chemicals in the cooling water systems.

E. The owner shall not use groundwater remediation wells as the source of cooling water.

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

G. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the cooling water discharges general permit issued in 2008 and that submits a complete registration statement on or before March 2, 2013, is authorized to continue to discharge under the terms of the 2008 general permit until such time as the board either:

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

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

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

- a. Initiate enforcement action based upon the general permit that has been continued;
- b. Issue a notice of intent to deny coverage under the amended general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued general permit or be subject to enforcement action for discharging without a permit;
- c. Issue an individual permit with appropriate conditions;
- or
- d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

**9VAC25-196-60. Registration statement.**

The owner shall file a complete general VPDES permit registration statement for cooling water discharges. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing discharge covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing discharge not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information: A. Deadlines for submitting registration statements. The owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for cooling water discharges of 50,000 gallons per day or less.

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

2. Existing facilities.

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

b. Any owner that was authorized to discharge under the general VPDES permit that became effective on March 2, 2008, and who intends to continue coverage under this

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general permit shall submit a complete registration statement to the board on or before February 1, 2013.

B. Late registration statements. [ ~~Late registration Registration~~ ] statements will be accepted [ after March 2, 2013 ], but authorization to discharge will not be retroactive. Owners described in subdivision A 2 b of this section that submit [ ~~late~~ ] registration statements [ after February 1, 2013, ] are authorized to discharge under the provisions of 9VAC25-196-50 G if a complete registration statement is submitted on or before March 2, 2013.

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

1. Facility name and address, owner name ~~and~~, mailing address ~~and~~, telephone number, and email address (if available);
2. Operator name, mailing address, ~~and~~ telephone number, and email address (if available) if different from owner;
3. Does the facility currently have a VPDES permit? Permit Number if yes;
4. Listing of point source discharges that are not composed entirely of cooling water;
5. Listing of type and size (tons) of cooling equipment or noncontact cooling water processes;
6. The following information if any chemical or nonchemical treatment, or both, is employed in each of the cooling water systems:
  - a. Description of the ~~chemical or nonchemical~~ treatment, ~~or both~~, to be employed (both chemical and nonchemical) and its purpose; for chemical additives other than chlorine, provide the information prescribed in subdivisions 6 b, c, d, e and f;
  - b. Name and manufacturer of each additive used;
  - c. List of active ingredients and percent composition;
  - d. Proposed schedule and quantity of chemical usage, and either an engineering analysis, or a technical evaluation of the active ingredients, to determine the concentration in the discharge;
  - e. Available aquatic toxicity information for each proposed additive used; and
  - f. Any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation of the discharge;
7. Description of any type of treatment or retention being provided to the wastewater before discharge (i.e. retention ponds, settling ponds, etc.);
8. A schematic drawing of the cooling water equipment that shows the source of the cooling water, its flow through the facility, and each cooling water discharge point;
9. ~~For cooling waters with a direct discharge to surface waters, a~~ A USGS 7.5 minute topographic map or

equivalent computer generated map extending to at least one mile beyond the property boundary. The map must show the outline of the facility and the location of each of its existing and proposed intake and discharge points, and must include all springs, rivers and other surface water bodies;

10. The following discharge information:

- a. A listing of all cooling water discharges by a unique number;
- b. The source of cooling water for each discharge;
- c. An estimate of the maximum daily flow in gallons per day for each discharge;
- d. The name of the waterbody receiving direct discharge or discharge through the municipal separate storm sewer system; and
- e. The duration and frequency of the discharge for each separate discharge point; continuous, intermittent, or seasonal;
- f. ~~The name and contact information of the owner of the municipal separate storm sewer system that receives the discharge, if applicable.~~

11. Whether the facility will discharge to a municipal separate storm sewer system (MS4). If so, the name of the MS4 owner. The owner of the facility shall notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under the general permit and shall copy the DEQ regional office with the notification. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number; and

12. 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.

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

## **9VAC25-196-70. General permit.**

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

General Permit No: VAG25  
 Effective Date: March 2, ~~2008~~ 2013  
 Expiration Date: March 1, ~~2013~~ 2018  
**GENERAL PERMIT FOR NONCONTACT COOLING  
 WATER DISCHARGES OF 50,000 GALLONS PER DAY  
 OR LESS**

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of noncontact cooling water discharges of 50,000 gallons per day or less are

authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except Class V stockable trout waters, Class VI natural trout waters, and those specifically named in board regulations ~~or policies~~ which ~~that~~ prohibit such discharges. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

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

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge noncontact cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s): outfall(s): \_\_\_\_\_.

~~Such discharges~~ 1. Effluent limitations and monitoring requirements for the first four years of the permit term (March 2, 2013, through March 1, 2017). Discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	<sup>(1)</sup>	NA	1/3 Months	Immersion Stabilization
pH (SU)	<del>9</del> <u>9.0</u> <sup>(2)</sup>	<del>6</del> <u>6.0</u> <sup>(2)</sup>	1/3 Months	Grab
Ammonia-N <sup>(3)</sup> (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine <sup>(3)</sup> (mg/l)	Nondetectable	NA	1/3 Months	Grab
Hardness (mg/l CaCO <sub>3</sub> ) <sup>(2)</sup>	NL	NA	1/3 Months	Grab
Total <del>Dissolved</del> Recoverable Copper <sup>(4)</sup> (µg/l)	NL	NA	1/3 Months	Grab
Total <del>Dissolved</del> Recoverable Zinc <sup>(4)</sup> (µg/l)	NL	NA	1/3 Months	Grab
Total <del>Dissolved</del> Recoverable Silver <sup>(4), (5)</sup> (µg/l)	NL	NA	1/3 Months	Grab
Total Phosphorus <sup>(6)</sup> (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

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<sup>(2)</sup>Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

<sup>(3)</sup>Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls directly discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.

<sup>(4)</sup>A specific ~~analysis~~ analytical method is not specified for these materials; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate analysis method to meet the Max QL value shall be selected from the following list of EPA methods to achieve a quantification level that is less than the target level for the material under consideration: using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

Material	EPA Method	Target Level Max QL (µg/l)
Copper	200.7, 200.8, 200.9, 1638, 1640	9.2 1.0
Zinc	289.2, 200.7, 200.8, 1638, 1639	65.0 50.0
Silver	200.7, 200.8, 200.9, 1638	1.2 1.0

Quality control/assurance information shall be submitted to document that the required ~~quantification level~~ QL has been attained.

<sup>(5)</sup>Silver monitoring is only required where a Cu/Ag anode is used.

<sup>(6)</sup>Phosphorus monitoring is only required where an additive containing phosphorus is used.

<sup>(7)</sup>Hardness monitoring is only required for discharges to freshwater streams, perennial streams, or dry ditches.

2. Effluent limitations and monitoring requirements for the last year of the permit term (March 2, 2017, through March 1, 2018), discharges to freshwater receiving streams. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	<sup>(1)</sup>	NA	1/3 Months	Immersion Stabilization
pH (SU)	9.0 <sup>(2)</sup>	6.0 <sup>(2)</sup>	1/3 Months	Grab
Ammonia-N <sup>(3)</sup> (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine <sup>(3)</sup> (mg/l)	Nondetectable	NA	1/3 Months	Grab
Total Recoverable Copper <sup>(4)</sup> (µg/l)	9.0	NA	1/3 Months	Grab
Total Recoverable Zinc <sup>(4)</sup> (µg/l)	120	NA	1/3 Months	Grab
Total Recoverable Silver <sup>(4), (5)</sup> (µg/l)	3.4	NA	1/3 Months	Grab
Total Phosphorus <sup>(6)</sup> (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.



<sup>(2)</sup>Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

<sup>(3)</sup>Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls directly discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.

<sup>(4)</sup>A specific analytical method is not specified; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

Material	Max QL (µg/l)
Copper	1.0
Zinc	50.0
Silver	1.0

Quality control/assurance information shall be submitted to document that the required QL has been attained.

<sup>(5)</sup>Silver monitoring is only required where a Cu/Ag anode is used.

<sup>(6)</sup>Phosphorus monitoring is only required where an additive containing phosphorus is used.

3. Effluent limitations and monitoring requirements for the last year of the permit term (March 2, 2017, through March 1, 2018), discharges to saltwater receiving streams. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	<sup>(1)</sup>	NA	1/3 Months	Immersion Stabilization
pH (SU)	9.0 <sup>(2)</sup>	6.0 <sup>(2)</sup>	1/3 Months	Grab
Ammonia-N <sup>(3)</sup> (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine <sup>(3)</sup> (mg/l)	Nondetectable	NA	1/3 Months	Grab
Total Recoverable Copper <sup>(4)</sup> (µg/l)	6.0	NA	1/3 Months	Grab
Total Recoverable Zinc <sup>(4)</sup> (µg/l)	81	NA	1/3 Months	Grab
Total Recoverable Silver <sup>(4), (5)</sup> (µg/l)	1.9	NA	1/3 Months	Grab
Total Phosphorus <sup>(6)</sup> (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

<sup>(2)</sup>Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

<sup>(3)</sup>Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls directly discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of

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cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.

<sup>(4)</sup>A specific analytical method is not specified; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

<u>Material</u>	<u>Max QL (µg/l)</u>
<u>Copper</u>	<u>1.0</u>
<u>Zinc</u>	<u>50.0</u>
<u>Silver</u>	<u>1.0</u>

Quality control/assurance information shall be submitted to document that the required QL has been attained.

<sup>(5)</sup>Silver monitoring is only required where a Cu/Ag anode is used.

<sup>(6)</sup>Phosphorus monitoring is only required where an additive containing phosphorus is used.

## B. Special conditions.

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

2. No discharges other than cooling water, as defined, are permitted under this general permit.

3. The use of any chemical additives not identified in the registration statement, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ before any changes are made to the chemical ~~and/or~~ or nonchemical treatment technology employed in the cooling water system. Requests for approval of the change shall be made in writing and shall include the following information:

a. Describe the chemical ~~and/or~~ or nonchemical treatment to be employed and its purpose; if chemical additives are used, provide the information prescribed in subdivisions 3 b, c, d, e and f;

b. Provide the name and manufacturer of each additive used;

c. Provide a list of active ingredients and percentage of composition;

d. Give the proposed schedule and quantity of chemical usage, and provide either an engineering analysis, or a technical evaluation of the active ingredients, to determine the concentration in the discharge;

e. Attach available aquatic toxicity information for each additive proposed for use; and

f. Attach any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation for the discharge.

4. Where cooling water is discharged through a municipal storm sewer system to surface waters, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system in writing of the existence of the discharge and

provide the following information: the name of the facility, a contact person and phone number, the nature of the discharge, ~~number of the outfalls, and~~ the location of the discharge, and the facility's VPDES general permit number. A copy of such notification shall be provided to the department. Discharge Monitoring Reports (DMRs) required by this permit shall be submitted to both the department and the owner of the municipal separate storm sewer system.

5. The permittee shall at all times properly operate and maintain all cooling water systems. Inspection shall be conducted for each cooling water unit by the plant personnel at least once per year with reports maintained on site.

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

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

(1) One hundred micrograms per liter (100 µg/l);

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 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;

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

(4) The level established by the board in accordance with 9VAC25-31-220 F.

b. 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 this permit, if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l);

- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board in accordance with 9VAC25-31-220 F.

7. Geothermal systems using groundwater and no chemical additives. Geothermal systems using groundwater and no chemical additives may be eligible for reduced monitoring requirements.

If a geothermal system was covered by the previous cooling water general permit, and the monitoring results from the previous permit term demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to reduce the monitoring to once in the first monitoring quarter of the first year of this permit term.

Owners of new geothermal systems, and previously unpermitted geothermal systems that receive coverage under this permit shall submit monitoring results to the department for the first four monitoring quarters after coverage begins. If the monitoring results demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to suspend monitoring for the remainder of the permit term.

Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, upon issuance of the letter or notice, or initiation of the enforcement action the monitoring frequency shall revert to 1/3 months and remain in effect until the permit's expiration date.

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

9. Discharges to waters with an approved "total maximum daily load" (TMDL). Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

10. Notice of termination.

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

- (1) Operations have ceased at the facility and there are no longer cooling water discharges from the facility;
- (2) A new owner has assumed responsibility for the facility (NOTE: A notice of termination does not have to

be submitted if a VPDES Change of Ownership Agreement form has been submitted);

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

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

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

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

(2) Facility name and location;

(3) VPDES cooling water discharges general permit number; and

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

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility and there are no longer cooling water discharges from the facility;

(c) A statement indicating that all cooling water discharges have been covered by an individual VPDES permit; or

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

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

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

e. The notice of termination shall be submitted to the DEQ regional office serving the area where the cooling water discharge is located.

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

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

## Part II

### Conditions Applicable to All VPDES Permits

#### A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.
4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

#### B. Records.

1. Records of monitoring information shall include:
  - a. The date, exact place and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - c. The date(s) and time(s) analyses were performed;
  - d. The individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the board.

#### C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another

reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

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

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

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

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

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge

immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

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

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

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

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

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

- a. Any unanticipated bypass; and
  - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office. Reports may be made by telephone ~~or by fax~~, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/PollutionReportingForm.aspx>. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

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

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

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

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

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

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices,

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and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

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

## K. Signatory requirements.

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

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

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

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

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

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

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of

plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

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

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to 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."

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new registration statement at least ~~90~~ 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall

not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

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

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

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. 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 ensure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

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

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

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

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

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

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

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

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

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

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

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.
2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:
  - a. The current permittee notifies the department ~~at least within 30 days in advance~~ of the ~~proposed~~ transfer of the title to the facility or property;
  - b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
  - c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or

revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

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

VA.R. Doc. No. R11-2742; Filed September 28, 2012, 4:53 p.m.

## Proposed Regulation

Title of Regulation: **9VAC25-600. Eastern Virginia Ground Water Management Area (amending 9VAC25-600-10, 9VAC25-600-20).**

Statutory Authority: § 62.1-256 of the Code of Virginia.

Public Hearing Information:

November 26, 2012 - 1:30 p.m. - James City County, Board Room, Building F, 101 Mounts Bay Road, Williamsburg, VA

December 4, 2012 - 2 p.m. - Spotsylvania County, Holbert Building, Board of Supervisors Meeting Room, 9104 Courthouse Road, Spotsylvania, VA

Public Comment Deadline: January 11, 2013.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4234, FAX (804) 698-4346, or email [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.virginia.gov).

Basis: Section 62.1-256 of the Code of Virginia authorizes the Board of Health to adopt regulations to administer and enforce the Ground Water Management Act of 1992 (§ 62.1-254 et seq.) of the Code of Virginia. The designation process is outlined in 9VAC25-610-70 and 9VAC25-610-80.

Purpose: Groundwater levels in the undesignated portion of Virginia's coastal plain are continuing to decline. Impacts from groundwater withdrawals are propagating along the fall line into the undesignated portion of Virginia's coastal plain and have the potential to interfere with wells in these areas without assigned mitigation responsibilities. Given current groundwater declines, the entire coastal plain aquifer system must be managed to maintain a sustainable future supply of groundwater for the protection of the health, safety, or welfare of the citizens in the Eastern Virginia Groundwater Management Area.

Substance: The regulations are being amended to expand the groundwater management area to include localities that are included in Virginia's coastal plain, with boundaries extending westward to Interstate 95. The term "ground water" is being revised in the regulation to the term "groundwater" to be consistent with common usage and the use of the term by United States Geological Survey (USGS).

Issues: The primary advantage to the public will be that these regulations will manage groundwater resources sustainably within the entire coastal plain. This will ensure that Virginia's



groundwater resources are being managed in order to maintain resource availability for future Virginians. There are no disadvantages to the public from managing the groundwater resource.

The primary advantage to the Commonwealth is that groundwater resources will be comprehensively managed. There are no disadvantages to the Commonwealth from managing the groundwater resource.

With the expansion of the groundwater management area, additional withdrawers of groundwater will be required to obtain groundwater withdrawal permits. These permits are issued based on demonstrated need for groundwater, require water conservation and mitigation of impacts, and specify maximum amounts of groundwater that may be withdrawn. All withdrawers of groundwater, unless exempted by statute, are required to obtain a permit, which places additional regulations on withdrawers of groundwater occurring within the management area.

#### Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board proposes to expand the Eastern Virginia Groundwater Management Area to include the counties of Essex, Gloucester, King George, King and Queen, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland, and the areas of Arlington, Caroline, Fairfax, Prince William, Spotsylvania, and Stafford counties east of Interstate 95.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. The State Water Control Board proposes to expand the Eastern Virginia Groundwater Management Area to include the counties of Essex, Gloucester, King George, King and Queen, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland, and the areas of Arlington, Caroline, Fairfax, Prince William, Spotsylvania, and Stafford counties east of Interstate 95. The proposed expansion is quite large which is about the size of the current management area.<sup>1</sup>

Groundwater is a valuable economic resource due to its many beneficial uses. These include, but are not limited to provision of drinking water; provision of water for crop irrigation, for livestock, for industrial and commercial processes, for aquaculture, for fire protection, and for drought relief; provision of non-use services (e.g. wetlands supported by groundwater, bequest motivations); and provision of supplemental discharge to surface water supplies.

According to Department of Environmental Quality (DEQ) groundwater levels in the proposed expansion areas are continuing to decline two to four feet per year. Since the entire coastal plain aquifer system is interconnected, the

system must be managed as a whole to maintain a sustainable future groundwater supply.

With the proposed changes, entities withdrawing 300,000 gallons or more of groundwater per month will be required to obtain a permit. The permits will be for a period of ten years. The levels of initial permitted withdrawals will be based on the historical withdrawal levels to make sure the current users are not forced to reduce their usage for a period of ten years. After the initial ten-year period, the current users may be required to reduce their usage or no permit may be issued depending on the review of the application.

The proposed regulations will introduce compliance costs on the regulated users of groundwater. There will be an application fee of \$1,200 for initial permits based on historic groundwater withdrawals for a ten-year permit term. No fees are required for agricultural withdrawals. Since 111 known entities are expected to be affected, approximately \$133,200 in total application fees will be paid by the regulated entities during the initial ten-year period. After the initial ten-year period, application fee for a subsequent permit is \$6,000.

In some cases an aquifer test may be required. This test is needed when an applicant disagrees with the area of impact determined by DEQ or the model used for evaluating drawdown impacts is known to have problems predicting drawdowns in a specific area. The cost of an aquifer test typically ranges from \$10,000 to \$25,000.

The new users are required to provide a geophysical log which is estimated to cost approximately \$1,200, but may vary depending on the depth of the well. If a camera survey is required, costs may range from \$1,000 to \$2,000 depending on whether the pump must be removed and the depth of the well.

When there is enough uncertainty whether a proposed withdrawal can meet the drawdown criteria, monitoring wells may be required. The cost of monitoring wells can range from \$50,000 to \$100,000 depending on the depth and number of wells.

In cases where no permits can be issued, the users will have to absorb the cost differences between the groundwater and the alternate water source chosen. Alternate water sources may include development of surface water reservoirs, withdrawals from existing lakes or rivers, desalination of salt water, reuse of water for non-potable uses, or water conservation measures. The size of the economic effects in these cases will primarily depend on the differential cost of the alternate water source and the quantity of water needed.

Also, according to DEQ, there are 27 known local government withdrawals. These local governments may pass some or all of the additional compliance costs onto their end users. The ability of an entity passing additional regulatory compliance costs on their customers is generally determined by the strength of the demand for the product, which is groundwater in this case.

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## Regulations

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The proposed regulations will also introduce administrative costs on DEQ due to the additional permit workload anticipated. DEQ estimates that approximately six full-time staff will be needed to accommodate the additional workload. At a cost of \$40,000 per full-time position, the total staffing costs is expected to be about \$240,000 per year. However, since the current users will be able to continue to withdraw their historical usage levels, DEQ anticipates that the need for the additional staff may be phased in over time.

The main benefit of the proposed regulations is to achieve a sustainable future groundwater supply. As mentioned before, DEQ estimates that the groundwater levels in the proposed expansion areas are continuing to decline two to four feet per year. The recharge rate, on the other hand, is estimated to be 1/10th of an inch per year for some aquifers. Thus, it takes a very long time for groundwater to recharge to its pre-withdrawal levels. Furthermore, significant reductions in groundwater levels may lead to dewatering of aquifers, which causes irreversible damage to the aquifers.

Also, since the entire coastal plain aquifer system is interconnected, withdrawals from one well may affect others. According to DEQ, the mechanics of Virginia's coastal plain aquifer system is such that groundwater levels start declining along the fall line first (approximately Interstate 95 line) and propagate toward the Atlantic Ocean. For example, a major users withdrawal in the Tidewater region may reduce the level of groundwater first in Richmond area and then in Tidewater area. Thus, the protection of groundwater levels is anticipated to benefit the areas closer to the fall line more than the others since they are at more risk.

Furthermore, the proposed regulations are expected to mitigate negative externalities that could exist in an unregulated groundwater management area and lead to an improved allocation of groundwater among different users. When actions of an individual impose involuntary costs on somebody else, a negative externality is said to exist. In the example given, a groundwater user in Tidewater may force the user in Richmond to develop alternate water sources and impose involuntary costs.

A negative externality obscures the true price of a commodity and consequently leads to inefficient allocation of that resource. For example, the user in Tidewater would not pay the full cost of his or her usage and would tend to consume more groundwater than he or she would if he or she was paying the full price, which would include the costs imposed on the user in Richmond. On the other hand, the user in Richmond would tend to consume less than the optimal level as he or she is paying more than what the resource would have cost if there were no externalities. As the proposed regulations will reduce negative externalities and bring the actual cost of groundwater closer to its true cost, an improvement in the efficient allocation of groundwater resources in the proposed groundwater management areas and

possibly in some of the current management areas may be expected.

**Businesses and Entities Affected.** There are 111 known users of groundwater withdrawing 300,000 gallons or more in the proposed expansion area. Of these, 27 are local governments.

**Localities Particularly Affected.** The proposed expansion of the Eastern Virginia Groundwater Management Area includes the counties of Essex, Gloucester, King George, King and Queen, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland, and the areas of Arlington, Caroline, Fairfax, Prince William, Spotsylvania, and Stafford counties east of Interstate 95.

**Projected Impact on Employment.** The demand for labor to review applications by DEQ and to prepare the applications for the users by the consultants is expected to increase. It is conceivable that a sustainable future supply of groundwater may lead to a sustainable economic activity and have a positive impact on demand for labor in the long term. However, the withdrawals of new users or of existing users after the initial ten-year period may be limited or prohibited in the expanded management area. If such reduction or prohibition of groundwater withdrawals causes some economic activities to slow down or cease, a reduction in demand for labor may result.

**Effects on the Use and Value of Private Property.** Similarly, the permit fees and compliance costs may reduce the use and value of private property in the proposed expansion areas. It is conceivable that a sustainable future supply of groundwater may preserve the use and value of private property in the long term. However, the withdrawals of new users or of existing users after the initial ten-year period may be limited or prohibited in the expanded management area. If such reduction or prohibition of groundwater withdrawals occurs, a negative impact on the use and value of private property may be expected.

**Small Businesses: Costs and Other Effects.** Of the 111 known entities using more than 300,000 gallons of groundwater, 8 are estimated to be small businesses. The costs and other effects on the small businesses are the same as the ones discussed above which include permit fees and costs and added cost of alternate source of water if no permit is issued for groundwater.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There is no known alternative that accomplishes the same goals.

**Real Estate Development Costs.** If a real estate development project relies on groundwater as a resource, permit fees, other permit costs, and the added cost of alternate source of water may contribute to the development costs of the real estate project. Otherwise, no significant effect on real estate development costs is expected.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed

regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 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.

<sup>1</sup> Current Eastern Virginia Groundwater Management Area includes the counties of Charles City, Isle of Wight, James City, King William, New Kent, Prince George, Southampton, Surry, Sussex, and York; the areas of Chesterfield, Hanover, and Henrico east of Interstate 95; and the cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

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

Summary:

*The proposed amendments expand the Eastern Virginia Groundwater Management Area to include the counties of Essex, Gloucester, King George, King and Queen, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland, and those areas of Arlington, Caroline, Fairfax, Prince William, Spotsylvania, and Stafford counties that lie east of Interstate 95.*

CHAPTER 600  
EASTERN VIRGINIA ~~GROUND WATER~~  
GROUNDWATER MANAGEMENT AREA

**9VAC25-600-10. Definitions.**

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

"Act" means the ~~Groundwater~~ Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia).

"Area" means the Eastern Virginia Groundwater Management Area.

"Board" means the State Water Control Board.

~~"Ground water~~ "Groundwater management area" means a geographically defined ~~ground water~~ groundwater area in which the board has deemed the levels, supply or quality of ~~ground water~~ groundwater to be adverse to public welfare, health and safety.

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

**9VAC25-600-20. Declaration of ~~ground—water~~ groundwater management area.**

A. The board hereby orders the declaration of the eastern part of Virginia as a ~~ground water~~ groundwater management area. This area shall be known as the Eastern Virginia Groundwater Management Area.

B. The area encompasses the counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of Arlington, Caroline, Chesterfield, Fairfax, Hanover, and Henrico, Prince William, Spotsylvania, and Stafford counties east of Interstate 95; and the cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

C. All aquifers located between the land surface and basement rock within the geographic area defined will be included in the area and will be subject to the corrective controls set forth in Act.

VA.R. Doc. No. R09-1782; Filed October 1, 2012, 1:43 p.m.

**Proposed Regulation**

Title of Regulation: **9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-10, 9VAC25-610-20, 9VAC25-610-40, 9VAC25-610-50, 9VAC25-610-60, 9VAC25-610-70, 9VAC25-610-80, 9VAC25-610-90, 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, 9VAC25-610-130, 9VAC25-610-140, 9VAC25-610-150, 9VAC25-610-160, 9VAC25-610-170, 9VAC25-610-190, 9VAC25-610-220, 9VAC25-610-240, 9VAC25-610-250, 9VAC25-610-260, 9VAC25-610-270, 9VAC25-610-280, 9VAC25-610-290, 9VAC25-610-300, 9VAC25-610-310, 9VAC25-610-320, 9VAC25-610-330, 9VAC25-610-340, 9VAC25-610-350, 9VAC25-610-370, 9VAC25-610-380, 9VAC25-610-390; adding 9VAC25-610-85, 9VAC25-610-92, 9VAC25-610-94, 9VAC25-610-96, 9VAC25-610-98, 9VAC25-610-102, 9VAC25-610-104,**

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# Regulations

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**9VAC25-610-106, 9VAC25-610-108; repealing 9VAC25-610-400).**

Statutory Authority: § 62.1-256 of the Code of Virginia.

Public Hearing Information:

November 26, 2012 - 1:30 p.m. - James City County, Board Room, Building F, 101 Mounts Bay Road, Williamsburg, VA

December 4, 2012 - 2 p.m. - Spotsylvania County, Holbert Building, Board of Supervisors Meeting Room, 9104 Courthouse Road, Spotsylvania, VA

Public Comment Deadline: January 11, 2013.

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

Basis: Section 62.1-256 of the Code of Virginia authorizes the State Water Control Board to adopt regulations to administer and enforce the Ground Water Management Act of 1992 (§ 62.1-254 et seq.) of the Code of Virginia.

Purpose: The proposed amendments are necessary to protect the health, safety, or welfare of citizens in both the Eastern Virginia and Eastern Shore Ground Water Management Areas in order to ensure the availability of ground water for current and future beneficial uses. Groundwater levels in parts of the coastal plain are declining to the point that they are nearing aquifer tops in a number of localities along the fall line. In addition, levels are declining generally throughout the rest of the coastal plain. The declines in groundwater levels in the current Eastern Virginia Ground Water Management Area have created a situation in which many existing permitted users are unable to renew their withdrawal permits at permitted amounts when they exceed current use. Also, new or expanded applications are a challenge to permit. Withdrawing groundwater to the point that it falls below the top of the aquifer can lead to subsidence or impair the aquifer's ability to store water in the future, potentially impacting the availability of groundwater for existing users and severely compromising growth and development potential throughout the management area.

Over the years our understanding of the coastal plain aquifer system has changed. In addition, we need to address what constitutes an adequate margin of safety and what technical criteria are defensible for determining whether or not to issue a permit and for what amounts.

Substance: The regulations are amended for consistency with other water permit program regulations. The application requirements for different types of permits and situations have been separated into different regulatory sections to provide more clarity concerning the requirements for complete applications. Previously, different types of permits were listed in one section, making the regulations confusing and difficult to use.

Throughout the regulation, the term "ground water" has been changed to the term "groundwater" to be consistent with common usage and terminology of the U.S. Geological Survey. The terms "amend," "amended," and "amendment" have been changed to the terms "modify," "modified," and "modification" throughout the regulation to be consistent with the use of these terms in other water permit programs.

Preapplication meetings are now required prior to submitting a permit application for a withdrawal. This will reduce the number of revisions it takes for the applicant to achieve a complete application and will reduce the number of re-reviews required to be conducted by agency staff. A provision has been added to the regulations that would allow the agency the ability to not require information to be submitted by applicants as part of a permit application if the agency already has the same information in their possession and the information has not changed over the course of the previous permit term. This information would be discussed and validated at preapplication meetings.

New sections have been added to address surface water and groundwater conjunctive use permits and supplemental drought relief permits. Conjunctive use permits will address the balance between available surface water sources and the need to withdraw supplemental groundwater to meet water demand. A section has been added to the regulations to address the requirements for supplemental drought relief permits. Supplemental drought relief permits are permits to withdraw groundwater to meet human consumption after mandatory water use restrictions have been implemented.

The water conservation and management plan section has been revised to specify the conservation measures and requirements that must be met, depending on the use of the groundwater. This allows the agency to specify specific water conservation measures that must be addressed in water conservation and management plans for specific uses. Due to the finite nature of the groundwater resource, conservation measures are required to be implemented through the development of water conservation and management plans. Conservation measures of high volume water consumers on municipal and nonmunicipal public water supplies shall be discussed in plans to ensure that conservation measures are being implemented and applied. Water conservation and management plans will become an enforceable part of the permit.

The regulations now identify information to be provided to ensure that the need for the groundwater has been documented and that alternatives to using groundwater have been investigated and considered. Previously there was limited information provided to applicants concerning their justification of need. The regulations should provide more consistency for applicants concerning the information they provide to justify their need to withdraw groundwater. Projected demand information developed as part of water

supply plans developed to comply with 9VAC25-780 may be used to meet some of the justification of need requirements.

A section has been added to allow for the agency to estimate an area of impact of a small withdrawal based on information available instead of requiring geotechnical investigations to occur. Adding this approach will allow some applicants to accept a default area of impact in lieu of conducting geotechnical investigations. The geotechnical investigations add to the cost of applying for a groundwater withdrawal permit. Applicants will retain the ability to conduct geotechnical investigations in lieu of accepting the agency's default area of impact.

The regulations are also being revised to be consistent with current agency guidance concerning the 80% drawdown criteria evaluation. This change is needed because additional information concerning the geologic structure of the coastal plain aquifer system and its effects on evaluating withdrawal impacts have been discovered since the regulations were last updated.

For consistency, additional permit conditions that will be applicable to all permits are being specified in the regulations. These changes will provide the applicant with knowledge of minimum permit conditions that they will be required to comply with before they apply for a permit and will increase certainty to the regulated community.

Issues: The primary advantage to the public will be that these regulations manage groundwater resources to maintain resource availability for future Virginians. There may be financial savings and processing time benefits for some applicants. There are no disadvantages to the public from managing the groundwater resource.

The primary advantage to the Commonwealth is that groundwater resources will be comprehensively managed. There are no disadvantages to the Commonwealth from managing the groundwater resource.

This regulatory revision addresses conjunctive use systems as well as supplemental drought relief wells. These types of water uses are currently described in statute; however, the regulatory revision provides details concerning the requirements for these permits. These regulations are important to all localities that are regulated by these regulations. With the expansion of the groundwater management area, which is regulated under a separate regulation, additional localities will be required to obtain groundwater withdrawal permits. These permits are issued based on demonstrated need for groundwater, require water conservation and mitigation of impacts, and specify maximum amounts of groundwater that may be withdrawn. All withdrawers of groundwater, unless exempted by statute, are required to obtain a permit, which places additional regulations on withdrawers of groundwater occurring within the management area.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board proposes to 1) require that the need for groundwater withdrawal is documented, 2) require preapplication meetings prior to permit application for groundwater withdrawals, 3) allow the Department of Environmental Quality the ability to not require information if the agency already has the same information, 4) to allow for the Department of Environmental Quality to estimate an area of impact of a small withdrawal, and 5) clarify and format numerous requirements in the regulations or in the Code of Virginia that already exist.

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

Estimated Economic Impact. The State Water Control Board is proposing to include details in the regulations concerning how the need for a groundwater withdrawal is documented and that alternatives to using groundwater have been investigated and considered. This requirement is currently included in statute and is described in agency guidance. According to the Department of Environmental Quality (DEQ), the need for groundwater may be documented by using certain publicly available demographic information such as population growth projections and comprehensive plans for localities. DEQ estimates that the cost of the need documentation may add \$2,000 to \$4,000 to the permit costs, and that information developed as part of regional water supply plans may be used as part of this documentation. Since the regulations provide more details concerning the need for the groundwater withdrawal and the alternative water supplies considered, this information will provide more certainty to the review process. This requirement will increase the amount of information that will have to be reviewed and considered, however providing these requirements in regulation should reduce the number of revisions required to the permit application concerning the needs determination.

The compliance costs associated with this requirement would be more significant where the need for groundwater cannot be justified and documented. In those cases, applicants may be denied a permit and may have to abandon their plans or revert to an alternate source for their water demand. For example, a locality may be interested in obtaining a permit to withdraw more groundwater than can be used by the locality and then marketing the groundwater not needed by the locality to other users. Since the need for groundwater would not be supported by the demographic information for the locality, a permit may be denied. In those cases, applicants may have to give up their plans to sell groundwater or revert to alternate sources. The main benefit of this requirement is to make sure that groundwater is conserved, is sustainable and that aquifers are protected from degradation. Statute prohibits the issuance of permits for more water than can be applied to a proposed beneficial use.

Also, since the entire coastal plain aquifer system is interconnected, withdrawals from one well may affect others.

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## Regulations

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According to DEQ, the mechanics of Virginia's coastal plain aquifer system is such that groundwater levels start declining along the fall line first (approximately Interstate 95 line) and propagate toward the Atlantic Ocean. For example, a major users withdrawal in the Tidewater area may reduce the level of groundwater first in the Richmond area and then in Tidewater. When actions of an individual impose involuntary costs on somebody else, a negative externality is said to exist. In the example given, a groundwater user in Tidewater may force the user in Richmond to develop alternate water sources and impose involuntary costs. The over pumping of groundwater by a groundwater user has the potential to exacerbate the size of negative externalities associated with groundwater consumption. Thus, the proposed need documentation is expected to help justify the amount of groundwater needed by a groundwater user and help mitigate the negative externalities on other users wanting to use groundwater.

The board also proposes to require preapplication meetings prior to permit application for groundwater withdrawals. According to DEQ, preapplication meetings will be informative for the applicants and help them achieve a complete application package with a reduced number of revisions and re-reviews required to be conducted by DEQ staff. The main benefit of this proposed change is a more streamlined permit process with a reduced number of meetings, visits, reduced application processing time, and consequently reduced administrative costs for the permit applicant and DEQ.

Another change will allow DEQ to not require certain information from the permit applicants if DEQ already has the information. This change is expected to reduce permit application costs that would be associated with reproduction of already existing information and its submittal to DEQ.

One of the proposed changes will allow DEQ to estimate an area of impact of a small withdrawal from the information already available instead of requiring an aquifer test. The applicants will have a right to conduct their own geotechnical investigations instead of accepting the default area of impact estimated by DEQ. The cost of the aquifer test typically ranges from \$10,000 to \$25,000. Thus, the proposed change is expected to reduce the permit application costs by \$10,000 to \$25,000 if the default area of impact is accepted. DEQ does not expect a significant increase in staff time to develop a default estimate as most of this work is currently done.

The remaining changes are generally related to formatting of the regulations and clarification of existing requirements and are not expected to create significant economic effects other than possibly reducing the likelihood of costly mistakes that could arise from unclear regulatory language.

Businesses and Entities Affected. There are 394 known users of groundwater withdrawing 300,000 gallons or more in the Eastern Virginia and Eastern Shore Groundwater Management Areas. Of these entities, 111 are located in the

expanded part of the Eastern Virginia Groundwater Management Area which is at the proposed stage of the rulemaking process at this time.

Localities Particularly Affected. Eastern Shore Groundwater Management Area includes the counties of Accomack and Northampton.

Current Eastern Virginia Groundwater Management Area includes the counties of Charles City, Isle of Wight, James City, King William, New Kent, Prince George, Southampton, Surry, Sussex, and York; the areas of Chesterfield, Hanover, and Henrico east of Interstate 95; and the cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

The proposed expansion of the Eastern Virginia Groundwater Management Area includes the counties of Essex, Gloucester, King George, King and Queen, Lancaster, Mathews, Middlesex, Northumberland, Richmond, and Westmoreland, and the areas of Arlington, Caroline, Fairfax, Prince William, Spotsylvania, and Stafford counties east of Interstate 95.

Projected Impact on Employment. The proposed preapplication meetings, no longer requiring submission of existing information, and allowing DEQ to estimate a default area of impact are expected to reduce the demand for labor by the applicants and the agency. However, the proposed need documentation is expected to increase the demand for labor by the agency and the applicants.

It is also conceivable that where the need cannot be justified and documented and therefore no permit can be issued, the proposed need documentation may reduce or slow down economic activity and cause a reduction in demand for labor. On the other hand, a permit denial may help preserve groundwater resources of other localities and help them maintain a sustainable future supply of groundwater which may lead to a sustainable economic activity and have a positive impact on demand for labor in the long term.

Effects on the Use and Value of Private Property. Similarly, the proposed preapplication meetings, no longer requiring submission of existing information, and allowing DEQ to estimate a default area of impact are expected to reduce compliance costs of the private entities and could add to their asset values. However, the proposed need documentation is expected to increase compliance costs and could reduce their asset values.

It is also conceivable that where the need cannot be justified and documented and therefore no permit can be issued, the proposed need documentation may reduce the use and value of private property. On the other hand, a permit denial may help preserve groundwater resources of other localities and help them maintain a sustainable future supply of groundwater which may lead to a sustainable economic activity and have a positive impact on the use and value of private property in the long term.

Small Businesses: Costs and Other Effects. Of the 394 known entities using more than 300,000 gallons of groundwater, 111 are estimated to be small businesses. The costs and other effects on the small businesses are the same as the ones discussed above which include the costs of the proposed need documentation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative that accomplishes the same goals.

Real Estate Development Costs. If a real estate development project relies on groundwater as a resource, the costs of the need documentation as discussed above may contribute to the development costs of the real estate project. Otherwise, no significant effect on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 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 department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

*The regulations are amended to be more consistent with current administrative and application processing practices of other water permit program regulations. The application requirements for different types of permits and situations are separated into different regulatory sections to provide more clarity concerning the requirements for complete applications. New sections are added to address surface water and groundwater conjunctive use permits and supplemental drought relief permits. The water*

*conservation and management plan section is revised to specify the conservation measures and requirements that must be met depending on the use of the groundwater. The regulations also now identify information to be provided to ensure that the need for the groundwater is documented and that alternatives to using groundwater are investigated and considered. A section is added allowing the agency to estimate an area of impact for mitigation of a small withdrawal based on available modeled information instead of requiring geotechnical investigations to occur. The regulations are also revised to be consistent with current agency guidance concerning the 80% drawdown criteria evaluation. Additional permit conditions are specified in the regulations that will be applicable to all permits, which will clarify the requirements that groundwater withdrawers must meet.*

CHAPTER 610

~~GROUND-WATER~~ GROUNDWATER WITHDRAWAL REGULATIONS

Part I  
General

**9VAC25-610-10. Definitions.**

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Adverse impact" means reductions in ~~ground-water~~ groundwater levels or changes in ~~ground-water~~ groundwater quality that limit the ability of any existing ~~ground-water~~ groundwater user lawfully withdrawing or authorized to withdraw ~~ground-water~~ groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of ~~ground-water~~ groundwater required by the existing use. Existing ~~ground-water~~ groundwater users include all those persons who have been granted a ~~ground-water~~ groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural use includes withdrawals for turf farm operations, but does not include withdrawals for landscaping activities or turf installment and maintenance associated with landscaping activities.

"Applicant" means a person filing an application to initiate or enlarge a ~~ground-water~~ groundwater withdrawal in a ~~ground-water~~ groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

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"Beneficial use" includes, but is not limited to domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Consumptive use" means the withdrawal of ~~ground-water~~ groundwater, without recycle of said waters to their source of origin.

"Department" means the Department of Environmental Quality.

"Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

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

"Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic framework of an area or determine the hydrogeologic properties of any aquifer or confining unit to the extent that withdrawals associated with such investigations do not result in unmitigated adverse impacts to existing ~~ground-water~~ groundwater users. Geophysical investigations include, but are not limited to, pump tests and aquifer tests.

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

"Historic prepumping water levels" means ~~ground-water~~ groundwater levels in aquifers prior to the initiation of any ~~ground-water~~ groundwater withdrawals. For the purpose of this chapter, in the Eastern Virginia and Eastern Shore ~~Ground-Water~~ Groundwater Management Areas, historic prepumping water levels are defined as water levels present in aquifers prior to 1890.

"Human consumption" means the use of water for drinking, bathing, showering, cooking, dishwashing, and maintaining oral hygiene.

~~"Human consumptive use" means the withdrawal of ground water for private residential domestic use and that portion of ground water withdrawals in a public water supply system that support residential domestic uses and domestic uses at commercial and industrial establishments.~~

"Mitigate" means to take actions necessary to assure that all existing ~~ground-water~~ groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of ~~ground-water~~ groundwater needed for existing uses.

"Permit" means a ~~ground-water~~ groundwater withdrawal permit issued ~~by the board~~ under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of ~~ground-water~~ groundwater under

specified conditions in a ~~ground-water~~ groundwater management area.

"Permittee" means a person who currently has an effective ~~ground-water~~ groundwater withdrawal permit issued ~~by the board~~ under the Ground Water Act of 1992.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views and comments to the board pursuant to ~~the board's Procedural Rule No. 1.~~ § 62.1-44.15:02 of the Code of Virginia.

"Salt water intrusion" means the encroachment of saline waters in any aquifer that create adverse impacts to existing ~~ground-water~~ groundwater users or is counter to the public interest.

"Special exception" means a document issued by the board for withdrawal of ~~ground-water~~ groundwater in unusual situations where requiring the user to obtain a ~~ground-water~~ groundwater withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special exceptions allow the withdrawal of a specified quantity of ~~ground-water~~ groundwater under specified conditions in a ~~ground-water~~ groundwater management area.

"Supplemental drought relief well" means a well permitted to withdraw a specified amount of groundwater to meet human consumption needs during declared drought conditions after mandatory water use restrictions have been implemented.

"Surface ~~water~~ and ~~ground-water~~ groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and ~~ground-water~~ groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

"Well" means any artificial opening or artificially altered natural opening, however made, by which ~~ground-water~~ groundwater is sought or through which ~~ground-water~~ groundwater flows under natural pressure or is intended to be withdrawn.

"Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected wells or withdrawal points which are under



common ownership but are not necessarily located on contiguous properties.

**9VAC25-610-20. Purpose.**

The ~~Groundwater~~ Ground Water Management Act of 1992 recognizes and declares that the right to reasonable control of all ~~ground-water~~ groundwater resources within the Commonwealth belongs to the public and that in order to conserve, protect and beneficially utilize the ~~ground-water~~ groundwater resource and to ensure the public welfare, safety and health, provisions for management and control of ~~ground-water~~ groundwater resources are essential. This chapter delineates the procedures and requirements to be followed when establishing Groundwater Management Areas and the issuance of Groundwater Withdrawal Permits by the board pursuant to the ~~Groundwater~~ Ground Water Management Act of 1992.

**9VAC25-610-40. Prohibitions and requirements for ~~ground-water~~ groundwater withdrawals.**

A. No person shall withdraw, attempt to withdraw, or allow the withdrawal of ~~ground-water~~ groundwater within a ~~ground-water~~ groundwater management area, except as authorized pursuant to a ~~ground-water~~ groundwater withdrawal permit, or as excluded in 9VAC25-610-50.

B. No permit or special exception shall be issued for more ~~ground-water~~ groundwater than can be applied to the proposed beneficial use.

**9VAC25-610-50. Exclusions.**

The following do not require a ~~ground-water~~ groundwater withdrawal permit:

1. Withdrawals of less than 300,000 gallons per month;
2. Withdrawals associated with temporary construction dewatering that do not exceed 24 months in duration;
3. Withdrawals associated with a state-approved ~~ground-water~~ groundwater remediation that do not exceed 60 months in duration;
4. Withdrawals for use by a ~~ground-water~~ groundwater source heat pump where the discharge is reinjected into the aquifer from which it was withdrawn;
5. Withdrawals from ponds recharged by ~~ground-water~~ groundwater without mechanical assistance;
6. Withdrawals for the purpose of conducting geophysical investigations, including pump tests;
7. Withdrawals coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of Mines, Minerals, and Energy;
8. Withdrawals coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other ~~ground-water~~ groundwater users within a ~~ground-water~~ groundwater management area;

9. Withdrawals in any area not declared to be a ~~ground-water~~ groundwater management area;

10. Withdrawal of ~~ground-water~~ groundwater authorized pursuant to a special exception issued by the board; and

11. Withdrawal of ~~ground-water~~ groundwater discharged from free flowing springs where the natural flow of the spring has not been increased by any method.

**9VAC25-610-60. Effect of a permit.**

A. Compliance with a ~~ground-water~~ groundwater withdrawal permit constitutes compliance with the permit requirements of the ~~Groundwater~~ Ground Water Management Act of 1992.

B. The issuance of a permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

Part II

Declaration of Ground Water Management Areas

**9VAC25-610-70. Criteria for consideration of a ~~ground-water~~ groundwater management area.**

The board upon its own motion, or in its discretion, upon receipt of a petition by any county, city or town within the area in question, may initiate a ~~ground-water~~ groundwater management area proceeding, whenever in its judgment there is reason to believe that any one of the four following conditions exist:

1. ~~Ground-water~~ Groundwater levels in the area are declining or are expected to decline excessively;
2. The wells of two or more ~~ground-water~~ groundwater users within the area are interfering or may be reasonably expected to interfere substantially with one another;
3. The available ~~ground-water~~ groundwater supply has been or may be overdrawn; or
4. The ~~ground-water~~ groundwater in the area has been or may become polluted.

**9VAC25-610-80. Declaration of ~~ground-water~~ groundwater management areas.**

A. If the board finds that any of the conditions listed in 9VAC25-610-70 exist, and further determines that the public welfare, safety and health require that regulatory efforts be initiated, the board shall declare the area in question a ~~ground-water~~ groundwater management area, by regulation.

B. Such regulations shall be promulgated in accordance with the agency's Public Participation Guidelines (~~9VAC25-10-10 et seq.~~) (9VAC25-11) and the Administrative Process Act (~~§ 9-6.14:1 et seq. of the Code of Virginia~~) (§ 2.2-4000 et seq. of the Code of Virginia).

C. The regulation shall define the boundaries of the ~~ground-water~~ groundwater management area, and identify the aquifers to be included in the ~~ground-water~~ groundwater management area. Any number of aquifers that either wholly

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or partially overlie one another may be included within the same ~~ground-water~~ groundwater management area.

D. After adoption the board shall mail a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the ~~ground-water~~ groundwater management area lies.

## Part III

### Permit Application and Issuance

#### **9VAC25-610-85. Preapplication meeting.**

A. The applicant and owner or operator intending to apply for a new or expanded application for a groundwater withdrawal or reapply for a current permitted withdrawal shall schedule a meeting with the department prior to submitting their permit application. The purpose of the meeting is to have a mutual exchange of information on the proposed application and applicable regulatory requirements. If the preapplication meeting is being held for a public water supply system, the Virginia Department of Health may participate in the preapplication meeting by providing information and guidance to assist the applicant with meeting Virginia Department of Health regulatory requirements.

B. For applicants reapplying for a current permitted withdrawal, during the preapplication meeting, the department shall discuss information provided in previous permit applications and regular submittals that may or may not be resubmitted as part of the permit application.

## Part III

### Permit Application and Issuance

#### **9VAC25-610-90. Application for a permit by groundwater users in existing groundwater management areas withdrawing prior to July 1, 1992.**

~~A.~~ Persons withdrawing ~~ground-water~~ groundwater or who have rights to withdraw ~~ground-water~~ groundwater prior to July 1, 1992, in the Eastern Virginia or Eastern Shore ~~Ground Water~~ Groundwater Management Areas and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

1. Any person who was issued a certificate of ~~ground-water~~ groundwater right or a permit to withdraw ~~ground-water~~ groundwater prior to July 1, 1991, and who was withdrawing ~~ground-water~~ groundwater pursuant to said permit or certificate on July 1, 1992, shall file an application on or before December 31, 1992, to continue said withdrawal. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by the existing certificate or permit or by reports required by Water Withdrawal Reporting Regulations (9VAC25-200-~~40 et seq.~~).

2. Any person who was issued a certificate of ~~ground-water~~ groundwater right or a permit to withdraw ~~ground-water~~ groundwater prior to July 1, 1991, and who had not initiated the withdrawal prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms

and conditions of the certificate or permit and shall file an application for a ~~ground-water~~ groundwater withdrawal permit on or before December 31, 1995, to continue said withdrawal. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by the existing certificate or permit or by reports required by Water Withdrawal Reporting Regulations (9VAC25-200-~~40 et seq.~~).

3. Any person who was issued a permit to withdraw ~~ground-water~~ groundwater on or after July 1, 1991, and prior to July 1, 1992, shall not be required to apply for a ~~ground-water~~ groundwater withdrawal permit until the expiration of the permit to withdraw ~~ground-water~~ groundwater or 10 years from the date of issuance of the permit to withdraw ~~ground-water~~ groundwater whichever occurs first. Such persons shall reapply for a ~~ground-water~~ groundwater withdrawal permit as described in ~~subsection D of this section~~ 9VAC25-610-96.

4. Any person withdrawing ~~ground-water~~ groundwater for agricultural or livestock watering purposes on or before July 1, 1992, shall file an application for a ~~ground-water~~ groundwater withdrawal permit on or before December 31, 1993. The applicant shall demonstrate the claimed prior withdrawals by voluntary withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200-~~40 et seq.~~) when such reports have been filed with the board. When such reports are not available, estimates of withdrawal will be accepted that are based on the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps, energy consumption per hour, and pumping capacity; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or other methods approved by the board.

5. Any political subdivision, or authority serving a political subdivision, holding a certificate of ~~ground-water~~ groundwater right or a permit to withdraw ~~ground-water~~ groundwater issued prior to July 1, 1992, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application on or before December 31, 1992. Any political subdivision, or authority serving a political subdivision, shall submit, as part of the application, a water conservation and management plan as described in 9VAC25-610-100 B.

6. Any person who is required to apply in subdivision 1, 2, or 5 of this ~~subsection~~ section and who uses the certificated or permitted withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a ~~ground-water~~ groundwater withdrawal permit.

7. Any person described in subdivision 1, 2, 3, or 5 of this ~~subsection~~ section who files a complete application by the

date required may continue to withdraw ~~ground water~~ groundwater pursuant to the existing certificate or permit until such time as the board takes action on the outstanding application for a ~~ground water~~ groundwater withdrawal permit.

8. Any person described in subdivision 4 of this ~~subsection~~ section who files a complete application by the date required may continue his existing withdrawal until such time as the board takes action on the outstanding application for a ~~ground water~~ groundwater withdrawal permit.

9. Any person described in subdivision 1, 2, 3, 4, or 5 of this ~~subsection~~ section who files an incomplete application by the date required may continue to withdraw ~~ground water~~ groundwater as described in subdivisions 7 and 8 of this ~~subsection~~ section provided that all information required to complete the application is provided to the board within 60 days of the board's notice to the applicant of deficiencies. Should such person not provide the board the required information within 60 days, he shall cease withdrawals until he provides any additional information to the board and the board concurs that the application is complete.

10. A complete application for those persons described in subdivision 1, 2, 3, 4, or 5 of this ~~subsection~~ section shall contain:

- ~~a. A ground water withdrawal permit application completed in its entirety. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;~~
- ~~b. Well construction documentation for all wells associated with the application;~~
- ~~c. Locations of all wells associated with the application shown on United States Geological Survey 7 1/2 minute topographic maps or copies of such maps;~~
- ~~d. Withdrawal reports required by the existing certificate or permit, reports required by Water Withdrawal Reporting Regulations (9VAC25-200-10 et seq.), or estimates of withdrawals as described in subdivision 4 of this subsection to support any claimed prior withdrawal; and~~
- ~~e. A copy of the Virginia Department of Health waterworks operation permit, or equivalent, where applicable.~~
- ~~f. Persons described in subdivision 5 of this subsection shall submit a water conservation and management plan as described in 9VAC25-610-100.~~
- ~~g. The application shall have an original signature as described in 9VAC25-610-150.~~
- a. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

b. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;

c. A signature as described in 9VAC25-610-150;

d. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(1) The depth of the well;

(2) The diameter, top and bottom, and material of each cased interval;

(3) The diameter, top and bottom, for each screened interval; and

(4) The depth of pump intake.

e. Locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

f. A map identifying the service areas for public water supplies;

g. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable.

h. Persons described in subdivision 5 of this section shall submit a water conservation and management plan as described in 9VAC25-610-100;

i. Withdrawal reports required by the existing groundwater certificate or permit, reports required by Water Withdrawal Reporting Regulations (9VAC25-200), or estimates of withdrawals as described in subdivision 4 of this section to support any claimed prior withdrawal; and

j. A copy of the Virginia Department of Health waterworks operation permit, or equivalent, where applicable.

11. The board may waive the requirement for information listed in subdivision 10 of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

~~12.~~ 12. Any person described in subdivision 1, 2, 3, or 5 of this ~~subsection~~ section who fails to file an application by the date required creates the presumption that all claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to ~~ground water~~ groundwater

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~~groundwater~~ withdrawal based on historic use have been abandoned, he shall have filed an application with a letter of explanation to the board by November 21, 1993. Any such person failing to rebut the presumption that claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned who wishes to withdraw ~~ground water~~ groundwater shall apply for a new withdrawal as described in ~~subsection C of this section~~ 9VAC25-610-94.

~~12.~~ 13. Any person described in subdivision 4 of this ~~subsection~~ section who fails to file an application by the date required creates the presumption that all claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned, he may do so by filing an application with a letter of explanation to the board within 60 days of the original required date or within 60 days of January 1, 1999, whichever is later. Any such person failing to rebut the presumption that claims to ~~ground water~~ groundwater withdrawal based on historic use have been abandoned who wishes to withdraw ~~ground water~~ groundwater shall apply for a new withdrawal as described in ~~subsection C of this section~~ 9VAC25-610-94.

**B. Persons withdrawing ground water when a ground water management area is declared or expanded after July 1, 1992, and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.**

~~1. Any person withdrawing ground water in an area that is declared to be a ground water management area after July 1, 1992, shall file an application for a ground water within six months of the effective date of the regulation creating or expanding the ground water management area. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25 200 10 et seq.). In the case of agricultural ground water withdrawals not required to report by Water Withdrawal Reporting Regulations, estimates of withdrawal will be accepted that are based on the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps, energy consumption per hour, and pumping capacity; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or other methods approved by the board.~~

~~2. Any person withdrawing ground water who uses the withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a ground water withdrawal permit.~~

~~3. Any person who is required to apply for a ground water withdrawal permit and files a complete application within six months after the effective date of the regulation~~

~~creating or expanding a ground water management area may continue their withdrawal until such time as the board takes action on the outstanding application for a ground water withdrawal permit.~~

~~4. Any person who is required to apply for a ground water withdrawal permit and files an incomplete application within six months after the effective date of the regulation creating or expanding a ground water management area may continue to withdraw ground water as described in subdivision 3 of this subsection provided that all the information required to complete the application is provided to the board within 60 days of the board's notice to the applicant of deficiencies. Should such person not provide the board the required information within 60 days, he shall cease withdrawals until he provides any additional information to the board and the board concurs that the application is complete.~~

~~5. A complete application for those persons described in subdivision 1 of this subsection shall contain:~~

~~a. A ground water withdrawal permit application completed in its entirety. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;~~

~~b. Well construction documentation for all wells associated with the application;~~

~~c. Locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps or copies of such maps;~~

~~d. Withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25 200 10 et seq.) or estimates of withdrawals as described in subdivision 1 of this subsection to support any claimed prior withdrawal;~~

~~e. A copy of the Virginia Department of Health waterworks operation permit, where applicable; and~~

~~f. The application shall have an original signature as described in 9VAC25 610 150.~~

~~6. Any person who fails to file an application within six months after the effective date creating or expanding a ground water management area creates the presumption that all claims to ground water withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to ground water withdrawal based on historic use have been abandoned, they may do so by filing an application with a letter of explanation to the board within eight months after the date creating or expanding the ground water management area. Any such person failing to rebut the presumption that claims to ground water withdrawal based on historic use have been abandoned who wishes to withdraw ground water shall apply for a new withdrawal as described in subsection C of this section.~~

~~C. Persons wishing to initiate a new withdrawal or expand an existing withdrawal in any ground water management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.~~

~~1. A ground water withdrawal permit application shall be completed and submitted to the board and a ground water withdrawal permit issued by the board prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50.~~

~~2. A complete ground water withdrawal permit application for a new or expanded withdrawal, at a minimum, shall contain the following:~~

~~a. A ground water withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required;~~

~~b. The application shall include notification from the local governing body of the county, city or town in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body of any county, city or town fails to respond within 45 days following receipt of a written request by certified mail, return receipt requested, by an applicant for certification that the location and operation of the proposed facility is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter;~~

~~c. The application shall have an original signature as described in 9VAC25-610-150;~~

~~d. The application shall include locations of all wells associated with the application shown on United States Geological Survey 7 1/2 minute topographic maps or copies of such maps and a detailed location map of each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;~~

~~e. A completed well construction report for all existing wells associated with the application. Well construction report forms will be in a format specified by the board and are available from the Department of Environmental Quality;~~

~~f. An evaluation of the lowest quality water needed for the intended beneficial use;~~

~~g. An evaluation of sources of water supply, other than ground water, including sources of reclaimed water; and~~

~~h. A water conservation and management plan as described in 9VAC25-610-100.~~

~~3. In addition to requirements contained in subdivision 2 of this subsection, the board may require any or all of the~~

~~following information prior to considering an application complete.~~

~~a. A plan to mitigate potential adverse impacts due to the proposed withdrawal on existing ground water users.~~

~~b. The installation of monitoring wells and the collection and analysis of drill cuttings, continuous cores, geophysical logs, water quality samples or other hydrogeologic information necessary to characterize the aquifer system present at the proposed withdrawal site.~~

~~c. The completion of pump tests or aquifer tests to determine aquifer characteristics at the proposed withdrawal site.~~

~~d. Other information that the board believes is necessary to evaluate the application.~~

~~D. Duty to reapply.~~

~~1. Any permittee with an effective permit shall submit a new permit application at least 270 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.~~

~~2. Permittees who have effective permits shall submit a new application 270 days prior to any proposed modification to their activity which will:~~

~~a. Result in an increase of withdrawals above permitted limits; and~~

~~b. Violate or lead to the violation of the terms and conditions of the permit.~~

~~3. The applicant shall provide all information described in subdivisions C 1 and 2 of this section and may be required to provide any information described in subdivision C 3 of this section for any reapplication.~~

~~E. Where the board considers an application incomplete under the requirements of this section, the board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a permit application, or submitted incorrect information in a permit application or in any report to the board, he shall immediately submit such facts or the correct information.~~

~~F. When an application does not accurately describe an existing or proposed ground water withdrawal system, the board may require the applicant to amend the existing application, submit a new application, or submit new applications before the application will be processed.~~

~~G. All persons required by this chapter to apply for ground water withdrawal permits shall submit application forms in a format specified by the board. Such application forms are available from the Department of Environmental Quality.~~

~~H. No ground water withdrawal permit application shall be considered complete until a permit fee is submitted as~~

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required by regulations in Fees for Permits and Certificates (9VAC25-20-10 et seq.).

**9VAC25-610-92. Application for a permit by existing users when a groundwater management area is declared or expanded on or after July 1, 1992.**

Persons withdrawing groundwater when a groundwater management area is declared or expanded on or after July 1, 1992, and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

1. Any person withdrawing groundwater in an area that is declared to be a groundwater management area on or after July 1, 1992, shall file an application for a groundwater permit within six months of the effective date of the regulation creating or expanding the groundwater management area. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200), or other methods approved by the board if reporting information pursuant to the Water Withdrawal Reporting Regulations is not available. In the case of agricultural groundwater withdrawals not required to report by Water Withdrawal Reporting Regulations, estimates of withdrawal will be accepted that are based on the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps, energy consumption per hour, and pumping capacity; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or other methods approved by the board.

2. Any person withdrawing groundwater who uses the withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a groundwater withdrawal permit.

3. Any person who is required to apply for a groundwater withdrawal permit and files a complete application within six months after the effective date of the regulation creating or expanding a groundwater management area may continue their existing documented withdrawal until such time as the board takes action on the outstanding application for a groundwater withdrawal permit.

4. Any person who is required to apply for a groundwater withdrawal permit and files an incomplete application within six months after the effective date of the regulation creating or expanding a groundwater management area may continue to withdraw groundwater as described in subdivision 3 of this section provided that all the information required to complete the application is provided to the board within 60 days of the board's notice to the applicant of deficiencies. Should such person not provide the board the required information within 60 days, he shall cease withdrawals until he provides any additional

information to the board and the board concurs that the application is complete.

5. A complete application for those persons described in subdivision 1 of this section shall contain:

a. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

b. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;

c. A signature as described in 9VAC25-610-150;

d. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(1) The depth of the well;

(2) The diameter, top and bottom, and material of each cased interval;

(3) The diameter, top and bottom, for each screened interval; and

(4) The depth of pump intake;

e. Locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

f. A map identifying the service areas for public water supplies;

g. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

h. Withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200), other documentation demonstrating historical water use approved by the board to support claimed prior withdrawals if water Water Withdrawal Reporting information is unavailable or estimates of withdrawals as described in subdivision 1 of this section to support any claimed prior withdrawal; and

i. A copy of the Virginia Department of Health waterworks operation permit where applicable.

6. The board may waive the requirement for information listed in subdivision 5 of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

7. Any person who fails to file an application within six months after the effective date creating or expanding a groundwater management area creates the presumption that all claims to groundwater withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned, they may do so by filing an application with a letter of explanation to the board within eight months after the date creating or expanding the groundwater management area. Any such person failing to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned who wishes to withdraw groundwater shall apply for a new withdrawal as described in 9VAC25-610-94.

**9VAC25-610-94. Application for a new permit, expansion of an existing withdrawal, or reapplication for a current permitted withdrawal.**

Persons wishing to initiate a new withdrawal, expand an existing withdrawal, or reapply for a current permitted withdrawal in any groundwater management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

1. A groundwater withdrawal permit application shall be completed and submitted to the board and a groundwater withdrawal permit issued by the board prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50.

2. A complete groundwater withdrawal permit application for a new or expanded withdrawal, or reapplication for a current withdrawal, shall contain the following:

a. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

b. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;

c. A signature as described in 9VAC25-610-150;

d. A completed well construction report for all existing wells associated with the application submitted on the Water Well Completion Report, Form GW2;

e. The application shall include locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

f. A map identifying the service areas for public water supplies;

g. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

h. A water conservation and management plan as described in 9VAC25-610-100;

i. The application shall include notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery;

j. An alternatives analysis that evaluates sources of water supply other than groundwater, including sources of reclaimed water, and the lowest quality of water needed for the intended beneficial use as described in 9VAC25-610-102;

k. Documentation justifying the need for future water supply as described in 9VAC25-610-102;

l. A plan to mitigate potential adverse impacts from the proposed withdrawal on existing groundwater users. In lieu of developing individual mitigation plans, multiple applicants may choose to establish a mitigation program to collectively develop and implement a cooperative mitigation plan that covers the entire area of impact of all members of the mitigation program; and

m. Other relevant information that may be required by the board to evaluate the application.

3. In addition to requirements contained in subdivision 2 of this section, the board may require any or all of the following information prior to considering an application complete.

a. The installation of monitoring wells and the collection and analysis of drill cuttings, continuous cores, geophysical logs, water quality samples, or other hydrogeologic information necessary to characterize the aquifer system present at the proposed withdrawal site.

b. The completion of pump tests or aquifer tests to determine aquifer characteristics at the proposed withdrawal site.

4. The board may waive the requirement for information listed in subdivision 2 or 3 of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

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## **9VAC25-610-96. Duty to reapply for a permit.**

A. Any permittee with an effective permit shall submit a new permit application at least 270 days before the expiration date of an effective permit unless permission for a later date has been granted by the board. If a complete application for a new permit has been filed in a timely manner, and the board is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit, the permit may be administratively continued.

B. Permittees who have effective permits shall submit a new application 270 days prior to any proposed modification to their activity or withdrawal system that will:

1. Result in an increase of withdrawals above permitted limits; or
2. Violate or lead to the violation of the terms and conditions of the permit.

C. The applicant shall provide all information described in 9VAC25-610-94 for any reapplication. The information may be provided by referencing information previously submitted to the department that remains accurate and relevant to the permit application. The board may waive any requirement of 9VAC25-610-94 if it has access to substantially identical information.

## **9VAC25-610-98. Incomplete or inaccurate applications.**

A. Where the board finds an application to be incomplete under the requirements of 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94, the board shall require the submission of additional information after an application has been filed, and may suspend processing of the application until such time as the applicant has supplied the missing or deficient information and the board finds the application complete. An incomplete permit application for a new or expanded withdrawal may be suspended from processing 180 days from the date that the applicant received notification that the application is deficient. Once an application has been suspended from processing, the applicant must submit a new complete application; however, no additional permit fee will be assessed. Further, where the applicant becomes aware that one or more relevant facts from a permit application were omitted, or that incorrect information was submitted in a permit application or in any report to the board, the applicant shall immediately submit such facts or the correct information.

B. When an application does not accurately describe an existing or proposed groundwater withdrawal, the board may require the applicant to revise the existing application or submit a new application before the application will be processed.

## **9VAC25-610-100. Water conservation and management plans.**

A. Any application to initiate a new withdrawal or expand an existing withdrawal in any ground water groundwater management area or the reapplication at the end of a permit

cycle for all permits shall require a water conservation and management plan before the application or reapplication is considered complete. The board shall review all water conservation and management plans and assure that such plans contain all elements required in subsection B of this section. The approved plan shall become an enforceable part of the approved permit.

B. A water conservation and management plan shall include:

1. Requirements for the use of water saving plumbing and processes including, where appropriate, the use of water saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code;
2. A water loss reduction program;
3. A water use education program;
4. An evaluation of potential water reuse options; and
5. Requirements for mandatory water use reductions during water shortage emergencies declared by the local governing body or director including, where appropriate, ordinances prohibiting the waste of water generally and requirements providing for mandatory water use restrictions, with penalties, during water shortage emergencies.

C. The board shall review all water conservation and management plans and assure that such plans contain all elements required in 9VAC25-610-100 B. The board shall approve all plans that:

1. Contain requirements that water saving fixtures be used in all new and renovated plumbing as provided in the Uniform Statewide Building Code;
2. Contain requirements for making technological, procedural, or programmatic improvements to the applicant's facilities and processes to decrease water consumption. These requirements shall assure that the most efficient use is made of ground water;
3. Contain requirements for an audit of the total amount of ground water used in the applicant's distribution system and operational processes during the first two years of the permit cycle. Subsequent implementation of a leak detection and repair program will be required within one year of the completion of the audit, when such a program is technologically feasible;
4. Contain requirements for the education of water users and employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource;
5. Contain an evaluation of potential water reuse options and assurances that water will be reused in all instances where reuse is feasible;
6. Contain requirements for mandatory water use restrictions during water shortage emergencies that prohibit all nonessential uses such as lawn watering, car washing, and similar nonessential residential, industrial and



commercial uses for the duration of the water shortage emergency; and

7. Contain penalties for failure to comply with mandatory water use restrictions.

B. A water conservation and management plan is an operational plan to be referenced and implemented by the permittee. Water conservation and management plans shall be consistent with local and regional water supply plans in the applicant's geographic area developed as required by 9VAC25-780. The water conservation and management plan shall be specific to the type of water use and include the following:

1. For municipal and nonmunicipal public water supplies:

a. Requirements for the use of water-saving equipment and processes for all water uses including, technological, procedural, or programmatic improvements to the facilities and processes to decrease the amount of water withdrawn or to decrease water demand. These requirements shall assure that the most practicable use is made of groundwater. If these options are not implemented in the plan, information on the water-saving alternatives examined and the water savings associated with the alternatives shall be provided. Water conservation and management plans shall discuss high volume water consumption by users on the system and where conservation measures have previously been implemented and shall be applied. Also, where appropriate, the use of water-saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code (13VAC5-63) shall be identified in the plan;

b. A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a leak detection and repair program shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks;

c. A water use education program that contains requirements for the education of water users and training of employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource. The program shall include a schedule for information distribution and the type of materials used;

d. An evaluation of water reuse options and assurances that water shall be reused in all instances where reuse is practicable. Potential for expansion of the existing reuse practices or adoption of additional reuse practices shall also be included; and

e. Requirements for mandatory water use reductions during water shortage emergencies declared by the local governing body or water authority consistent with §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include, where appropriate, ordinances in municipal systems prohibiting the waste of water generally and requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies. The water conservation and management plan shall also contain requirements for mandatory water use restrictions during water shortage emergencies that restricts or prohibits all nonessential uses such as lawn watering, car washing, and similar nonessential residential, industrial, and commercial uses for the duration of the water shortage emergency. Penalties for failure to comply with mandatory water use restrictions shall be included in municipal system plans.

2. For nonpublic water supply applicants - commercial and industrial users:

a. Requirements for the use of water-saving equipment and processes for all water uses including, technological, procedural, or programmatic improvements to the facilities and processes to decrease the amount of water withdrawn or to decrease water demand. These requirements shall assure that the most practicable use is made of groundwater. If these options are not implemented in the plan, information on the water-saving alternatives examined and the water savings associated with the alternatives shall be provided. Also, where appropriate, the use of water-saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code (13VAC5-63) shall be identified in the plan;

b. A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a leak detection and repair program shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks;

c. A water use education program that contains requirements for the education of water users and training of employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource. The program shall include a schedule for information distribution and the type of materials used;

d. An evaluation of water reuse options and assurances that water shall be reused in all instances where reuse is

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practicable. Potential for expansion of the existing reuse practices or adoption of additional reuse practices shall also be included; and

e. Requirements for complying with mandatory water use reductions during water shortage emergencies declared by the local governing body or water authority in accordance with §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include, where appropriate, ordinances prohibiting the waste of water generally and requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies. The water conservation and management plan shall also contain requirements for mandatory water use restrictions during water shortage emergencies that restricts or prohibits all nonessential uses such as lawn watering, car washing, and similar nonessential industrial and commercial uses for the duration of the water shortage emergency.

### 3. For nonpublic water supply applicants - agricultural users:

a. Requirements for the use of water-saving plumbing and processes to decrease the amount of water withdrawn or to decrease water demand. Plans submitted for the use of groundwater for irrigation shall identify the specific type of irrigation system that will be utilized, the efficiency rating of the irrigation system in comparison to less efficient systems, the irrigation schedule used to minimize water demand, and the crop watering requirements. Multiple types of irrigation methods may be addressed in the plan. For livestock watering operations, plans shall include livestock watering requirements (per head) and processes to minimize waste of water. These requirements shall assure that the most practicable use is made of groundwater. If these options are not implemented in the plan, information on the water-saving alternatives examined and the water savings associated with the alternatives shall be provided;

b. A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a leak detection and repair program shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks;

c. A water use education program that contains requirements for the training of employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource. The program shall include a schedule for

training employees. This requirement may be met through training employees on water use requirements contained in irrigation management plans or livestock management plans;

d. An evaluation of potential water reuse options and assurances that water shall be reused in all instances where reuse is practicable and not prohibited by other regulatory programs; Potential for expansion of the existing reuse practices or adoption of additional reuse practices shall also be included; and

e. Requirements for mandatory water use reductions during water shortage emergencies and compliance with ordinances prohibiting the waste of water generally. This shall include requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies.

f. The permittee may submit portions of Agricultural Management Plans or Irrigation Management Plans developed to comply with requirements of federal or state laws, regulations, or guidelines to demonstrate the requirements of subdivisions B 3 a through d of this section are being achieved.

### **9VAC25-610-102. Evaluation of need for withdrawal and alternatives.**

A. The applicant shall identify the purpose of the proposed withdrawal by providing a narrative description of the water supply issues that form the basis of the proposed withdrawal.

B. The applicant shall subsequently demonstrate to the satisfaction of the board that the withdrawal meets an established water supply need.

1. In establishing local need for a public water supply, the applicant shall provide the following information:

a. Existing supply sources, yields and demands, including:

(1) Peak day and average daily withdrawal;

(2) Total consumptive use component of the withdrawal, including identification of the amount needed for human consumption;

(3) Types of water uses; and

(4) Existing water conservation measures and drought response plan, including what conditions trigger their implementation.

b. Projected demands in 10 year increments over a minimum 30-year planning period that includes the following:

(1) Projected demand contained in the local or regional water supply plan developed in accordance with 9VAC25-780 or for the project service area if such area is smaller than the planning area; or

(2) Statistical population (growth) trends, projected demands by use type including projected demand with and without water conservation measures.

2. In establishing need for agricultural water supply, the applicant shall provide the following information:

a. For crop irrigation: crop, acreage, crop spacing, crop watering requirements for the particular crop (crop rooting depth), soil types, soil holding capacity (available water capacity), allowable soil water depletion, historic precipitation records (precipitation contribution), peak irrigation months, irrigation scheduling approaches (tensiometers vs. feel method), irrigation type (drip, overhead, center pivot etc.), and irrigation system efficiency rating.

b. For livestock watering: kind and size of animal, rate and composition of gain, presence of pregnant animals or lactating animals, type of diet, level of dry matter intake, level of activity, quality of the water, temperature of the water offered, and surrounding air temperature.

3. In establishing need for commercial water supply, the applicant shall provide the following information:

a. Number of employees by month for an average year;

b. Average gallons per day used per month;

c. Average daily water use rate per employee per month; and

d. Identification of peak month of water demand.

4. In establishing need for industrial water supply, the applicant shall provide the following information:

a. SIC or NAICS industry code;

b. Number of employees by month for an average year;

c. Average gallons per day used per month;

d. Average daily water use rate per employee per month;

e. Identification of peak month of water demand;

f. Amount of withdrawal per unit of output or similar metric identified by the user; and

g. Monthly amount of water used for industrial processes.

C. The applicant shall provide an alternatives analysis that evaluates sources of water supply other than groundwater and the availability and use of lower qualities of groundwater that can still be put to beneficial use. For all proposed withdrawals, the applicant shall demonstrate to the satisfaction of the board:

1. Opportunities to reduce and minimize the use of groundwater have been identified and the requested amount is the minimum amount of groundwater necessary for the proposed activity;

2. The project utilizes the lowest quality water for the proposed activity;

3. Alternate sources of supply other than groundwater, including surface water and water reuse, were considered

for use in the proposed activity particularly for consumptive use purposes; and

4. Practicable alternatives, including design alternatives, have been evaluated for the proposed activity. Measures that would avoid or result in less adverse impact to high quality groundwater shall be considered to the maximum extent practicable.

D. Any alternatives analysis conducted specifically for public water supply projects shall include:

1. All applicable alternatives contained in the local or regional water supply plan developed in accordance with 9VAC25-780;

2. Alternatives that are practicable that had not been identified in the local or regional water supply plan developed in accordance with 9VAC25-780;

3. Water conservation measures that could be considered as a means to reduce demand for each alternative considered by the applicant; and

4. A narrative description that outlines the opportunities and status of regionalization efforts undertaken by the applicant, including the interconnectivity of water systems and the ability for applicants to purchase water from other water supplies.

E. The alternatives analysis shall discuss the criteria used to evaluate each alternative including, but not limited to:

1. Demonstration that the proposed alternative meets the project purpose and project demonstrated need;

2. Availability of the alternative to the applicant;

3. Evaluation of interconnectivity of water supply systems and the ability to purchase water from other supplies when applicable (both existing and proposed); and

4. Evaluation of the cost of the alternative on an equivalent basis.

**9VAC25-610-104. Surface water and groundwater conjunctive use systems.**

A. Surface water and groundwater conjunctive use systems for public water supplies.

1. Applicants proposing to withdraw groundwater as part of a surface water and groundwater conjunctive use system for public water supplies shall provide the following information to the board in addition to information required by 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94 as part of their permit application:

a. A detailed description of the surface water and groundwater conjunctive use system, including:

(1) Identification of all surface water sources, including pond and reservoir volumes where applicable;

(2) Identification of the wells used on a continual basis to supplement surface water supply needs and wells to be utilized in periods of reduced surface water availability. Well construction information for all wells shall be

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submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(a) The depth of the well;

(b) The diameter, top and bottom, and material of each cased interval;

(c) The diameter, top and bottom, for each screened interval; and

(d) The depth of pump intake.

(3) A description of the storage system, excluding surface water sources described in subdivision 1 a (1) of this subsection;

(4) A copy of the Engineering Description Sheet developed by the Virginia Department of Health for the withdrawal; and

(5) A line drawing of the water supply system illustrating the water balance of the system.

b. Records documenting the amount of water withdrawn on a daily basis for each water source during average weather conditions and during drought conditions;

c. Documentation of the seasonal supply of surface water during both average and drought conditions;

d. Documentation of any seasonal changes in demand that occur during an annual cycle of the specified beneficial use or uses; and

e. Other relevant information that may be required by the board to evaluate the application.

2. The applicant shall demonstrate that the groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use or uses.

3. The board shall evaluate the proposed groundwater withdrawal for consistency with criteria specified in 9VAC25-610-110.

4. In addition to conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, 9VAC25-610-130, and 9VAC25-610-140, the permit shall specify the maximum amount of groundwater that may be withdrawn during the term of the permit and shall address variations in the groundwater withdrawal amounts that may occur.

5. The board may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

6. Applicants may request approval to withdraw groundwater amounts that exceed the withdrawal limits established in subdivision 4 of this section from wells that are part of a conjunctive use system to meet human consumption needs during periods of drought by applying for a supplemental drought relief permit as described in 9VAC25-610-106.

B. Surface water and groundwater conjunctive use systems for uses other than public water supplies.

1. Applicants proposing to withdraw groundwater as part of a surface water and groundwater conjunctive use system for uses other than public water supplies shall provide the following information to the board in addition to information required by 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94 as part of their permit application:

a. A detailed description of the surface water and groundwater conjunctive use system, including:

(1) Identification of all surface water sources, including pond and reservoir volumes where applicable;

(2) Identification of the wells used on a continual basis to supplement surface water supply needs and wells to be utilized in periods of reduced surface water availability. Well construction information for all wells shall be submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(a) The depth of the well;

(b) The diameter, top and bottom, and material of each cased interval;

(c) The diameter, top and bottom, for each screened interval; and

(d) The depth of pump intake.

(3) A description of the storage system, excluding surface water sources described in subdivision 1 a (1) of this subsection; and

(4) A map delineating the area in which the water will be beneficially used.

b. Records documenting the amount of water withdrawn on a monthly basis and annual basis for each water source during average weather conditions and during drought conditions;

c. Documentation of the seasonal supply of surface water during both average and drought conditions;

d. Documentation of any seasonal changes in demand that occur during an annual cycle of the specified beneficial use or uses;

e. Other relevant information that may be required by the board to evaluate the application.

2. The applicant shall demonstrate that the groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use or uses.

3. The board shall evaluate the proposed groundwater withdrawal for consistency with criteria specified in 9VAC25-610-110.

4. In addition to conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-130, and 9VAC25-610-140, the permit shall specify the maximum amount of groundwater that may be withdrawn during the term of the permit and shall address variations in the groundwater withdrawal amounts that may occur.

5. The board may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

**9VAC25-610-106. Supplemental drought relief wells.**

A. Public water supplies wishing to withdraw groundwater for human consumption during periods of drought through the use of supplemental drought relief wells in any groundwater management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

B. A groundwater withdrawal permit application shall be completed and submitted to the board and a groundwater withdrawal permit issued by the board prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50.

C. A complete groundwater withdrawal permit application for supplemental drought relief wells shall contain the following:

1. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. Such application forms are available from the Department of Environmental Quality;

3. A signature as described in 9VAC25-610-150;

4. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(1) The depth of the well;

(2) The diameter, top and bottom, and material of each cased interval;

(3) The diameter, top and bottom, for each screened interval; and

(4) The depth of pump intake.

5. The application shall include locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

6. A map identifying the service areas for public water supplies;

7. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

8. A water conservation and management plan as described in 9VAC25-610-100;

9. The application shall include notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery;

10. A plan to mitigate potential adverse impacts from the proposed withdrawal on existing groundwater users. In lieu of developing individual mitigation plans, multiple applicants may choose to establish a mitigation program to collectively develop and implement a cooperative mitigation plan that covers the entire area of impact of all members of the mitigation program;

11. Documentation on the maximum amount of groundwater needed annually to meet human consumption needs; and

12. Other relevant information that may be required by the board to evaluate the application.

D. Permits issued by the board for groundwater withdrawals from supplemental drought relief wells shall include the following permit conditions:

1. Permits shall include a maximum amount of groundwater allowed to be withdrawn over the term of the permit.

2. The permit shall specify an annual limit on the amount of groundwater to be withdrawn based on the amount of groundwater needed annually to meet human consumption needs. Groundwater withdrawals from supplemental drought relief wells shall be subject to monthly groundwater withdrawal limits.

3. Permits shall specify that groundwater withdrawn from supplemental drought relief wells shall be used to meet human consumption needs.

4. Permits shall specify that groundwater shall only be withdrawn from supplemental drought relief wells after mandatory water restrictions have been implemented pursuant to approved water conservation and management plans as required by § 62.1-265 of the Code of Virginia.

5. A permit shall contain the total depth of each permitted well in feet.

6. A permit shall specify the screened intervals of wells authorized for use by the permit;

7. A permit shall contain the designation of the aquifers to be utilized.

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8. A permit may contain conditions limiting the withdrawal amount of a single well or a group of wells within a withdrawal system to a quantity specified by the board.

9. A groundwater withdrawal permit for a public water supply shall contain a condition allowing daily withdrawals at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the board to reduce or eliminate groundwater withdrawals by public water suppliers if necessary to protect human health or the environment.

10. The permit shall state that no pumps or water intake devices are to be placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

11. All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users shall install in-line totalizing flow meters to read gallons, cubic feet, or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in groundwater withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

b. Permits shall contain requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.

c. Permits shall contain required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

d. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of at least 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

12. All permits shall prohibit withdrawals from wells not authorized in the permit.

13. All permits shall include requirements to report the amount of water withdrawn from each permitted well or well system on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

14. Groundwater withdrawal permits issued under this chapter shall have an effective and expiration date that will determine the life of the permit. Groundwater withdrawal permits shall be effective for a fixed term not to exceed 10 years. Permit duration of less than the maximum period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

15. Each permit shall have a condition allowing the reopening of the permit for the purpose of modifying the conditions of the permit to meet new regulatory standards duly adopted by the board.

16. Each well that is included in a groundwater withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the Department of Environmental Quality well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the board and are available from the Department of Environmental Quality.

E. The permit shall address variations in the groundwater withdrawal amounts that may occur.

F. In addition to the permit conditions listed in subsection D of this section, the board may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

G. The board shall evaluate the application for supplemental drought relief wells based on the following criteria:

1. The applicant demonstrates that no pumps or water intake devices are placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

2. The applicant demonstrates that the amount of groundwater withdrawal requested is the smallest amount of withdrawal necessary to support human consumption when mandatory water use restrictions have been implemented.

3. The applicant provides a water conservation and management plan as described in 9VAC25-610-100 and implements the plan as an enforceable condition of the groundwater withdrawal permit.

4. The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

5. The board's technical evaluation demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant or that there are no existing groundwater withdrawers within the area of impact of the proposed withdrawal.

In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

a. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

b. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

c. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

d. The requirement that the claimant provide documentation that he is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens, and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

6. The board conducts a technical evaluation of the stabilized effects of the proposed withdrawal with the stabilized cumulative effects of all existing lawful withdrawals to identify if the withdrawal will lower water levels in any confined aquifer below a point that represents 80% of the distance between the historical prepumping water levels in the aquifer and the top of the aquifer.

7. The board's technical evaluation demonstrates that the proposed groundwater withdrawal will not result in salt

water intrusion or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing groundwater users or the groundwater resource. This provision shall not exclude the withdrawal of brackish water provided that the proposed withdrawal will not result in unmitigated adverse impacts.

**9VAC25-610-108. Estimating area of impact for qualifying groundwater withdrawals.**

A. For groundwater withdrawals where available information indicates the area of impact for the withdrawal will be less than 12 square miles, the director may estimate, through the use of modeling techniques, the area of impact of a withdrawal for use by the applicant in developing a mitigation plan.

B. The applicant may choose to use the area of impact estimated by the department or the applicant may conduct a geophysical investigation to gather site-specific information to be used as the basis for identifying the area of impact of the withdrawal.

C. The area of impact, whether estimated or identified through an evaluation of a geophysical evaluation, shall be included in the permit's mitigation plan if a plan is required by 9VAC25-610-110 D 3 g.

D. Mitigation plans for all surface water and groundwater conjunctive use system permits and supplemental drought relief permits shall address the area of impact associated with the maximum groundwater withdrawal allowed by such permits.

**9VAC25-610-110. ~~Criteria for issuance of permits~~ Evaluation criteria for permit applications.**

A. The board shall not issue any permit for more ~~ground water~~ groundwater than will be applied to the proposed beneficial use.

B. The board shall issue ~~ground-water~~ groundwater withdrawal permits to persons withdrawing ~~ground-water~~ groundwater or who have rights to withdraw ~~ground-water~~ groundwater prior to July 1, 1992, in the Eastern Virginia or Eastern Shore ~~Ground-Water~~ Groundwater Management Areas and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The board shall issue a ~~ground-water~~ groundwater withdrawal permit for persons meeting the criteria of ~~subdivision 1 of 9VAC25-610-90 A-4~~ for the total amount of ~~ground-water~~ groundwater withdrawn in any consecutive 12-month period between July 1, 1987, and June 30, 1992; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the board shall issue a ~~ground-water~~ groundwater withdrawal permit for the total amount of water withdrawn in any consecutive 12-month period between July 1, 1980, and June 30, 1992.

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2. The board shall issue a ~~ground-water~~ groundwater withdrawal permit for persons meeting the criteria of subdivision 2 of 9VAC25-610-90 A-2, for the total amount of ~~ground-water~~ groundwater withdrawn and applied to a beneficial use in any consecutive 12-month period between July 1, 1992, and June 30, 1995.

3. The board shall issue a ~~ground-water~~ groundwater withdrawal permit for persons meeting the criteria of subdivision 4 of 9VAC25-610-90 A-4 for the total amount of ~~ground-water~~ groundwater withdrawn in any consecutive 12-month period between July 1, 1983, and June 30, 1993. The board shall evaluate all estimates of ~~ground-water~~ groundwater withdrawal based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only reasonable estimates will be used to document a permit limit.

4. The board shall issue a ~~ground-water~~ groundwater withdrawal permit for persons meeting the criteria of subdivision 5 of 9VAC25-610-90 A-5 for the amount of ~~ground-water~~ groundwater withdrawal needed to annually meet human consumption needs as proven in the water conservation and management plan approved by the board. The board shall include conditions in such permits that require the implementation of mandatory use restrictions before such withdrawals can be exercised.

5. When requested by persons described in subdivisions 1, 2, and 4 of 9VAC25-610-90 A-1, 2 and 4, the board ~~shall~~ may issue ~~ground-water~~ groundwater withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on documentation of water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. The applicant shall provide evidence of withdrawal amounts through metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

C. The board shall issue ~~ground-water~~ groundwater withdrawal permits to persons withdrawing ~~ground-water~~ groundwater when a ~~ground-water~~ groundwater management area is declared or expanded after July 1, 1992, and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The board shall issue a ~~ground-water~~ groundwater withdrawal permit to nonagricultural users for the total amount of ~~ground-water~~ groundwater withdrawn in any consecutive 12-month period during the five years preceding the effective date of the regulation creating or expanding the ~~ground-water~~ groundwater management area.

2. The board shall issue a ~~ground-water~~ groundwater withdrawal permit to agricultural users for the total amount of ~~ground-water~~ groundwater withdrawn in any consecutive 12-month period during the 10 years preceding the effective date of the regulation creating or expanding the ~~ground-water~~ groundwater management area. The board shall evaluate all estimates of ~~ground-water~~ groundwater withdrawal based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only reasonable estimates will be used to document a permit limit.

3. When requested by the applicant the board ~~shall~~ may issue ~~ground-water~~ groundwater withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on documentation of water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. The applicant shall provide evidence of withdrawal amounts through metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

D. The board shall issue ~~ground-water~~ groundwater withdrawal permits to persons wishing to initiate a new withdrawal ~~or~~ expand an existing withdrawal, or reapply for a current withdrawal in any ~~ground-water~~ groundwater management area who have submitted complete applications and are not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The applicant shall provide all information required in ~~9VAC25-610-90 C-2~~ subdivision 2 of 9VAC25-610-94 prior to the board's determination that an application is complete. The board may require the applicant to provide any information contained in ~~9VAC25-610-90 C-3~~ subdivision 3 of 9VAC25-610-94 prior to considering an application complete based on the anticipated impact of the proposed withdrawal on existing ~~ground-water~~ groundwater



groundwater users or the ~~ground-water~~ groundwater resource.

2. The board shall perform a technical evaluation to determine the areas of any aquifers that will experience at least one foot of water level declines due to the proposed withdrawal and may evaluate the potential for the proposed withdrawal to cause salt water intrusion into any portions of any aquifers or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing ~~ground-water~~ groundwater users or the ~~ground-water~~ groundwater resource. Prior to public notice of a draft permit developed in accordance with the findings of the technical evaluation and at the request of the applicant, the results of the technical evaluation, including all assumptions and input, will be provided to the applicant for review.

3. The board shall issue a ~~ground-water~~ groundwater withdrawal permit when it is demonstrated, by a complete application and the board's technical evaluation, to the board's satisfaction that the maximum safe supply of ~~ground-water~~ groundwater will be preserved and protected for all other beneficial uses and that the applicant's proposed withdrawal will have no significant unmitigated impact on existing ~~ground-water~~ groundwater users or the ~~ground-water~~ groundwater resource. In order to assure that the applicant's proposed withdrawal complies with the above stated requirements, the demonstration shall include, but not be limited to, compliance with the following criteria:

a. The applicant demonstrates that no other sources of water supply, including reclaimed water, are viable.

b. The applicant demonstrates that the ~~ground-water~~ groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use.

c. The applicant demonstrates that no pumps or water intake devices are placed ~~below~~ lower than the top of the uppermost confined aquifer that a well utilizes as a ~~ground-water~~ groundwater source or ~~below~~ lower than the bottom of an unconfined aquifer that a well utilizes as a ~~ground-water~~ groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

d. The applicant demonstrates that the amount of ~~ground-water~~ groundwater withdrawal requested is the smallest amount of withdrawal necessary to support the proposed beneficial use and that the amount is representative of the amount necessary to support similar beneficial uses when adequate conservation measures are employed.

e. The applicant provides a water conservation and management plan as described in 9VAC25-610-100 and implements the plan as an enforceable condition of the ~~ground-water~~ groundwater withdrawal permit.

f. The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

g. The board's technical evaluation demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant or that there are no existing ~~ground-water~~ groundwater withdrawers within the area of impact of the proposed withdrawal.

In cases where the area of impact does not remain on the property owned by the applicant or existing ~~ground-water~~ groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing ~~ground-water~~ groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

(1) The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

(2) A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

(3) A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

(4) The requirement that the claimant provide documentation that he is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

h. The board's technical evaluation demonstrates that the stabilized effects from the proposed withdrawal in combination with the stabilized combined effects of all existing lawful withdrawals will not lower water levels, in any confined aquifer that the withdrawal impacts, below a point that represents 80% of the distance between the historical prepumping water levels in the aquifer and the top of the aquifer. Compliance with the 80% drawdown criterion will be determined at the points that are halfway between the proposed withdrawal site and the predicted one foot drawdown contour based on the predicted stabilized effects of the proposed withdrawal.

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i. The board's technical evaluation demonstrates that the proposed ~~ground-water~~ groundwater withdrawal will not result in salt water intrusion or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing ~~ground-water~~ groundwater users or the ~~ground-water~~ groundwater resource. This provision shall not exclude the withdrawal of brackish water ~~so long as provided that~~ the proposed withdrawal will not result in unmitigated adverse impacts.

4. The board may also take the following factors into consideration when evaluating a ~~ground-water~~ groundwater withdrawal permit application or special conditions associated with a ~~ground-water~~ groundwater withdrawal permit:

- a. The nature of the use of the proposed withdrawal;
- b. The proposed use of innovative approaches such as aquifer storage and recovery systems, surface water and ~~ground-water~~ groundwater conjunctive use systems, multiple well systems that blend withdrawals from aquifers that contain different quality ~~ground-water~~ groundwater in order to produce potable water, and desalinization of brackish ~~ground-water~~ groundwater;
- c. Climatic cycles;
- d. Economic cycles;
- e. The unique requirements of nuclear power stations;
- f. Population and water demand projections during the term of the proposed permit;
- g. The status of land use and other necessary approvals; and
- h. Other factors that the board deems appropriate.

E. When proposed uses of ~~ground-water~~ groundwater are in conflict or available supplies of ~~ground-water~~ groundwater are not sufficient to support all those who desire to use them, the board shall prioritize the evaluation of applications in the following manner:

1. Applications for human ~~consumptive use~~ consumption shall be given the highest priority;
2. Should there be conflicts between applications for human ~~consumptive uses~~ consumption, applications will be evaluated in order based on the date that said applications were considered complete; and
3. Applications for all uses, other than human consumption, will be evaluated following the evaluation of proposed human ~~consumptive uses~~ consumption in order based on the date that said applications were considered complete.

F. Criteria for ~~reissuance~~ review of ~~permits~~ reapplications for groundwater withdrawal permit.

1. The board shall consider all criteria ~~for reissuance of a~~ groundwater withdrawal permit described in subsection D of this section prior to reissuing a groundwater withdrawal

permit. Existing permitted withdrawal amounts shall not be the sole basis for determination of the appropriate withdrawal amounts when a permit is reissued.

2. The board shall reissue a permit to any public water supply user for an annual amount no less than the amount equal to that portion of the permitted withdrawal that was used by said system to support human ~~consumptive uses~~ consumption during 12 consecutive months of the previous term of the permit.

## **9VAC25-610-120. Public water supplies.**

The board shall evaluate all applications for ~~ground-water~~ groundwater withdrawals for public water supplies as described in 9VAC25-610-110. The board shall make a preliminary decision on the application and prepare a draft ~~ground-water~~ groundwater withdrawal permit and forward the draft permit to the Virginia Department of Health. The board shall not issue a final ~~ground-water~~ groundwater withdrawal permit until such time as the Virginia Department of Health issues a waterworks operation permit, or equivalent. The board shall establish withdrawal limits for such permits as described in 9VAC25-610-140 A ~~3 and 4 and 5~~. Under the Virginia Department of Health's Waterworks Regulation any proposed use of reclaimed, reused, or recycled water contained in a ~~ground-water~~ groundwater withdrawal application to support a public water supply is required to be approved by the Virginia Department of Health.

## **9VAC25-610-130. Conditions applicable to all groundwater permits.**

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this chapter shall be construed to relieve the ~~ground-water~~ groundwater withdrawal permit holder of the duty to comply with all applicable federal and state statutes and ~~regulations~~ prohibitions. At a minimum, a person must obtain a well construction permit or a well site approval letter from the Virginia Department of Health prior to the construction of any well for any withdrawal authorized by DEQ. Any permit ~~noncompliance is a violation of the Act and is a violation of~~ the law; and is grounds for enforcement action, permit termination, revocation, ~~amendment~~, modification, or denial of a permit ~~renewal~~ application.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to:

1. Avoid all adverse impacts to lawful ~~ground-water~~ groundwater users which could result from the withdrawal; and

2. Where impacts cannot be avoided, provide mitigation of the adverse impact as described in 9VAC25-610-110 D 3 g.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board or any duly authorized agent of the board or department may, at reasonable times and under reasonable circumstances, to conduct actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. ~~Enter~~ Entry upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the permit; and
3. Sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the permit or as otherwise authorized by law.

E. Duty to provide information. The permittee shall furnish to the board, within a reasonable time, any information ~~which~~ that the board may request to determine whether cause exists for ~~amending~~ amending ~~modifying~~ modifying or revoking, ~~reissuing~~ reissuing, or ~~terminating~~ terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

F. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic 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 expiration of a granted permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include as appropriate:
  - a. The date, exact place and time of sampling or measurements;

- b. The name of the individuals who performed the sampling or measurements;
- c. The date the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; ~~and~~
- f. The results of such analyses; and
- g. Chain of custody documentation.

G. Permit action.

1. A permit may be ~~amended~~ modified or revoked as set forth in Part VI (9VAC25-610-170 et seq.) of this chapter.
2. If a permittee files a request for permit ~~amendment~~ modification or revocation, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until ~~the request is acted upon by~~ the board makes a final case decision. This provision shall not be used to extend the expiration date of the effective permit.
3. Permits may be ~~amended~~ modified or revoked upon the request of the permittee, or upon board initiative, to reflect the requirements of any changes in the statutes or regulations.

**9VAC25-610-140. Establishing applicable standards, limitations or other permit conditions.**

A. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, and 9VAC25-610-130, each permit shall include conditions with the following requirements:

1. A permit shall contain the total depth of each permitted well in feet;
2. A permit shall specify the screened intervals of wells authorized for use by the permit;
- ~~2.~~ 3. A permit shall contain the designation of the aquifers to be utilized;
- ~~3.~~ 4. A permit shall contain conditions limiting the withdrawal amount of a single well or a group of wells that comprise a withdrawal system to a quantity specified by the board. A permit shall contain a maximum annual withdrawal and a maximum monthly groundwater withdrawal limit;
- ~~4.~~ 5. A ~~ground-water~~ groundwater withdrawal permit for a public water supply shall contain a condition allowing daily withdrawals at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the board to reduce or eliminate ~~ground-water~~ groundwater withdrawals by public water suppliers if necessary to protect human health or the environment;

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~~5. 6.~~ The ~~permittee shall not place a pump~~ permit shall state that no pumps or water intake ~~device~~ devices are to be placed lower than the top of the uppermost confined aquifer that a well utilizes as a ~~ground-water~~ groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a ~~ground-water~~ groundwater source; in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

~~6. 7.~~ All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users who are issued ~~ground-water~~ groundwater withdrawal permits based on 9VAC25-610-110 B 3 and C 2 shall install either in-line totalizing flow meters or hour meters that record the hours of operation of withdrawal pumps on each permitted well prior to beginning the permitted use. Flow meters shall produce volume determinations within plus or minus 10% of actual flows. Hour meters shall produce run times within plus or minus 10% of actual run times. Hour meter readings will be multiplied by the maximum capacity of the withdrawal pump to determine withdrawal amounts. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in ~~ground-water~~ groundwater withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

b. Permitted users who are issued ~~ground-water~~ groundwater withdrawal permits based on any section of this chapter not included in subdivision ~~6-a 7 a~~ of this subsection shall install in-line totalizing flow meters to read gallons, cubic feet or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in ~~ground-water~~ groundwater withdrawal reports. An alternative method for determining flow may be approved by the board on a case-by-case basis.

c. Permits shall contain requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.

d. Permits shall contain required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

e. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of at least 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

~~8.~~ All permits shall prohibit withdrawals from wells not authorized in the permit.

~~7. 9.~~ All permits shall include requirements to report the amount of water withdrawn from each permitted well and well system on forms provided by the board with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

~~8. 10.~~ ~~Ground-water~~ Groundwater withdrawal permits issued under this chapter shall have an effective and expiration date which will determine the life of the permit. ~~Ground-water~~ Groundwater withdrawal permits shall be effective for a fixed term not to exceed 10 years. Permit duration of less than the maximum period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by ~~amendment~~ modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

~~9. 11.~~ Each permit shall have a condition allowing the reopening of the permit for the purpose of ~~amending~~ modifying the conditions of the permit to meet new regulatory standards duly adopted by the board. ~~Cause for reopening permits include but is not limited to a determination that the circumstances under which the previous permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit amendment or revocation.~~

~~10. 12.~~ Each well that is included in a ~~ground-water~~ groundwater withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the Department of Environmental Quality well identification number, the ~~ground-water~~ groundwater withdrawal permit number, the total depth of the well and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the board and are available from the Department of Environmental Quality.

B. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, 9VAC25-610-130, and subsection A of this section, each permit may include conditions with the following requirements where applicable:

1. A withdrawal limit may be placed on ~~all or some~~ one or more of the wells ~~which that~~ constitute a withdrawal system;
2. A permit may contain quarterly, monthly, or daily withdrawal limits or withdrawal limits based on any other frequency as determined by the board;
3. A permit may contain conditions requiring water quality and water levels monitoring at specified intervals in any wells deemed appropriate by the board;
4. A permit may contain conditions specifying water levels and water quality action levels in pumping and observation/monitoring wells to protect against or mitigate water quality levels or aquifer degradation. The board may require permitted users to initiate control measures which include, but are not limited to, the following:
  - a. Pumping arrangements to reduce ~~ground water~~ groundwater withdrawal in areas of concentrated pumping;
  - b. Location of wells to eliminate or reduce ~~ground water~~ groundwater withdrawals near saltwater-freshwater interfaces;
  - c. Requirement of selective withdrawal from other available aquifers than those presently used or proposed;
  - d. Selective curtailment, reduction or cessation of ~~ground water~~ groundwater withdrawals to protect the public welfare, safety, or health or to protect the resource;
  - e. Conjunctive use of freshwater and saltwater aquifers, or waters of less desirable quality where water quality of a specific character is not essential;
  - f. Construction and use of observation or monitoring wells, ~~drilled into aquifers between areas of ground water withdrawal (or proposed areas of ground water withdrawal) and sources of lower quality water including saltwater~~;
  - g. ~~Prohibiting~~ Well construction techniques that prohibit the hydraulic connection of aquifers that contain different quality waters, such as gravel packing, that could result in deterioration of water quality in an aquifer; and
  - h. Such other necessary control or abatement techniques as are ~~technically feasible~~ practicable to protect and beneficially utilize the groundwater resource.
5. A permit may contain conditions limiting water level declines in pumping wells and observation wells; ~~and~~
6. All permits may include requirements to report water quality and water level information on forms provided by the board with a frequency dependent on the nature and

effect of the withdrawal, but in no case less than once per year; and

7. Permits shall require implementation of water conservation and management plans developed to comply with requirements of 9VAC25-610-100.

C. In addition to conditions described in 9VAC25-610-130 and subsections A and B of this section, the board may issue any groundwater withdrawal permit with any terms, conditions and limitations necessary to protect the public welfare, safety, and health or to protect the resource.

**9VAC25-610-150. Signatory requirements.**

~~Any application, report, or certification shall be signed as follows:~~

~~1. Application.~~

- ~~a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official 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 or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~
- ~~b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency).~~
- ~~c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.~~
- ~~d. Any application for a permit under this regulation must bear the signatures of the responsible party and any agent acting on the responsible party's behalf.~~

A. Application. Any application for a permit under this chapter must bear the applicant's signature or the signature of a person acting in the applicant's behalf with the authority to bind the applicant. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

~~2. B. Reports. All reports required by permits and other information requested by the board shall be signed by:~~

- ~~a. One of the persons described in subdivision 1 a, b or c of this section 1. The permittee; or~~
- ~~b. 2. A duly authorized representative of that person. A person is a duly authorized representative only if:~~

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(1) a. The authorization is made in writing to the board by a person described in ~~subdivision 1 a, b, or c~~ subsection A of this section; and

(2) b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated withdrawal ~~facility~~ system or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the board prior to or together with any separate information, or applications to be signed by an authorized representative.

3. C. Certification of application and reports. Any person signing a document under ~~subdivision 1 or 2~~ subsection A or B of 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.

## 9VAC25-610-160. Draft permit.

A. Upon receipt of a complete application for a new or expanded withdrawal or a complete application to ~~amend~~ modify an existing withdrawal, the board shall make a tentative decision to issue or deny the ~~application~~ permit. If a tentative decision is to issue the permit then a draft permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft permit:

1. Conditions, withdrawal limitations, standards and other requirements applicable to the permit;
2. Monitoring and reporting requirements;
3. Requirements for mitigation of adverse impacts; and
4. Requirements for a water conservation and management plan.

B. If the tentative decision is to deny the ~~application~~ permit, the board shall do so in accordance with 9VAC25-610-340.

### Part IV

#### Special Exception Application and Issuance

## 9VAC25-610-170. Application for a special exception.

A. Any person who wishes to initiate a ~~ground-water~~ groundwater withdrawal in any ~~ground-water~~ groundwater

management area and is not exempted from the provisions of this chapter by 9VAC25-610-50 may apply for a special exception in unusual cases where requiring the proposed user to obtain a ~~ground-water~~ groundwater withdrawal permit would be contrary to the purpose of the ~~Groundwater~~ Ground Water Management Act of 1992.

B. A special exception application shall be completed and submitted to the board and a special exception issued by the board prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50 ~~of this chapter~~. Special exception application forms shall be in a format specified by the board and are available from the Department of Environmental Quality.

C. Due to the unique nature of applications for special exceptions the board shall determine the completeness of an application on a case-by-case basis. The board may require any information required in ~~9VAC25-610-90 C 2 or 3~~ 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94, prior to considering an application for a special exception complete.

D. Where the board ~~considers~~ finds an application incomplete, the board ~~may~~ shall require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board ~~considers~~ finds the application complete. An incomplete permit application for a special exception may be suspended from processing 180 days from the date that the applicant received notification that the application is deficient. Further, where the applicant becomes aware that he omitted one or more relevant facts from a special exception application, or submitted incorrect information in a special exception application or in any report to the board, he shall immediately submit such facts or the correct information.

## 9VAC25-610-190. Criteria for the issuance of special exceptions.

A. The board shall issue special exceptions only in unusual situations where the applicant demonstrates to the board's satisfaction that requiring the applicant to obtain a ~~ground-water~~ groundwater withdrawal permit would be contrary to the intended purposes of the ~~Groundwater~~ Ground Water Management Act of 1992.

B. The board may require compliance with any criteria described in 9VAC25-610-110.

## 9VAC25-610-220. Establishing applicable standards, limitations or other special exception conditions.

The board may issue special exceptions which include any requirement for permits as described in 9VAC25-610-140. Special exceptions shall not be renewed, except in the case of special exceptions that have been issued to allow ~~ground-water~~ groundwater withdrawals associated with state-approved ~~ground-water~~ groundwater remediation activities. In the case of reissuance of a special exception for a state-

approved ~~ground water~~ groundwater remediation activity, the board may require the holder of the special exception to submit any information required in ~~9VAC25-610-90 C 2 or 3~~ 9VAC25-610-90, 9VAC25-610-92, and 9VAC25-610-94, and may require compliance with any criteria described in 9VAC25-610-110. In the case where any other activity that is being supported by the specially excepted withdrawal will require that the withdrawal extend beyond the term of the existing special exception, the ~~ground water~~ groundwater user shall apply for a permit to withdraw ~~ground water~~ groundwater.

**9VAC25-610-240. Draft special exception.**

A. Upon receipt of a complete application, the board shall make a tentative decision to issue or deny the ~~application~~ special exception. If a tentative decision is to issue the special exception then a draft special exception shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft special exception:

1. Conditions, withdrawal limitations, standards and other requirements applicable to the special exception;
2. Monitoring and reporting requirements; and
3. Requirements for mitigation of adverse impacts.

B. If the tentative decision is to deny the ~~application~~ special exception, the board shall return the application to the applicant. The applicant may then apply for a ~~ground water~~ groundwater withdrawal permit for the proposed withdrawal in accordance with Part III (9VAC25-610-85 et seq.) of this chapter.

Part V  
Public Involvement

**9VAC25-610-250. Public notice of permit or special exception action and public comment period.**

A. Every draft permit described in 9VAC25-610-160 A and draft special exception shall be given public notice ~~in a form prescribed by the board and,~~ paid for by the ~~owner~~ applicant, by publication once in a newspaper of general circulation in the area affected by the withdrawal.

B. Notice of each draft permit described in 9VAC25-610-160 A and draft special exception will be mailed by the board to each local governing body within the ~~ground water~~ groundwater management area within which the proposed withdrawal will occur on or before the date of public notice.

C. The board shall allow a period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request ~~an informal~~ a public hearing.

D. The contents of the public notice of a draft permit or draft special exception action shall include:

1. Name and address of the applicant. If the location of the proposed withdrawal differs from the address of the applicant the notice shall also state the location in

sufficient detail such that the specific location may be easily identified;

2. Brief description of the beneficial use that the ~~ground water~~ groundwater withdrawal will support;
3. The name and depth below ground surface of the aquifer that will support the proposed withdrawal;
4. The amount of ~~ground water~~ groundwater withdrawal requested expressed as an average gallonage per day;
5. A statement of the tentative determination to issue or deny a permit or special exception;
6. A brief description of the final determination procedure;
7. The address, email address, and phone number of a specific person or persons at the department's office from whom further information may be obtained; and
8. A brief description on how to submit comments and request a public hearing.

E. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application or for draft permits for existing ~~ground water~~ groundwater withdrawals when such draft permits are based solely on historic withdrawals.

F. When a permit or special exception is denied the board will do so in accordance with 9VAC25-610-340.

**9VAC25-610-260. Public access to information.**

All information pertaining to ~~permit and special exception application and processing shall be available to the public~~ groundwater permit processing or in reference to any activity requiring a groundwater permit under this chapter shall be available to the public unless the applicant has made a showing that the information is protected by the applicant as a trade secret covered by § 62.1-44.21 of the Code of Virginia. All information claimed confidential must be identified as such at the time of submission to the board.

**9VAC25-610-270. Public comments and public hearing.**

~~A. All written comments submitted during the 30 day comment period described in 9VAC25-610-250 C shall be retained by the board and considered during the board's final decision on the permit or special exception.~~

~~B. A.~~ The director shall consider all written comments and requests for ~~an informal~~ a public hearing received during the comment period, and shall make a determination on the necessity of ~~an informal~~ a public hearing in accordance with 9VAC25-230-50 § 62.1-44.15:02 of the Code of Virginia. All proceedings, ~~informal public hearings,~~ and decisions from ~~them~~ it will be in accordance with ~~Procedural Rule No. 1 § 62.1-44.15:02 of the Code of Virginia.~~

~~C. Should the director, in accordance with Procedural Rule No. 1, determine to dispense with the informal hearing, he may grant the permit or special exception, or, at his discretion, transmit the application or request, together with all written comments thereon and relevant staff documents~~

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~~and staff recommendations, if any, to the board for its decision.~~

~~D. B.~~ Any ~~owner applicant or permittee~~ aggrieved by ~~any an~~ action of the board ~~or director~~ taken without a formal hearing ~~or inaction of the board or director~~ may request in writing a formal hearing pursuant to ~~Procedural Rule No. 1 § 62.1-44.25~~ of the Code of Virginia.

## **9VAC25-610-280. Public notice of hearing.**

A. Public notice of any ~~informal~~ public hearing held pursuant to 9VAC25-610-270 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the area affected by the proposed withdrawal at least 30 days in advance of the public hearing; and
2. Notice of the ~~informal~~ public hearing shall be sent to all persons and government agencies which received a copy of the public notice of the draft permit or special exception and to those persons requesting ~~an informal a public~~ hearing or having commented in response to the public ~~notice~~ in accordance with § 62.1-44.15:02 of the Code of Virginia.

~~B. Notice shall be effected pursuant to subdivisions A 1 and A 2 of this section, upon mailing, at least 30 days in advance of the informal hearing. The cost of public notice shall be paid by the applicant.~~

C. The content of the public notice of any ~~informal~~ public hearing held pursuant to 9VAC25-610-270 shall include at least the following:

1. Name and address of each person whose application will be considered at the ~~informal~~ public hearing, the amount of ~~ground-water~~ groundwater withdrawal requested expressed as an average gallonage per day, and a brief description of the beneficial use that will be supported by the proposed ~~ground-water~~ groundwater withdrawal.
2. The precise location of the proposed withdrawal and the aquifers that will support the withdrawal. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information.
3. A brief reference to the public notice issued for the permit or special exception application and draft permit or special exception, including identification number and date of issuance unless the public notice includes the ~~informal~~ public hearing notice.
4. Information regarding the time and location for the ~~informal~~ public hearing.
5. The purpose of the ~~informal~~ public hearing.
6. A concise statement of the relevant issues raised by the persons requesting the ~~informal~~ public hearing.
7. Contact person and the ~~address mailing address, email address, phone number, and name~~ address, mailing address, email address, phone number, and name of the Department of Environmental Quality office at which interested persons

may obtain further information or request a copy of the draft permit or special exception.

8. A brief reference to the rules and procedures to be followed at the ~~informal~~ public hearing.

D. Public notice of any formal hearing held pursuant to 9VAC25-610-270 ~~D C~~ shall be in accordance with Procedural Rule No.1 (9VAC25-230).

## Part VI

Permit and Special Exception ~~Amendment~~ Modification,  
Revocation and Denial

## **9VAC25-610-290. Rules for amendment modification and revocation.**

Permits and special exceptions shall be ~~amended~~ modified or revoked only as authorized by this part of this chapter as follows:

1. A permit or special exception may be ~~amended~~ modified in whole or in part, or revoked;
2. Permit or special exception ~~amendments~~ modifications shall not be used to extend the term of a permit or special exception; and
3. Amendment Modification or revocation may be initiated by the board, ~~or~~ at the request of the permittee, or other person at the board's discretion under applicable laws or the provisions of this chapter.

## **9VAC25-610-300. Causes for revocation.**

A. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100 a permit or special exception can be revoked for cause. Causes for revocation are as follows:

1. Noncompliance with any condition of the permit or special exception;
2. Failure to fully disclose all relevant facts or misrepresentation of a material fact in applying for a permit or special exception, or in any other report or document required by the Act, this chapter or permit or special exception conditions;
3. The violation of any regulation or order of the board, or any order of a court, pertaining to ~~ground-water~~ groundwater withdrawal;
4. A determination that the withdrawal authorized by the permit or special exception endangers human health or the environment and can not be regulated to acceptable levels by permit or special exception ~~amendment~~ modification;
5. A material change in the basis on which the permit or special exception was issued that requires either a temporary or permanent reduction, application of special conditions or elimination of any ~~ground-water~~ groundwater withdrawal controlled by the permit or special exception.

B. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100 a permit or special exception ~~can~~ may be revoked when any of the developments described



in 9VAC25-610-310 occur ~~and the holder of the permit or special exception agrees to or requests the revocation.~~

**9VAC25-610-310. Causes for amendment modification.**

A. A permit or special exception may, at the board's discretion, be ~~amended~~ modified for any cause as described in 9VAC25-610-300.

B. A permit or special exception may be ~~amended~~ modified when any of the following developments occur:

1. When new information becomes available about the ~~ground-water~~ groundwater withdrawal covered by the permit or special exception, or the impact of the withdrawal, which was not available at permit or ~~of~~ special exception issuance and would have justified the application of different conditions at the time of issuance;
2. When ~~ground-water~~ groundwater withdrawal reports submitted by the permittee indicate that the permittee is using less than 60% of the permitted withdrawal amount for a five-year period;
3. When a change is made in the regulations on which the permit or special exception was based; or
4. When changes occur which are subject to "reopener clauses" in the permit or special exception.

**9VAC25-610-320. Transferability of permits and special exceptions.**

A. Transfer by ~~amendment modification~~. Except as provided for under automatic transfer in subsection B of this section, a permit or special exception shall be transferred only if the permit has been ~~amended~~ modified to reflect the transfer.

B. Automatic transfer. Any permit or special exception shall be automatically transferred to a new owner as allowed by the minor modification process described in 9VAC25-610-330 B ~~8~~ if:

1. The current owner notifies the board within 30 days in advance of the proposed transfer of ownership;
2. The notice to the board includes a notarized written agreement between the existing permittee and proposed new ~~owner~~ permittee containing a specific date of transfer of permit or special exception responsibility, coverage and liability ~~between them to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity;~~ and
3. The board does not within the 30-day time period notify the existing ~~owner~~ permittee and the proposed ~~owner~~ permittee of its intent to ~~amend~~ modify, revoke, or reissue the permit or special exception-; and
4. The permit transferor and the permit transferee provide written notice to the board of the actual transfer date.

**9VAC25-610-330. Minor amendment modification.**

A. Upon request of the holder of a permit or special exception, or upon board initiative with the consent of the holder of a permit or special exception, minor ~~amendments~~ modifications may be made in the permit or special exception without following the public involvement procedures.

B. For ~~ground-water~~ groundwater withdrawal permits and special exceptions, minor ~~amendments~~ modifications may only:

1. Correct typographical errors;
2. Require reporting at a greater frequency than required in the permit or special exception;
3. Add additional or more restrictive monitoring requirements than required in the permit or special exception;
4. Replace an existing well ~~so long as provided that the replacement well is screened in the same aquifer or aquifers as the existing well, the replacement well is in the same location as near vicinity of the existing well, the~~ ground-water groundwater withdrawal does not increase, and the area of impact does not increase;
5. Add additional wells so long as the additional wells are screened in the same aquifer or aquifers as the existing well, additional wells are in the ~~same location as near vicinity of~~ the existing well, the total ~~ground-water~~ groundwater withdrawal does not increase, and the area of impact does not increase;
6. Combine the withdrawals governed by multiple permits into one permit when the systems that were governed by the multiple permits are physically connected, as long as the interconnection will not result in additional ~~ground~~ water groundwater withdrawal and the area of impact will not increase;
7. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date; ~~and~~
8. Allow for a change in ownership or operational control when the board determines that no other change in the permit or special exception is necessary, provided that a written agreement containing a specific date for transfer of permit or special exception responsibility, coverage and liability from the current to the new owner has been submitted to the board-; and
9. Revise a water conservation and management plan to update conservation measures being implemented by the permittee that increase the amount of groundwater conserved.

**9VAC25-610-340. Denial of a permit or special exception.**

A. The director shall make a decision to tentatively deny the permit or special exception requested if the requirements of

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this chapter are not met. Bases for denial include, but are not limited to, the following:

1. The cumulative stabilized impact of the proposed withdrawal in combination with all existing lawful withdrawals will lower water levels in a confined aquifer below a point that represents 80% of the distance between the historical prepumping water levels in the aquifer and the top of the aquifer;
2. The groundwater withdrawal amount requested in the permit application exceeds the amount that can be applied to the proposed beneficial use;
3. Available supplies of groundwater are insufficient for all who desire to use them and the preference is being given to use for human consumption; and
4. Failure to implement a water conservation and management plan associated with a previously permitted withdrawal.

~~A. B.~~ The applicant shall be notified by letter of the ~~department's~~ director's preliminary decision to recommend to the board denial of tentatively deny the permit or special exception requested.

~~B. C.~~ The department shall provide sufficient information to the applicant regarding the rationale for denial, such that the applicant may, at his option, modify the application in order to achieve a favorable recommendation; withdraw his application; or proceed with the processing on the original application.

~~C. D.~~ Should the applicant withdraw his application, no permit or special exception will be issued.

~~D. E.~~ Should the applicant elect to proceed ~~with the original project as originally proposed~~, the ~~staff shall make its recommendation of denial to the director for determination of the need for public notice as provided for in Part V of this chapter~~ director shall advise the applicant of his right to an informal fact finding in accordance with § 2.2-4019 of the Administrative Process Act to consider the denial.

## Part VII Enforcement

### 9VAC25-610-350. Enforcement.

The board may enforce the provisions of this chapter utilizing all applicable procedures under the ~~Groundwater~~ Ground Water Management Act of 1992 or any other section of the Code of Virginia that may be applicable.

### 9VAC25-610-370. Control of naturally flowing wells.

The owner of any well that naturally flows, in any portion of the Commonwealth, shall either:

- Permanently abandon the well in accordance with the Virginia Department of Health's Private Well Construction Regulations; or
- Equip the well with valves that will completely stop the flow of ~~ground water~~ groundwater when it is not being applied to a beneficial use.

### 9VAC25-610-380. Statewide information requirements.

The board may require any person withdrawing ~~ground water~~ groundwater for any purpose anywhere in the Commonwealth, whether or not declared to be a ~~ground water~~ groundwater management area, to furnish to the board such information that may be necessary to carry out the provisions of the ~~Groundwater~~ Ground Water Management Act of 1992. ~~Ground water~~ Groundwater withdrawals that occur in conjunction with activities related to the exploration and production of oil, gas, coal, or other minerals regulated by the Department of Mines, Minerals and Energy are exempt from any information reporting requirements.

### 9VAC25-610-390. Statewide right to inspection and entry.

Upon presentation of credentials the board, or any duly authorized agent, shall have the power to enter, at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, located anywhere in the Commonwealth for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs to ensure compliance with any permits, standards, policies, rules, regulations, rulings and special orders which the board or department may adopt, issue or establish to carry out the provisions of the ~~Groundwater~~ Ground Water Management Act of 1992 and this chapter.

### 9VAC25-610-400. Evaluation of regulation. (Repealed.)

~~Within three years after January 1, 1999, the department shall perform an analysis of this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

~~Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter, or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

**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 (9VAC25-610)

~~Water Division Permit Application Fee.~~

~~Application for a Ground Water Withdrawal Permit (with instructions) (rev. 6/99).~~

~~Ground Water Withdrawal Permit Change of Ownership Agreement Form (eff. 6/99).~~

~~Revocation Agreement Form (eff. 6/99).~~

~~Water Well Completion Report, Form GW2, (rev. 6/99).~~

~~Permit to Withdraw Ground Water (eff. 6/99).~~

~~Public Notice Authorization Form - Authorization for Public Notice Billing to Ground Water Withdrawal Permit Applicant (eff. 6/99).~~

~~Preapplication Meeting Application for a Ground Water Groundwater Withdrawal Permit (eff. 6/99).~~

~~Local and Areawide Planning Requirements (eff. 5/99).~~

~~Quarterly Groundwater Withdrawal Report.~~

[Water Division Permit Application Fee \(rev. 9/12\).](#)

[Application Instructions for Completing a Groundwater Withdrawal Permit Application \(undated\).](#)

[Application for a Groundwater Withdrawal Permit \(rev. 9/12\).](#)

[Groundwater Withdrawal Permit - Change of Ownership Agreement Form \(undated\).](#)

[Uncontested Termination Agreement \(undated\).](#)

[Water Well Completion Report, Form GW2 \(undated\).](#)

[Public Notice Authorization Form - Authorization for Public Notice Billing to Groundwater Withdrawal Permit Applicant \(undated\).](#)

[Preapplication Meeting - Application for a Groundwater Withdrawal Permit \(rev. 9/12\).](#)

[Local and Areawide Planning Requirements \(rev. 9/12\).](#)

[Quarterly Groundwater Withdrawal Report.](#)

[Mitigation Plan \(undated\).](#)

VA.R. Doc. No. R09-1781; Filed October 1, 2012, 1:46 p.m.

## Proposed Regulation

**Title of Regulation:** 9VAC25-740. Water Reclamation and Reuse Regulation (amending 9VAC25-740-10, 9VAC25-740-30 through 9VAC25-740-180, 9VAC25-740-200; adding 9VAC25-740-45, 9VAC25-740-55, 9VAC25-740-105).

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

**Public Hearing Information:**

December 13, 2012 - 2 p.m. - Department of Environmental Quality, Piedmont Regional Office, Training Room, 4949-Cox Road, Glen Allen, VA

**Public Comment Deadline:** January 11, 2013.

**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](mailto:william.norris@deq.virginia.gov).

**Basis:** Section 62.1-44.15 of the Code of Virginia authorizes the State Water Control Board to promulgate regulations necessary to carry out its powers and duties.

Specific to water reclamation and reuse, § 62.1-44.2 of the Code of Virginia establishes the purpose of the law, among other things, to promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health. More specifically, §§ 62.1-44.15 (10) and 62.1-44.15 (15) give authority to the board to adopt regulations as it deems necessary to enforce the general water quality management program, and to promote and establish requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into state waters.

**Purpose:** The primary purpose of this regulatory action is to amend the Water Reclamation and Reuse Regulation (9VAC25-740), which became effective October 1, 2008. Since its implementation, both the Department of Environmental Quality (DEQ) and the public have identified needed changes to the regulation that would improve the State Water Control Board's ability to implement a more effective water reclamation and reuse regulatory program for the protection of public health and safety. Two items that will be addressed among other changes to improve implementation of the regulation are (i) the inflexibility of the regulation to accept deviations from design or operational requirements that may discourage projects capable of producing or distributing reclaimed water suitable for reuse in a manner protective of the environment and public health and (ii) the lack of provisions to authorize temporary water reclamation and reuse without a permit during periods of significant drought to conserve potable water supply.

**Substance:** Amendments to the Water Reclamation and Reuse Regulation:

1. Add provisions to allow design or operational deviations for facilities still capable of producing or distributing reclaimed water in a manner protective of the environment and public health;
2. Add provisions for an emergency authorization to reclaim and reuse wastewater without a permit during periods of significant drought;
3. Add a requirement for an auxiliary or backup plan for conjunctive wastewater treatment works and reclamation systems that rely primarily or completely on water reuse for elimination of wastewater;
4. Modify and add requirements to manage pollutants of concern from significant industrial users for reclamation systems and satellite reclamation systems that will produce Level 1 reclaimed water, and for reclamation systems that are part of an indirect potable reuse project;
5. Add design and operational requirements for UV disinfection of Level 1 and Level 2 reclaimed water;

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6. Add or modify several terms and their associated definitions related to the use of these terms within the context of the regulation;
7. Modify language to clarify service agreement or contract requirements for end users of reclaimed water, and alternative permitting options for reclaimed water distribution systems;
8. Modify activities excluded from the requirements of the regulation related to alternative onsite sewage systems permitted by the Virginia Department of Health, utilization of harvested rainwater and storm water, and indirect non-potable reuse of reclaimed water;
9. Add the Water Withdrawal Reporting Regulation (9VAC25-200) to the list of other board regulations with which the Water Reclamation and Reuse Regulation has a relationship;
10. Modify the point of compliance (POC) for reclaimed water standards to include POCs for certain system storage facilities and reclaimed water distribution systems, in addition to POCs required for reclamation systems and satellite reclamation systems;
11. Add reclaimed water monitoring requirements for certain system storage facilities and reclaimed water distribution systems where determined necessary by the board;
12. Modify reuses listed in regulation to include irrigation to establish erosion control and move ship ballast to industrial reuses requiring a minimum of Level 1 reclaimed water;
13. Modify the description of unlisted reuses and add all reuses of reclaimed industrial wastewater that will require reclaimed water standards and monitoring requirements developed on a case-by-case basis;
14. Add permit application, design, construction, and operation requirements that are specific to indirect potable reuse projects;
15. Add a provision that allows reclaimed water agents to inspect end users reuses and storage facilities as part of the service agreement or contract between the reclaimed water agent and an end user;
16. Modify cross-connection and backflow prevention requirements for reclaimed water distribution systems to be consistent with regulations of other state agencies (e.g., Uniform State Building Code);
17. Clarify that the requirement for reclaimed water distribution systems to maintain reclaimed water standards for intended reuses does not apply to Corrective Action Thresholds, which are operational standards for only reclamation systems and satellite reclamation systems;
18. Modify Class I reliability requirements for Level 1 reclamation systems and satellite reclamation systems to include associated pump stations not addressed by the

Sewage Collection and Treatment Regulations, 9VAC25-790;

19. Add requirement prohibiting application of reclaimed water during winds that would cause overspray or aerosol drift into or beyond buffer zones of setbacks. This requirement is consistent with the prohibition of reclaimed water runoff from irrigation sites;
20. Revise an existing prohibition that will allow the reuse of reclaimed water inside residential buildings and structures that are other than one or two family dwellings;
21. Revise an existing design requirement that allows non-system storage facilities of reclaimed water to discharge under less restrictive circumstances;
22. Add provisions to prevent unauthorized discharges and to recover flush water or reclaimed water for use or reuse from the maintenance of reclaimed water distribution systems;
23. Add a prohibition against significant adverse impacts to other beneficial uses that may result from the diversion of source water from a VPDES permitted surface water discharge to water reclamation and reuse;
24. Add a provision to submit information necessary for an impact analysis for each VPDES permitted treatment works that proposes a new or increased diversion of its discharge to reclamation and reuse; and
25. Make minor changes to (i) clarify or make more specific the language of the regulation, (ii) eliminate redundancy, (iii) relate separate sections or subdivisions of the regulation, and (iv) correct grammatical and typographical errors.

Issues: The proposed amendments are not expected to result in any disadvantages to the public, the regulated community, the agency, or the Commonwealth. The proposal should have advantages for the regulated community and the agency through improved implementation of the program.

As stated in the Notice of Intended Regulatory Action for this regulatory action, the board studied the possible reuse of reclaimed water for groundwater recharge and presented its findings in a report to the Regulatory Advisory Panel (RAP) with points for discussion by the panel. Based on discussions of the RAP and comments received from individual RAP members, there appears to be general support by the RAP for groundwater recharge with reclaimed water for subsequent reuse. While DEQ appreciates the input of the RAP and recognizes the benefits of groundwater recharge with reclaimed water for reuse, the agency has determined that amendments to the Water Regulation and Reuse Regulation to address groundwater recharge should follow the establishment of a new or revised board policy on groundwater recharge, and should be part of or follow a regulatory action to amend the Groundwater Regulations (9VAC25-280). Input received from the RAP will provide useful information to support these efforts in the future.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (the Board) proposes to 1) allow variances from design, construction, operation or maintenance requirements of this regulation, 2) allow the production, distribution and reuse of reclaimed water without a permit when there is a substantial threat to public safety, 3) allow greater flexibility in the management of pollutants of concern from significant industrial users, 4) expand the list of approved reuses not requiring case-by-case approval, 5) expand the reuse of reclaimed water by allowing the reuse of water in more types of dwellings, 6) allow non-system storage facilities of reclaimed water to discharge under less restrictive circumstances, 7) provide facility owners the authority to inspect reuses and storage facilities of end users with whom they have a service agreement or contract, 8) require permit applicants to plan for emergencies, 9) establish that alternative onsite sewage systems regulated by the Virginia Department of Health (VDH) are required to obtain a separate permit from the Department of Environmental Quality (DEQ), 10) provide authority to add new points of compliance downstream for storage facilities and reclaimed water distribution systems, 11) establish additional monitoring requirements to address reclaimed water degradation during longer term storage, 12) introduce design requirements to improve maintenance and compliance with operational requirements of the regulation for reclaimed water distribution systems, and 13) require that pump stations meet reliability requirements for Level 1 reclamation systems and satellite reclamation systems.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact. The Board proposes numerous changes that will affect water reclamation and reuse facilities and activities in Virginia. Participation in water reclamation and reuse is voluntary. Thus, these regulations apply to those who voluntarily participate in water reclamation and reuse. The proposed changes include many substantive changes as well as many minor changes such as clarification of the language of the regulation, elimination of redundancies, formatting of sections or subdivisions of the regulation, and correction of grammatical and typographical errors. A number of the substantive changes are expected to provide direct benefits to the water reclamation and reuse facility owners thereby encouraging reclamation and reuse while a number of other changes are expected to introduce additional compliance costs. In almost all cases no reliable information is available to quantify the size of the expected benefits or expected costs. A description of the likely economic impacts of substantive changes is as follows.

One of the substantive changes will provide authority to the Board to issue variances from design, construction, operation, or maintenance requirements of this regulation. The proposed language describes circumstances for which a variance may be considered, information to be included in an application for a variance, the period within which the board must act on a variance request, minimum factors to be considered by the board when acting upon a variance request, the Board's disposition of a variance request, effective date of a variance request when granted, variance nontransferability and incorporation into the project permit, and circumstances where variance procedures contained in the other regulations may apply in lieu of the variance procedures contained in this regulation.

According to DEQ, primarily due to high compliance costs, applicants have requested exceptions to design or operational requirements of the regulation, but DEQ was unable to grant such exceptions or variances without the authority established in law or regulation. With the proposed changes, DEQ will have greater flexibility where the design, construction, operation or maintenance of a water reclamation and reuse proposal may not conform to specific requirements of the regulation. Greater flexibility should help DEQ accommodate requests for less expensive alternative solutions to design requirements of the regulation. DEQ does not expect any increased risks to the environment or public health from this proposed change. Approximately five variances are expected to be issued annually.

Another significant change will provide authority to DEQ to allow the production, distribution and reuse of reclaimed water without a permit when the board finds that due to drought there is insufficient public water supply that may result in a substantial threat to public safety. The language regarding this change describes circumstances under which the board can issue an emergency authorization, projects that are or are not eligible for emergency authorization, permit application requirements following the issuance of an emergency authorization, the effective duration of the emergency authorization, and public participation requirements for an emergency authorization. This change will provide only a temporary authorization that will expire automatically unless an application for a permanent authorization is made within 180 days. DEQ had in the past received requests to temporarily authorize emergency reuse of reclaimed water during severe droughts without permit coverage, but was unable to grant such authorization without the authority established in regulation. The amendment will provide DEQ the authority and flexibility to temporarily authorize reclamation and specific reuses of reclaimed wastewater without a permit during periods of significant drought. This change has the potential to help regulants avoid potentially significant compliance costs during severe droughts. Several applications for emergency authorizations may be expected in severe drought years.

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The proposed changes will also clarify and simplify requirements to manage pollutants of concern from significant industrial users (SIUs) for reclamation systems and satellite reclamation systems that will produce Level 1 reclaimed water, and for reclamation systems that are part of an indirect potable reuse project. This change will eliminate unnecessary reviews and approvals by the board, no longer require pretreatment programs, and allow greater flexibility in the management of pollutants of concern from SIUs for the purpose of producing Level 1 reclaimed water reducing monitoring, administrative, inspection, investigation, and sampling costs.

The proposed changes will also expand the list of approved reuses not requiring case-by-case approval by DEQ and to include irrigation to establish erosion control and will move ship ballast to industrial reuses requiring a minimum of Level 1 reclaimed water. This change will reduce the time to review and approve reuse involving irrigation to establish erosion control. It will also make reclaimed water standards required for ship ballast reuse consistent with US Coast Guard proposed standards for ship ballast discharges within US waters. Both DEQ and permit holders are expected to benefit from this change in terms of reduced administrative compliance costs.

The board also proposes to expand the reuse of reclaimed water by removing a current prohibition that does not allow the reuse of reclaimed water inside residential buildings and structures that are other than one or two family dwellings (i.e., single family homes, townhouses and duplexes). Since this change allows greater use of reclaimed water, some regulants may be able to take advantage of it and enjoy some savings and reduce their reliance on potable water supplies.

The proposed regulations will also allow non-system storage facilities of reclaimed water to discharge under less restrictive circumstances. Currently, no reclaimed water storage facility can discharge except in the event of a 25-year, 24-hour storm. The proposed changes will allow non-system storage facilities of reclaimed water to discharge in the event of a 10-year, 24-hour storm, reducing the necessary storage capacity of these facilities. Allowing smaller facilities to be built can reduce construction and maintenance costs of reclaimed water storage facilities. This change is expected to benefit end users of reclaimed water that must store the reclaimed water between periods of reuse, such as for irrigation (e.g., at golf courses), utilizing existing ponds that predate the design requirements of the current regulation.

The Board will also require that the applicant or permit holder must reserve the right to perform routine or periodic inspections of an end users reclaimed water reuses and storage facilities to ensure compliance with the regulations. This change will provide reclaimed water agents the authority to inspect reuses and storage facilities of end users with whom they have a service agreement or contract. According to DEQ, while reuses and storage facilities of an end user

may be inspected by DEQ, most end users will not be issued a permit by or have a relationship with DEQ. This change will allow reclaimed water agents to be more aware of and responsive to problems with end users, and to exercise more control in the management of reclaimed water within their service areas. This change may also provide some administrative relief to DEQ as it may be able to direct some of its resources to other areas as needed.

Despite these expected benefits, the proposed changes may introduce additional compliance costs also. One of the changes will require applicants to provide information on specific measures to be immediately implemented for the management of wastewater and reclaimed water in the event that primary reuses of reclaimed water generated by specific conjunctive systems cease or fail. The goal of this change is to address the vulnerability of specific conjunctive systems with no or limited wastewater management options other than water reuse in the event that primary reuses of reclaimed water cease or fail. This change will force permit applicants to plan for emergencies and come up with an auxiliary or backup plan to manage unused reclaimed water. While the required planning may be fairly inexpensive to comply with, there could be significant implementation costs in a crisis situation. However, the benefits of the planning would also be high in such an event.

Another proposed change will establish that alternative onsite sewage systems regulated by VDH are required to obtain a separate permit from DEQ if water reclamation and reuse is part of the system. This change is expected to impose additional costs on owners of these systems interested in making water reclamation and reuse a part of the system. Increased costs may include the fee of a second permit and costs for additional monitoring, reporting, and record keeping required for reclamation and reuse. On the other hand, this change will clarify the applicability of this regulation to VDH permitted alternative onsite sewage systems and allow the use of such systems for water reclamation and reuse.

The proposed regulations also provide authority to the Board to add new points of compliance downstream for storage facilities and reclaimed water distribution systems. This change will allow the Board to establish locations for new monitoring requirements where deemed necessary. Depending on how many and which parameters are analyzed, the cost per sampling event at each point of compliance may vary from \$18 to \$96. However, since the decision to add new points of compliance will be made on a case by case basis, DEQ does not know the number of cases where a new point of compliance may be established.

Similarly, the proposed regulations will also establish additional monitoring requirements for reclamation systems where reclaimed water is held in system storage for a period greater than 24 hours or for satellite reclamation systems where the system storage facility discharges to a reclaimed water distribution system, a non-system storage facility, or

directly to a reuse. This change has the potential to create additional monitoring and reporting costs on system owners. The intent of this change is to mitigate the environmental and public health risks associated with reclaimed water degradation during longer term storage. Since the monitoring parameters and frequencies will be determined on a case-by-case basis, it is not known how many systems may be required to adopt additional monitoring requirements.

The proposed changes will add a new design requirement that valves and outlets on reclaimed water distribution system pipelines are placed where they can be accessed or would allow isolation of pipe sections for maintenance activities. The goal of this requirement is to improve maintenance and compliance with operational requirements of the regulation for reclaimed water distribution systems. This change has the potential to add some compliance costs as it may result in installation of additional valves or installation in places where installation would not normally be preferred.

The Board proposes to require that pump stations meet reliability requirements for Level 1 reclamation systems and satellite reclamation systems. This change is proposed to ensure that all components of Level 1 reclamation systems, including pump stations, will perform reliably or will initiate other contingencies in the event of power failure or other disruption at the facility. This change is expected to reduce the potential discharge of substandard reclaimed water to reuses and reduce environmental or public safety risks. However, improving the reliability of pump stations may add to compliance costs.

**Businesses and Entities Affected.** According to DEQ, there are 23 facilities currently authorized by individual Virginia Pollution Abatement (VPA) permits and 1033 facilities authorized by individual Virginia Pollutant Discharge Elimination System (VPDES) permits that are capable of providing source water for and/or implementing water reclamation and reuse. Seven water reclamation and reuse projects currently authorized by either a VPDES or VPA permit within the state provide reclaimed water to a variety of end users that range from small to large businesses for cooling, irrigation, fire suppression, toilet flushing, and car washing. While the need and demand for reclaimed water in Virginia is anticipated to grow, there is insufficient data and no clear trends to extrapolate the number and frequency of water reclamation and reuse projects that will be proposed, and the number and type of end users that will be served by these projects.

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

**Projected Impact on Employment.** Taken together, the proposed changes do not have a clear direct and significant impact on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** The proposed changes that benefit facility owners are expected to add to the asset value of their water reclamation and reuse

businesses. Conversely, the proposed changes that may introduce additional compliance costs are expected to negatively affect the asset value of water reclamation and reuse businesses.

**Small Businesses: Costs and Other Effects.** According to DEQ, among the VPA permitted facilities, 13 are privately owned and may be considered small businesses. Among the VPDES permitted facilities, 299 are privately owned and may be considered small businesses. The costs and other effects on small businesses are the same as discussed above.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There are no known alternative methods that would accomplish the same goals while minimizing adverse impacts.

**Real Estate Development Costs.** The proposed changes are not expected to have a direct impact on 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 department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

**Summary:**

*Amendments to the Water Reclamation and Reuse Regulation (9VAC25-740) address issues to improve the board's ability to effectively promote and encourage the reclamation and reuse of wastewater in a manner protective of the environment and public health. Amendments would allow (i) design or operational*

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*deviations for facilities still capable of producing or distributing reclaimed water in a manner protective of the environment and public health and (ii) temporary authorization of water reclamation and reuse without a permit during periods of significant drought. These amendments are needed to improve implementation of the regulation and to further promote and encourage water reclamation and reuse.*

## Part I

### Definitions and General Program Requirements

#### **9VAC25-740-10. Definitions.**

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

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, or cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses.

"Biological nutrient removal (BNR)" means treatment that achieves an annual average of 8.0 mg/l total nitrogen (N) and 1.0 mg/l total phosphorus (P).

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

"Bulk irrigation reuse" means reuse of reclaimed water for irrigation of an area greater than five acres on one contiguous property.

~~"Class I reliability" means a measure of reliability that requires a treatment works design to provide continuous satisfactory operation during power failures, flooding, peak loads, equipment failure, and maintenance shut down. This class includes design features, such as additional electrical power sources, additional flow storage capacity, and additional treatment units that provide operation in accordance with the issued certificate or permit requirements.~~

"Conjunctive system" means a system consisting of a wastewater treatment works and reclamation system having no or minimal separation of treatment processes between the treatment works and the reclamation system.

"Controlled use" means a use of reclaimed water authorized in accordance with this chapter.

"Corrective action threshold" or "CAT" means a bacterial, turbidity or total residual chlorine standard for reclaimed water at which measures shall be implemented to correct operational problems of the reclamation system within a

specified period, or divert flow from the reclamation treatment process in accordance with this chapter.

"Design flow" means the capacity at which a treatment works is designed to reliably treat an average 24-hour influent flow rate, assessed over a period of a month for all months of operation within a year, including appropriate peak factors provided to meet applicable reliability and redundancy requirements. The average 24-hour influent flow rate shall be based on projected estimates of influent flow to be received by the treatment works.

"Designated design flow" means the design flow of a reclamation system that may be some percentage of or equal to the design flow of a treatment works providing wastewater or partially treated wastewater to the reclamation system to produce reclaimed water.

"Direct beneficial use" means the use of reclaimed water in a manner protective of the environment and public health that involves transport of the reclaimed water from the point of reclamation treatment and production to the point of use without an intervening discharge to waters of the state.

"Direct injection" means the discharge of reclaimed water directly into groundwater.

"Direct potable reuse" means the discharge of reclaimed water directly into a drinking water treatment facility or into a drinking water distribution system. This includes storage facilities associated with the drinking water treatment facility or drinking water distribution system that are not surface or ground waters of the state.

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

"Disinfection" means the destruction, inactivation, or removal of pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants; UV radiation; or other processes.

"Disposal" means the discharge of effluent to injection wells, effluent outfalls, subsurface drain fields, or other facilities utilized primarily for the release of effluents into the environment without deriving a direct beneficial use.

"Domestic sewage" means sewage derived from the normal family or household activities, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets.

"Drip irrigation" means the slow and uniform aboveground application of water to individual plants and vegetated cover using tubing and drip devices or emitters. Drip irrigation may include below-ground applications of reclaimed water as specified in 9VAC25-740-90 B.

"Effluent," unless specifically stated otherwise, means treated wastewater that is not reused after flowing out of any treatment works.

"End user" means a person or entity that directly uses reclaimed water.



"Filtration" means the passing of wastewater through a conventional technology, such as sand, anthracite or cloth; or an advanced technology, such as microfiltration, ultrafiltration, nanofiltration or reverse osmosis membrane.

"Food crops commercially processed" means food crops that, prior to sale to the public or others, have undergone chemical or physical processing sufficient to remove or destroy pathogens.

"Food crops not commercially processed" means food crops that, prior to sale to the public or others, have not undergone chemical or physical processing sufficient to remove or destroy pathogens.

"Gray water" means untreated wastewater from bathtubs, showers, lavatory fixtures, wash basins, washing machines, and laundry tubs. It does not include wastewater from toilets, urinals, kitchen sinks, dishwashers, or laundry water from soiled diapers.

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

"Harvested rainwater" means rainwater that has been collected off of a rooftop through a system that concentrates the rooftop flow and conveys this to a storage device, container, or vessel with the intention of using this water before discharge to waterways via sanitary sewer systems, septic tank or other onsite treatment and disposal systems, or a land based discharge.

"Indirect nonpotable reuse" means the discharge of reclaimed water to a receiving surface water for the purpose of intentionally augmenting a water source, followed by withdrawal from the water source with or without mixing and transport to the withdrawal location, for reuse or distribution for reuse other than indirect potable reuse.

"Indirect potable reuse" or "IPR" means the discharge of reclaimed water to a receiving surface water for the purpose of intentionally augmenting a water supply source, with subsequent withdrawal after mixing with the ambient surface water and transport to the withdrawal location, followed by treatment and distribution for drinking water and other potable water purposes.

~~"Indirect reuse" means the use of reclaimed water subsequent to discharge to surface waters of the state, including wetlands, pursuant to a VPDES permit.~~

"Industrial wastewater" means wastewater resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Irrigation" means the application of water to land for plant use at a rate that undesirable plant water stress does not occur.

"Landscape impoundment" means a body of water that contains reclaimed water, is not intended for public contact, and is used primarily for aesthetic enjoyment. Landscape impoundments include, but are not limited to, decorative pools, fountains, ponds and lagoons; located outdoors or indoors.

"Level 1" means a degree of treatment at which reclaimed water has received, at a minimum, secondary treatment with filtration and higher-level disinfection, and meets all other applicable standards specified in 9VAC25-740-70.

"Level 2" means a degree of treatment at which reclaimed water has received, at a minimum, secondary treatment and standard disinfection, and meets all other applicable standards specified in 9VAC25-740-70.

"Municipal wastewater" means sewage.

"Nonbulk irrigation reuse" means the reuse of reclaimed water for irrigation of individual areas less than or equal to five acres.

"Nonpotable water" means any water, including reclaimed water, not meeting the definition of potable water.

"Nonsystem storage" means storage for reclaimed water that is other than system storage and is used at a location downstream of the service connection to the reclaimed water distribution system to equalize flow to end users.

~~"Nutrient management plan (NMP)"~~ "Nutrient management plan" or "NMP" means a plan prepared by a nutrient management planner certified by the Department of Conservation and Recreation to manage the amount, placement, timing, and application of plant nutrients from liquid, solid or semisolid manures, fertilizers, biosolids, or other materials, for the purpose of producing crops and reducing nutrient loss to the environment.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for the production or distribution of reclaimed water, or any facility or operation that produces or distributes reclaimed water.

"Permit" means an authorization, certificate, license, or equivalent control document issued by the board to implement the requirements of this chapter.

"Point of compliance" or "POC" means a point at which compliance with the standards of this chapter is required.

"Pollutants of concern" means any pollutants that might reasonably be expected to be discharged to a publicly or privately owned treatment works in sufficient amounts to pass through or interfere with the works, contaminate sludge generated by the works, cause problems in the collection

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system of the works, or jeopardize the health of employees at the works and the public.

"Potable water" means water fit for human consumption and domestic use that is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served.

"Public access area" means an area that is intended to be accessible to the general public, such as golf courses, cemeteries, parks, athletic fields, school yards, and landscape areas. Public access areas include private property that is not open to the public at large, but is intended for frequent use by many persons. Presence of authorized farm personnel or other authorized treatment plant, utilities system, or reuse system personnel does not constitute public access.

~~"Reclamation" means the treatment of domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.~~

~~"Reclamation system" means a treatment works that treats domestic, municipal or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.~~

"Reclaimed water" means water resulting from the treatment of domestic, municipal or industrial wastewater that is suitable for a water reuse that would not otherwise occur. Specifically excluded from this definition is "gray water." For the purposes of this chapter, "harvested rainwater" and "stormwater" are also excluded from this definition.

"Reclaimed water agent" means a person or entity that holds a permit to distribute reclaimed water to one or more end users.

"Reclaimed water distribution system" means a network of pipes, pumping facilities, storage facilities, and appurtenances designed to convey and distribute reclaimed water from one or more reclamation systems to one or more end users.

"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.

"Reclamation system" means a treatment works that treats domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.

"Reject water storage" means storage for water diverted by a reclamation system or satellite reclamation system that does not meet applicable reclaimed water standards.

"Reliability Class I" means a measure of reliability that requires a treatment works design to provide continuous satisfactory operation during power failures, flooding, peak loads, equipment failure, and maintenance shut-down. This class includes design features, such as additional electrical power sources, additional flow storage capacity, and additional treatment units that provide operation in

accordance with the issued certificate or permit requirements. The definition of Reliability Class I contained in this chapter is in addition to but does not supersede the definition of Reliability Class I contained in the Sewage Collection and Treatment Regulations (9VAC25-790).

"Reuse" or "water reuse" means the use of reclaimed water for a direct beneficial use, an indirect potable reuse, an indirect nonpotable reuse, or a controlled use in accordance with this chapter.

"Reuse system" means an installation or method of operation that uses reclaimed water for a water reuse in accordance with this chapter.

"Restricted access" means limited access by humans to areas where, nonpotable water, including reclaimed water, is used, resulting in minimal or no potential for human contact.

"Satellite reclamation system" or "SRS" means a conjunctive ~~wastewater treatment works and reclamation~~ system that operates within or parallel to a sewage collection system to treat a portion of the available wastewater flow in the collection system to produce reclaimed water for reuse. Satellite reclamation systems do not have a discharge to surface waters, but may return their treatment process wastewater and residuals to the sewage collection system.

"Secondary treatment" means a biological treatment process for wastewater that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation in 40 CFR § 133.102 (2001).

"Service area" means a geographic area that receives reclaimed water from a reclaimed water distribution system or directly from a reclamation system for approved reuses within that area.

"Sewage" means the water-carried human wastes and nonwater-carried human excrement, kitchen, laundry, shower, bath or lavatory wastes, separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.

"Significant industrial user" or "SIU" shall have the meaning set forth in the VPDES Permit Regulation (9VAC25-31-10).

"Source water" means untreated or partially treated wastewater supplied for reclamation.

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

"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.

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

"Supplemental irrigation" means irrigation, which in combination with rainfall, meets but does not exceed the water necessary to maximize production or optimize growth of the irrigated vegetation.

"Surface waters" means all waters in the Commonwealth, except ~~ground-water~~ groundwater as defined in § 62.1-255 of the Code of Virginia.

"System storage" means storage on or off the site and considered part of a reclamation system, ~~satellite reclamation system~~ SRS, or reclaimed water distribution system that is used to store reclaimed water produced by the reclamation system or ~~satellite reclamation system~~ SRS and to equalize flow to or within a reclaimed water distribution system.

"Total maximum daily load" or "TMDL" shall have the meaning set forth in the Water Quality Planning Regulation (9VAC25-720).

"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 that are 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; or 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.

"Underground aquifer" means an aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of groundwater to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than 10,000 mg/l total dissolved solids and is not an exempted aquifer.

"Unintentional reuse" means the unintentional or unplanned use of reclaimed water subsequent to discharge to surface waters of the state, including wetlands, pursuant to a VPDES permit.

"Unrestricted access" means unlimited or minimally limited access by humans to areas where nonpotable water, including reclaimed water, is used, resulting in a high potential for human contact.

"User" means end user.

~~"Virginia Pollution Abatement (VPA) Permit"~~ "Virginia Pollution Abatement Permit" or "VPA Permit" means a document issued by the board, pursuant to the Virginia Pollution Abatement Permit Regulation (9VAC25-32), authorizing pollutant management activities under prescribed conditions.

~~"Virginia Pollutant Discharge Elimination System (VPDES) Permit"~~ "Virginia Pollutant Discharge Elimination System

Permit" or "VPDES Permit" means a document issued by the board, pursuant to the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31), 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.

"Wastewater" means untreated liquid and ~~water-carried~~ water-carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions.

"Water reclamation" means the reclamation of wastewater or treated effluent for reuse.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" shall include all structures, equipment, and appurtenances used in the storage, collection, purification, treatment, and distribution of pure water, except the piping and fixtures inside the building where such water is delivered.

**9VAC25-740-30. Applicability and transition.**

A. The requirements of this chapter shall apply to water reclamation systems, reclaimed water distribution systems, and water reuse unless specifically excluded under 9VAC25-740-50 A. The requirements shall apply to all new water reclamation systems, reclaimed water distribution systems and, as applicable, water reuses for which Virginia Pollution Abatement (VPA) or Virginia Pollutant Discharge Elimination System (VPDES) permit applications are received after October 1, 2008. The requirements may also be applied to all existing permitted facilities producing, distributing or using reclaimed water through a permit modification or reissuance procedure and shall be applied when such facilities are to be modified or expanded unless specifically excluded under 9VAC25-740-50 A. The owners of existing water reclamation systems, reclaimed water distribution systems and, as applicable, water reuses that do not have a VPA or VPDES permit shall submit a complete VPA or VPDES permit application or other necessary information as prescribed under 9VAC25-740-40 within 180 days of being requested by the board.

B. For the purposes of this chapter:

1. The incorporation of standards, monitoring requirements and special conditions for water reclamation and reuse into a VPA permit shall be considered a minor modification unless they alter other conditions of the permit specifically related to the pollutant management activity for which the permit was originally issued.
2. Standards, monitoring requirements and special conditions for water reclamation and reuse may be administratively authorized for a VPDES permit without a

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permit modification unless they effectively alter other conditions of the permit specifically related to the effluent discharge for which the permit was originally issued. The administrative authorization shall have the full effect of the VPDES permit until such time that it is incorporated into the VPDES permit through reissuance or major modification.

3. ~~Minor modification~~ Modification of a VPA or VPDES permit or the issuance of an administrative authorization associated with a VPDES permit described in subdivisions 1 and 2 of this subsection shall require an application for a water reclamation and reuse project in accordance with 9VAC25-740-100.

## **9VAC25-740-40. Permitting requirements.**

A. The owner of the reclamation system and the owner of the reclaimed water distribution system or the reclaimed water agent shall obtain a VPDES or VPA permit to produce and distribute reclaimed water, unless otherwise excluded from the requirements of this chapter under 9VAC25-740-50

A. Where both the reclamation system and the reclaimed water distribution system are under common ownership and management, one permit may be issued to the owner. Permit coverage may be provided through modification or reissuance of an existing VPA permit, or reissuance of or administrative authorization for an existing VPDES permit to include standards, monitoring requirements and special conditions that address water reclamation and reuse.

B. The owner of a satellite reclamation system (SRS) shall obtain a VPA permit. Alternatively and at the discretion of the board, a ~~satellite reclamation system SRS~~ may be authorized under a VPA or VPDES permit issued to a wastewater treatment works that is under common ownership or management with the ~~satellite reclamation system SRS~~ and receives wastewater and residuals discharged by the ~~satellite reclamation system SRS~~.

C. Each end user shall enter into a service agreement or contract with all reclaimed water agents from which the end user receives reclaimed water prior to receipt of such water. Monitoring and management of individual end users ~~of reclaimed water~~ shall be by the ~~permittee~~ reclaimed water agents with whom the end users have a service connection, and through the service agreements or contracts between the permittee reclaimed water agents and the individual end users unless affected by a permit issued to an end user as described in subsection F of this section.

D. Where a reclamation system and a reclaimed water distribution system that receives reclaimed water from the reclamation system are under separate ownership and management, and the reclaimed water distribution system does not distribute reclaimed water to end users other than to the owner or management of that system, the reclaimed water distribution system ~~shall~~ may not require a permit provided a service agreement or contract is established between the

reclamation system and the reclaimed water distribution system.

E. A separate permit may be required for end users receiving reclaimed water directly from more than one reclamation system, ~~satellite reclamation system SRS~~, reclaimed water distribution system, or a combination thereof. An end user may be authorized under the permit issued to one of the reclamation systems, ~~satellite reclamation systems SRSs~~, or reclaimed water distribution systems that supply reclaimed water to the end user, provided the end user is under common ownership or management with the permitted system.

F. Property irrigated with reclaimed water from a reclamation system, ~~satellite reclamation system SRS~~, or reclaimed water distribution system under common ownership or management with that property, shall be regulated by the permit issued to the reclamation system, ~~satellite reclamation system SRS~~, or reclaimed water distribution system providing reclaimed water to the irrigated property.

G. A reclamation system shall not discharge reclaimed or reject water to surface waters of the state in lieu of providing storage, discharging to another permitted reuse system, if applicable; returning reclaimed or reject water to a wastewater treatment works; or suspending production of reclaimed water; without authorization to discharge under a VPDES Permit.

## **9VAC25-740-45. Emergency authorization for the production, distribution, or reuse of reclaimed water.**

A. The board may issue an emergency authorization for the production, distribution, or reuse of reclaimed water when it finds that due to drought there is an insufficient public water supply that may result in a substantial threat to public safety. The emergency authorization may be issued only after:

1. Conservation measures mandated by local or state authorities have failed to protect public safety, and
2. The Virginia Department of Health has been notified of the application to issue an emergency authorization and has been provided not less than 14 days to submit comments or recommendations to the board on the application.

B. An emergency authorization may be issued in addition to an Emergency Virginia Water Protection Permit (9VAC25-210) for a new or increased public water supply withdrawal.

C. An emergency authorization may be issued to only existing VPDES or VPA permitted municipal treatment works that:

1. Are not currently authorized to produce, distribute, or reuse reclaimed water in accordance with 9VAC25-740-40;
2. Are currently capable of producing reclaimed water meeting minimum standard requirements of 9VAC25-740-90 for proposed reuses listed in the application for an emergency authorization; and

3. Do not have significant industrial users (SIUs), or do have SIUs and a pretreatment program developed, approved, and maintained in accordance with Part VII (9VAC25-31-730 through 9VAC25-31-900) of the VPDES Permit Regulation.

D. An emergency authorization may be issued for only reuses of reclaimed water deemed necessary by the board. In no case shall an emergency authorization be issued in lieu of a VPDES permit action for a reuse that involves a discharge of reclaimed water to surface waters.

E. An application for an emergency authorization issued pursuant to this section shall provide the information specified in 9VAC25-740-105. No later than 180 days after the issuance of an emergency authorization, the holder of the authorization shall apply for coverage under a VPDES or VPA permit in accordance with 9VAC25-740-40. Thereafter, the emergency authorization shall remain in effect until the board acts upon the application for the VPDES or VPA permit in accordance with 9VAC25-740-30 B.

F. There shall be no public comment period for the issuance of an emergency authorization.

**9VAC25-740-50. Exclusions and prohibitions.**

A. Exclusions. Exclusion from the requirements of this chapter does not relieve any owner of the operations identified in this section of the responsibility to comply with any other applicable federal, state, or local statutes, regulations, or ordinances. The following are excluded from the requirements of this chapter:

1. Activities permitted by the Virginia Department of Health (VDH), such as, but not limited to, septic tank drainfield systems and other on-site sewage treatment and disposal systems, and water treatment plant recycle flows. This exclusion does not apply to alternative onsite sewage systems as defined in 12VAC5-613 (Regulations for Alternative Onsite Sewage Systems) with an average daily sewage flow in excess of 1,000 gallons per day that are concurrently permitted by the board and VDH to allow sewage reclamation and reuse in addition to onsite sewage treatment and disposal.

2. Utilization of gray water, harvested rainwater, or stormwater.

3. Nonpotable water produced and utilized on-site by the same treatment works for facilities permitted through a VPDES or VPA permit. This includes the use of nonpotable water at the treatment works site for incidental landscape irrigation that is not identified as land treatment defined in the Sewage Collection and Treatment Regulations (9VAC25-790). The treatment works site shall include property that is either contiguous to or in the immediate vicinity of the parcel of land upon which the treatment works is located, provided such property is under common ownership or management with the treatment works. This exclusion does not apply to nonpotable water

produced by treatment works authorized by the VPDES General Permit for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons Per Day (9VAC25-110).

4. Recycle flows within a treatment works.

5. Industrial effluents or other industrial water streams created prior to final treatment and used for water recirculation, recycle, or reuse systems located on the same property as the industrial facility, provided:

a. The water used in these systems does not contain or is not expected to contain pathogens or other constituents in sufficient quantities and with a potential for human contact as may be harmful to human health;

b. These systems are closed or isolated to prevent worker contact with the water of the systems; or

c. Other measures are in place, including but not limited to, applicable federal and state occupational safety and health standards and requirements, to adequately inform and protect employees from pathogens or other constituents that may be harmful to human health in the water to be re-circulated, recycled or reused at the facility.

6. Land treatment systems defined in the Sewage Collection and Treatment Regulations (9VAC25-790). Such use of wastewater effluent, either existing or proposed, must be authorized by a VPA or VPDES permit and must be on land owned or under the direct long-term control of the permittee.

7. Indirect Unintentional reuse with the exception of indirect potable reuse projects proposed after October 1, 2008 and indirect nonpotable reuse projects proposed after (effective date of amended regulation).

8. Existing indirect potable reuse projects that upon October 1, 2008, are authorized by a VPDES permit to discharge to surface waters of the state, and future expansions of these projects.

9. Direct injection of reclaimed water into any underground aquifer authorized by EPA under the Safe Drinking Water Act, Underground Injection Control Program (UIC), 40 CFR Part 144; or other applicable federal and state laws and regulations.

~~Exclusion from the requirements of this chapter does not relieve any owner of the above operations of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulations.~~

B. Prohibitions. The following are prohibited under this chapter:

1. Direct potable reuse;

2. The reuse of reclaimed water for any purpose inside a residential or domestic dwelling or a building containing a residential or domestic unit distributed to one or two family dwellings. This prohibition does not apply to reuses of reclaimed water outside of and on the same property as

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one or two family dwellings where the reclaimed water is not distributed to such reuses by way of plumbing within the dwellings;

3. The reuse of reclaimed water to fill residential swimming pools, hot tubs or wading pools;

4. The reuse of reclaimed water for food preparation or incorporation as an ingredient into food or beverage for human consumption;

5. Bypass of untreated or partially treated wastewater from the reclamation system or any intermediate unit process to the point of reuse unless the bypass complies with standards and requirements specified in 9VAC25-740-70 and is for essential maintenance to assure efficient operation; and

6. The return of reclaimed water to the reclaimed water distribution system after the reclaimed water has been delivered to an end user; and

7. Reduction of the discharge from a VPDES permitted treatment works due to diversion of source water flow for reclamation and reuse such that the physical, chemical, or biological properties of the receiving state waters are affected in a manner that would cause a significant adverse impact to other beneficial uses.

## **9VAC25-740-55. Variances.**

A. The board may grant a variance to this chapter for design, construction, operation, or maintenance requirements contained in the chapter by following the appropriate procedures set forth in this section.

B. Any person or entity wishing to initiate a project for the production, distribution, or reuse of reclaimed water that is not excluded from the provisions of this chapter by 9VAC25-740-50 may apply for a variance to the design, construction, operation, or maintenance requirements of this chapter where requiring the project to comply with such requirements would be contrary to the purpose of State Water Control Law, specifically § 62.1-44.2 of the Code of Virginia. The board may grant a variance if it finds that the hardship imposed, which may be economic, outweighs the benefits of the project and that the granting of such variance would not adversely impact public health or the environment.

C. An application for a variance shall be made in writing and shall include the following:

1. A citation of the regulation from which a variance is requested;

2. The nature and duration of variance requested;

3. A statement of the hardship to the applicant and the anticipated impacts to public health and welfare or the environment if a variance were granted;

4. Suggested conditions that might be imposed on the granting of a variance that would limit any anticipated detrimental impacts on public health or the environment;

5. Other information, if any, believed to be pertinent by the applicant; and

6. Such other information as may be required to make the determination in accordance with subsection B of this section.

D. The board shall act on any application for a variance submitted pursuant to this section within 60 days of application receipt. In the board's decision to grant or deny a variance for a project to produce, distribute, or reuse reclaimed water, the board shall consider, at a minimum, the following:

1. The effect that such a variance would have on the adequate operation of the project, including operator safety (in accordance with the requirements of the Virginia Department of Labor and Industry, Occupation Safety and Health Administration);

2. The cost and other economic considerations imposed by the regulatory requirement for which the variance has been requested; and

3. The effect that such a variance would have on the protection of public health or the environment.

E. Disposition of a variance request.

1. If the board proposes to deny a variance request submitted pursuant to this section, the board shall provide the applicant an opportunity to an informal fact-finding proceeding in accordance with § 2.2-4019 of the Code of Virginia. Thereafter, the board may reject any application for a variance and shall notify the applicant in writing of this decision and the basis for the rejection. The board's notice, in this case, constitutes a case decision.

2. If the board proposes to grant a variance request submitted pursuant to this section, the applicant shall be notified in writing of this decision. Such notice shall:

a. Identify the project for which the variance has been granted;

b. Describe the variance;

c. Specify the period of time for which the variance will be effective; and

d. State that the variance shall be terminated when the project comes into compliance with the applicable design, construction, operation, or maintenance requirements of this chapter and may be terminated upon a finding by the board that the project has failed to comply with any requirements or schedules issued in conjunction with the variance.

3. The effective date of a variance described in subdivision 2 of this subsection shall be 15 days following the date of notice to the applicant.

F. All variances granted for the design, construction, operation, or maintenance of a project to produce, distribute, or reuse reclaimed water are nontransferable. Any requirements of the variance shall become part of the permit

for the project subsequently issued, reissued, or modified by the board.

G. Where this chapter references the Sewage Collection and Treatment Regulations (9VAC25-790) for design, construction, operation, or maintenance requirements affecting components of a project to produce, distribute, or reuse reclaimed water, an application for a variance to such requirements shall be in accordance with variance procedures described in 9VAC25-790.

**9VAC25-740-60. Relationship to other board regulations.**

A. Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32). The VPA Permit Regulation delineates the procedures and requirements to be followed in connection with the VPA permits issued by the board pursuant to the State Water Control Law. ~~While any~~ Any treatment works treating domestic, municipal or industrial wastewater that produces reclaimed water or a facility that distributes reclaimed water in a manner that does not result in a discharge to surface waters ~~is required to~~ shall obtain a VPA permit, ~~this chapter prescribes design,~~ Design, operation, and maintenance standards prescribed by this chapter for water reclamation and ~~water reuse. These requirements~~ shall be incorporated into the VPA permit application and the VPA permit when applicable. Water reclamation and reuse requirements contained in a VPA permit shall be enforced through existing enforcement mechanisms of the ~~VPA~~ permit.

B. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). The VPDES Permit Regulation delineates the procedures and requirements to be followed in connection with VPDES permits issued by the board pursuant to the Clean Water Act and the State Water Control Law. ~~While any~~ Any treatment works treating domestic, municipal, or industrial wastewater that produces reclaimed water and has a discharge to a surface or a ~~facility that distributes reclaimed water in a manner that results in~~ distribution system that has a discharge to surface waters ~~is required to~~ shall obtain a VPDES permit, ~~this chapter prescribes design,~~ Design, operation, and maintenance standards for water reclamation and reuse. ~~These requirements~~ shall be incorporated into the VPDES permit application and the VPDES permit when applicable. Water reclamation and reuse requirements contained in a VPDES permit shall be enforced through existing enforcement mechanisms of the ~~VPDES~~ permit.

C. Sewage Collection and Treatment Regulations (9VAC25-790). The Sewage Collection and Treatment Regulations establish standards for the operation, construction, or modification of a sewerage system or treatment works, including land treatment systems. This chapter prescribes design, operation and maintenance standards for water reclamation and reuse.

D. Regulation for Nutrient Enriched Waters and Discharges within the Chesapeake Bay Watershed (9VAC25-40). Sections 62.1-44.19:12 through 62.1-44.19:19 of the Code of

Virginia, which establishes the Regulation for Nutrient Enriched Waters and Discharges within the Chesapeake Bay Watershed (9VAC25-40), allows for credit to be given for reductions in total nitrogen and total phosphorus discharged loads through recycle or reuse of wastewater when determining technology requirements associated with new or expanded discharges.

E. General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). The General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia regulates point sources of nutrients and establishes a framework for nutrient credit trading and offsets. Water reclamation and reuse provides an opportunity to reduce point source nutrient loads.

F. Local and Regional Water Supply Planning Regulation (9VAC25-780). The Local and Regional Water Supply Planning Regulation requires every county, city, and town to develop a water plan in accordance with established planning criteria. Where appropriate, the plan may consider nontraditional means of increasing supplies such as interconnection, desalination, recycling and reuse.

G. Water Withdrawal Reporting Regulation (9VAC25-200). The Water Withdrawal Reporting Regulation requires industrial VPDES permittees to annually report to the board the source and location of water withdrawals and the type of use information specified by 9VAC25-200. Where the VPDES permitted discharge volume deviates by greater than ± 10% of the water withdrawal volume, the permittee is required to report the deviation.

Part II

Reclaimed Water Treatment, Standards, Monitoring Requirements and Reuses

**9VAC25-740-70. Standards Treatment and standards for reclaimed water.**

A. Standards Treatment and standards for reclaimed water are as follows: provided in Table 70-A.

1. Level 1:

~~a. Secondary treatment with filtration and higher level disinfection.~~

~~b. Bacterial standards:~~

~~(1) Fecal coliform\*: monthly geometric mean\*\* less than or equal to 14 colonies/100 ml; corrective action threshold at greater than 49 colonies/100 ml; or~~

~~(2) E. coli\*: monthly geometric mean\*\* less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 35 colonies/100 ml; or~~

~~(3) Enterococci\*: monthly geometric mean\*\* less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 24 colonies/100 ml.~~

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c. Total Residual Chlorine (TRC)<sup>\*\*\*</sup>: corrective action threshold at less than 1.0 mg/l<sup>\*\*\*\*</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow

d. pH 6.0-9.0 standard units.

e. Five day Biochemical Oxygen Demand (BOD<sub>5</sub>): monthly average less than or equal to 10 mg/l; or Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>)<sup>\*\*\*\*</sup>: monthly average less than or equal to 8 mg/l.

f. Turbidity: Daily average of discrete measurements recorded over a 24 hour period less than or equal to 2 nephelometric turbidity units (NTU); corrective action threshold at greater than 5 NTU.

## 2. Level 2:

a. Secondary treatment and standard disinfection.

b. Bacterial standards:

(1) Fecal coliform<sup>\*</sup>: monthly geometric mean<sup>\*\*</sup> less than or equal to 200 colonies/100ml; corrective action threshold at greater than 800 colonies/100 ml; or

(2) E. coli<sup>\*</sup>: monthly geometric mean<sup>\*\*</sup> less than or equal to 126 colonies/100ml; corrective action threshold at greater than 235 colonies/100 ml; or

(3) Enterococci<sup>\*</sup>: monthly geometric mean<sup>\*\*</sup> less than or equal to 35 colonies/100ml; corrective action threshold at greater than 104 colonies/100 ml.

c. Total Residual Chlorine (TRC)<sup>\*\*\*</sup>: corrective action threshold at less than 1.0 mg/l<sup>\*\*\*\*</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.

d. pH 6.0-9.0 standard units.

e. BOD<sub>5</sub>: monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l; or CBOD<sub>5</sub><sup>\*\*\*\*</sup>: monthly average less than or equal to 25 mg/l; maximum weekly average 40 mg/l.

f. TSS: monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l.

\* After disinfection.

\*\* For the purpose of calculating the geometric mean, bacterial analytical results below the detection level of the analytical method used shall be reported as values equal to the detection level.

\*\*\* Applies only if chlorine is used for disinfection.

\*\*\*\* TRC less than 1.0 mg/l may be authorized by the board if demonstrated to provide comparable disinfection through a chlorine reduction program in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790).

\*\*\*\*\* Applies only if CBOD<sub>5</sub> is used in lieu of BOD<sub>5</sub>.

Table 70-A

Treatment and Standards for Reclaimed Water

	1. Level 1	2. Level 2
a. Treatment	Secondary treatment with filtration and higher-level disinfection.	Secondary treatment and standard disinfection.
b. Bacterial standards	(1) Fecal coliform <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 14 colonies/100ml; corrective action threshold at greater than 49 colonies/100 ml; or	(1) Fecal coliform <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 200 colonies/100ml; corrective action threshold at greater than 800 colonies/100 ml; or
	(2) E. coli <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 35 colonies/100 ml; or	(2) E. coli <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 126 colonies/100 ml; corrective action threshold at greater than 235 colonies/100 ml; or
	(3) Enterococci <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 24 colonies/100 ml.	(3) Enterococci <sup>1</sup> : monthly geometric mean <sup>2</sup> less than or equal to 35 colonies/100 ml; corrective action threshold at greater than 104 colonies/100 ml.
c. Total Residual Chlorine (TRC) <sup>3</sup>	Corrective action threshold at less than 1.0 mg/l <sup>4</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.	Corrective action threshold at less than 1.0 mg/l <sup>4</sup> after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.
d. pH	6.0 – 9.0 standard units	6.0 – 9.0 standard units
e. Five-day Biochemical Oxygen Demand (BOD <sub>5</sub> )	(1) BOD <sub>5</sub> : Monthly average less than or equal to 10 mg/l; or (2) Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> ) <sup>5</sup> : monthly average less than or equal to 8 mg/l.	(1) BOD <sub>5</sub> : Monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l; or (2) Carbonaceous Biochemical Oxygen Demand (CBOD <sub>5</sub> ) <sup>5</sup> : monthly average less than or equal to 25 mg/l; maximum weekly average 40 mg/l.



f. Turbidity <sup>6</sup>	<u>Daily average of discrete measurements recorded over a 24-hour period less than or equal to 2 nephelometric turbidity units (NTU); corrective action threshold at greater than 5 NTU.</u>	
f. Total Suspended Solids (TSS)		<u>Monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l.</u>
<p><sup>1</sup>After disinfection.</p> <p><sup>2</sup>For the purpose of calculating the geometric mean, bacterial analytical results below the detection level of the analytical method used shall be reported as values equal to the detection level.</p> <p><sup>3</sup>Applies only if chlorine is used for disinfection.</p> <p><sup>4</sup>TRC less than 1.0 mg/l may be authorized by the board if demonstrated to provide comparable disinfection through a chlorine reduction program in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790).</p> <p><sup>5</sup>Applies only if CBOD<sub>5</sub> is used in lieu of BOD<sub>5</sub>.</p> <p><sup>6</sup>Where ultraviolet radiation will be used for disinfection of Level 1 reclaimed water, other turbidity standards may apply in accordance with 9VAC25-740-110 A 2 a.</p>		

B. Point of compliance (POC).

~~Excluding the turbidity standard for Level 1 treatment, reclaimed 1. Reclaimed water produced by reclamation systems and SRSs for reuse shall meet all other applicable standards in accordance with this chapter, excluding the turbidity standard for Level 1 treatment, at the point of compliance POC. The point of compliance POC for Level 1 and Level 2 treatment shall be after all reclaimed water treatment and prior to discharge to a reclaimed water distribution system. Where chlorination is used for disinfection of the reclaimed water, the POC for the TRC standard shall be the monitoring location specified in 9VAC25-740-80 A 2. The point of compliance POC for the turbidity standard of Level 1 treatment shall be just upstream of disinfection.~~

2. Where the board determines that reclaimed water monitoring is required for a system storage facility or a reclaimed water distribution system, the number and location of POCs for these facilities shall be determined on a case-by-case basis and shall be described in the following documents for approval by the board:

- a. For system storage facilities other than those considered part of reclaimed water distribution systems, in the operations and maintenance manual of the reclamation system or SRS where the storage facility is located;
- b. For reclaimed water distribution systems, including system storage facilities considered part of these systems, in the Reclaimed Water Management plan pursuant to 9VAC25-740-100 C 1 h;
- c. For both the system storage facility and reclaimed water distribution system when under common ownership or management and within the same service area, in either document described in subdivision 2 a or b of this subsection.

C. Reclaimed water that fails to comply with the standards shall be managed as follows:

1. Should reclaimed water reach the corrective action threshold (CAT) for turbidity in the standard for Level 1, or for TRC in the standards for Level 1 or 2, whichever applies, the operator of the reclamation system shall immediately initiate a review of treatment operations and data to identify the cause of the CAT monitoring results to bring the reclaimed water back into compliance with the standards. Resampling or diversion shall occur within one hour of first reaching the CAT. Procedures for resampling, operational review and diversion shall be as described in an approved operations and maintenance manual for the reclamation system. If subsequent monitoring results of the resamples collected within one hour of the first CAT monitoring results for turbidity or TRC continue to reach the CAT of the standards, the reclaimed water shall be considered substandard or reject water and shall be diverted to either storage for subsequent additional treatment or retreatment, or discharged to another permitted reuse system requiring a lower level of treatment not less than Level 2 or to a VPDES permitted effluent disposal system provided the reject water meets the effluent limits of the permit. If the reclamation system is unattended, the diversion of reject water shall be initiated and performed with automatic equipment. There shall be no automatic restarts of distribution to reuse until the treatment problem is corrected. Failure to divert the substandard or reject water after one hour of CAT monitoring results shall be considered a violation of this chapter. Upon resuming discharge of reclaimed water to the reclaimed water distribution system for which the CAT was reached, resampling for turbidity or TRC shall occur within one hour to verify proper treatment.
2. Should reclaimed water reach the CAT for bacteria (i.e., fecal coliform, E. coli or enterococci) in the standards for Level 1 or 2, whichever applies, the operator of the reclamation system shall immediately initiate a review of treatment operations and data to identify the cause of the CAT monitoring results to bring the reclaimed water back into compliance with the standards. Procedures for

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operational review shall be as described in an approved operations and maintenance manual for the reclamation system. Two consecutive bacterial monitoring results that reach the CAT of the standards shall be considered a violation of this chapter.

3. Repeated, although temporary, failure to comply with all other standards by the reclamation system may be considered a violation of this chapter determined by the frequency and magnitude of the noncompliant monitoring results and other relevant factors. Failure to resample after determination that monitoring results are not in compliance with the standards, to make adjustments to the treatment process to bring the reclaimed water back into compliance with the standards, or to divert substandard or reject water in accordance with subdivision 1 of this subsection shall be considered a violation of this chapter.

D. Treatment or standards other than or in addition to the treatment and standards of 9VAC25-740-70-A in subsection A of this section may be necessary based on the quality and character of the wastewater to be reclaimed or the intended reuse or reuses of the reclaimed water. Such alternative or additional treatment or standards may be exempt from this chapter unless required by the board to protect public health and the environment.

E. Standards for the reclamation of industrial wastewater will be determined on a case-by-case basis relative to the proposed reuse or reuses of the reclaimed water and for the purpose of protecting public health and the environment. Industrial wastewater may also be subject to disinfection requirements of Level 1 or Level 2 if the industrial wastewater contains sewage or is expected to contain organisms pathogenic to humans, such as, but not limited to, wastewater from the production and processing of livestock and poultry. The point of compliance for reclamation standards of industrial wastewater shall also be determined on a case-by-case basis.

## **9VAC25-740-80. Reclaimed water monitoring requirements for reuse.**

A. The monitoring requirements for the standards provided under 9VAC25-740-70 A, are as follows:

### 1. Turbidity analysis:

a. Analysis shall be performed by a continuous, on-line turbidity meter equipped with an automated data logging or recording device and an alarm to notify the operator when the CAT for turbidity in the standard for Level 1 has been reached. Compliance with the average turbidity standard shall be determined daily, based on the arithmetic mean of hourly or more frequent discrete measurements recorded during a 24-hour period. Monitoring for the turbidity CAT shall be continuous.

b. Should the on-line turbidity meter go out of service for either planned or unplanned repair, the permittee shall be allowed to manually collect samples for turbidity

analysis at four-hour intervals up to a maximum of five days. Following the five-day period of repair, continuous, on-line monitoring with a turbidity meter shall resume.

2. Sampling and analysis for residual concentrations of disinfectants, including total residual chlorine (TRC):

### a. ~~Shall for~~ For Level 1:

(1) Shall be continuous on-line monitoring, equipped with an automated data logging or recording device and an alarm to notify the operator when the CAT for the disinfectant has been reached. For disinfectants other than chlorine, continuous on-line monitoring shall be provided at the point of compliance monitoring. For TRC, continuous on-line monitoring shall be provided at the end of the contact tank or contact period. Monitoring for the TRC CAT shall be continuous.

(2) Should the on-line disinfectant monitoring equipment go out of service for either planned or unplanned repair, the permittee shall be allowed to manually collect samples for disinfectant analysis at four-hour intervals up to a maximum of five days. Following the five-day period of repair, continuous, on-line disinfectant monitoring shall resume.

b. ~~Shall for~~ For Level 2, shall be based on the designated design flow of the reclamation system and be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). For chemical disinfectants other than TRC, monitoring shall be provided at the point of compliance ~~monitoring~~ in accordance with 9VAC25-740-70 B. For TRC, monitoring shall be provided at the end of the contact tank or contact period.

3. Sampling for TSS and BOD<sub>5</sub> or CBOD<sub>5</sub> shall be at least weekly or more frequently based on the designated design flow of the reclamation system, and shall be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). Compliance with the monthly average TSS and BOD<sub>5</sub> or CBOD<sub>5</sub> standards shall be determined monthly, based on the arithmetic mean of all samples collected during the month. Compliance with the maximum weekly average TSS and BOD<sub>5</sub> or CBOD<sub>5</sub> standards shall be determined monthly, using the same procedures applied in the VPDES Permit program for point source discharges.

4. Sampling for fecal coliform, E. coli or enterococci:

a. Shall for Level 1, be grab samples collected at a time when wastewater characteristics are most representative of the treatment facilities and disinfection processes for water reuse, and at the ~~following~~ frequencies provided in Table 80-A. Compliance with the geometric mean standards for fecal coliform, E. coli, or enterococci shall be determined monthly, based on all bacteriological monitoring results for that month. Monitoring of the

CAT for fecal coliform, E. coli, or enterococci shall be based on the bacteriological monitoring results determined for each day a sample is collected.

Table 80-A	
Reclamation System Designated Design Flow (MGD) <sup>(1)</sup>	Bacterial Sampling Frequency <sup>(2)</sup>
>0.500	Daily with the ability to reduce to no less than four days per week <sup>(3)</sup>
0.050 to 0.500	Four days per week with the ability to reduce to no less than three days per week <sup>(3)</sup>
<0.050	Three days per week with no reduction allowed
<sup>(1)</sup> MGD means million gallons per day. <sup>(2)</sup> For reclamation systems treating municipal wastewater, bacterial samples shall be collected between 10 a.m. and 4 p.m. to coincide with peak flows to the reclamation system. An exception to this requirement may be approved upon demonstration to the board that peak flows to the reclamation system occur outside this period. <sup>(3)</sup> Monitoring frequency may be reduced after demonstrating compliance with bacterial standards for Level 1 and adequate correlation between bacterial monitoring results and measurements for surrogate disinfection parameters, such as TRC and turbidity.	

<sup>(1)</sup>MGD means million gallons per day.

<sup>(2)</sup>For reclamation systems treating municipal wastewater, bacterial samples shall be collected between 10 a.m. and 4 p.m. to coincide with peak flows to the reclamation system. An exception to this requirement may be approved upon demonstration to the board that peak flows to the reclamation system occur outside this period.

<sup>(3)</sup>Monitoring frequency may be reduced after demonstrating compliance with bacterial standards for Level 1 and adequate correlation between bacterial monitoring results and measurements for surrogate disinfection parameters, such as TRC and turbidity.

Compliance with the geometric mean standards for fecal coliform, E. coli or enterococci shall be determined monthly, based on all bacteriological monitoring results for that month. Monitoring of the CAT for fecal coliform, E. coli or enterococci shall be based on the bacteriological monitoring results determined for each day a sample is collected.

b. Shall for Level 2, be based on the designated design flow of the reclamation system and be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). Compliance with the geometric mean standard and monitoring of the CAT for

fecal coliform, E. coli or enterococci shall be in accordance with the same procedures specified for Level 1 in subdivision A 4 a of this ~~section~~ subsection.

5. Samples for pH shall be grab samples collected at least daily. Compliance with the range of the pH standard shall be determined daily based on the pH of the samples.

B. Samples collected for TSS, BOD<sub>5</sub> or CBOD<sub>5</sub>, and fecal coliform, E. coli or enterococci analyses, shall be analyzed by laboratory methods accepted by the board.

C. A reclamation system that produces reclaimed water intermittently or seasonally shall monitor only when the reclamation system discharges to a reclaimed water distribution system, a ~~non-system~~ nonsystem storage facility, or directly to a reuse.

D. Monitoring of reclaimed water held in system storage for a period greater than 24 hours at a reclamation system or SRS may be required by the board (i) where the system storage facility discharges to a reclaimed water distribution system, a nonsystem storage facility, or directly to a reuse; and (ii) where conditions exist at the facility to degrade the reclaimed water to a quality failing to comply with applicable minimum reclaimed water standards for the intended reuses of that water. When monitoring of reclaimed water in or from system storage is required, monitoring parameters and frequencies shall be determined by the board on a case-by-case basis.

~~D. E.~~ Monitoring other than or in addition to that described under 9VAC25-740-80 A may be required for treatment of reclaimed water that is provided pursuant to 9VAC25-740-70 D and 9VAC25-740-70 E.

**9VAC25-740-90. Minimum standard requirements for reuses of reclaimed water.**

A. Minimum standard requirements for reclaimed water shall be determined, in part, by the reuse or reuses of that water. For specific reuses, the minimum standard requirements of reclaimed water are as follows: provided in Table 90-A.

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Table 90-A  
Minimum Standard Requirements for Reuses of Reclaimed Water

Reuse Category	Reuse	Minimum Standard Requirements <sup>a</sup>
1. Urban – Unrestricted Access	<p>All types of landscape irrigation in public access areas (i.e., golf courses, cemeteries, public parks, school yards and athletic fields)</p> <p>Toilet flushing <del>nonresidential</del><sup>b</sup></p> <p>Fire fighting or protection and fire suppression in <del>nonresidential buildings</del><sup>b</sup></p> <p>Outdoor <del>domestic or residential</del> reuse (i.e., lawn watering and noncommercial car washing)<sup>b</sup></p> <p>Commercial car washes</p> <p>Commercial air conditioning systems</p>	Level 1
2. Irrigation – Unrestricted Access <sup>b,c</sup>	Irrigation for any food crops not commercially processed, including crops eaten raw	Level 1
3. Irrigation – Restricted Access <sup>b,c,d,e</sup>	Irrigation for any food crops commercially processed	Level 2
	Irrigation for nonfood crops and turf, including fodder, fiber and seed crops; pasture for foraging livestock; sod farms; ornamental nurseries; and silviculture	
4. Landscape Impoundments <sup>d,f</sup>	Potential for public access or contact	Level 1
	No potential for public access or contact	Level 2
5. Construction <sup>e</sup>	<p>Soil compaction</p> <p>Dust control</p> <p>Washing aggregate</p> <p>Making concrete</p> <p><u>Irrigation to establish vegetative erosion control<sup>g</sup></u></p>	Level 2
6. Industrial <sup>e</sup>	<p>Commercial laundries</p> <p><u>Ship ballast<sup>h</sup></u></p>	Level 1
	<p>Livestock watering<sup>f,i</sup></p> <p>Aquaculture<sup>g,1</sup></p> <p>Stack scrubbing</p> <p>Street washing</p> <p>Boiler feed</p> <p><del>Ship ballast</del></p> <p>Once-through cooling<sup>h,k</sup></p> <p>Recirculating cooling towers<sup>h,k</sup></p>	Level 2

<sup>a</sup>For reclaimed industrial wastewater, minimum standards required shall be determined on a case-by-case basis relative to the proposed reuse or reuses.

<sup>b</sup>Reclaimed water treated to Levels 1 or 2 may be used for surface irrigation, including spray irrigation. Reclaimed water treated to Level 2 may be used for spray irrigation if the area to be irrigated restricts access to the public and has appropriate setbacks in accordance with

~~9VAC25-740-170. Reclaimed water treated to Level 1 or 2 may be used for irrigation of food crops eaten raw, excluding root crops, only when there will be no direct contact (or indirect contact via aerosol carry) between the reclaimed water and edible portions of the crop.~~

~~<sup>c</sup>For irrigation with reclaimed water treated to Level 2, the following shall be prohibited unless Level 1 disinfection is provided:~~

- ~~1. Grazing by milking animals on the irrigation reuse site for 15 days after irrigation with reclaimed water ceases, and~~
- ~~2. Harvesting, retail sale or allowing access by the general public to ornamental nursery stock or sod farms for 14 days after irrigation with reclaimed water ceases.~~

~~<sup>d</sup>Landscape impoundments may also be used to store reclaimed water for other subsequent reuses of that reclaimed water, such as irrigation, if included in an inventory of reclaimed water storage facilities submitted to the board pursuant to 9VAC25-740-110 C 15.~~

~~<sup>e</sup>Worker contact with reclaimed water treated to Level 2 shall be minimized. Level 1 disinfection shall be provided when worker contact with reclaimed water is likely.~~

~~<sup>f</sup>Level 1 disinfection shall be provided when the reclaimed water is consumed by milking livestock.~~

~~<sup>g</sup>Level 1 disinfection shall be provided for aquaculture production of fish to be consumed raw, such as for sushi.~~

~~<sup>h</sup>Windblown spray generated by once-through cooling or recirculating cooling towers using reclaimed water treated to Level 2, shall not reach areas accessible to workers or the public unless Level 1 disinfection is provided. See also setback requirements in 9VAC25-740-170 for open cooling towers.~~

~~<sup>a</sup>For reclaimed industrial wastewater, minimum standards required shall be determined on a case-by-case basis relative to the proposed reuse or reuses.~~

~~<sup>b</sup>These reuses of reclaimed water are prohibited in accordance with 9VAC25-740-50 B 2 where they would involve the distribution of reclaimed water to a one or two family dwelling in order to occur.~~

~~<sup>c</sup>Reclaimed water treated to Levels 1 or 2 may be used for surface irrigation, including spray irrigation. Reclaimed water treated to Level 2 may be used for spray irrigation if the area to be irrigated restricts access to the public and has appropriate setbacks in accordance with 9VAC25-740-170. Reclaimed water treated to Level 1 or 2 may be used for irrigation of food crops eaten raw, excluding root crops, only when there will be no direct contact (or indirect contact via aerosol carry) between the reclaimed water and edible portions of the crop.~~

~~<sup>d</sup>For irrigation with reclaimed water treated to Level 2, the following shall be prohibited unless Level 1 disinfection is provided:~~

- ~~1. Grazing by milking animals on the irrigation reuse site for 15 days after irrigation with reclaimed water ceases, and~~
- ~~2. Harvesting, retail sale or allowing access by the general public to ornamental nursery stock or sod farms for 14 days after irrigation with reclaimed water ceases.~~

~~<sup>e</sup>Worker contact with reclaimed water treated to Level 2 shall be minimized. Level 1 disinfection shall be provided when worker contact with reclaimed water is likely.~~

~~<sup>f</sup>Landscape impoundments may also be used to store reclaimed water for other subsequent reuses of that reclaimed water, such as irrigation, if included in an inventory of reclaimed water storage facilities submitted to the board pursuant to 9VAC25-740-110 C 15.~~

~~<sup>g</sup>Irrigation with reclaimed water to establish vegetative cover at a construction site shall be subject to requirements for irrigation reuse specified in 9VAC25-740-100 C. Continued irrigation of the same site following construction completion shall be subject to the minimum standard requirements of reuse categories 1, 2, or 3 contained in this table, determined by the intended reuse of the irrigated site.~~

~~<sup>h</sup>Reuse of reclaimed water for ship ballast shall also comply with applicable federal regulations and standards governing the use and discharge of ship ballast.~~

~~<sup>i</sup>Level 1 disinfection shall be provided when the reclaimed water is consumed by milking livestock.~~

~~<sup>j</sup>Level 1 disinfection shall be provided for aquaculture production of fish to be consumed raw, such as sushi.~~

~~<sup>k</sup>Windblown spray generated by once-through cooling or recirculating cooling towers using reclaimed water treated to Level 2, shall not reach areas accessible to workers or the public unless Level 1 disinfection is provided. See also setback requirements in 9VAC25-740-170 for open cooling towers.~~

B. For any type of reuse not ~~addressed in this chapter~~ listed in subsection A of this section, including, but not limited to, indirect potable reuse and below-ground drip irrigation reuse, that is newly proposed after October 1, 2008, indirect nonpotable reuse that is newly proposed after (effective date of amended regulation); or any reuse of reclaimed industrial water, including reuses listed in subsection A of this section, the board may prescribe specific reclaimed water standards and monitoring requirements needed to protect public health and the environment. When establishing these requirements for the proposed reuse, the board shall consider the following factors:

1. The risk of the proposed reuse to public health with specific input from the Virginia Department of Health;
2. The degree of public access and human exposure to reclaimed water by the proposed reuse;
3. The reclaimed water treatment necessary to prevent nuisance conditions by the proposed reuse;
4. The reclaimed water treatment necessary for the proposed reuse to comply with this and other applicable regulations of the board;
5. The potential for improper or unintended use of the reclaimed water;

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6. Other federal or state laws, regulations and guidelines that would apply to the proposed reuse;
7. The similarity of the proposed reuse to reuses listed in this chapter with regard to potential impact to public health and the environment;
8. Whether the proposed reuse may be excluded or prohibited by 9VAC25-740-50; and
9. For new indirect potable reuse proposals, residence or transport time, mixing ratios, and other relevant information deemed necessary by the board.

C. For any indirect potable reuse (IPR) project that is newly proposed after (effective date of amended regulation), the following are required:

1. A multiple barrier approach shall be used in the planning, design, and operation of the project. Multiple barriers to be employed for the project shall be described in the application for a permit in accordance with 9VAC25-740-100 D.
2. All reclaimed water generated by a reclamation system for IPR shall meet, at a minimum, Level 1 reclaimed water standards, reclaimed water standards developed pursuant to subsection B of this section, and any other standards that may apply, including but not limited to, the Water Quality Standards (9VAC25-260) and total maximum daily loads (TMDLs). Where there is more than one standard for the same pollutant, the more stringent standard shall apply.
3. The public health risks of and the need to impose new or more stringent reclaimed water standards for an IPR project shall be reevaluated with specific input from the Virginia Department of Health upon each renewal of the permit issued to the reclamation system that produces reclaimed water for the project. Factors to be considered in the reevaluation shall include, at a minimum, applicable factors contained in subsection B of this section.
4. All reclamation systems identified as a component of an IPR project in accordance with 9VAC25-740-100 D 1, including pump stations that are part of the reclamation systems, shall meet reliability requirements specified in 9VAC25-740-130 C.
5. VPDES permitted treatment works that have SIUs and provide source water for reclamation and subsequent IPR shall, if required, have a pretreatment program or a program equivalent to a pretreatment program in accordance with 9VAC25-740-150 E.

### Part III

#### Application and Technical Requirements

#### **9VAC25-740-100. Application for permit.**

A. The need for an owner to obtain a permit or modification or reissuance of an existing permit from the board for a proposed or an existing reclamation system, reclaimed water distribution system, satellite reclamation system (SRS), or, as applicable, water reuse, shall be determined in accordance

with 9VAC25-740-30. Where required, permit coverage for these systems or activities shall be provided in accordance with 9VAC25-740-40, contingent upon receipt of a complete application from the owner. The application shall contain supporting documentation and information required by subsections B and C of this section.

B. General information. For projects that involve water reclamation and the distribution of reclaimed water, the following information shall be submitted with an application for a permit. Information required for this subsection may be provided by referencing specific information previously submitted to the board unless changes have occurred that require the submission of new or more current information. For projects that involve exclusively the distribution of reclaimed water, information for only subdivisions 1, 2, and 5 of this subsection shall be submitted with an application for a permit.

1. A description of the design and a site plan showing operations and unit processes of the proposed project, including and as applicable, treatment, storage, distribution, reuse and disposal facilities, and reliability features and controls. Treatment works, reclamation systems and reclaimed water distribution systems previously permitted need not be included, unless they are directly tied into the new units or are critical to the understanding of the complete project. Design approaches shall be consistent with accepted engineering practice and any applicable state regulations;
2. A general location map, showing orientation of the project with reference to at least two geographic features (e.g., numbered roads, named streams or rivers, etc.). A general location map for a reclaimed water distribution system may be included in the map of a service area required in accordance with subdivision C 1 a of this section;
3. Information regarding each wastewater treatment works that diverts or will divert ~~effluent or~~ source water to the reclamation system to be permitted, including:
  - a. All unit processes used for the treatment of wastewater at the facility prior to diversion to the reclamation system,
  - b. Any ~~significant industrial users defined in 9VAC25-31-10~~ SIUs that indirectly discharge to the wastewater treatment works; and
  - c. Analyses of the ~~effluent or~~ source water to be diverted by the facility to the reclamation system.
4. Information regarding the sewage collection system that diverts or will divert sewage to the ~~satellite reclamation system~~ SRS to be permitted, including:
  - a. The name of the sewage collection system and the owner of that system;
  - b. Any ~~significant industrial users (SIUs) defined in 9VAC25-31-10~~ SIUs that discharge directly or indirectly

to the collection line from which sewage will be diverted to the ~~satellite reclamation system, SRS~~, excluding any downstream SIUs whose discharge has no potential to backflow to the ~~satellite reclamation system SRS~~ intake. This information shall include the location of the SIUs and distance between the SIUs and the ~~satellite reclamation system SRS~~ along the sewage collection line or lines; and

c. Characterization of the sewage to be diverted from the sewage collection system to the ~~satellite reclamation system SRS~~ at the point of diversion. Analysis of the sewage may be required where SIUs described in subdivision 4 b of this subsection discharge to the sewage collection system.

5. Information regarding each reclamation system or ~~satellite reclamation system SRS~~ to be permitted, including:

- a. The standards specified in 9VAC25-740-70 A to be achieved;
- b. Any other physical, chemical, and biological characteristics and constituent concentrations that may affect the intended reuse of the reclaimed water with respect to adverse impacts to public health or the environment; and
- c. ~~Design~~ Designated design flow.

6. For the purpose of determining any significant adverse impacts to other beneficial uses, information regarding the VPDES permitted wastewater treatment works or the sewage collection system that proposes a new or increased diversion of source water to a reclamation system or SRS for the production of reclaimed water, including:

- a. The latitude and longitude of the treatment works discharge location to a surface water or the SRS return discharge location in the sewage collection system;
- b. The mean monthly discharge of the treatment works or the SRS for each month during the most recent 60 or more consecutive months at the time of application, or where this information is not available, estimated values for the mean monthly discharge of the treatment works or the SRS for each month during a period of 12 consecutive months;
- c. The maximum monthly diversion of source water from the treatment works to a reclamation system or from the sewage collection system to a SRS for each month during a period of 12 consecutive months;
- d. Pertaining only to sewage collection systems that provide source water, the name of the treatment works at the terminus of the sewage collection system; and
- e. The information specified in subdivisions 5 a, b, and c of this subsection for each increase in source water diverted by the treatment works or the sewage collection system to a reclamation system or SRS, respectively,

among multiple increases to occur in planned phases, and the anticipated dates of the phased increases.

7. Information describing measures to be immediately implemented for the management of wastewater and reclaimed water by a conjunctive system in the event that primary reuses of reclaimed water generated by the system cease or fail, and where the system:

- a. Relies primarily or completely on water reclamation and reuse to eliminate wastewater;
- b. Relies on:
  - (1) Irrigation as the primary or only reuse of reclaimed water, or
  - (2) One or more large end users, each consuming a significant volume of reclaimed water, such that the ability of the conjunctive system to manage wastewater would be adversely impacted if any such end user were to discontinue receiving reclaimed water from the conjunctive system; and
- c. Does not have the ability to implement two or more of the options described in 9VAC25-740-110 C 1.

8. Information required per subdivision 7 of this subsection shall be included in the Reclaimed Water Management plan described in subsection C of this section where the conjunctive system is acting as a reclaimed water agent by directly distributing reclaimed water to an end user or end users, including an end user that is also the applicant or permittee.

~~6- 9.~~ Information, if applicable, regarding any type of proposed reuse not listed in this chapter, by which the board can evaluate the need to prescribe specific reclaimed water treatment and monitoring requirements in accordance with 9VAC25-740-90 B; and

~~Information required for subsection B of this section may be provided by referencing specific information previously submitted to the board unless changes have occurred that require the submission of new or more current information.~~

C. Reclaimed water management (RWM) plan.

1. A RWM plan shall be submitted in support of a permit ~~applications~~ application for a new or expanded reclamation systems, ~~satellite reclamation systems~~ system, SRS, or reclaimed water distribution systems that ~~provide~~ system acting as a reclaimed water agent by directly distributing reclaimed water to an end user or end users, including an end user that is also the applicant or permittee. A RWM plan shall not be required for a reclamation system that distributes reclaimed water exclusively for indirect potable reuse. The RWM plan shall contain the following:

- a. A description and map of the expected service area to be covered by the RWM plan for the term of the permit for the project (i.e., five years for a VPDES or 10 years for a VPA permit). The map shall identify all reuses according to reuse categories shown in 9VAC25-740-90

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A or other categories for reuses that are or shall be authorized pursuant to 9VAC25-740-90 B, and their locations within the service area. The map shall also identify and show the location of all public potable water supply wells and springs, and public water supply intakes, within the boundaries of the service area. The description and map of the service area shall be updated by the permittee with each permit renewal.

b. A current inventory of impoundments, ponds or tanks that are used for system storage of reclaimed water and, as applicable, reject water storage under the control of the permittee, and nonsystem storage located within the service area of the RWM plan in accordance with 9VAC25-740-110 C 15.

c. A water balance that accounts for the volumes of reclaimed water to be generated, stored, reused and discharged (i.e., through a VPDES permitted outfall, back to a sewage collection system, or otherwise disposed). The water balance shall include projected volumes of seasonal and annual reclaimed water demand for each reuse category.

d. An example of service agreements or contracts to be established by the applicant or permittee with end users regarding implementation of and compliance with the RWM plan. A service agreement or contract shall contain conditions and requirements specified in subdivisions 3 b and c of this subsection and in 9VAC25-740-170 that apply to the particular planned reuse of each end user. Terms of the agreement shall require property owners to report to the applicant or permittee all potable and nonpotable water supply wells on their property and to comply with appropriate setback distances for wells where reclaimed water will be used on the same property. Within the agreement or contract, the applicant or permittee shall also reserve the right to perform routine or periodic inspections of an end user's reclaimed water reuses and storage facilities, and to terminate the agreement or contract and withdraw service for any failure by the end user to comply with the terms and conditions of the agreement or contract if corrective action for such failure is not taken by the end user.

e. A description of monitoring of end users by the applicant or permittee to verify compliance with the terms of their agreements or contracts. Monitoring shall include, at a minimum, metering the volume of reclaimed water consumed by end users.

f. An education and notification program required in accordance with 9VAC25-740-170 A.

g. A cross-connection and backflow prevention program that:

(1) Evaluates the potential for cross-connections of the reclaimed water distribution system to a potable water system and backflow to the reclaimed water distribution system from industrial end users;

(2) Evaluates the public health risks associated with possible backflow from industrial end users;

(3) Describes inspections to be performed by the applicant or permittee at the time end users connect to the reclaimed water distribution system and periodically thereafter to prevent cross-connections to a potable water system and backflow from industrial end users as determined necessary through the program evaluation; ~~and~~

(4) Insures that cross-connection and backflow prevention design criteria specified in 9VAC25-740-110 B for reclaimed water distribution systems are implemented; ~~and~~

~~(5) Requires a~~ A backflow prevention device shall be required on the reclaimed water service connection to an industrial end user, unless evaluation by the cross-connection and backflow prevention program determines that there is minimal risk to public health associated with possible backflow from the industrial end user or that there will be no backflow from the industrial end user capable of contaminating the reclaimed water supply.

h. A description of how the quality of reclaimed water in the reclaimed water distribution system shall be maintained to meet and, if determined necessary by the board, monitored to verify compliance with the standards minimum standard requirements specified in 9VAC25-740-90 for the intended reuse or reuses of the reclaimed water ~~in accordance with 9VAC25-740-90, excluding CAT standards. Where monitoring of reclaimed water in the distribution system is required, monitoring parameters and frequencies shall be determined by the board on a case-by-case basis.~~

i. Information specified in subdivision B 7 of this section for conjunctive systems described in subdivision B 8 of this section.

~~+~~ j. Where the applicant or permittee is the provider of reclaimed water, the exclusive end user of that reclaimed water and is not otherwise excluded under 9VAC25-740-50 A, information for only subdivisions e 1 a, b, and c of this section subsection is required.

2. All irrigation reuses of reclaimed water shall be limited to supplemental irrigation.

3. Nutrient management requirements for irrigation reuse will be established in the RWM plan according to the concentration of total N and total P in the reclaimed water compared to "Biological Nutrient Removal (BNR)" as defined in 9VAC25-740-10.

a. Except as specified in subdivision 4 of this subsection, a nutrient management plan (NMP) shall not be required for irrigation reuse of reclaimed water treated to achieve BNR or nutrient levels below BNR.

b. For bulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP shall be required of the end user.



(1) Where the applicant or permittee is the end user, the NMP shall be submitted with the RWM plan to the board and shall be the responsibility of the applicant or permittee to properly implement.

(2) Where the end user is other than the applicant or permittee, the NMP shall be required as a condition of the service agreement or contract specified in subdivision ~~€ 1 d of this section~~ subsection between the applicant or permittee and the end user. The end user shall be responsible for obtaining, maintaining and following a current NMP; providing a copy of the most current NMP to the applicant or permittee prior to initiating bulk irrigation reuse of reclaimed water; and providing proof of compliance with the NMP at the request of the permittee.

c. For nonbulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP shall not be required. However, the RWM plan shall describe other measures to be implemented by the applicant or permittee to manage nutrient loads by nonbulk irrigation reuse of reclaimed water not treated to achieve BNR within the service area. These shall include, but are not limited to the following:

(1) The inclusion of language in the service agreement or contract specified in subdivision ~~€ 1 d of this section~~ subsection, explaining proper use of the reclaimed water by the end user for the purpose of managing nutrients;

~~(2) Reclaimed water metering of individual nonbulk irrigation end users;~~

~~(3) (2)~~ Routine distribution of literature not less than annually, to individual nonbulk irrigation end users addressing the proper use of reclaimed water for irrigation in accordance with 9VAC25-740-170 A; and

~~(4) (3)~~ Monthly monitoring of N and P loads by nonbulk irrigation reuses to the service area of the RWM plan based on the total monthly metered ~~use~~ nonbulk irrigation reuse of reclaimed water for the service area and the monthly average concentrations of total N and total P in the reclaimed water. Results of this monitoring shall be included in the annual report to the board submitted in accordance with 9VAC25-740-200 C.

4. Independent of the reclaimed water nutrient content, a NMP shall be required for a bulk irrigation reuse site where:

a. A wastewater treatment works, reclamation system, ~~satellite reclamation system~~ SRS, or reclaimed water distribution system and the irrigation reuse site or sites are under common ownership or management, and

b. In addition to irrigation reuse:

(1) There is no option to dispose of the reclaimed water through a VPDES permitted discharge, or

(2) There is an option to dispose of the reclaimed water through a VPDES permitted discharge, but the VPDES

permit does not allow discharge of the full nutrient load under design flow (e.g., a treatment works with a VPDES permitted discharge implements water reclamation and reuse in lieu of providing treatment to meet nutrient effluent limits at design flow).

~~The 5. A NMP required per subdivision 4 of this subsection~~ shall be approved by the DCR and submitted with the RWM plan to the board. The applicant or permittee shall be responsible for proper implementation of the NMP.

~~5. 6.~~ If required for a specific irrigation reuse, the NMP shall be prepared by a nutrient management planner certified by the DCR and shall be maintained current in accordance with the Nutrient Management Training and Certification Regulations, 4VAC5-15. A copy of the NMP for each irrigation reuse site shall be maintained at the site or at a location central to all sites covered by the plan. Another copy shall be provided to and retained by the applicant or permittee.

~~6. 7.~~ A site plan is required for each bulk irrigation reuse site and area of proposed expansion to an existing irrigation reuse site, displayed on the most current USGS topographic maps (7.5 minutes series, where available) and showing the following:

a. The boundaries of the irrigation site;

b. The location of all potable and nonpotable water supply wells and springs, public water supply intakes, occupied dwellings, property lines, areas accessible to the public, outdoor eating, drinking and bathing facilities; surface waters, including wetlands; limestone rock outcrops and sinkholes within 250 feet of the irrigation site; and

c. Setbacks areas around the irrigation site in accordance with 9VAC25-740-170.

~~Where expansion of an existing irrigation site is anticipated, the same information shall be provided for the area of proposed expansion.~~

~~7. 8.~~ The site plan for a bulk irrigation reuse site shall be prepared by:

a. The applicant or permittee for submission with the RWM plan to the board when the irrigation site is under common ownership or management with a wastewater treatment works, a reclamation system ~~or satellite reclamation system~~, SRS, or reclaimed water distribution system from which it receives reclaimed water for irrigation; or

b. The bulk irrigation end user for submission with the service agreement or contract between the end user and the applicant or permittee when the irrigation site is not under common ownership or management with a wastewater treatment works, a reclamation system ~~or satellite reclamation system~~, SRS, or reclaimed water

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distribution system from which it receives reclaimed water for irrigation.

~~8. 9.~~ For the addition of new end users or new reuses not contained in the original RWM plan submitted with the application for a permit, the permittee shall submit to the board for approval an amendment to the RWM plan identifying the new end users ~~not less than 30 days~~ or new reuses prior to connection and reclaimed water service to ~~these~~ the new end users or initiating the new reuses. For each new end user or new reuse, the permittee shall also provide all applicable information required by this subsection C of this section. Amendment of the RWM plan for the addition of new end users or new reuse after the issuance or reissuance of the permit shall not be considered a modification of the permit unless the new end users or new reuses will require the addition of different reclaimed water standards, monitoring requirements and conditions not contained in the permit.

D. Indirect potable reuse (IPR). For an application to permit an IPR project, the following additional information shall be submitted by the applicant or permittee to the board:

1. Identification of the following components of an IPR project:

a. The reclamation system that will produce reclaimed water discharged to the water supply source (WSS);

b. The WSS to which the reclamation system identified in subdivision 1 a of this subsection will discharge reclaimed water.

c. The waterworks that will withdraw water from the WSS identified in subdivision 1 b of this subsection to produce potable water.

2. Identification of all uses in addition to IPR of the WSS identified in subdivision 1 of this subsection. Such uses shall be those deemed acceptable by the Virginia Department of Health or the Waterworks Regulation (12VAC5-590).

3. A description of multiple barriers to be implemented by the reclamation system or waterworks, or both, to produce water of a quality suitable for IPR. Multiple barriers shall include at a minimum:

a. Source control and protection. This involves the control of contaminants with potential to adversely impact public health by preventing or minimizing the entry of these contaminants into the wastewater collection system prior to reclamation or the WSS prior to withdrawal by the waterworks. Source control and protection shall, at a minimum, address pretreatment requirements for SIUs in accordance with 9VAC25-740-150 E and education requirements in accordance with 9VAC25-740-170 A 1, and shall describe other measures to reduce the introduction of contaminants from domestic sources that may include, but are not limited to,

community collection programs for hazardous wastes and unused pharmaceuticals.

b. Effective and reliable treatment. This involves the use of treatment processes at both the reclamation system and the waterworks that, in combination with any natural attenuation provided by the environmental buffer to be described per subdivision 3 c of this subsection, shall reliably achieve the water quality necessary for IPR. A description of reclamation system treatment processes for IPR may be satisfied by referencing application information submitted in accordance with subsection B of this section.

c. Environmental buffers and natural attenuation. This involves the use of an environmental buffer, such as a surface water used as a WSS source, to provide further removal or degradation of certain contaminants when exposed to naturally occurring physical, chemical, and biological processes in the environment over time.

d. Monitoring programs. This involves monitoring at progressive stages of treatment or barriers of the project to verify that they are working effectively and reliably to achieve the necessary water quality for IPR.

e. Responses to adverse conditions. To address those circumstances where the reclamation system of the IPR project experiences a catastrophic treatment failure that cannot be corrected by subsequent treatment or barriers, or fails to produce reclaimed water meeting the standards or limits at the point of discharge to the WSS, the application for the IPR project shall contain:

(1) A contingency plan that describes all alternatives to be implemented in lieu of discharging the substandard reclaimed water to the WSS.

(2) A notification program for the reclamation system of the IPR project and as described in 9VAC25-740-170 A 2.

4. An evaluation of the combined effectiveness of all the barriers described in subdivision 3 of this subsection to achieve the water quality necessary for IPR.

5. Any information deemed necessary by the board to establish reclaimed water standards and monitoring requirements for the IPR project in accordance with 9VAC25-740-90 B. This shall include, but is not limited to, residence or transport times, mixing ratios, and other applicable modeling of the reclamation system discharge or contaminants introduced by the discharge to the WSS.

6. A water balance for the reclamation system that accounts for the volumes of reclaimed water to be generated, stored, discharged to the WSS, and withdrawn for IPR.

7. Any change by the reclamation system to provide reclaimed water for other reuses or end users in addition to IPR shall require submission of a RWM plan in accordance with subdivision C 1 of this section. The water balance for

the RWM plan shall include the water balance required per subdivision 6 of this subsection for the IPR project.

8. A copy of the contractual agreement established between the reclamation system and the waterworks of the IPR project, identifying the responsibilities of each party to implement multiple barriers described in accordance with subdivision 3 of this subsection, unless the reclamation system and waterworks are under common ownership or management.

**9VAC25-740-105. Application for an emergency authorization.**

A. An application for an emergency authorization as described in 9VAC25-740-45 shall include information addressing the following:

1. Contact information of the applicant or permittee including name, mailing address, telephone number, and, if applicable, fax number, and electronic mail address;
2. Name of the city or county where the emergency production, distribution, and reuse of reclaimed water shall occur;
3. Recent and current water use, including monthly water use in the previous calendar year and weekly water use in the previous six months prior to the application. The application shall identify the sources of such water and also identify any water purchased from other water suppliers;
4. A description of the severity of the public water supply emergency, including for reservoirs, an estimate of days of remaining supply at the current rates of use and replenishment; for wells, current production; for intakes, current streamflow;
5. A description of mandatory water conservation measures taken or imposed by the applicant or permittee and the dates when the measures were implemented. For the purposes of obtaining an emergency authorization, mandatory water conservation measures shall include, but are not limited to, the prohibition of lawn and landscape watering, noncommercial vehicle washing, the watering of recreation fields, refilling of swimming pools, and the washing of paved surfaces;
6. An estimate of water savings realized by implementing mandatory water conservation measures;
7. Documentation that the applicant or permittee has exhausted all public water supply management actions that would minimize the threat to public welfare, safety, and health, and would avoid the need to obtain an emergency authorization. This may include among other actions, the acquisition of an Emergency Virginia Water Protection Permit (9VAC25-210) for a new or increased withdrawal;
8. Any other information demonstrating that public water supply conditions are a substantial threat to public health or safety;

9. Name, address, and permit number of the municipal treatment works that proposes to produce, distribute, or reuse reclaimed water under the emergency authorization;

10. A statement confirming that the municipal treatment works:

- a. Does not have SIUs, or
- b. Has SIUs and a pretreatment program developed, approved, and maintained in accordance with Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation;

11. Information regarding the design and operation of the treatment works, demonstrating that the facility is currently capable of producing reclaimed water meeting minimum standard requirements of 9VAC25-740-90 for reuses listed in the application pursuant to subdivision 12 of this subsection;

12. Information specified in 9VAC25-740-100 B 3 d regarding the diversion of source water from the treatment works to reclamation and reuse;

13. A list of proposed reuses for reclaimed water produced by the municipal treatment works and an explanation of how these reuses will protect public health and safety under the current public water supply conditions;

14. A description of the system that will be used to distribute reclaimed water from the municipal treatment works to the intended reuses; and

15. A signed and dated certification statement in accordance with signatory requirements of the VPDES Permit Regulation (9VAC25-31) or the VPA Permit Regulation (9VAC25-32), whichever applies to the permit issued to the municipal treatment works.

B. The application for a permit described in 9VAC25-740-100 may be used as an application to issue an emergency authorization where the permit application contains the information required in subsection A of this section.

**9VAC25-740-110. Design criteria.**

A. Reclamation system.

1. The design of systems for the reclamation of municipal wastewater or ~~the effluent~~ source water derived from a municipal wastewater treatment works shall adhere to the standards of design and construction specified in the Sewage Collection and Treatment Regulations (9VAC25-790) and other applicable engineering standards and regulations. Design standards for reclamation systems of industrial wastewater or ~~the effluent~~ source water derived from an industrial wastewater treatment works shall be determined and evaluated on a case-by-case basis.

2. Ultraviolet (UV) disinfection for reclamation systems:

- a. For Level 1 reclaimed water:
  - (1) Designs for UV disinfection shall be validated in accordance with NWRI Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse, Second

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Edition (2003) (guidelines) to meet a UV design dosage greater than or equal to 100,000 uWsec/cm<sup>2</sup> (MS-2 dose) under peak flow and a minimum UV transmittance of 55% at 254 nm. A lower UV disinfection dosage may be authorized by the board if demonstrated to meet at least one of the bacteria standards for Level 1 specified in 9VAC25-740-70 A, and where microbial testing is used to validate the efficacy of the UV disinfection dose in accordance with the guidelines. For the lower disinfection dose, the board may develop reclaimed water turbidity standards and minimum UV transmittance requirements that are unique to the UV disinfection process of the reclamation system.

(2) The UV disinfection system shall be designed to supply the minimum dose specified in subdivision 2 a (1) of this subsection at all times. The system may be automated to immediately adjust the UV disinfection dosage in response to changes in the UV system influent reclaimed water flow and quality.

b. UV disinfection for Level 2 reclaimed water shall be designed, constructed, and operated in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) for UV disinfection of secondary effluent.

## B. Reclaimed water distribution system.

1. All reclaimed water distribution systems shall be designed and constructed in accordance with this chapter and applicable sections of the Sewage Collection and Treatment Regulations (9VAC25-790) pertaining to force mains, so that:

- a. Reclaimed water does not come into contact with or otherwise contaminate a potable water system;
- b. The structural integrity of the system is provided and maintained; and
- c. The capability for inspection, maintenance, and testing is maintained.

2. For a reclaimed water distribution system, the following shall be implemented as part of the cross-connection and backflow prevention program submitted with the RWM plan:

- a. There shall be no direct cross-connections between the reclaimed water distribution system and a potable water supply system.
- b. The reclaimed water distribution system shall be in compliance with the cross connection control and backflow prevention requirements of Article 3 (12VAC590-580 et seq.) of Part II of the Commonwealth of Virginia Waterworks Regulations; and, when applicable, the reclaimed water distribution system shall also be in compliance with the Virginia Statewide Building Code, and local building and plumbing codes (13VAC5-63).

c. Potable water may be used to supplement reclaimed water for a reuse, provided there is an air gap separation of at least eight inches between the potable water and the reclaimed water or a reduced pressure principle backflow prevention device installed at the potable water service connection to the reuse. The installation of the reduced pressure principal backflow prevention device shall allow for proper inspection and testing of the device.

d. Reclaimed water shall not be returned to the reclaimed water distribution system after the reclaimed water has been delivered to an end user.

3. In-ground reclaimed water distribution pipelines shall be installed and maintained to achieve minimum separation distance and configurations as follows:

a. No reclaimed water distribution pipeline shall pass within 50 feet of a potable water supply well, potable water supply spring or water supply intake that are part of a regulated waterworks. The same separation distance shall be required between a reclaimed water distribution pipeline and a nonpublic or private potable water supply well or spring, but may be reduced to not less than 35 feet provided special construction and pipe materials are used to obtain adequate protection of the potable water supply.

b. Reclaimed water distribution pipeline shall be separated horizontally by at least 10 feet from a water main. The distance shall be measured edge-to-edge. When local conditions prohibit this horizontal separation, the reclaimed water distribution pipeline may be laid closer provided that the water main is in a separate trench or an undisturbed earth shelf located on one side of the reclaimed water distribution pipeline and the bottom of the water main is at least 18 inches above the top of the reclaimed water distribution pipeline. Where this vertical separation cannot be obtained, the reclaimed water distribution pipeline shall be constructed of water pipe material in accordance with AWWA specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C600-05, effective December 1, 2005) for the pipe material, with a minimum test pressure of 30 psi.

c. Distribution pipeline that conveys Level 1 reclaimed water shall be separated horizontally by at least two feet from a sewer line. The distance shall be measured edge-to-edge. When local conditions prohibit this horizontal separation, the reclaimed water distribution pipeline may be laid closer provided that the sewer line is in a separate trench or an undisturbed earth shelf located on one side of the reclaimed water distribution pipeline and the bottom of the reclaimed water distribution pipeline is at least 18 inches above the top of the sewer line. Where this vertical separation cannot be obtained, either the reclaimed water distribution pipeline or the sewer line

shall be constructed of water pipe material in accordance with AWWA specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C600-05, effective December 1, 2005) for the pipe material, with a minimum test pressure of 30 psi.

d. Reclaimed water distribution pipeline shall cross under water main such that the top of the reclaimed water distribution pipeline is at least 18 inches below the bottom of the water main. When local conditions prohibit this vertical separation, the reclaimed water distribution pipeline shall be constructed of AWWA specified water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790). Where reclaimed water distribution pipeline crosses over water main, the reclaimed water distribution pipeline shall:

- (1) Be laid to provide a separation of at least 18 inches between the bottom of the reclaimed water distribution pipeline and the top of the water main.
- (2) Be constructed of AWWA approved water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).
- (3) Have adequate structural support to prevent damage to the water main.
- (4) Have joints placed equidistant and as far as possible from the water main joints.

e. Sewer line shall cross under distribution pipeline that conveys Level 1 reclaimed water such that the top of the sewer line is at least 18 inches below the bottom of the reclaimed water distribution pipeline. When local conditions prohibit this vertical separation, the sewer line shall be constructed of AWWA specified water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790). Where sewer line crosses over distribution pipeline that conveys Level 1 reclaimed water, the sewer line shall:

- (1) Be laid to provide a separation of at least 18 inches between the bottom of the sewer line and the top of the reclaimed water distribution pipeline.
- (2) Be constructed of AWWA approved water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).
- (3) Have adequate structural support to prevent damage to the reclaimed water distribution pipeline.

(4) Have joints placed equidistant and as far as possible from the reclaimed water distribution pipeline joints.

f. No reclaimed water distribution pipeline shall pass through or come into contact with any part of a sewer manhole. Distribution pipeline that conveys Level 1 reclaimed water shall be separated horizontally by at least two feet from a sewer manhole whenever possible. The distance shall be measured from the edge of the pipe to the edge of the manhole structure. When local conditions prohibit this horizontal separation, the manhole shall be of watertight construction and tested in place.

4. No setback distance is required to any nonpotable water supply well and no vertical or horizontal separation distances are required between above-ground reclaimed water pipelines and potable water, sewer or wastewater pipelines.

5. All reclaimed water outlets shall be of a type, or secured in a manner, that permits operation by authorized personnel. Public access to reclaimed water outlets shall be controlled in areas where reclaimed water outlets are accessible to the public as follows:

a. If quick connection couplers are used on above-ground portions of the reclaimed water distribution system, they shall differ materially from those used on the potable water supply.

b. Use of above-ground hose bibs, spigots or other hand-operated connections that are standard on local potable water distribution systems shall be prohibited for use on the local reclaimed water distribution system. If above-ground hose bibs, spigots or other hand-operated connections are used on the reclaimed water distribution system, they must differ materially from those used on the local potable water distribution system and must be clearly distinguishable as reclaimed water connections (i.e., painted purple, valve operation with a special tool) so as not to be mistaken for potable water connections. Where below-grade vaults are used to house reclaimed water connections, the connections in the vault may have standard potable water distribution system thread and bib size services provided the bib valves can be operated only by a special tool. The below-grade vaults shall also be labeled as being part of the reclaimed water distribution system (i.e., painted purple, labeled).

6. Existing potable water distribution systems, sewer and wastewater pipelines collection systems, and irrigation distribution systems may be converted for use as reclaimed water distribution pipelines systems. The Not less than 90 days prior to such conversions, excluding the conversion of irrigation distribution systems that are not under common ownership or management with reclamation systems, SRSs, or reclaimed water distribution systems providing reclaimed water to the irrigation distribution systems, the

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following information shall be submitted to the board for approval of the conversion:

a. A system conversion plan that contains:

~~a. The (1) Information on the location and identification of the facilities to be converted;~~

~~b. The (2) Information on the location of all connections to the facilities to be converted;~~

~~c. A description of measures to be taken to ensure that existing connections will be eliminated;~~

~~d. Description (3) A description of procedures to be used to ensure that all connections and cross-connections shall be eliminated. This may include physical inspections, dye testing, or other testing procedures;~~

~~e. Description of marking, signing, labeling, or color coding to be used to identify the converted facility as a reclaimed water transmission facility;~~

(4) A description of the physical and operational modifications necessary to convert the existing system to a reclaimed water distribution system that shall comply with applicable design criteria in subsections B and C of this section, and the operations and maintenance requirements of 9VAC25-740-140 D 2;

~~f. Description (5) A description of cleaning and disinfection procedures to be followed before the converted facilities will be placed into operation for reclaimed water distribution. For the conversion of existing sewer and wastewater collection systems, cleaning and disinfection of the system shall be conducted in accordance with AWWA standards (ANSI/AWWA C651-05, effective June 1, 2005). Procedures to dispose of flush water from cleaning or disinfection shall be those described in the operations and maintenance manual of the system for the disposal of flush water from maintenance activities;~~

~~g. Assessment (6) An assessment of the physical condition and integrity of facilities to be converted; and~~

~~h. (7) Reasonable assurance that cross-connections will not result, public health will be protected, and the integrity of potable water, wastewater, and reclaimed water systems will be maintained when the conversion is made.~~

b. An operations and maintenance manual for the system converted to a reclaimed water distribution system in accordance with 9VAC25-740-140 B, containing at a minimum the items specified in 9VAC25-740-140 D.

7. Tank trucks may be used to transport and distribute reclaimed water only if the following requirements are met:

a. The truck is not used to transport potable water that is used for drinking water or food preparation;

b. The truck is not used to transport waters or other fluids that do not meet the requirements of this chapter, unless

the tank has been evacuated and properly cleaned prior to the addition of the reclaimed water;

c. The truck is not filled through on-board piping or removable hoses that may subsequently be used to fill tanks with water from a potable water supply; and

d. The reclaimed water contents of the truck are clearly identified as nonpotable water on the truck.

8. Reclaimed water distribution systems shall have the following identification, notification and signage:

a. ~~All reclaimed~~ Reclaimed water piping with an outer diameter greater than or equal to one inch, installed in-ground after (effective date of amended regulation) or above-ground shall ~~have~~ display the words "CAUTION: RECLAIMED WATER - DO NOT DRINK" ~~embossed, integrally stamped, or otherwise affixed to the piping, and shall be identified by one or more of the following methods:~~

~~(1) Painting the piping purple (Pantone 522) and stamping the piping with the required caution statement on opposite sides of the pipe, repeated at intervals of three feet or less.~~

~~(2) Using stenciled pipe (1) Stenciling or stamping the piping with two-inch to three-inch letters on opposite sides of the pipe, piping, placed at intervals of three to four feet. For pipes piping less than two inches in and greater than or equal to one inch outer diameter, lettering shall be at least 5/8 inch, placed on opposite sides of the pipe, piping and repeated at intervals of one foot.~~

~~(3) (2) Wrapping the piping with purple (Pantone 522) polyethylene vinyl wrap or adhesive tape, placed longitudinally at three-foot intervals. The width of the wrap or tape shall be at least three inches, and shall display the required caution statement in either white or black lettering.~~

~~(4) (3) Permanently affixing purple (Pantone 522) vinyl adhesive tape on top of the piping, parallel to the axis of the pipe, piping, fastened at least every 10 feet to each pipe section, and continuously for the entire length of the piping. The width of the tape shall be at least three inches, and shall display the required caution statement in either white or black lettering.~~

(4) Using an alternate method that assures the caution statement will be displayed to provide an equivalent degree of public notification and protection if approved by the board.

b. Additional methods, if provided, to identify reclaimed water piping with an outer diameter greater than or equal to one inch (e.g., permanently color coding the piping Pantone 522 purple), shall not obscure any portion of the caution statement required pursuant to subdivision 8 a of this subsection.

c. Reclaimed water piping with an outer diameter less than one inch shall require the following:

(1) Where installed in-ground after (effective date of amended regulation) or above ground, the piping shall be permanently color coded purple (Pantone 522). Longitudinal purple striping of the piping may be allowed provided the cumulative width of the stripes is greater than or equal to 25% of the outer pipe diameter.

(2) Where installed within a building or structure, the piping shall have in addition to color coding required per subdivision 8 c (1) of this subsection, the words "CAUTION: RECLAIMED WATER – DO NOT DRINK" embossed, stenciled, stamped, or affixed with adhesive tape on the piping, placed on opposite sides of the piping, and repeated at intervals of one foot. Lettering of the caution statement shall be of a size easily read by a person with normal vision at a distance of two feet.

~~b. d.~~ All ~~visible, other~~ above-ground portions of the reclaimed water distribution system including reclaimed water piping, valves, outlets (including fire hydrants) and other appurtenances shall be ~~colored~~ color coded, taped, labeled, tagged or otherwise marked to notify the public and employees that the source of the water is reclaimed water, not intended for drinking or food preparation. For reclaimed water treated to Level 2, such notification shall also inform employees to practice good personal hygiene for incidental contact with reclaimed water and the public to avoid contact with the reclaimed water.

~~e. e.~~ Each mechanical appurtenance of a reclaimed water distribution system shall be colored purple and legibly marked "RECLAIMED WATER" to identify it as a part of the reclaimed water distribution system and to distinguish it from mechanical appurtenances of a potable water distribution system or a wastewater collection system.

~~d. Existing underground distribution or collection pipelines and appurtenances retrofitted for the purpose of distributing reclaimed water shall be colored coded, taped, labeled, tagged or otherwise identified as described in subdivisions 8 a, b and c of this subsection. This identification need not extend the entire length of the retrofitted reclaimed water distribution system but is required within 10 feet of locations where the distribution system crosses a potable water supply line or sanitary sewer line.~~

~~e. f.~~ Valve boxes for reclaimed water distribution systems shall be painted purple. Valve covers for reclaimed water distribution lines shall not be interchangeable with potable water supply valve covers.

g. Existing potable water distribution systems, sewer or wastewater collection systems, or irrigation distribution systems that are converted to reclaimed water distribution systems in accordance with subdivision 6 of this subsection after (effective date of amended regulation), shall be retrofitted to meet identification,

notification, and signage requirements of subdivision 8 of this subsection with the following exceptions:

(1) For converted systems requiring the submission of a conversion plan and an operations and maintenance manual in accordance with subdivision 6 of this subsection, existing in-ground converted piping shall be retrofitted to a distance of not less than 10 feet from locations where the piping crosses or is crossed by a potable water supply line or sanitary sewer line.

(2) For all other converted systems, identification, notification, and signage requirements specified in subdivision 8 of this subsection for in-ground piping shall not apply.

9. All reclaimed water distribution systems shall be maintained to minimize losses and to ensure safe and reliable conveyance of reclaimed water such that the reclaimed water will not be degraded below the standards, excluding CAT standards, required for the intended reuse or reuses in accordance with 9VAC25-740-90.

C. Storage requirements.

1. To ensure reliable reclamation system operation in accordance with the requirements of this chapter, all reclamation systems shall have the ability to implement one or more of the following options:

- a. Store reclaimed water;
- b. Discharge reclaimed water to another permitted reuse system, if applicable;
- c. Discharge reclaimed water to surface waters of the state under a VPDES permit;
- d. Suspend all or a portion of water reclamation for planned periods; or
- e. In the case of a satellite reclamation system, discharge reclaimed water into the sewage collection system from which it received water for reclamation.

2. Storage for reclaimed water shall be required only when ~~subdivision 1 b, c, or d~~ subdivision 1 b, c, or d of this subsection or, as applicable, subdivision 1 e of this subsection are not available or approved by the board.

3. Separate, off-line storage shall be provided for reject water of the reclamation system unless the reject water can be diverted to another permitted reuse system, discharged to surface waters of the state under a VPDES permit, returned directly to an appropriate point of treatment in the reclamation system, or in the case of a satellite reclamation system, sent to the sewage collection system from which the reclamation system received water for reclamation. Where reject water is stored, provisions shall be incorporated into the design of the reclamation system to distribute the reject water from storage to other parts of the reclamation system for additional or repeated treatment.

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4. Storage for reject water may also be used for emergency storage to ensure Reliability Class I ~~reliability~~ of the reclamation system in accordance with 9VAC25-740-130.

5. Reject water and reclaimed water may be stored in water-tight tanks placed above-ground or in-ground. Labeling of tanks used for reject water storage, system storage or nonsystem storage shall be in accordance with 9VAC25-740-160 B, and shall, at a minimum, identify the contents of each tank as either reject water or reclaimed water.

6. For all impoundments or ponds that are used for reject water storage or system storage, with the exception of impoundments and ponds specified in subdivision 7 of this subsection, the following are required:

a. A minimum two-foot freeboard shall be maintained at all times. Any emergency discharge or overflow device and the disposition of the overflow discharge shall be identified in the engineering report.

b. There shall be a minimum two-foot separation distance between the bottom of the impoundment or pond and the seasonal high water table.

c. The impoundment or pond shall have a properly designed and installed synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness. Synthetic liners shall be installed in accordance with the manufacturer's specifications and recommendations. The soil liner shall be composed of separate lifts not to exceed six inches. The maximum coefficient of permeability for the synthetic and soil liners shall not exceed  $1 \times 10^{-6}$  cm/sec and  $1 \times 10^{-7}$  cm/sec, respectively. A plan of quality assurance and quality control which substantiates the adequacy of the liner and its installation shall be included in or shall accompany the preliminary engineering report or supporting documentation for the CTC. Documentation of quality assurance and quality control activities on liner installation along with permeability test results, shall be submitted with the statement of construction completion to the board.

d. If the requirements of ~~subdivision~~ subdivision 6 b or c of this subsection cannot be met, the board may allow use of the impoundment or pond for storage provided that a groundwater monitoring plan for the facility is submitted to the board for review and approval. The plan shall identify the direction of groundwater flow and the proposed location and depth of groundwater monitoring wells at the location of the impoundment or pond, parameters to be monitored, a monitoring schedule, and procedures for proper sample collection and handling.

e. The design of the impoundment or pond shall prevent the entry of surface water or storm water runoff from outside the facility embankment or berm.

f. Where the embankment of the impoundment or pond is composed of soil, the embankment shall have:

(1) A top width of at least five feet;

(2) Interior and exterior slopes no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are used;

(3) Shallow-rooted vegetative cover or other soil stabilization to prevent erosion; and

(4) Erosion stops and water seals installed on all piping that penetrates the embankment.

g. There shall be routine maintenance of the impoundment or pond liner, embankments and access areas.

h. Impoundments and ponds shall be sited to avoid areas of uneven subsidence, sinkholes, or unstable soils unless provisions are made for their correction. Results from field and laboratory tests from an adequate number of test borings and soil samples shall be the basis for computations pertaining to permeability and stability analyses.

i. Impoundments or ponds shall not be located on a floodplain unless protected from inundation or damage by a 100-year frequency flood event.

j. There shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 100 feet for storage of Level 1 reclaimed water and 200 feet for storage of Level 2 reclaimed water or reject water.

7. Reject water storage and system storage impoundments or ponds that exist upon October 1, 2008, shall be exempt from the design, construction, and operation requirements specified in subdivision 6 of this subsection until such time these facilities are modified or expanded, or unless they have failed to comply with other existing regulatory or permitting requirements.

8. The capacity of reject water storage and system storage facilities, including impoundments, ponds or tanks, shall be as follows:

a. For reject water, the capacity of the storage facility shall, at a minimum, be the volume equal to the ~~average daily permitted~~ designated design flow of the reclamation system unless other options exist for immediate disposal or retreatment of the reject water in addition to storage.

b. For reclaimed water, the capacity of the storage facility shall be determined by the seasonal variability in demand, intended reuses with intermittent, variable demand, such as fire protection or fighting; and the availability of other options to generate or manage reclaimed water as specified in subdivision 1 of this subsection.



(1) Where there is no or minimal seasonal variability in demand and no other options are available for alternative generation or management of all or a portion of the reclaimed water, the capacity of the storage facility shall, at a minimum, be the volume equal to three times that portion of ~~reclaimed water average daily~~ the reclamation system designated design flow for which no other options to generate or manage the reclaimed water from the reclamation system are permitted.

(2) Where there is seasonal variability in demand and no other options are available for alternative generation or management of all or a portion of the reclaimed water during periods of low seasonal demand, storage facilities shall have sufficient storage capacity to assure the retention of the reclaimed water under conditions and circumstances that preclude reuse. The methods, assumptions and calculations used to determine the system storage requirements shall be provided and justified in the preliminary engineering report or supporting documentation for the CTC. Analytical means of determining system storage requirements, such as water balance calculations or computer hydrological programs, shall be used and shall account for all water inputs into the system. Analysis shall be based on site-specific data. Irrigation efficiencies or rainfall efficiencies shall not be used in storage volume determinations.

9. Requirements specified in subdivision 6 of this subsection shall not apply to ~~lakes~~, impoundments or ponds used for nonsystem storage with the exception of those specified in subdivision 11 of this subsection.

10. Landscape impoundments may also be used for nonsystem storage of reclaimed water prior to another subsequent reuse, such as irrigation.

11. Impoundments or ponds used for nonsystem storage of reclaimed water, including landscape impoundments, for subsequent irrigation reuse on sites under common ownership or management with the reclamation system or satellite reclamation system that provides reclaimed water to the sites, shall comply with the design, construction and operation requirements specified in subdivision 6 of this subsection.

12. For ~~lakes~~, impoundments or ponds used for nonsystem storage of reclaimed water, the following setback distances shall apply:

- a. There shall be a 50-foot minimum setback distance measured horizontally from the perimeter of the ~~lake~~, impoundment or pond to property lines.
- b. For an impoundment or pond with a liner meeting the requirements specified in subdivision 6 c of this subsection, there shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 100 feet for

storage of Level 1 reclaimed water and 200 feet for storage of Level 2 reclaimed water.

c. For an unlined impoundment or pond, there shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 200 feet for storage of Level 1 reclaimed water and 400 feet for storage of Level 2 reclaimed water.

13. Where more than one setback distance applies to storage for reclaimed water or reject water, the greater setback distance shall govern.

14. ~~All Reclaimed water system storage facilities, including landscape impoundments used for nonsystem storage,~~ shall be designed and operated to prevent a discharge to surface waters of the state except in the event of a storm greater than the 25-year 24-hour storm. Reclaimed water nonsystem storage facilities, including landscape impoundments used for nonsystem storage, shall be designed and operated to prevent a discharge to surface waters of the state, except in the event of a storm greater than the 10-year, 24-hour storm.

15. Permittees shall maintain current inventories of reject water storage, system storage and nonsystem storage facilities located within the service area of the RWM plan. An inventory or a revised inventory shall be submitted as part of the RWM plan in the permit application. For the addition of new storage facilities to an inventory after permit issuance, the permittee shall submit to the board an amended inventory at least 30 days before reclaimed water will be introduced into the new storage facilities. An inventory of reject water storage, system storage and nonsystem storage facilities shall include the following:

- a. Name or identifier for each storage facility;
- b. Location of each storage facility (including latitude and longitude);
- c. Function of each storage facility (i.e., reject water storage, system storage or nonsystem storage);
- d. Type of each storage facility (i.e., covered tank, uncovered tank, lined pond, unlined pond, etc.); and
- e. Location (latitude and longitude) and distance of the nearest potable water supply well and spring, and public water supply intake, to each storage facility within 450 feet of that facility.

16. Storage requirements as specified in this subsection shall not apply to reclaimed water storage facilities provided at the site of an industrial end user where such facilities are regulated by an existing water permit issued by the board to the industrial end user, or the industrial end user is also the generator of reclaimed water stored in the facilities and is excluded under 9VAC25-740-50 A.

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## 9VAC25-740-120. Construction requirements.

### A. Preliminary engineering report and pilot study.

1. A preliminary engineering report shall be submitted for new water reclamation projects and for modification or expansion of existing reclamation systems, ~~satellite reclamation systems~~ SRSs, and reclaimed water distributions systems. At the request of the applicant or permittee, the board may waive the need for a preliminary engineering report or portions of a preliminary engineering report for modification or expansion of an existing reclamation system, ~~satellite reclamation system~~ SRS, or reclaimed water distributions system based on the scope of the proposed project.

2. A pilot study shall be required where treatment is proposed for a reclamation system of an IPR project.

a. The pilot study shall demonstrate the ability of selected treatment processes to:

(1) Meet, at a minimum, the reclaimed water standards prescribed for the IPR project in accordance with 9VAC25-740-90 C, and

(2) Generate a consistent and reliable supply of reclaimed water for the IPR project.

b. The pilot study shall quantify and characterize the quality of source water provided for reclamation and reclaimed water generated by the treatment processes of the reclamation system for a period of not less than 365 days unless reduced by the board in accordance with subdivision 2 d of this subsection.

c. At the request of the applicant or permittee, the board may reduce the pilot study duration specified in subdivision 2 b of this subsection or the pilot study scope where the following are met:

(1) The applicant or permittee provides a detailed plan of study for the board's review and approval before initiating the pilot study, and

(2) The detailed plan of study justifies to the satisfaction of the board that a pilot study of shorter duration or reduced scope will be sufficient to achieve the requirements of subdivision 2 a of this subsection. For the purpose of reducing the duration or scope of a pilot study, results of previous pilot studies and operating experiences of similar water reclamation and IPR projects may be used as part of the demonstration required pursuant to subdivision 2 a of this subsection.

d. Results of the pilot study shall be submitted to the board for review.

### B. Certificate to construct and certificate to operate.

1. No owner shall cause or allow the construction, expansion or modification of a reclamation system or ~~satellite reclamation system~~ SRS except in compliance with a certificate to construct (CTC) from the board unless otherwise provided for by this chapter. Furthermore, no

owner shall cause or allow any reclamation system or ~~satellite reclamation system~~ SRS to be operated except in compliance with a certificate to operate (CTO) issued by the board, which authorizes the operation of the reclamation system or ~~satellite reclamation system~~ SRS unless otherwise provided for by this chapter. The need for a CTC and CTO for modifications shall be determined by the board on a case-by-case basis. Conditions may be imposed on the issuance of any CTC or CTO, and no reclamation system or ~~satellite reclamation system~~ SRS may be constructed, modified, or operated in violation of these conditions.

### 2. CTC.

a. Upon approval of the proposed design by the board, including any submitted plans and specifications, if required, the board will issue a CTC to the owner of such approval to construct or modify his reclamation system or ~~satellite reclamation system~~ SRS in accordance with the approved plans and specifications.

b. Any deviations from the approved design or the submitted plans and specifications significantly affecting hydraulic conditions (flow profile), unit operations capacity, the functioning of the reclamation system or ~~satellite reclamation system~~ SRS, or the quality of the reclaimed water, must be approved by the board before any such changes are made.

### 3. CTO.

a. Upon completion of the construction or modification of the reclamation system or ~~satellite reclamation system~~ SRS, the owner shall submit to the board a Statement of Construction Completion signed by a licensed professional engineer stating that the construction work has been completed in accordance with the approved plans and specifications, or revised only in accordance with subdivision 2 b of this subsection. This statement shall be based upon inspections of the reclamation system or ~~satellite reclamation system~~ SRS during and after construction or modifications that are adequate to ensure the truth of the statement.

b. Upon receipt of the construction completion statement, the board may issue a final CTO. However, the board may delay the granting of the CTO pending inspection, or satisfactory evaluation of reclaimed water test results, to ensure that the work has been satisfactorily completed.

c. A conditional CTO may be issued specifying final approval conditions, with specific time periods for completion of unfinished work, revisions to the operations and maintenance manual, or other appropriate items. The board may issue a conditional CTO to owners of a reclamation system or ~~satellite reclamation system~~ SRS for which the required information for completion of construction has not been received. Such CTOs will contain appropriate conditions requiring the completion of any unfinished or incomplete work including

subsequent submission of the statement of completion of construction.

d. ~~Consideration will be given to issuance of an~~ An interim CTO may be issued to individual unit operations of the treatment system so as to allow utilization of these unit operations prior to completion of the total project. A final CTO shall be issued upon verification that the requirements of this chapter have been complied with.

e. Within 30 days after placing a new or modified reclamation system or ~~satellite reclamation system~~ SRS into operation, the board may require reclaimed water produced ~~should by the system to~~ be sampled and tested in a manner sufficient to demonstrate compliance with approved specifications and permit requirements. The board shall be notified of the time and place of the tests, and shall be sent the results of the tests for evaluation as part of the final CTO.

f. Within 90 days of placing the new or modified reclamation system or ~~satellite reclamation system~~ SRS into operation, the owner shall submit a new or revised operations and maintenance manual for the water reclamation system, ~~satellite reclamation system~~ SRS, or both, ~~as applicable, to be if~~ covered by the same permit. The manual shall contain information as specified in 9VAC25-740-140.

g. The board may amend or reissue a CTO where there is a change in the manner of treatment or the source of water that is reclaimed at the permitted location, or for any other cause incidental to the protection of the public health and welfare, provided notice is given to the owner.

**9VAC25-740-130. Operator requirements and system reliability.**

A. Operator requirements. In accordance with the Virginia Board for Waterworks and Wastewater Works Operators Regulations (18VAC160-20), each reclamation system shall be assigned a classification based on the treatment processes used to reclaim water and the design capacity of the facility. The classification of both the reclamation system and the operator in responsible charge shall be the same as that specified in the Sewage Collection and Treatment Regulations (9VAC25-790) for sewage treatment works with similar treatment processes and design capacities. The reclamation system shall be manned while in operation and under the supervision of the operator in responsible charge unless the system is equipped with remote monitoring and, as applicable, automated diversion of substandard or reject water in accordance with 9VAC25-740-70 C 1 a.

B. Reliability Class I reliability as defined in 9VAC25-740-10 is required for Level 1 reclamation systems ~~and~~ satellite reclamation systems, and for pump stations considered part of these systems, unless there is a permitted alternate treatment ~~or~~ discharge or disposal system available ~~that has with~~ sufficient capacity to handle any reclaimed water flows that do not meet the reclaimed water standards of this chapter or

performance criteria established in the operations and maintenance manual.

C. Reliability Class I, as defined in 9VAC25-740-10, is required for a reclamation system identified as a component of an IPR project in accordance with 9VAC25-740-100 D 1, including pump stations that are part of the reclamation system. No exception or variance shall be granted for this requirement.

~~C. D.~~ For independent reclamation systems and systems consisting of an industrial wastewater treatment works and reclamation system, the applicability of Reliability Class I reliability requirements as specified in the Sewage Collection and Treatment Regulations (9VAC25-790), shall be determined by the board for each proposed or existing system.

~~D. E.~~ The board may approve alternative measures to achieve Reliability Class I reliability specified in the Sewage Collection and Treatment Regulations (9VAC25-790) and this chapter if the applicant or permittee can demonstrate in the engineering report, using accepted and appropriate engineering principles and practices, that the alternative measures will achieve a level of reliability equivalent to Reliability Class I reliability.

**9VAC25-740-140. Operations and maintenance.**

A. The permittee shall develop and submit to the board an operations and maintenance manual in accordance with 9VAC25-740-120 B 3 f for each reclamation system, ~~satellite reclamation system~~ SRS, or combination of these facilities covered by the same permit. The permittee shall maintain the manual and any changes in the practices and procedures followed by the permittee shall be documented and submitted to the board within 90 days of the effective date of the changes.

B. For each reclaimed water distribution system, the permittee shall develop an operations and maintenance manual to be made available at a location central to the system. The permittee shall maintain the manual and include any changes in the practices and procedures followed by the permittee in the manual. The operations and maintenance manual for a reclaimed water distribution system may be included in the operations and maintenance manual described in subsection A of this section where the reclaimed water distribution system and a reclamation system or ~~satellite reclamation system~~ SRS, or all these facilities are covered by the same permit.

C. For a reclamation system authorized under the permit of a wastewater treatment works that provides flow to the reclamation system, the operations and maintenance manual of the reclamation system may be made a part of the operations and maintenance manual for the wastewater treatment works.

D. The operations and maintenance manual is a set of detailed instructions developed to facilitate the operator's

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understanding of operational constraints and maintenance requirements for the reclamation system, ~~satellite reclamation system~~ SRS, or reclaimed water distribution system; and the monitoring and reporting requirements specified in the permit issued for each system. The scope and content of the manual will be determined by the complexity of the system or systems described by the manual.

1. For a reclamation system or ~~satellite reclamation system~~ SRS, the operations and maintenance manual shall, at a minimum, contain the following:

- a. A description of unit treatment processes within the reclamation system or ~~satellite reclamation system~~ SRS and step-by-step instructions for the operation of these processes;
- b. Routine maintenance and schedules of maintenance for each unit treatment process in the system;
- c. The criteria used to make continuous determinations of the acceptability of the reclaimed water being produced and shall include set points for parameters measured by continuous on-line monitoring equipment;
- d. Descriptions of sampling and monitoring procedures and record keeping that comply with the requirements of this chapter and any applicable permit conditions;
- e. The physical steps and procedures to be followed by the operator when substandard water is being produced, including resampling and operational review in accordance with 9VAC25-740-70 C;
- f. The physical steps and procedures to be followed by the operator when the treatment works returns to normal operation and acceptable quality reclaimed water is again being produced;
- g. Procedures to be followed during a period when an operator is not present at the treatment works;
- h. Information necessary for the proper management of sludge or residuals from reclamation treatment that is not specifically requested in the application for a VPDES or VPA permit; and
- i. A contingency plan to eliminate or minimize the potential for untreated or inadequately treated water to be delivered to reuse areas. The plan shall, as applicable, reference and coordinate with the education and notification program specified in 9VAC25-740-170 A for any release of untreated or inadequately treated water to the reclaimed water distribution system.

2. For a reclaimed water distribution system, the operations and maintenance manual shall, at a minimum, contain the following:

- a. A map of the distribution system, a description of all components within the distribution system, and step-by-step instructions for the operation of specific mechanical components;

b. Routine and unplanned inspection of the distribution system, including required inspections for the cross-connection and backflow prevention program as specified in 9VAC25-740-100 C 1 g;

c. Routine maintenance and schedules of maintenance for all components of the distribution system. Maintenance shall include, but is not be limited to, initial and routine flushing of the distribution system, measures to prevent or minimize corrosion, fouling and clogging of distribution lines; and detection and repair of broken distribution lines, flow meters or pumping equipment; and

d. Procedures to ~~handle~~;

(1) Handle and dispose of any wastes or wastewater generated by maintenance of the distribution system in a manner protective of the environment;

(2) Prevent the discharge of reclaimed or flush water from distribution system maintenance activities to:

(a) Storm drains;

(b) State waters unless otherwise authorized by the board; and

(c) Sanitary sewers unless allowed under local sewer use ordinances and authorized by the board; and

(3) Collect and, as applicable, retreat reclaimed water or treat flush water from distribution system maintenance activities for a subsequent reuse or use approved by the board.

E. The permittee shall review and revise the operations and maintenance manual, as needed and appropriate, to ensure that the manual contains procedures and criteria addressing the requirements of subsection D of this section for satisfactory system performance. Any revision to the manual shall be reviewed and approved by the board.

F. The permittee of a reclamation system, ~~satellite reclamation system~~ SRS, or reclaimed water distribution system shall be responsible for making the facility protective of the environment and public health at all times, including periods of inactivation or closure. Included in the operations and maintenance manual for the reclamation system, ~~satellite reclamation system~~ SRS, or reclaimed water distribution system, the permittee shall submit a plan for inactivation or closure of the facility, specifying what steps will be taken to protect the environment and public health.

G. Where ~~a reclamation system or satellite reclamation system and a bulk irrigation reuse site or sites are~~ is under common ownership or management with a reclamation system or SRS that generates reclaimed water applied to the site, the operations and maintenance manual for the reclamation system or ~~satellite reclamation system~~ SRS shall include the following:

1. Measurements and calculations used to determine supplemental irrigation rates of reclaimed water for the irrigation reuse sites;
2. Operating procedures of the irrigation system;
3. Routine maintenance required for the continued design performance of the irrigation system and reuse sites;
4. Identification and routine maintenance of reclaimed water storage facilities dedicated to bulk irrigation reuse;
5. Schedules for harvesting and crop removal at the irrigation reuse sites;
6. An inventory of spare parts to be maintained for the irrigation system; and
7. Any other information essential to the operation of the irrigation system and reuse sites in accordance with the requirements of this chapter.

**9VAC25-740-150. Management of pollutants from significant industrial users.**

A. A reclamation system that receives effluent source water from a wastewater treatment works having significant industrial users (SIUs) as defined by the VPDES Permit Regulation (9VAC25-31-10), SIUs shall not be permitted to produce reclaimed water treated to meeting Level 1 or for reuse in areas accessible to the public or where human contact with the reclaimed water is likely standards, unless the wastewater treatment works providing effluent to the reclamation system is:

1. A wastewater treatment works providing source water to the reclamation system is a publicly owned treatment works (POTW) as defined in the VPDES Permit Regulation (9VAC25-31-10), that and has a pretreatment program required by and developed, approved and maintained in accordance with procedures described in Part VII of the VPDES Permit Regulation (9VAC25-31-730 through 9VAC25-31-900 et seq.); or
2. Any other POTW or privately owned treatment works as defined in the VPDES Permit Regulation (9VAC25-31-10), with either a VPA or VPDES permit that has developed a program to manage pollutants of concern discharged by SIUs, equivalent to a pretreatment program required in the VPDES Permit Regulation for qualifying POTWs. The reclamation system has evaluated source water from the treatment works for pollutants of concern discharged by SIUs to the treatment works, and has confirmed that such pollutants shall not interfere with the ability of the wastewater treatment works to produce source water suitable for the production of reclaimed water meeting Level 1 standards and any other standards required in accordance with 9VAC25-740-70 D. All such evaluations by the reclamation system shall be submitted to the board for review and approval, and shall be repeated for each new SIU that proposes to discharge to the treatment works prior to commencing such discharge. The

reclamation system shall maintain a current inventory of SIUs discharging to the treatment works.

B. The permittee of a reclamation system authorized to produce reclaimed water treated to Level 1 or for reuse in areas accessible to the public or where human contact is likely, shall establish a contractual agreement with all wastewater treatment works providing effluent or source water to the reclamation system unless the reclamation system and the treatment works are authorized by the same permit. The purpose of the contractual agreement shall be to ensure that reclaimed water discharged from the reclamation system is safe for use in areas accessible to the public or where human contact is likely. Prior to The contractual agreement shall, at a minimum, require the treatment works to notify the reclamation system of all SIUs that discharge to the treatment works. Upon execution of the contractual agreement, a draft copy of the contract agreement shall be provided to the Board for review and approval. A contractual agreement will not be required where the permittee of the reclamation system is also the permittee of the wastewater treatment system that provides effluent or source water to the reclamation system board.

C. A satellite reclamation system (SRS) that receives municipal wastewater or sewage from a sewage collection system pipeline with contributions from SIU discharges, excluding any SIUs whose discharge has no potential to reach the SRS intake, shall not be permitted to produce reclaimed water meeting Level 1 standards, unless the SRS has evaluated pollutants of concern discharged by the SIUs and has confirmed that such pollutants shall not interfere with the ability of the SRS to produce reclaimed water meeting Level 1 standards and any other standards required in accordance with 9VAC24-740-70 D. All such evaluations by the SRS shall be submitted to the board for review and approval, and shall be repeated for each new SIU that proposes to discharge to the sewage collection system and whose discharge has the potential to reach the SRS intake prior to commencing such discharge. The SRS shall maintain a current inventory of all SIUs that discharge pollutants of concern to the sewage collection system capable of reaching the intake of the SRS.

D. The permittee of a SRS authorized to produce reclaimed water treated to Level 1 shall establish a contractual agreement with the sewage collection system providing sewage to the SRS. The contractual agreement shall, at a minimum, require the sewage collection system to notify the SRS of all SIUs that discharge to the sewage collection system. Upon execution of the contractual agreement, a copy of the agreement shall be provided to the board.

E. Any VPDES permitted treatment works with SIUs that provides source water for reclamation and subsequent indirect potable reuse shall have the following:

1. For publicly owned treatment works, a pretreatment program where required by the VPDES Permit Regulation or deemed necessary by the board in accordance with

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procedures described in Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation.

2. For all other treatment works, a program equivalent to a pretreatment program as described in Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation, if deemed necessary by the board.

## **9VAC25-740-160. Access control and advisory signs.**

A. There shall be no uncontrolled public access to reclamation systems, ~~satellite reclamation systems~~ SRSs, and system storage facilities. Access to any wastewater treatment works directly associated with a reclamation system or ~~satellite reclamation system~~ SRS shall be controlled in accordance with the Sewage, Collection and Treatment Regulations (9VAC25-790). System storage ponds shall be enclosed with a fence or otherwise designed with appropriate features to discourage the entry of animals and unauthorized persons.

B. Where advisory signs or placards are required as described in subsections C and D of this section or 9VAC25-740-110 C 5 for above-ground storage facilities, each sign shall state, at a minimum, "CAUTION: RECLAIMED WATER – DO NOT DRINK" and have the equivalent standard international symbol for nonpotable water. The size of the sign and lettering used shall be such that it can be easily read by a person with normal vision at a distance of 50 feet. Alternate signage and wording that assures an equivalent degree of public notification and protection may be accepted by the board.

C. For all reuses of reclaimed water treated to Level 2, fencing around the site boundary is not required but public access shall be restricted and advisory. Advisory signs shall be posted around reuse areas or reuse site boundaries. The advisory signs, and shall additionally state the nature of the reuse and no trespassing. Fencing around the site boundary is not required.

D. Advisory For all reuses of reclaimed water treated to Level 1, advisory signs or placards for all reuses of reclaimed water treated to Level 1 shall be posted within and at the boundaries of reuse areas. The advisory signs or placards shall additionally state the nature of the reuse. Examples of some notification methods that may be used by permittees include posting advisory signs at entrances to residential neighborhoods where reclaimed water is used for landscape irrigation and posting advisory signs at the entrance to a golf course and at the first and tenth tees.

E. Advisory signs shall be posted adjacent to impoundments or ponds, including landscape impoundments, used for nonsystem storage of reclaimed water.

F. For industrial reuses, advisory signs shall be posted around those areas of the industrial site where reclaimed water is used and at the main entrances to the industrial site to notify employees and the visiting public of the reclaimed

water reuse. Access control beyond what is normally provided by the industry is not required.

## **9VAC25-740-170. Use area requirements.**

A. Education and notification program. An education and notification program (program) shall be developed and submitted with the RWM Plan in accordance with 9VAC25-740-100 C 1 for reuses that require Level 1 reclaimed water, will be in areas accessible to the public, or are likely to have human contact. For indirect potable reuse (IPR) projects that do not require a RWM plan, the program shall be submitted with the application to permit the project in accordance with 9VAC25-740-100 D. The program shall be the responsibility of the permittee to implement.

1. Education. ~~The purpose of the education component of the program is to ensure that shall:~~

a. For end users and the public likely to have contact with reclaimed water, provide information:

(1) To ensure that they are informed of the origin, nature, and characteristics of the reclaimed water; the manner in which the reclaimed water can be used safely; and uses for which the reclaimed water is prohibited or limited. The program shall describe all modes of communication to be used to educate and inform, including, but not limited to, meetings, distribution of written information, the news media (i.e., news papers, radio, television or the internet), and advisory signs as described in 9VAC25-740-160. Program education for:

(2) To individual end users shall be, at the time of their initial connection to the reclaimed water distribution system and, which may be provided in the service agreement or contract with the permittee established in accordance with 9VAC25-740-100 C 1 d., and

For nonbulk irrigation reuse of reclaimed water not treated to achieve BNR, education of individual end users shall be, at a minimum, annually (3) To individual end users, annually or more often after the reclaimed water distribution system is placed into operation for nonbulk irrigation reuse of reclaimed water not treated to achieve biological nutrient removal (BNR).

b. For IPR projects, provide information to generators of source water for reclamation and IPR that are other than SIUs. This information shall describe methods and practices to avoid or reduce the introduction of contaminants from domestic and commercial sources into the wastewater collection system prior to reclamation and shall be provided to individual generators annually or more often after the reclamation system is placed into operation.

c. Describe all modes of communication to be used to educate and inform, including, but not limited to, meetings, distribution of written information, the news media (i.e., newspapers, radio, television, or the Internet), and advisory signs as described in 9VAC25-740-160.

2. Notification. The notification component of the program shall contain procedures to notify end users and the affected public of treatment failures at the reclamation system discharges of substandard reclaimed water to reuse that can adversely impact human health, or result in the loss of reclaimed water service due to planned or unplanned causes.

a. Notifications required for discharge of substandard reclaimed water to reuse.

(1) For reuses other than IPR. Where treatment of the reclaimed water fails more than once during a seven-day period to comply with Level 1 disinfection or other standards developed in accordance with 9VAC25-740-70 D or 9VAC25-740-70 E for the protection of human health, and the non-compliant reclaimed water has been discharged to ~~the~~ a reclaimed water distribution system or directly to a reuse, the permittee shall notify the end user of the treatment failures and advise the end user of precautions to be taken to protect ~~public~~ human health when using the reclaimed water in areas accessible to the public or where human contact with the reclaimed water is likely. These precautions shall be implemented for a period of seven days or greater depending on the frequency and magnitude of the treatment failure.

(2) For IPR. Where treatment of the reclaimed water fails at any time to comply with standards specified in 9VAC25-740-90 C and is discharged to the water supply source (WSS), the permittee shall notify the owner or management of the waterworks that withdraws water from the affected WSS of the time, duration, volume, and pollutant characteristics of the noncompliant discharge within a period of less than or equal to half the shortest determined travel time between the reclamation system discharge and the waterworks intake, but in no case greater than eight hours. Such notification shall be implemented for a period of seven days or greater depending on the frequency and magnitude of the noncompliant reclaimed water discharge and the ability of subsequent multiple barriers as described in the permit application of the IPR project to mitigate the impact of the discharge on the WSS.

b. Notifications required for loss of service.

(1) For reuses other than IPR. Where reclaimed water service to end users will be interrupted due to planned causes, such as scheduled maintenance or repairs, the permittee shall provide advance notice to end users of the anticipated date and duration of the interrupted service. Where reclaimed water service to end users is disrupted by unplanned causes, such as an upset at the reclamation system, the permittee shall notify end users and the affected public of the disrupted service if it can not or will not be restored within eight hours of discovery.

(2) For IPR. Where the discharge of the reclamation system to the WSS will be interrupted due to planned

causes, such as scheduled maintenance or repairs, the permittee shall provide advance notice to the owner or management of the waterworks that withdraws water from the WSS of the anticipated date, duration, and cause for the interrupted discharge. Where the discharge of the reclamation system is interrupted by unplanned causes, such as an upset at the reclamation system, the permittee shall notify the waterworks owner or management of the interrupted discharge if the discharge cannot or will not be restored within eight hours of initial occurrence.

c. The notification component of the program shall describe all modes of communication that may be used to provide the notifications specified in subdivisions 2 a and b of this subsection. Modes of communication may include, but are not limited to, those described in subdivision 1 c of this subsection for the education component of the education and notification program.

B. Reclaimed water shall be used in a manner that is consistent with this chapter and with the conditions of the VPDES or VPA permit, such that public health and the environmental shall be protected.

C. Reclaimed water delivered to end users shall ~~be of acceptable quality~~ comply with reclaimed water standards required for the intended reuses at the point of delivery to end users.

D. There shall be no nuisance conditions resulting from the distribution, use, or storage of reclaimed water.

E. For all irrigation reuses of reclaimed water, the following shall be required:

1. There shall be no application of reclaimed water to the ground when it is saturated, frozen or covered with ice or snow, and during periods of rainfall.
2. The chosen method of irrigation shall minimize human contact with the reclaimed water.
3. Reclaimed water shall be prevented from coming into contact with drinking fountains, water coolers, or eating surfaces.

F. For bulk irrigation reuse of reclaimed water, the following shall be required:

1. Irrigation systems shall be designed, installed and adjusted to:
  - a. Provide uniform distribution of the reclaimed water over the irrigation site;
  - b. Prevent ponding or pooling of reclaimed water at the irrigation site;
  - c. Facilitate maintenance and harvesting of irrigated areas and precludes damage to the irrigation system from the use of maintenance or harvesting equipment;
  - d. Prevent aerosol carry-over from the irrigation site to areas beyond the setback distances described in subsection H of this section; and
  - e. Prevent clogging from algae or suspended solids.

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2. All pipes, pumps, valve boxes and outlets of the irrigation system shall be designed, installed, and identified in accordance with 9VAC25-740-110 B.

3. Any reclaimed water runoff shall be confined to the irrigation reuse site unless authorized by the board.

G. Overspray of surface waters, including wetlands, from irrigation or other reuses of reclaimed water is prohibited.

H. Setback distances for irrigation reuses of reclaimed water.

1. For sites irrigated with reclaimed water treated to Level 1, the following setback distances provided in Table 170-H1 are required:

- a. ~~Potable water supply wells and springs, and public water supply intakes—100 feet~~
- b. ~~Nonpotable water supply wells—10 feet~~
- e. ~~Limestone rock outcroppings and sinkholes—50 feet~~

<u>Potable water supply wells and springs and public water supply intakes</u>	<u>100 feet</u>
<u>Nonpotable water supply wells</u>	<u>10 feet</u>
<u>Limestone rock outcroppings and sinkholes</u>	<u>50 feet</u>

2. For sites irrigated with reclaimed water treated to Level 1, no setback distances are required from occupied dwellings and outdoor eating, drinking and bathing facilities. However, aerosol formation shall be minimized within 100 feet of occupied dwellings and outdoor eating, drinking and bathing facilities through the use of low trajectory nozzles for spray irrigation, above-ground drip irrigation, or other means.

3. For sites irrigated with reclaimed water treated to Level 2, the following setback distances provided in Table 170-H2 are required:

- a. ~~Potable water supply wells and springs, and public water supply intakes—200 feet~~
- b. ~~Nonpotable water supply wells—10 feet~~
- e. ~~Surface waters, including wetlands—50 feet~~
- d. ~~Occupied dwellings—200 feet~~
- e. ~~Property lines and areas accessible to the public—100 feet~~
- f. ~~Limestone rock outcroppings and sinkholes—50 feet~~

<u>Potable water supply wells and springs and public water supply intakes</u>	<u>200 feet</u>
<u>Nonpotable water supply wells</u>	<u>10 feet</u>
<u>Surface waters, including wetlands</u>	<u>50 feet</u>
<u>Occupied dwellings</u>	<u>200 feet</u>
<u>Property lines and areas accessible to the public</u>	<u>100 feet</u>
<u>Limestone rock outcroppings and sinkholes</u>	<u>50 feet</u>

4. For sites irrigated with reclaimed water treated to Level 2, the setback distances may be reduced as follows:

- a. Up to but not exceeding 50% from occupied dwellings and areas accessible to the public if it can be demonstrated that alternative measures shall be implemented to provide an equivalent level of public health protection. Such measures shall include, but are not limited to, disinfection of the reclaimed water equivalent to Level 1, application of the reclaimed water by methods that minimize aerosol formation (e.g., low trajectory nozzles for spray irrigation, above-ground drip irrigation), installation of permanent physical barriers to prevent migration of aerosols from the reclaimed water irrigation site, or any combination thereof. Written consent of affected landowners is required to reduce setback distances from occupied dwellings.
- b. Up to 100 % from property lines with written consent from adjacent landowners.
- c. To but not less than 100 feet from potable water supply wells and springs, or public water supply intakes if it can be demonstrated that disinfection of the reclaimed water is equivalent to Level 1 and there are no other constituents of the reclaimed water present in quantities sufficient to be harmful to human health.
- d. To but not less than 25 feet from surface waters, including wetlands, where reclaimed water shall be applied by methods that minimize aerosol formation (e.g., low trajectory nozzles for spray irrigation, above-ground drip irrigation); or permanent physical barriers are installed to prevent the migration of aerosols from the reclaimed water irrigation site to surface waters.

5. Application of reclaimed water shall not occur during winds of sufficient strength to cause overspray or aerosol drift into or beyond the buffer zones or setbacks specified in subdivisions 1 through 4 of this subsection.



~~5.~~ 6. For irrigation reuses where more than one setback distance may apply, the greater setback distance shall govern.

~~6.~~ 7. Unless specifically stated otherwise, all setback distances shall be measured horizontally.

I. Minimum separation distances for in-ground reclaimed water distribution pipelines specified in 9VAC25-740-110 B 3, shall apply to in-ground piping for irrigation systems of reclaimed water.

J. A setback distance of 100 feet horizontally shall be maintained from indoor aesthetic features (i.e., decorative waterfalls or fountains) that use reclaimed water treated to Level 1, to adjacent indoor public eating and drinking facilities where the aesthetic features have the potential to create aerosols and eating and drinking facilities are within the same room or building space.

K. A setback distance of 300 feet horizontally shall be provided from an open cooling tower to the site property line where reclaimed water treated to Level 2 is used in the tower. No setback distance shall be required from an open cooling tower to the site property line where a drift or mist eliminator is installed and properly operated or reclaimed water treated to Level 1 disinfection standards is used in the tower. Treatment of the reclaimed water to Level 1 disinfection standards may be provided by the industrial end user through the contract or agreement established by the permittee in accordance with 9VAC25-740-100 C 1 d.

**9VAC25-740-180. Operational flow requirements.**

A. When the monthly average flow into a reclamation system or ~~satellite reclamation system~~ SRS reaches 95% of the ~~designated~~ design capacity flow authorized by the VPDES or VPA permit issued to that system for each month of any three-month period, the permittee shall within 30 days notify the board in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

~~B.~~ B. The plan of action described in subsection A of this section shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem that could be reasonably anticipated, resulting from high flows entering the reclamation system or ~~satellite reclamation system~~ SRS.

~~C.~~ C. Upon receipt of the permittee's plan of action described in subsection A of this section, 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.

~~D.~~ D. Failure to timely submit an adequate plan of action in accordance with subsection A of this section shall be deemed a violation of the permit.

~~E.~~ 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.

**9VAC25-740-200. Reporting.**

A. Permittees of water reclamation systems and ~~satellite reclamation systems~~ SRSs shall submit a monthly monitoring report to the board. The report shall include monitoring results for parameters contained in the VPDES or VPA permit to demonstrate compliance with applicable reclaimed water standards of this chapter.

B. Interruption or loss of reclaimed water supply or discharge of any untreated or partially treated water that fails to comply with standards specified in the VPDES or VPA permit to the service area of intended reuse, shall be reported in accordance with procedures specified in the permit. This report shall also contain a description of any notification provided in accordance with 9VAC25-740-170 A 2.

C. Permittees of reclaimed water distribution systems shall submit an annual report to the board on or before February 10 of the following year. The annual report shall, at a minimum:

1. Estimate the volume of reclaimed water distributed to the service area of the RWM plan, reported as monthly totals for a 12-month period from January 1 through December 31;
2. Provide for reclaimed water not treated to achieve BNR that is used within the service area of the RWM plan, the monthly average concentrations of total N and total P in the reclaimed water, an estimate of the monthly total volume of reclaimed water used for nonbulk irrigation and for bulk irrigation, the monthly total nutrient loads (N and P) to the service area resulting from nonbulk irrigation reuse and from bulk irrigation reuse, and the area in active reuse for nonbulk irrigation and for bulk irrigation within the service area, all reported for a 12-month period from January 1 through December 31; and
3. Provide a summary of ongoing education and notification program activities, including copies of education materials, as required by 9VAC25-740-170 A.

**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 (9VAC25-740)

~~Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit or a Virginia Pollution Abatement Permit, 6/1/2009.~~

[Water Reclamation and Reuse Addendum to an Application for a Virginia Pollutant Discharge Elimination System Permit](#)

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# Regulations

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[or a Virginia Pollution Abatement Permit and Instructions \(undated\).](#)

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-740)

Installation of Ductile-Iron Water Mains and Their Appurtenances, ANSI/AWWA C600-05 (Revision of ANSI/AWWA C600-99), effective December 1, 2005, American Water Works Association.

Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse, Second Edition (May 2003), National Water Research Institute, 10500 Ellis Avenue, P.O. Box 20865, Fountain Valley, California 92728; [www.nwri-usa.org](http://www.nwri-usa.org).

Disinfecting Water Mains, ANSI/AWWA C651-05, effective June 1, 2005, American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado, 80235; [www.awwa.org](http://www.awwa.org).

V.A.R. Doc. No. R11-2622; Filed September 28, 2012, 5:07 p.m.

## Final Regulation

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

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

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

**Effective Date:** November 21, 2012.

**Agency Contact:** Allan Brockenbrough, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4147, FAX (804) 698-4032, TTY (804) 698-4021, or email [allan.brockenbrough@deq.virginia.gov](mailto:allan.brockenbrough@deq.virginia.gov).

### Summary:

*The amendments (i) expand the trading program to allow smaller, "nonsignificant" dischargers to generate compliance credits that may be provided to other dischargers (under the current regulation, only the larger "significant" facilities with wasteload allocations in the Water Quality Management Planning Regulation are able to generate compliance credits); (ii) eliminate the requirement to submit a redundant annual report in addition to a year end discharge monitoring report; (iii) allow new or expanding facilities to offset new loads with compliance credits; and (iv) reflect the planned development of nonpoint source credit certification*

*regulations by the Department of Conservation and Recreation.*

### 9VAC25-820-10. Definitions.

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

"Annual mass load of total nitrogen" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

"Annual mass load of total phosphorus" (expressed in pounds per year) means the sum of the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general permit in 9VAC25-820-70 for calculating total monthly load.

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

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

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

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

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

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

"Department" means the Department of Environmental Quality.

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

"Equivalent load" means:

2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus discharged by an industrial facility are considered equivalent to the load discharged from

sewage treatment works with a design capacity of 0.04 million gallons per day,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Quantification level (QL)" means the minimum levels, concentrations, or quantities of a target variable (e.g., target analyte) that can be reported with a specified degree of confidence in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

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

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

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

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

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

## **9VAC25-820-70. General permit.**

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

General Permit No.: VAN000000

Effective Date: January 1, 2012

Amended Effective Date: November 21, 2012

Expiration Date: December 31, 2016

GENERAL PERMIT FOR TOTAL NITROGEN AND  
TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT  
TRADING IN THE CHESAPEAKE WATERSHED IN  
VIRGINIA  
AUTHORIZATION TO DISCHARGE UNDER THE  
VIRGINIA POLLUTANT DISCHARGE ELIMINATION  
SYSTEM AND THE VIRGINIA STATE WATER  
CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of facilities holding a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen and/or total phosphorus discharges to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen and/or total phosphorus.

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

PART I  
SPECIAL CONDITIONS APPLICABLE TO ALL  
FACILITIES

A. Authorized activities.

1. Authorization to discharge for facilities required to register.

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

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

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

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

3. Continuation of permit coverage.

a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, 2016, in accordance with Part III A or who is not required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this general permit until such time as the board either:

- (1) Issues coverage to the owner under the reissued general permit, or
- (2) Notifies the owner that coverage under the reissued permit is denied.

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

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

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

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

B. Waste load allocations.

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

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

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

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

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

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

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

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

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

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

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

(1) Waste load allocations of those facilities that have waste load allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

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

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

Nitrogen Load (lbs/day) = flow x 8.0 mg/l x 8.345 x 365 days/year

Phosphorus Load (lbs/day) = flow x 1.0 mg/l x 8.345 x 365 days/year

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

The regional facility shall be eligible to generate credits.

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

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

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

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

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

C. Schedule of compliance.

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

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

Tributary	Parameter	Final Effluent Limits Effective Date
James River	Nitrogen	January 1, 2017
York River	Phosphorus	January 1, 2016

b. Following submission of compliance plans and compliance plan updates required by 9VAC25-820-40, the board shall reevaluate the schedule of compliance in subdivision 1 a of this subsection, taking into account the information in the compliance plans and the factors in § 62.1-44.19:14 C 2 of the Code of Virginia. When warranted based on such information and factors, the board shall adjust the schedule in subdivision 1 a of this subsection as appropriate by modification or reissuance of this general permit.

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

a. Facilities listed in 9VAC25-820-80 will have individual dates for compliance based on their respective compliance plans, that may be earlier than the basin schedule listed in subdivision 1 of this subsection.

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

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

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

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

D. Annual update of compliance plan. Every owner or operator of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit updated

compliance plans to the department no later than February 1 of each year. The compliance plans shall contain sufficient information to document a plan for the facility to achieve and maintain compliance with applicable total nitrogen and phosphorus individual waste load allocations on the registration list and aggregate waste load allocations in Part I C 3. Compliance plans for facilities that were required to submit a registration statement with the department under Part I G 1 a may rely on the acquisition of point source credits in accordance with Part I J of this general permit, but not the acquisition of credits through payments into the Water Quality Improvement Fund, to achieve compliance with the individual and combined waste load allocations in each tributary. Compliance plans for expansions or new discharges for facilities that are required to submit a registration statement with the department under Part I G 1 b and c may rely on the acquisition of allocation in accordance with Part II B of this general permit to achieve compliance with the individual and combined waste load allocations in each tributary.

E. Monitoring requirements.

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

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Parameter	Sample Type and Collection Frequency			
	≥20.0 MGD	1.0-19.999 MGD	0.040-0.999 MGD	< 0.040 MGD
STP design flow	≥20.0 MGD	1.0-19.999 MGD	0.040-0.999 MGD	< 0.040 MGD
Effluent TN load limit for industrial facilities		>100,000 lb/yr	487-99,999 lb/yr	< 487 lb/yr
Effluent TP load limit for industrial facilities		>10,000 lb/yr	37-9,999 lb/yr	< 37 lb/yr
Flow	Totalizing, Indicating, and Recording			1/Day, see individual VPDES permit for sample type
Nitrogen Compounds (Total Nitrogen = TKN + NO <sub>2</sub> <sup>-</sup> (as N) + NO <sub>3</sub> <sup>-</sup> (as N))	24 HC 3 Days/Week	24 HC 1/Week	8 HC 2/Month, > 7 days apart	1/Month Grab
Total Phosphorus	24 HC 3 Days/Week	24 HC 1/Week	8 HC 2/Month, > 7 days apart	1/Month Grab

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

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

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

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

where:

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

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

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

d = number of discharge days in the calendar month

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

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

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



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

where:

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

ML = total monthly load (lb/mo)

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

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

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo)

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

F. Annual reporting.

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

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

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

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

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

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

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo)

On or before February 1, annually, each permittee shall file a discharge monitoring report with the department identifying the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by the permitted facility during the previous calendar year.

G. Requirement to register; exclusions.

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

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

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

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

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

H. Registration statement.

1. The registration statement shall contain the following information:

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

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

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- c. VPDES permit numbers for all permits assigned to the facility, or pursuant to which the discharge is authorized;
  - d. If applying for an aggregated waste load allocation in accordance with Part I B 2 of this permit, list all affected facilities and the VPDES permit numbers assigned to these facilities;
  - e. For new and expanded facilities, a plan to offset new or increased delivered total nitrogen and delivered total phosphorus loads, including the amount of waste load allocation acquired. Waste load allocations or credits sufficient to offset projected nutrient loads must be provided for period of at least five years; and
  - f. For existing facilities, the amount of a facility's waste load allocation transferred to or from another facility to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.
2. The registration statement shall be submitted to the DEQ Central Office, Office of Water Permits and Compliance Assistance.
3. An amended registration statement shall be submitted upon the acquisition or transfer of a facility's waste load allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.
- I. Public notice for registration statements proposing modifications or incorporations of new waste load allocations or delivery factors.
1. All public notices issued pursuant to a proposed modification or incorporation of a (i) new waste load allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion, or (ii) delivery factor, shall be published once a week for two consecutive weeks in a major local newspaper of general circulation serving the locality where the facility is located informing the public that the facility intends to apply for coverage under this general permit. At a minimum, the notice shall include:
- a. A statement of the owner or operator's intent to register for coverage under this general permit;
  - b. A brief description of the facility and its location;
  - c. The amount of waste load allocation that will be acquired or transferred if applicable;
  - d. The delivery factor for a new discharge or expansion;
  - e. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication and to establish a dialogue between the owner or operator and persons who may be affected by the facility;
  - f. An announcement of a 30-day comment period and the name, telephone number, and address of the owner's or operator's representative who can be contacted by the interested persons to answer questions;
  - g. The name, telephone number, and address of the DEQ representative who can be contacted by the interested persons to answer questions, or where comments shall be sent; and
  - h. The location where copies of the documentation to be submitted to the department in support of this general permit notification and any supporting documents can be viewed and copied.
2. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.
3. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the notice is published in the local newspaper.
- J. Compliance with waste load allocations.
1. Methods of compliance. The permitted facility shall comply with its waste load allocation contained in the registration list maintained by the department. The permitted facility shall be in compliance with its waste load allocation if:
- a. The annual mass load is less than or equal to the applicable waste load allocation assigned to the facility in this general permit (or permitted design capacity for expanded facilities without allocations);
  - b. The permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 2 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility; or
  - c. In the event it is unable to meet the individual waste load allocation pursuant to subdivision 1 a or 1 b of this subsection, the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made into the Water Quality Improvement Fund pursuant to subdivision 3 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility.
2. Credit acquisition from permitted facilities. A permittee may acquire point source nitrogen credits or point source phosphorus credits from one or more permitted facilities ~~with waste load allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C and 9VAC25-720-120 C of the Water Quality~~

~~Management Planning Regulation, including the Blue Plains wastewater treatment facility operated by the District of Columbia Water and Sewer Authority, only if:~~

- a. The credits are generated and applied to a compliance obligation in the same calendar year;
- b. The credits are generated by one or more permitted facilities in the same tributary, except that permitted facilities in the Eastern ~~Shore~~ Coastal Basin may also acquire credits from permitted facilities in the Potomac and Rappahannock tributaries. Eastern ~~Shore~~ Coastal Basin facilities may acquire credits from the Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the Rappahannock tributary by an Eastern ~~Shore~~ Coastal Basin facility;
- c. The exchange or acquisition of credits does not affect any requirement to comply with local water quality-based limitations as determined by the board;
- d. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;
- e. The credits are generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's waste load allocations (until a facility is constructed and has commenced operation, such credits are held, and may be sold, by the Water Quality Improvement Fund; and
- f. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that he has acquired sufficient credits to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the credit exchange notification form submitted to the department.

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

limited to, providing a record of solicitation or demonstration that point source allocations are not available for sale in the tributary in which the permittee is located. Payments to the Water Quality Improvement Fund shall be in the amount of \$6.04 for each pound of nitrogen and \$15.08 for each pound of phosphorus and shall be subject to the following requirements:

- a. The credits are generated and applied to a compliance obligation in the same calendar year.
  - b. The credits are generated in the same tributary, except that permitted facilities in the Eastern ~~Shore~~ Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries. Eastern ~~Shore~~ Coastal Basin facilities may acquire credits from the Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the Rappahannock tributary by an Eastern ~~Shore~~ Coastal Basin facility.
  - c. The acquisition of credits does not affect any requirement to comply with local water quality-based limitations, as determined by the board.
4. This general permit neither requires, nor prohibits a municipality or regional sewerage authority's development and implementation of trading programs among industrial users, which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's individual VPDES permit.

PART II  
SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

- A. Offsetting mass loads discharged by new and expanded facilities.
  1. An owner or operator of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under this general permit.
    - a. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.
    - b. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.

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

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

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

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

c. Zero, for facilities with a new discharge.

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

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

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

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

b. Acquisition of ~~nonpoint source load allocations, using a trading ratio of two pounds reduced for every pound to be discharged, through the use of best management practices that are~~ credits certified by the board pursuant to § 62.1-44.19:20 of the Code of Virginia or certified by the Soil and Water Conservation Board pursuant to § 10.1-603.15:2 of the Code of Virginia. Credits used to offset new or increased nutrient loads under this subdivision shall be:

~~(1) Acquired through a public or private entity acting on behalf of the land owner~~ Subject to a trading ratio of two pounds reduced for every pound to be discharged if certified by the Soil and Water Conservation Board pursuant to § 10.1-603.15:2 of the Code of Virginia;

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

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

(4) Demonstrated to have achieved reductions beyond those already required by or funded under federal or state law, or by ~~the Virginia tributaries strategies plans~~ Virginia's Chesapeake Bay TMDL Watershed Implementation Plan;

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

(6) In the case of allocations generated by land use conversions and urban source reduction controls (BMPs), beyond those in place as of July 1, 2005;

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

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

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

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

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

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

2. Acquisition of allocations or point source nitrogen or point source phosphorus credits is subject to the following conditions:

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

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

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

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

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

f. Such allocations or credits shall be provided for a period of five years with each registration under the general permit.

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

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

PART III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

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

B. Duty to register for reissued general permit. If the permittee wishes to continue an activity regulated by the

general permit after its expiration date, the permittee must register for coverage under the new general permit, when it is reissued by the department.

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

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

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

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

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

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

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

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

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2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the law, any substances or parameters at any location.

## J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.
3. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - c. The date(s) analyses were performed;
  - d. The individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or alternative EPA-approved methods, unless other test procedures have been specified in the permit.

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

## L. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
  - a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-31-180 A; or

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

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

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

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

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

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

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

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

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

- a. Unusual spillage of materials resulting directly or indirectly from processing operations;
  - b. Breakdown of processing or accessory equipment;
  - c. Failure or taking out of service of the treatment work or auxiliary facilities (such as sewer lines or wastewater pump stations); and

d. Flooding or other acts of nature.

7. Twenty-four-hour reporting.

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

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

- (1) Any unanticipated bypass that exceeds any effluent limitation in the permit.
- (2) Any upset that exceeds any effluent limitation in the permit.
- (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

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

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

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

M. Bypass.

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

2. Notice.

- a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.
- b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section (24-hour notice).

3. Prohibition of bypass.

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

- (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
- (3) The permittee submitted notices as required under subdivision 2 of this subsection.

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

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

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

- a. An upset occurred and that the permittee can identify the cause(s) of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and
- d. The permittee complied with any remedial measures required under subsection D of this section.

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

VA.R. Doc. No. R13-3245; Filed September 19, 2012, 3:29 p.m.



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## TITLE 11. GAMING

### VIRGINIA RACING COMMISSION

#### Final Regulation

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

**Title of Regulation:** 11VAC10-30. Limited Licenses (amending 11VAC10-30-20).

**Statutory Authority:** § 59.1-369 of the Code of Virginia.

**Effective Date:** November 1, 2012.

**Agency Contact:** David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

**Summary:**

*The amendments conform to changes in Virginia statutory law as outlined in § 59.1-378.1 of the Code of Virginia.*

**11VAC10-30-20. Generally.**

The commission is authorized to issue limited licenses for the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people. The horse racing, with pari-mutuel wagering privileges, shall be conducted by limited licensees so as to maintain horse racing in the Commonwealth of Virginia of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices and to maintain in horse racing complete honesty and integrity.

A. Number of racing days. The commission may issue limited licenses to conduct horse race meetings, with pari-mutuel wagering privileges on races held at the site, for a period not to exceed 14 days in any calendar year.

B. Local referendum. The commission shall not grant a limited license to conduct a horse race meeting, with pari-mutuel wagering privileges, until a referendum approving the question is held in the county or city in which the race meeting is to be conducted; however, the commission may, in accordance with § 59.1-378.1 of the Code of Virginia, grant a limited license to the owner or operator of a steeplechase facility to conduct pari-mutuel wagering on steeplechase race meetings for a period not to exceed 14 days in any calendar year if the steeplechase facility has been sanctioned by the Virginia Steeplechase Association or National Steeplechase Association and the owner or operator of such facility has

been granted tax-exempt status under § 501(c)(3) or (4) of the Internal Revenue Code.

C. Observance of regulations. The holder of a limited license shall be charged with the same duties and responsibilities as are the holders of unlimited licenses with respect to the observance and enforcement of the Act and the regulations of the commission.

D. Racing surfaces. The holders of limited licenses shall utilize racing surfaces which are safe and humane for participants and meet generally accepted standards for the type of racing, but any dirt surface for flat racing shall be at least one mile in circumference, any turf surface for flat or jump racing shall be at least seven-eighths of a mile in circumference, and any dirt surface for Standardbred or Quarter Horse racing shall be at least five-eighths of a mile.

E. Renewal of limited licenses. Limited licenses are valid for one calendar year during which the licensee may conduct as many as 14 days of horse racing with pari-mutuel wagering privileges. A licensee may apply for a renewal of a limited license by submitting an application to the commission as set forth in 11VAC10-30-30 of this chapter. An applicant for a renewal of a limited license may incorporate by reference any information submitted in previous applications.

VA.R. Doc. No. R13-3393; Filed September 27, 2012, 10:34 a.m.



## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Proposed Regulation

**Title of Regulation:** 12VAC5-507. Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term Care Facility (adding 12VAC5-507-10 through 12VAC5-507-260).

**Statutory Authority:** § 32.1-122.6:01 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** December 21, 2012.

**Agency Contact:** Aileen Harris, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7436, or email aileen.harris@vdh.virginia.gov.

**Basis:** Section 54.1-3011.2 of the Code of Virginia establishes the Nursing Scholarship and Loan Repayment Fund, which the Board of Health and the Board of Nursing, pursuant to § 32.1-122.6:01 of the Code of Virginia, are to administer. Awarded funds are to be transmitted to the appropriate institution to be credited to the account of the recipient. Section 32.1-122.6:01 B requires the establishment of a nursing scholarship and loan repayment program for registered nurses, licensed practical nurses, and certified nurse aides who agree to perform a period of service in a



Commonwealth long-term care facility pursuant to regulations promulgated by the Board of Health in cooperation with the Board of Nursing.

**Purpose:** Regulations to implement the program are essential to addressing the shortage of trained medical professionals in the Commonwealth. The primary advantage will be the increase of availability of adequate, quality nursing care in long-term care facilities. Another advantage is that the long-term care facilities will be better positioned to retain qualified nurses because of the obligation created by accepting these scholarship or loan repayment funds.

**Substance:** A nursing scholarship and loan repayment program requiring service in a long-term care facility within the Commonwealth of Virginia is established. This program is for registered nurses, licensed practical nurses, and certified nurse aides. Scholarships will be given to qualifying nurses in exchange for service in the nursing profession in a long-term care facility in the Commonwealth. The loan repayment portion of the program will repay educational loans for qualifying applicants in exchange for service in the nursing profession in a long-term care facility in the Commonwealth. No funding has been appropriated to implement this program.

**Issues:** These new regulations will significantly support the recruitment and retention of nursing staff in long-term care facilities. The program establishes incentives for certified nurse aids who perform a vital function in these facilities and currently are not included in any workforce incentive program. The promulgation of these regulations should not pose any disadvantage to the public or the Commonwealth. The agency, however, will incur additional administrative costs, which are not currently covered by any appropriation. Expanding the qualified pool of long-term care nursing staff is generally viewed as a major means of improving the quality of care in long term care nursing facilities.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. Chapters 240 and 254 of the 2000 Acts of Assembly, directed the Board of Health (Board) to establish a program under which participants receive scholarships or educational loan repayments in exchange for a period of nursing service in a long-term care facility (traditionally known as a nursing home). The Board did not initially promulgate regulations due to the absence of funding. In 2010 it came to the Board's attention that the regulations still had not been promulgated, so they elected to move forward so that regulations could be in place should funding become available in the future. Thus the Board now proposes these regulations to establish a program under which participants receive scholarship or educational loan repayment in exchange for a period of nursing service in a long-term care facility in the Commonwealth.

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

**Estimated Economic Impact.** The proposed regulations establish sections relating to legislative authority and general information, definitions, scholarship rules (eligibility, conditions, number of applications per student, amounts of scholarships, how to apply, deadline dates) and loan repayment rules (administration of the nursing loan repayment program, eligibility, application requirement and restrictions, selection criteria, loan repayment amount, loans qualifying for repayment, repayment restrictions, release of information, effective date for start of service, repayment policy, disbursement procedure, compensation during service, monitoring during service, terms of service, loan repayment contract, breach of contract, waiver and suspension, cash reimbursement and penalty, and reporting requirements). Placing the requirements of the Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term-Care Facility in regulation will be beneficial in that it will reduce uncertainty for potential scholarship candidates.

**Businesses and Entities Affected.** The proposed regulations affect long-term care facilities, traditionally known as a nursing home, including both skilled nursing facilities and intermediate care facilities depending on the extent of nursing and related medical care provided. The majority of these facilities could be small businesses. In Virginia, there are approximately 280 long-term care facilities that could be affected.

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

**Projected Impact on Employment.** If funded, implementation of the Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term-Care Facility could help alleviate the shortage of nurses in long-term care facilities.

**Effects on the Use and Value of Private Property.** If funded, implementation of the Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term-Care Facility could help alleviate the shortage of nurses in long-term care facilities.

**Small Businesses: Costs and Other Effects.** If funded, implementation of the Nursing Scholarships and Loan Repayment Program Requiring Service in a Long-Term-Care Facility may marginally reduce the cost of finding and employing nurses for small long-term care facilities.

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

**Real Estate Development Costs.** The proposed regulations 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

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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: Virginia Department of Health concurs with the conclusion reached by the Department of Planning and Budgets economic impact analysis that the benefits will likely exceed the costs for all proposed changes.

## Summary:

*The 2000 Acts of Assembly amended § 32.1-122.6:01 of the Code of Virginia to require the establishment of a program under which participants can receive scholarship or educational loan repayment in exchange for a period of nursing service in a long-term care facility in the Commonwealth. By providing these scholarship or loan repayment funds to eligible recipients, Virginia hopes to reduce its nursing shortage, especially in long-term care facilities. Until now, regulations for this section of the Code of Virginia have not been promulgated because no funding is available to implement this program.*

## NURSING SCHOLARSHIP AND LOAN REPAYMENT PROGRAM REQUIRING SERVICE IN A LONG-TERM CARE FACILITY

### Part I

#### Legislative Authority and General Information

#### **12VAC5-507-10. Legislative authority and general information.**

Sections 32.1-122.6:01 of the Code of Virginia provides the Board of Health the authority to award certain nursing scholarships and loan repayment funds. Fee requirements are specified in §§ 54.1-3011.1 and 54.1-3011.2 of the Code of Virginia to establish the nursing scholarship and loan repayment fund.

All scholarship and loan repayment award recommendations will be made by the Nursing Scholarship Advisory Committee appointed by the State Board of Health. The

commissioner may act for the Board of Health when it is not in session. The committee shall consist of eight members: four deans or directors of schools of nursing, two former scholarship participants, and two members with experience in the administration of student financial aid programs. Committee appointments are for two-year terms and members may not serve for more than two successive terms.

The Virginia Department of Health serves as the staff element to the advisory committee and plays no role in the determination of scholarship or loan repayment participants.

After scholarships are awarded, depending upon availability of funds, nursing educational loans will be repaid for those registered nurses, licensed practical nurses, and certified nurse aides applying and meeting eligibility criteria as set forth in this chapter.

This chapter sets forth the criteria for eligibility for the scholarship and loan repayment program for registered nurses, licensed practical nurses, or certified nurse aides; the general terms and conditions applicable to the obligation of each scholarship and loan repayment participant to practice in a long-term-care facility in the Commonwealth; and penalties for a participant's failure to fulfill the practice requirements.

#### **12VAC5-507-15. Definitions.**

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

"Board" or "Board of Health" means the State Board of Health.

"Certified nurse aide" or "CNA" means an individual who has completed a nurse aide education program that is approved by the Board of Nursing, successfully passed the competency evaluation, and made application and been given certification by the Board of Nursing in the Commonwealth of Virginia.

"Commercial loans" means loans made by banks, credit unions, savings and loan associations, insurance companies, schools, and either financial or credit institutions that are subject to examination and supervision in their capacity as lenders by an agency of the United States or of the state in which the lender has its principal place of business.

"Commissioner" means the State Health Commissioner.

"Department" means Virginia Department of Health.

"Full-time" means at least 32 hours per week for 45 weeks per year.

"Licensed practical nurse" or "LPN" means a nurse who has completed a practical nurse program and is licensed by the Commonwealth of Virginia to provide routine care under the supervision of a licensed medical practitioner, a professional nurse, registered nurse, registered professional nurse, or other licensed health professional authorized by regulations of the Board of Nursing.

"Long-term care facility" means a licensed facility in the Commonwealth traditionally known as a nursing home, including both skilled nursing facilities and intermediate care facilities depending on the extent of nursing and related medical care provided.

"Participant" or "loan repayment participant" means an eligible registered nurse, a licensed practical nurse, or a certified nurse aide student or graduate who enters into a contract with the commissioner and participates in the scholarship or loan repayment program.

"Interest" means the legal rate of interest pursuant to the Code of Virginia.

"Penalty" means the amount of money equal to twice the amount of all monetary payments to the scholarship or loan repayment participant, less any service obligation completed.

"Reasonable educational expenses" means the costs of education, exclusive of tuition, that are considered to be required by the school's degree program or an eligible program of study, such as fees for room, board, transportation and commuting costs, books, supplies, educational equipment and materials, and travel that was a part of the estimated student budget of the school in which the participant was enrolled.

"Registered nurse" or "RN" means a nurse who has passed a state registration examination and has been licensed to practice nursing by the Board of Nursing in the Commonwealth of Virginia.

## Part II

### Administration of Nursing Scholarship Program

#### **12VAC5-507-20. Eligibility for scholarships.**

In order to be considered for a scholarship, applicants must meet the following criteria:

1. Be a bona fide resident of Virginia for at least one year as determined by § 23-7.4 of the Code of Virginia;
2. Be accepted for enrollment or enrolled in an approved nursing education program preparing them for examination for licensure as practical nurses or registered nurses or accepted for enrollment or enrolled in an approved nurse aide education program preparing them for certification;
3. Submit a completed application form and appropriate grade transcript prior to the established deadline dates; and
4. Demonstrate financial need which is verified by the financial aid officer/authorized person.

Failure to comply with all of these criteria will cause the applicant to be ineligible for a scholarship.

#### **12VAC5-507-30. Conditions of scholarships.**

For each \$100 of scholarship money received, the participant agrees to engage in the equivalent of one month of full-time nursing practice in a long-term care facility in the Commonwealth. Employment must begin within 90 days of the participant's graduation date. Voluntary military service,

even if stationed in Virginia, cannot be used to repay the service obligation required when a scholarship is awarded.

The participant shall notify the department in writing of his employment location within 30 days of his employment at a long-term care facility in the Commonwealth.

The participant may request approval of a change of employment. The board in its discretion may approve such a request.

If a participant fails to complete his studies, the full amount of the scholarship or scholarships received, plus applicable interest charge, must be repaid.

If upon graduation a participant leaves the state or fails to engage or ceases to engage in nursing practice in a long-term care facility in Virginia before all employment conditions of the scholarship award are fulfilled, the participant must repay the award amount reduced by the proportion of obligated years served plus applicable interest and penalty.

If the participant is in default due to death or permanent disability so as not to be able to engage in nursing practice in a long-term care facility, the participant or his personal representative may be relieved of this obligation under the contract to engage in nursing practice upon repayment of the total amount of scholarship or loan repayment funds received plus applicable interest. For participants completing part of the nursing obligation prior to becoming permanently disabled or in the event of death, the total amount of scholarship or loan repayment funds owed shall be reduced by the proportion of obligated years served. The obligation to make restitution may be waived by the board upon application of the participant or the participant's estate to the board.

Individual cases of hardship may be considered by the board for forgiveness of payment or service.

Partial fulfillment of the participant's obligation shall reduce the amount of restitution plus penalty and applicable interest due by an amount of money equal to the same percentage of time employed.

All refund checks should be made payable to the Commonwealth of Virginia.

Before any scholarship is awarded, the applicant must sign a written contract agreeing to the terms established by law and the Board of Health.

#### **12VAC5-507-40. Number of applications per student.**

Scholarships are awarded for single academic years. However, the same student may, after demonstrating satisfactory progress in his studies, apply for and receive scholarship awards for any succeeding academic year or years. No student may receive scholarships for more than a total of four years.

#### **12VAC5-507-50. Amounts of scholarships.**

The amount of each scholarship award is dependent upon the amount of money appropriated by the General Assembly

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and the number of qualified applicants. No participant will receive an award for less than \$150.

## **12VAC5-507-60. How to apply.**

Application, guidelines, and additional information may be available from the dean/director of a nursing program or from the financial aid office or from the department.

It is preferred that applications are completed online by going to the department's website.

## **12VAC5-507-70. Deadline dates.**

Applications will not be accepted more than two months in advance of the deadline, which is June 30.

Applications or transcripts received after 5 p.m. on the above date will not be considered for scholarship awards.

### Part III

#### Administration of the Nursing Loan Repayment Program

## **12VAC5-507-80. Administration of the nursing loan repayment program.**

The commissioner, as executive officer of the Board of Health, shall administer this program. Any requests for variance from this chapter shall be considered on an individual basis by the board.

## **12VAC5-507-90. Eligible applicants.**

An eligible applicant for the nursing loan repayment program must:

1. Be a bona fide resident of Virginia for at least one year as determined by § 23-7.4 of the Code of Virginia;
2. Be a registered nurse, licensed practical nurse, or certified nurse aide;
3. Have graduated from an approved educational program pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia;
4. Have a valid unrestricted Virginia license to practice nursing or be certified as a nurse aide, a copy of which shall be furnished to the nursing loan repayment program;
5. Have submitted a completed application to participate in the nursing loan repayment program; and
6. Have signed and submitted a written contract agreeing to repay educational loans and to serve in a long-term care facility for the applicable period of obligated service in the Commonwealth.

## **12VAC5-507-100. Application requirement and restrictions.**

The applicant must submit a completed application for loan repayment for the nursing loan repayment program, and the application must be received in the department between the dates of January 1 and May 1 of the year in which the applicant intends to initiate practice in the Commonwealth. The applicant must agree to serve a minimum of one year for a loan amount up to \$1,200 to a maximum of four years for a loan amount up to \$4,800.

## **12VAC5-507-110. Selection criteria.**

Applicants shall be competitively reviewed and selected for participation in the nursing loan repayment program based upon the following criteria:

1. Commitment to serve in a long-term care facility. The individual's stated commitment to serve in a long-term care facility in the Commonwealth.
2. Virginia graduates. Preferential consideration will be given to individuals who are graduates of Virginia nursing schools (verification will be obtained by the nursing loan repayment program).
3. Availability for service. Individuals who are immediately eligible and available for service in a long-term care facility will be given preferential consideration.
4. Length of proposed commitment. Preferential consideration will be given to individuals who commit to longer periods of service in a long-term care facility.
5. Selection for participation. All of an individual's professional qualifications and competency to practice will be considered, including but not limited to certification in a specialty, professional achievements, and other indicators of competency received from supervisors and program directors.
6. No other obligations. Individuals shall have no other obligation for health professional service to the federal government or state government unless such obligation will be completely satisfied prior to the beginning of service under the nursing loan repayment program.

## **12VAC5-507-120. Loan repayment amount.**

The amount that the state agrees to repay will depend upon availability of funds and the applicant's indebtedness, but no amount will exceed the total indebtedness. The nursing loan repayment program requires one year of service in a long-term care facility in the Commonwealth for up to \$1,200 in loans paid by this program.

## **12VAC5-507-130. Loans qualifying for repayment.**

Based on the availability of funds, the loan repayment program will pay for the cost of education necessary to obtain a nursing certificate, diploma, or degree. The program will pay toward the outstanding principal, interest, and related expense of federal, state, or local government loans and commercial loans obtained by the participant for:

1. School tuition and required fees incurred by the participant;
2. Other reasonable educational expenses; and
3. Reasonable living expenses as determined by the board.

## **12VAC5-507-140. Repayment restrictions.**

A. The following financial debts or service obligations are not qualified for repayment by the loan repayment program:

1. Public Health Service Nursing Shortage Area Scholarship;

2. Public Health and National Health Service Corps Scholarship Training Program;
3. Indian Health Service Scholarship Program;
4. Armed Forces Health Professions Scholarship Programs;
5. National Health Service Corps Scholarship Program financial damages or loans obtained to repay such damages;
6. Indian Health Corps Scholarship or loan obtained to repay such damages;
7. Financial damages or loans obtained to repay damages incurred as a result of breach of contract with any other federal, state, local agency, or commercial institution;
8. Loans for which documentation verifying the educational use of the loans is not available or is not sufficient;
9. Loans or part of loans obtained for educational or personal expenses during the participant's education that exceed the "reasonable" level as determined by the school's standard budget in the year the loan was made;
10. Loans that have been repaid in full, and loans that incur their own obligation for service that has not yet been performed;
11. Loans from friends and relatives;
12. The Mary Marshall Nursing Scholarship Program; and
13. The Nursing Scholarship Program with a commitment to service in a long-term care facility.

B. The board will be the final authority in determining qualifying educational loans.

**12VAC5-507-150. Release of information.**

Applicants shall agree to execute a release to allow the board access to loan records, credit information, and information from lenders necessary to verify eligibility and to determine loan repayments. To facilitate the process, applicants should submit pay-off statements from each lending institution.

Participants who have consolidated qualifying loans with other loans may be asked to submit other documentation, such as copies of original loan applications, to verify the portion of the loan that qualifies for repayment.

The applicant is required to submit all requested loan documentation prior to approval by the board.

**12VAC5-507-160. Effective date for start of service.**

Applicants become participants in the loan repayment program only when the applicant and the commissioner or his designee have signed the loan repayment program contract. The effective start date of the obligated service under contract is the date of employment in a long-term care facility or the date of the commissioner's signature, whichever is later.

**12VAC5-507-170. Repayment policy.**

It will be the responsibility of the participant to negotiate with each lending institution for the terms of the educational loan repayments. Each lending institution must certify that the participant's debt is a valid educational loan prior to payment by the loan repayment program. Any penalties associated with early repayment shall be the responsibility of the participant.

**12VAC5-507-180. Disbursement procedure.**

The financial institution holding the educational loan will be paid one lump sum payment. This payment will be credited to the account of the participant in an amount up to \$1,200 for a one year commitment within 45 days of the contract being signed by the applicant and the commissioner or his designee. If a participant wishes to commit to another year of service, he will be required to sign another contract. Depending on availability of funds, the nursing loan repayment program will pay the applicable financial institution another lump sum payment up to \$1,200 for the additional year commitment. Payment will be made approximately 45 days after the beginning of the subsequent year. The maximum number of loans a participant can receive is four.

**12VAC5-507-190. Compensation during service.**

Each participant is responsible for negotiating his own compensation package directly with the site where he will provide nursing services in a long-term care facility.

**12VAC5-507-200. Monitoring during service.**

Monitoring of the service by participants shall be conducted on an ongoing basis by department staff. Service verification forms shall be submitted by the participant to the department semi-annually (every six months) and countersigned by a representative of the service site (e.g., the medical director, human resource coordinator, chief executive officer, etc.) certifying continuous full-time service by participants.

The participant is required to maintain practice records in a manner that will allow the department to readily determine if the individual has complied with or is complying with the terms and conditions of the participation agreement.

**12VAC5-507-210. Terms of service.**

The following are the terms of service for the loan repayment program:

1. The participant shall contract to provide one year of service with a maximum of up to four years in whole year increments. Additional service beyond the one year commitment is dependent upon the availability of state funds for the nursing loan repayment program. An existing contract may be renewed for one year at a time up to a maximum of four years as funds become available;
2. The participant shall begin service within 90 days from entering into the contract;
3. The participant shall provide full-time service. Time spent in an "on-call" status will not count toward the

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number of hours worked per week. Any exceptions to the "on-call" provisions of this subdivision must be approved in advance by the board prior to acceptance in the loan repayment program.

4. No period of advanced training may count toward satisfying a period of obligated service under this loan repayment program;

## **12VAC5-507-220. Loan repayment contract.**

Prior to becoming a participant in the nursing loan repayment program, the applicant shall enter into a contract with the board agreeing to the terms and conditions upon which the loan repayment is granted. The contract shall:

1. Include the terms and conditions to carry out the purposes and intent of this program;
2. Provide that the participant will be required to provide nursing services in a long-term care facility in the Commonwealth for a minimum period of one year;
3. Provide for repayment of all amounts paid, plus interest and penalties, less any service time if the participant is found to be in breach of contract;
4. Be signed by the applicant; and
5. Be signed by the commissioner or her designee.

### Part IV Contract

## **12VAC5-507-230. Breach of contract.**

The following may constitute breach of contract:

1. Participant's failure to begin or complete his term of obligated service in a long-term care facility under the terms and conditions of the nursing loan repayment contract, regardless of the length of the agreed period of obligated service;
2. Participant's falsification or misrepresentation of information or misrepresentation of information on the program application or verification forms or other required document;
3. Participant's employment being terminated for good cause as determined by the employer and confirmed by the department. If employment is terminated for reasons beyond the participant's control (e.g., closure of site), the participant must transfer to another long-term care facility site in the Commonwealth within six months of termination. Failure of participant to transfer to another site shall be deemed to be a breach of the contract; and
4. Participant's failure to provide all reasonable, usual, and customary full-time health care service in a long-term care facility for at least 45 weeks per year.

## **12VAC5-507-240. Waiver or suspension, or both.**

Participants have the obligation to complete full-time continuous service for the period of their entire commitment. Under unusual circumstances (e.g., illness), a participant may request that the board agree to a postponement of the service

obligation. This postponement, if granted, will not relieve the participant of the responsibility to complete the remaining portion of the obligation. Such postponement will not be permitted as a matter of course, but may be allowed in the most compelling cases.

If the participant is in default due to death or permanent disability, the obligation to make restitution may be waived by the board upon application of the participant or the participant's estate to the board.

## **12VAC5-507-250. Cash reimbursement and penalty.**

Participants who serve less than their obligated service are liable to pay monetary damages to the Commonwealth as stated in the contract, reduced by the proportion of obligated years served. The default penalty will require the participant to repay twice the total amount of the award received. For example, if a participant owes \$1,200, he would have to repay at total of \$2,400.

Participants who serve less than their obligated service due to permanent disability or in the event of death shall have the total amount of scholarship or loan repayment funds owed reduced by the proportion of obligated years served.

### Part V

### Records and Reporting

## **12VAC5-507-260. Reporting requirements.**

Reporting requirements of the loan repayment participant are as follows:

1. Each participant shall at any time provide information as required by the board to verify compliance with the practice requirements of the nursing loan repayment program (e.g., verification of employment in a long-term care facility).
2. Each participant shall promptly notify the board in writing within 30 days before any of the following events occur:
  - a. Participant changes name;
  - b. Participant changes address;
  - c. Participant changes practice site;
  - d. Participant no longer intends to fulfill service obligation as a nurse in the Commonwealth in a long-term care facility; or
  - e. Participant ceases to practice as a registered nurse, licensed practical nurse, or certified nurse aide.

VA.R. Doc. No. R10-1890; Filed September 20, 2012, 4:18 p.m.

### **Proposed Regulation**

**Title of Regulation:** **12VAC5-540. Rules and Regulations for the Identification of Medically Underserved Areas in Virginia (amending 12VAC5-540-10 through 12VAC5-540-40).**

**Statutory Authority:** §§ 32.1-12 and 32.1-122.5 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comment Deadline:** December 21, 2012.

**Agency Contact:** Kenneth Studer, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7428, or email ken.studer@vdh.virginia.gov.

**Basis:** The Board of Health is authorized pursuant to § 32.1-122.5 of the Code of Virginia to establish criteria to identify primary care medically underserved areas within the Commonwealth and specify the data calculations to be used to estimate the level of underservice. The Board of Health is also to include criteria to estimate need for medical services in state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services.

**Purpose:** The regulations require updating because certain state programs and private funding sources depend on the accuracy of the Virginia Medically Underserved Area designation process in awarding funds to health providers and to communities. All of the changes are in response to the availability of new data sources allowing more timely designation of underserved areas. The designation process is designed to encourage the appropriate distribution and expansion of healthcare services into areas often lacking in such services thereby improving the public's health and welfare.

**Substance:** The recommended changes are designed to:

1. Allow state facilities to be automatically designated as Virginia Medically Underserved Areas.
2. Incorporate new state incentive programs into the Virginia Medically Underserved Program description.
3. Allow new data sources to be used in computing Virginia Medically Underserved Areas.
4. Establish a minimum five year update and renewal cycle for designation of Virginia Medically Underserved Areas.

**Issues:** The changes are required to make the regulations compatible with current medical and nursing scholarship regulations and to appropriately use new data sources that were not previously available. The regulatory action poses no disadvantage to the public or the Commonwealth.

**Department of Planning and Budget's Economic Impact Analysis:**

Summary of the Proposed Amendments to Regulation. The Board of Health (the board) proposes to 1) automatically designate the state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services as Virginia Medically Underserved Areas (VMUA), 2) update the data sources to be used in computing VMUA designations and establish a minimum of five years of update and renewal cycle for designations, and 3) remove outdated information regarding scholarship programs that are affected by the designation.

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

**Estimated Economic Impact.** These regulations establish criteria for VMUA designation. The criteria are required to be quantifiable measures, sensitive to the unique characteristics of urban and rural jurisdictions. The purpose of identifying medically underserved areas within the Commonwealth is to establish geographic areas in need of additional primary healthcare services. The VMUA designation is a targeting device that assists individual practitioners, medical facilities (e.g., clinics, hospitals), and communities in recruiting health professionals, obtaining foundation grants, qualifying for special services, etc.

VMUA designation is designed to encourage the appropriate distribution and expansion of healthcare services into areas where Virginia citizens often lack access to healthcare. State, private, and sometimes federal funding programs and agencies rely on VMUA designation to allocate their limited resources to provide incentives.

According to the Virginia Department of Health (VDH), VMUA designation has a direct impact on Nurse Practitioner/Nurse Midwife Scholarship allocations in Virginia. Also, Virginia Health Care Foundation, hospital conversion foundations, and other healthcare foundations use VMUA as acceptable criteria for grant applications. Moreover, federal regulations allow Virginia to develop criteria for qualifying areas for rural health clinic development. Rural health clinics are designed to recruit and retain providers in underserved areas through a cost-based reimbursement mechanism. Furthermore, Virginia may establish criteria for the placement of J-1 Waiver physicians in federal and state designated health professional shortage areas. A J-1 Waiver relieves an international medical graduate from the obligation of returning to his or her home country for two years, and allows the physician to apply for an immigration status that would allow him or her to remain in the U.S. Finally, VDH expects that once the VMUA criteria are updated according to the proposed changes and maintained regularly, the designations will be more generally used as a health planning tool and as a recognized set of criteria for evaluating healthcare shortages in the Commonwealth.

One of the proposed changes will allow the board to automatically designate the state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services as VMUA. While the board has had this authority since 1990 under § 32.1-122.5 of the Code of Virginia, the regulatory language has never included this authority. Since this authority has not been in the regulations, the Board has never designated these state facilities as VMUA. The proposed changes will add this authority in the regulations and allow the Board to designate the state facilities as VMUA. According to VDH, Departments of Corrections, Juvenile Justice, and Behavioral

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Health and Developmental Services respectively have 39, 11, and 16 facilities which may be automatically designated as VMUA.

The main benefit of this change will fall on the 66 state facilities operated by the three departments. These facilities will be able to attract nurse practitioners and midwives through the Commonwealth's Nurse Practitioner/Nurse Midwife Scholarship program. These facilities may also be approved for grant applications by various healthcare foundations and for J-1 Waiver recommendation by the United States Department of State. Since most of the benefits will depend on the decision of other entities on whether to rely on the VMUA designations, the exact extent of the potential benefits is unknown at this time.

The main cost of this change will fall on the areas that are currently designated as VMUA.<sup>1</sup> These areas will have to share the same available resources with 66 additional state facilities which may reduce the amount of benefits they currently receive due to VMUA designation.

Other proposed changes will update the data sources to be used in computing VMUA designations and establish a minimum of five years of update and renewal cycle for designations. According to VDH, these regulations were last revised in 1991 and have not been reviewed since that time. Since then, new and improved data sources have become available to assess the demographic characteristics indicative of areas with inadequate primary healthcare resources.

Similar to the previous change, the main cost of this change will fall on the areas that are currently designated as VMUA.<sup>2</sup> With the use of new data, some of the areas that are currently designated as VMUA may no longer be designated as VMUA. However, VDH believes only one or two areas might lose their current VMUA designation based on an experimentation with the data a few years ago.

On the other hand, areas that will become newly designated as VMUA due to use of new data will be the ones to mainly benefit from this change. These areas may enjoy an influx of state scholarships for nurse practitioners and midwives and grants made available by various healthcare associations and foundations.

In addition, updating the VMUA designations at least once in every five years is expected to keep up with the demographic changes that may occur and result in more accurate identification of areas that remains truly underserved over time.

The use of newer and improved data and frequent updates are also expected to more accurately identify the areas that are truly in need of additional primary healthcare resources. Due to this improvement in methodology, there is a chance that the federal government may start relying on the Commonwealth's VMUA designations and make new federal resources available to the designated areas.

Finally, the proposed changes will remove outdated information regarding scholarship programs that are affected by the designation. This particular change is not expected to create any significant economic effects other than improving the clarity of the regulations.

**Businesses and Entities Affected.** These regulations directly affect beneficiaries of VMUA designation. According to VDH, there are approximately 500 community and business entities supported by the designation process. In addition, the proposed changes will add 66 state facilities to the list of beneficiaries.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth. However, areas designated as VMUA under the current regulations include the counties of Accomack, Alleghany, Bath, Bland, Brunswick, Buchanan, Caroline, Charlotte, Dickenson, Essex, Greensville, Halifax, Henry, Highland, Lancaster, Lee, Louisa, Lunenburg, Mecklenburg, Northampton, Northumberland, Nottoway, Page, Patrick, Pittsylvania, Richmond, Russell, Scott, Smyth, Surry, Sussex, Tazewell, Washington, Westmoreland, Wise, and Wythe and the cities of Bristol, Clifton Forge, Covington, Danville, Emporia, Martinsville, and Norton. The proposed changes may remove VMUA designation from one or two of these areas while some other areas may be newly designated.

**Projected Impact on Employment.** The proposed changes may affect the distribution of statewide public scholarships by changing the list of VMUAs. Thus, supply of certain healthcare professionals may increase for facilities that may newly be designated as VMUA and decrease for those losing their designation. Similarly, statewide distribution of private grants may be altered by the proposed changes. Thus, facilities with new VMUA designation may see an increase in their demand for labor due to influx of additional grant funds, while those losing their designation may experience a decrease in their demand for labor.

Additionally, if the improvement in the VMUA designation process due to new data results in federal government relying on Commonwealth's VMUA designations and making new federal resources available to the designated areas, we can expect to see an effect on employment. For example, federal rural health clinic development designation would be expected to increase demand for healthcare professionals as additional clinics would be established in VMUAs. Also, federal J-1 Waiver designations would add to the supply of physicians available in VMUAs.

**Effects on the Use and Value of Private Property.** Asset value of privately owned beneficiaries of scholarships or grants may increase if they are newly designated as VMUA. On the other hand, their asset values may decrease if they lose their VMUA designation.

**Small Businesses: Costs and Other Effects.** While there is no data to conclusively identify the small businesses affected by the proposed changes, it is believed that most of the



approximately 500 community and business entities supported by the designation process are non-profit community groups such as free clinics and community health centers. The costs and other effects on the affected small businesses would be the same as discussed above.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed regulations would have an adverse impact on small businesses that are current beneficiaries of the VMUA designation, but would lose some or all of their benefits once the proposed regulations become effective. There is no known alternative that minimizes the adverse impact while accomplishing the same goals.

**Real Estate Development Costs.** No direct effect on real estate development costs is expected.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 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.

<sup>1</sup> VMUAs as of September 2006 include counties of Accomack, Alleghany, Bath, Bland, Brunswick, Buchanan, Caroline, Charlotte, Dickenson, Essex, Greensville, Halifax, Henry, Highland, Lancaster, Lee, Louisa, Lunenburg, Mecklenburg, Northampton, Northumberland, Nottoway, Page, Patrick, Pittsylvania, Richmond, Russell, Scott, Smyth, Surry, Sussex, Tazewell, Washington, Westmoreland, Wise, Wythe, and cities of Bristol, Clifton Forge, Covington, Danville, Emporia, Martinsville, Norton.

<sup>2</sup> Ibid.

Agency's Response to Economic Impact Analysis: Virginia Department of Health concurs with the conclusion reached by the Department of Planning and Budget's economic impact analysis that the benefits for the proposed changes will exceed the costs incurred in updating and identifying

medically underserved areas in Virginia in accordance with the amended regulations.

Summary:

*The proposed amendments (i) automatically designate the state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services as Virginia Medically Underserved Areas (VMUA); (ii) update the data sources to be used in computing VMUA designations and establish a minimum of five years of update and renewal cycle for designations; and (iii) remove outdated information regarding scholarship programs that are affected by the designation.*

Part I

General Information

**12VAC5-540-10. Authority.**

In accordance with the provisions of § 32.1-122.5 of the Code of Virginia, the State Board of Health is required to establish criteria for determining medically underserved areas within the Commonwealth and include in these criteria the need for medical care services in the state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services. The criteria are required to be quantifiable measures, sensitive to the unique characteristics of urban and rural jurisdictions.

**12VAC5-540-20. Purpose.**

The purpose of identifying medically underserved areas within the Commonwealth is to establish geographic areas in need of additional primary health care services. ~~These areas may be selected by trained primary care physicians and other health professionals as practice sites in fulfillment of obligations that the physicians and other health professionals accepted in return for medical training and scholarship grant assistance. Each year of practice in a medically underserved area satisfies the repayment requirement of a year of scholarship support from the Virginia Medical Scholarship Program. Additionally, these medically underserved areas will be eligible locations for practicing primary care physicians and other health professionals participating in the state or federal physician loan repayment programs.~~ Further, these medically underserved areas may become eligible for assistance, ~~state or federal~~, to establish primary care medical centers.

Part II

Designating Medically Underserved Areas

**12VAC5-540-30. Criteria for determining medically underserved areas.**

The following five criteria, as available, and as indicated, shall be used to evaluate and identify medically underserved areas throughout the Commonwealth of Virginia and the criteria shall be applied at a minimum five-year interval using the most recent data available to update the designations:

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1. Percentage of population with income at or below 100% of the federal poverty level. The source for these data shall be the most recent available publication of the Bureau of the Census of the U.S. Department of Commerce or appropriate intercensal estimates of poverty accepted by the Health Resources and Services Administration Shortage Designation Branch for federal health professional shortage area and medically underserved area designations.

2. Percentage of population that is 65 years of age or older. The source for these data shall be the Bureau of the Census of the U.S. Department of Commerce, or the latest estimates from the Weldon Cooper Center for Public Service at the University of Virginia, or the Economic Services Division of the Virginia Employment Commission.

3. The primary care physician to population ratio. The source for these data shall be the ~~Department of Family Practice of the Medical College of Virginia of Virginia Commonwealth University~~ Virginia Department of Health Professions, Board of Medicine physician profile database. Primary care physicians are defined as board certified or self-designated generalist practitioners who practice family medicine, pediatrics, internal medicine, or obstetrics/gynecology.

4. The four-year aggregate infant mortality rate. The source for these data shall be the ~~Center~~ most recent four-year infant mortality data for each jurisdiction from the Division of Health Statistics of the Virginia Department of Health.

5. The most recent ~~annual~~ seasonally adjusted quarterly civilian unemployment rate for each jurisdiction. The source for these data shall be the Information Services Division of the Virginia Employment Commission.

## 12VAC5-540-40. Application of the criteria.

A. Determining medically underserved cities and counties. The criteria enumerated in 12VAC5-540-30 shall be used to construct a numerical index by which the relative degree of medical underservice shall be calculated for each city and county within the Commonwealth. Observations for each of the five criteria will be listed for each Virginia city and county. An interval scale will be used to assign a particular value to each observation. This will be done for each of the five criteria. Each interval scale will consist of four ranges or outcomes of observations. The ranges will be numerically equal. The four ranges will be labeled as Level 1, Level 2, Level 3, and Level 4. The numerical difference between the ranges will be established beginning with the Level 2 range.

The Level 2 range shall have the statewide average for each respective criterion, except the population to primary care physician ratio, as its upper limit. The Level 2 upper limit for the primary care physician to population ratio is established by dividing the difference between the Level 4 upper limit for this criterion and the Level 1 upper limit by two. Each observation which is equal to or less than the Level 2 upper

limit, but greater than the Level 1 upper limit, will be assigned a numerical value of two.

The Level 1 range shall have an upper limit which is the quotient of the statewide average divided by two. For the ratio of population to primary care physician criterion, the upper limit of Level 1 shall be the ratio 2500:1 as recommended by the American Academy of Family Physicians. Each observation that is equal to or less than the Level 1 upper limit will be assigned a numerical value of one.

The Level 3 range shall have an upper limit that is equal to the sum of the upper limit of the Level 1 range and the upper limit of the Level 2 range. For the ratio of population to primary care physician criterion, the upper limit of level 3 shall be established at 3500:1, the federal standard for designating health manpower shortage areas. Each observation that is equal to or less than the Level 3 upper limit will be assigned a numerical value of three.

The Level 4 range will include any observation greater than the upper limit of Level 3 range. Each observation in the Level 4 range will be assigned a numerical value of four.

The values for each of the ranges of the five criteria will be summed for each Virginia city and county. Each Virginia city and county will have an assigned value of five or greater, to a maximum of 20. A statewide average value will be determined by summing the total city and county values and dividing by the number of cities and counties. Any city or county assigned a value that is greater than the statewide average value shall be considered medically underserved. ~~The application of criteria for determining medically underserved cities and counties shall be performed annually and published by the board.~~

B. Determining medically underserved areas within cities and counties. Geographic subsections of cities or counties may be designated as medically underserved areas when the entire city or county is not eligible if the subsection has: (i) a population to primary care physician ratio equal to or greater than 3500:1; and (ii) a population whose rate of poverty is greater than the statewide average poverty rate; and (iii) a minimum population of 3,500 persons residing in a contiguous, identifiable, geographic area. The board shall from time to time, on petition of any person, or as a result of its own decision, apply criteria for determining medically underserved subareas of cities and counties. Once determined to be medically underserved, any subarea of a city or county shall appear on the next list of medically underserved areas published by the board. Areas which qualify as medically underserved areas under 12VAC5-540-40 A and that are within Standard Metropolitan Areas as defined by the U.S. Department of Commerce, must also qualify under this section for purposes of placement of health professionals.

C. Medical care services in state facilities operated by the Departments of Corrections, Juvenile Justice, and Behavioral Health and Developmental Services will be deemed Virginia medically underserved areas.

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Board of Health is claiming an exemption from the Administrative Process Act in accordance with (i) § 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 and (ii) § 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. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 12VAC5-600. Waterworks Operation Fee (amending 12VAC5-600-10, 12VAC5-600-20, 12VAC5-600-30, 12VAC5-600-50, 12VAC5-600-60, 12VAC5-600-70, 12VAC5-600-100, 12VAC5-600-110).

**Statutory Authority:** §§ 32.1-12 and 32.1-170 of the Code of Virginia.

**Effective Date:** November 22, 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.

**Background:** Item 298 of Chapter 3 of the 2012 Acts of Assembly, Special Session I, reduces the Drinking Water Regulation (50801) line item from \$9,393,590 to \$8,293,590. To allow the Department of Health to recover the diminished funds, Item 298 B of the act allows for the increase of the Waterworks Technical Assistance Program Fee from the existing \$2.05 per connection to a maximum level of \$3.00 per connection for community waterworks. Calculations by Department of Health staff indicate a fee of \$2.95 per connection for community waterworks is necessary to recover the required funds.

**Summary:**

*The amendments increase the maximum fee to be collected from community waterworks to no more than \$3.00 per connection for community waterworks. The statutory maximum fee for community waterworks remains at \$160,000 per waterworks.*

*In addition, several technical changes are made, including changing the date on or before which the department will send a payment form/data verification notice to July 1.*

**Part I  
Definitions**

**12VAC5-600-10. Definitions.**

As used in this chapter, unless otherwise defined, words and terms are the same as those in § 32.1-167 of the Code of Virginia or in ~~12VAC5-590-20~~ 12VAC5-590-10 (Waterworks Regulations) and shall have the following meaning, unless the context clearly indicates otherwise:

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner who is the executive officer of the State Board of Health.

"Community waterworks" means a waterworks ~~which~~ that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Customer account" means (i) a metered or unmetered potable water service connection to the customer which is billed in any way by the waterworks owner; or (ii) where any community waterworks sends no billing, the customer accounts shall be defined as equal to the population served divided by four.

"Department" means the Virginia Department of Health.

"Due" means received or postmarked by the stated date.

"Fiscal year" means the year from July 1 to June 30.

"Nontransient noncommunity (NTNC) waterworks" means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same persons over six months out of the year.

"Owner" ~~or "water purveyor"~~ means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity or the federal government, which supplies or proposes to supply water to any person within this Commonwealth from or by means of any waterworks.

"Service connection" means the point of delivery of water to a customer's building service line as follows:

1. If a meter is installed, the service connection is the downstream side of the meter;
2. If a meter is not installed, the service connection is the point of connection to the waterworks;
3. When the ~~water purveyor~~ waterworks owner is also the building owner, the service connection is the entry point to the building.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

**Part II  
General Information**

**12VAC5-600-20. Purpose of the regulation.**

The regulation establishes a waterworks operation fee schedule where the number of customer accounts of a community waterworks is the basis for assessing charges to the community waterworks. The fee schedule for nontransient noncommunity waterworks is based on the waterworks ~~classification~~ being classified as a nontransient

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noncommunity waterworks. No ~~waterworks~~ owner shall pay more than \$160,000 per year per waterworks, nor is it the intent that an owner be charged this fee on water transferred to another waterworks.

## **12VAC5-600-30. Compliance with the Administrative Process Act.**

The provisions of the Administrative Process Act (§ ~~9-6.14-1~~ 2.2-4000 et seq. of the Code of Virginia) shall govern the promulgation and administration of this chapter.

### **Part III**

#### **Waterworks Operation Fees**

## **12VAC5-600-50. Community waterworks operation fee.**

A. An annual waterworks operation fee, not to exceed \$160,000, shall be charged as of July 1 of each fiscal year to the owner of each community waterworks in an amount as follows:

For each fiscal year: the number of customer accounts multiplied by no more than ~~\$2.05~~ \$3.00.

B. The fee shall be paid to the department and be due as follows:

1. If the fee established in subsection A of this section is \$400 or less, the fee shall be due in a lump sum on August 1;
2. If the fee established in subsection A of this section is more than \$400, the fee shall be due in a lump sum or equal quarterly installments each year as follows:
  - a. August 1—The lump sum or first quarterly installment.
  - b. November 1—The second quarterly installment.
  - c. February 1—The third quarterly installment.
  - d. May 1—The fourth quarterly installment.

C. Data verification. The number of customer accounts will be based on the best available data for a maximum period of six months prior to the close of business on June 30 each year as provided by the ~~waterworks~~ owner or chief administrative officer to the department. This verification shall be provided to the department by the owner of each community waterworks at the address specified in 12VAC5-600-100 and is due by August 1 of each year with the appropriate payment.

## **12VAC5-600-60. Nontransient noncommunity (NTNC) waterworks operation fee.**

A. An annual waterworks operation fee shall be charged as of July 1 of each fiscal year to the owner of each NTNC waterworks as follows: For each fiscal year, an amount of no more than \$90 per NTNC waterworks shall be assessed.

B. The fee shall be due to the department every November 1.

## **12VAC5-600-70. Notice.**

The department will send to each waterworks owner a payment form/data verification notice as prescribed by the department on or before ~~June~~ July 1 of each year. Failure to

receive this notice does not relieve the responsibility of the ~~waterworks~~ owner from providing payments or verification.

## **12VAC5-600-100. Payments.**

Payments are to be made payable to: VDH - Waterworks Technical Assistance Fund and sent to:

Virginia Department of Health  
~~Division of Water Supply Engineering~~  
1500 E. Main Street  
~~Room 109~~  
P.O. Box 2448  
Richmond, VA 23218

Office of Drinking Water  
Madison Building, 6th Floor  
109 Governor Street, Room 622  
Richmond, Virginia 23219

## **12VAC5-600-110. Late fees and administrative charges.**

In addition to the powers in 12VAC5-600-40, operation fees not received or postmarked by the due date shall be subject to interest, administrative charges, and late penalty fees in accordance with ~~§ 2.1-732~~ § 2.2-4805 of the Code of Virginia.

**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 (12VAC5-600)

~~Bill/Invoice for Payment of the Waterworks Operation Fee (if more than \$400), (rev. 1998).~~

~~Bill/Invoice for Payment of the Waterworks Operation Fee (if \$400 or less), (rev. 1998).~~

[Waterworks Operation Fee - Invoice/Data Verification Notice - less than \\$400 \(rev. 7/12\).](#)

[Waterworks Operation Fee - Invoice/Data Verification Notice - more than \\$400 \(rev. 7/12\).](#)

VA.R. Doc. No. R13-3258; Filed September 20, 2012, 9:20 a.m.

### **Final Regulation**

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

**Title of Regulation: 12VAC5-610. Sewage Handling and Disposal Regulations (amending 12VAC5-610-320, 12VAC5-610-330).**

**Statutory Authority:** §§ 32.1-12 and 32.1-164 of the Code of Virginia.

**Effective Date:** November 22, 2012.

**Agency Contact:** Allen Knapp, Director, Division of Onsite Sewage, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, FAX (804) 864-7475, or email allen.knapp@vdh.virginia.gov.

**Summary:**

*The amendments conform to recent changes in statutory law enacted by Chapter 184 of the 2012 Acts of Assembly. The amendments exempt onsite sewage system installations that are pursuant to designs certified by licensed private sector professional engineers and onsite soil evaluators from the department's inspection and coverage requirements and set out inspection and reporting requirements for such systems.*

**12VAC5-610-320. Inspection and correction.**

No part of any installation shall be covered with earth or used until inspected, corrections made if necessary, and approved, by the district or local health department or unless expressly authorized by the district or local health department. Any part of an installation which has been covered prior to approval shall be uncovered upon the direction of the district or local health department. This section shall not apply to any sewage disposal system installation that is pursuant to a design certified by a licensed professional engineer or onsite soil evaluator.

Exception. This section is inapplicable to a Type III septage disposal facility.

**12VAC5-610-330. Statements Inspections of private evaluations and designs and reports required upon completion of construction.**

~~A. Statement from a licensed professional engineer on a project where the submission of formal plans and specifications are required. Upon completion of the construction or modifications of such a sewage disposal system, the owner permitted pursuant to a design certified by a licensed professional engineer or onsite soil evaluator, the certifying licensed professional engineer or onsite soil evaluator shall inspect the sewage disposal system installation in a timely manner and submit to the district or local health department a statement signed by a licensed professional engineer signed inspection report stating that the construction work installation was completed substantially in accordance with the approved plans and specifications evaluation and design revised only in accordance with the provisions of 12VAC5-610-310. This statement inspection report shall be based upon inspections of the sewage disposal system during and after construction or modifications that are adequate to assure the accuracy of the statement report. The department~~

may, but is not required to, inspect the installation of such sewage disposal system. In the event that the certifying licensed professional engineer or onsite soil evaluator does not inspect the installation in a timely manner or declines to certify that the installation was completed substantially in accordance with the approved evaluation and design, the owner may petition the district or local health department to inspect the installation and render a final case decision approving or disapproving the installation. The district or local health department shall not be required to convene an informal fact-finding proceeding in accordance with § 2.2-4019 of the Code of Virginia or 12VAC5-610-200 prior to rendering such decision.

B. Statement from the sewage disposal system contractor. Upon completion of the construction or modification of a sewage disposal system, the owner shall submit to the district or local health department a statement signed by the contractor that the construction work was completed in accordance with the construction permit, and when appropriate the plans and specifications approved for the project and substantially in accordance with Part V (12VAC5-610-660 et seq.) of this chapter.

VA.R. Doc. No. R13-3356; Filed October 1, 2012, 2:37 p.m.

## BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

### Final Regulation

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (amending 12VAC35-115-10, 12VAC35-115-30, 12VAC35-115-50, 12VAC35-115-80).**

**Statutory Authority:** §§ 37.2-203 and 37.2-400 of the Code of Virginia.

**Effective Date:** November 21, 2012.

**Agency Contact:** Margaret Walsh, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 13th Floor, Richmond, VA 23219, telephone (804) 786-2008, FAX (804) 371-2308, or email margaret.walsh@dbhds.virginia.gov.

**Summary:**

*The amendments are made pursuant to Chapters 111, 517, and 813 of the 2009 Acts of the Assembly and (i) change the name of the agency from the Department of Mental Health, Mental Retardation and Substance Abuse Services to the Department of Behavioral Health and Developmental Services and (ii) clarify that each person admitted to a hospital, training center, or other facility, or program operated, funded, or licensed by the department, is afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility.*

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

## CHAPTER 115

### ~~RULES AND REGULATIONS TO ASSURE THE RIGHTS OF INDIVIDUALS RECEIVING SERVICES FROM PROVIDERS LICENSED, FUNDED, OR OPERATED BY THE DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION BEHAVIORAL HEALTH AND SUBSTANCE ABUSE~~ DEVELOPMENTAL SERVICES

#### Part I

#### General Provisions

#### **12VAC35-115-10. Authority and applicability.**

A. The Code of Virginia authorizes these regulations to further define and protect the rights of individuals receiving services from providers of mental health, mental retardation, or substance abuse services in Virginia. The regulations require providers of services to take specific actions to protect the rights of each individual. The regulations establish remedies when rights are violated or in dispute, and provide a structure for support of these rights.

B. Providers subject to these regulations include:

1. Facilities operated by the department under Chapters 3 (§ 37.2-300 et seq.) and 7 (§ 37.2-700 et seq.) of Title 37.2 of the Code of Virginia;
2. Sexually violent predator programs established under § 37.2-909 of the Code of Virginia;
3. Community services boards that provide services under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia;
4. Behavioral health authorities that provide services under Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
5. Public or private providers that operate programs or facilities licensed by the department under Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 of the Code of Virginia except those operated by the Department of Corrections; and
6. Any other providers receiving funding from the department. Providers of services under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1431-1444, that are subject to these regulations solely by receipt of Part C funds from or through the department shall comply with all applicable IDEA regulations found in 34 CFR Part 303 in lieu of these regulations.

C. Unless another law takes precedence, these regulations apply to all individuals who are receiving services from a public or private provider of services operated, licensed or funded by the Department of ~~Mental Health, Mental Retardation~~ Behavioral Health and Substance Abuse

Developmental Services, except those operated by the Department of Corrections.

D. These regulations apply to individuals under forensic status and individuals committed to the custody of the department as sexually violent predators, except to the extent that the commissioner may determine these regulations are not applicable to them. The exemption must be in writing and based solely on the need to protect individuals receiving services, employees, or the general public. The commissioner shall give the State Human Rights Committee (SHRC) chairperson prior notice of all exemptions and provide the written exemption to the SHRC for its information. These exemptions shall be time limited and services shall not be compromised.

#### **12VAC35-115-30. Definitions.**

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or the person's individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan. See § 37.2-100 of the Code of Virginia.

"Advance directive" means a document voluntarily executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state where executed (§ 54.1-2993 of the Code of Virginia). This may include a wellness recovery action plan (WRAP) or similar document as long as it is executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state. A WRAP or similar

document may identify the health care agent who is authorized to act as the individual's substitute decision maker.

"Authorization" means a document signed by the individual receiving services or that individual's authorized representative that authorizes the provider to disclose identifying information about the individual. An authorization must be voluntary. To be voluntary, the authorization must be given by the individual receiving services or his authorized representative freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion.

"Authorized representative" means a person permitted by law or these regulations to authorize the disclosure of information or to consent to treatment and services or participation in human research. The decision-making authority of an authorized representative recognized or designated under these regulations is limited to decisions pertaining to the designating provider. Legal guardians, attorneys-in-fact, or health care agents appointed pursuant to § 54.1-2983 of the Code of Virginia may have decision-making authority beyond such provider.

"Behavior intervention" means those principles and methods employed by a provider to help an individual to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan, functional plan, or behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting an individual to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

"Board" means the ~~State Mental Health, Mental Retardation~~ Board of Behavioral Health and ~~Substance Abuse~~ Developmental Services Board.

"Caregiver" means an employee or contractor who provides care and support services; medical services; or other treatment, rehabilitation, or habilitation services.

"Commissioner" means the Commissioner of the Department of ~~Mental Health, Mental Retardation~~ Behavioral Health and ~~Substance Abuse~~ Developmental Services.

"Community services board" or "CSB" means the public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, mental retardation, and substance abuse services to individuals within each city and county that established it. For the purpose of these regulations, community services board also includes a

behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

"Complaint" means an allegation of a violation of these regulations or a provider's policies and procedures related to these regulations.

"Consent" means the voluntary agreement of an individual or that individual's authorized representative to specific services.

Consent must be given freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion. Consent may be expressed through any means appropriate for the individual, including verbally, through physical gestures or behaviors, in Braille or American Sign Language, in writing, or through other methods.

"Department" means the Department of ~~Mental Health, Mental Retardation~~ Behavioral Health and ~~Substance Abuse~~ Developmental Services.

"Director" means the chief executive officer of any provider delivering services. In organizations that also include services not covered by these regulations, the director is the chief executive officer of the services or services licensed, funded, or operated by the department.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Disclosure" means the release by a provider of information identifying an individual.

"Emergency" means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual or to others.

"Exploitation" means the misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See § 37.2-100 of the Code of Virginia.) Exploitation also includes the use of a position of authority to extract personal gain from an individual. Exploitation includes violations of 12VAC35-115-120 (Work) and 12VAC35-115-130 (Research). Exploitation does not include the billing of an individual's third party payer for services. Exploitation also does not include instances of use or appropriation of an individual's assets, goods or property when permission is given by the individual or his authorized representative:

1. With full knowledge of the consequences;
2. With no inducements; and
3. Without force, misrepresentation, fraud, deceit, duress of any form, constraint, or coercion.

"Governing body of the provider" means the person or group of persons with final authority to establish policy. For the purpose of these regulations, the governing body of a CSB means the public body established according to Chapter 5

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(§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia, and shall include administrative policy community services boards, operating community services boards, local government departments with policy-advisory boards, and the board of a behavioral health authority.

"Habilitation" means the provision of individualized services conforming to current acceptable professional practice that enhance the strengths of, teach functional skills to, or reduce or eliminate challenging behaviors of an individual. These services occur in an environment that suits the individual's needs, responds to his preferences, and promotes social interaction and adaptive behaviors.

"Health care operations" means any activities of the provider to the extent that the activities are related to its provision of health care services. Examples include:

1. Conducting quality assessment and improvement activities, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment;
2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, and training, licensing or credentialing activities;
3. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; and
4. Other activities contained within the definition of health care operations in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.501.

"Health plan" means an individual or group plan that provides or pays the cost of medical care, including any entity that meets the definition of "health plan" in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR 160.103.

"Historical research" means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance. See 12VAC35-115-80 B (Confidentiality).

"Human research" means any systematic investigation, including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Human rights advocate" means a person employed by the commissioner upon recommendation of the State Human Rights Director to help individuals receiving services exercise their rights under this chapter. See 12VAC35-115-250 C.

"Individual" means a person who is receiving services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion.

"Inspector general" means a person appointed by the Governor to provide oversight by inspecting, monitoring, and reviewing the quality of services that providers deliver.

"Investigating authority" means any person or entity that is approved by the provider to conduct investigations of abuse and neglect.

"Licensed professional" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or certified psychiatric nurse specialist.

"Local Human Rights Committee" or "LHRC" means a group of at least five people appointed by the State Human Rights Committee. See 12VAC35-115-250 D for membership and duties.

"Neglect" means failure by a person, program, or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, mental retardation, or substance abuse. See § 37.2-100 of the Code of Virginia.

"Next friend" means a person designated in accordance with 12VAC35-115-146 B to serve as the authorized representative of an individual who has been determined to lack capacity to consent or authorize the disclosure of identifying information, when required under these regulations.

"Peer-on-peer aggression" means a physical act, verbal threat or demeaning expression by an individual against or to another individual that causes physical or emotional harm to that individual. Examples include hitting, kicking, scratching, and other threatening behavior. Such instances may constitute potential neglect.



"Person centered" means focusing on the needs and preferences of the individual, empowering and supporting the individual in defining the direction for his life, and promoting self-determination, community involvement, and recovery.

"Program rules" means the operational rules and expectations that providers establish to promote the general safety and well-being of all individuals in the program and to set standards for how individuals will interact with one another in the program. Program rules include any expectation that produces a consequence for the individual within the program. Program rules may be included in a handbook or policies and shall be available to the individual.

"Protection and advocacy agency" means the state agency designated under the federal Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act and the Developmental Disabilities (DD) Act. The protection and advocacy agency is the Virginia Office for Protection and Advocacy.

"Provider" means any person, entity, or organization offering services that is licensed, funded, or operated by the department.

"Psychotherapy notes" means comments recorded in any medium by a health care provider who is a mental health professional documenting and analyzing an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record. Psychotherapy notes shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

"Research review committee" or "institutional review board" means a committee of professionals that provides complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. (See § 37.2-402 of the Code of Virginia and 12VAC35-180.)

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.
2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency

control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency, (ii) nonphysical interventions are not viable, and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related postprocedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Services" means care, treatment, training, habilitation, interventions, or other supports, including medical care, delivered by a provider licensed, operated or funded by the department.

"Services record" means all written and electronic information that a provider keeps about an individual who receives services.

"State Human Rights Committee" or "SHRC" means a committee of nine members appointed by the board that is accountable for the duties prescribed in 12VAC35-115-250 E. See 12VAC35-115-250 E for membership and duties.

"State Human Rights Director" means the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed in 12VAC35-115-250 F.

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"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means the individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services delivered by providers licensed, funded, or operated by the department. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

## Part III

### Explanation of Individual Rights and Provider Duties

#### **12VAC35-115-50. Dignity.**

A. Each individual has a right to exercise his legal, civil, and human rights, including constitutional rights, statutory rights, and the rights contained in these regulations, except as specifically limited herein. Each individual has a right to have services that he receives respond to his needs and preferences and be person-centered. Each individual also has the right to be protected, respected, and supported in exercising these rights. Providers shall not partially or totally take away or limit these rights solely because an individual has a mental illness, mental retardation, or substance use disorder and is receiving services for these conditions or has any physical or sensory condition that may pose a barrier to communication or mobility.

B. In receiving all services, each individual has the right to:

1. Use his preferred or legal name. The use of an individual's preferred name may be limited when a licensed professional makes the determination that the use of the name will result in demonstrable harm or have significant negative impact on the program itself or the individual's treatment, progress, and recovery. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the services record.
2. Be protected from harm including abuse, neglect, and exploitation.
3. Have help in learning about, applying for, and fully using any public service or benefit to which he may be entitled. These services and benefits include educational or vocational services, housing assistance, services or benefits under Titles II, XVI, XVIII, and XIX of the Social Security Act, United States Veterans Benefits, and services from legal and advocacy agencies.
4. Have opportunities to communicate in private with lawyers, judges, legislators, clergy, licensed health care

practitioners, authorized representatives, advocates, the inspector general, and employees of the protection and advocacy agency.

5. Be provided with general information about program services, policies, and rules in writing and in the manner, format and language easily understood by the individual.

6. Be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility.

C. In services provided in residential and inpatient settings, each individual has the right to:

1. Have sufficient and suitable clothing for his exclusive use.
2. Receive nutritionally adequate, varied, and appetizing meals that are prepared and served under sanitary conditions, are served at appropriate times and temperatures, and are consistent with any individualized diet program.
3. Live in a humane, safe, sanitary environment that gives each individual, at a minimum:
  - a. Reasonable privacy and private storage space;
  - b. An adequate number of private, operating toilets, sinks, showers, and tubs that are designed to accommodate individuals' physical needs;
  - c. Direct outside air provided by a window that opens or by an air conditioner;
  - d. Windows or skylights in all major areas used by individuals;
  - e. Clean air, free of bad odors; and
  - f. Room temperatures that are comfortable year round and compatible with health requirements.
4. Practice a religion and participate in religious services subject to their availability, provided that such services are not dangerous to the individual or others and do not infringe on the freedom of others.
  - a. Religious services or practices that present a danger of bodily injury to any individual or interfere with another individual's religious beliefs or practices may be limited. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation. The reasons for the restriction shall be documented in the individual's services record.
  - b. Participation in religious services or practices may be reasonably limited by the provider in accordance with other general rules limiting privileges or times or places of activities.
5. Have paper, pencil and stamps provided free of charge for at least one letter every day upon request. However, if an individual has funds to buy paper, pencils, and stamps

to send a letter every day, the provider does not have to pay for them.

6. Communicate privately with any person by mail and have help in writing or reading mail as needed.

a. An individual's access to mail may be limited only if the provider has reasonable cause to believe that the mail contains illegal material or anything dangerous. If so, the director or his designee may open the mail, but not read it, in the presence of the individual.

b. An individual's ability to communicate by mail may be limited if, in the judgment of a licensed professional, the individual's communication with another person or persons will result in demonstrable harm to the individual's mental health.

c. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the services record.

7. Communicate privately with any person by telephone and have help in doing so. Use of the telephone may be limited to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.

a. An individual's access to the telephone may be limited only if, in the judgment of a licensed professional, communication with another person or persons will result in demonstrable harm to the individual or significantly affect his treatment.

b. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the individual's services record.

c. Residential substance abuse services providers that are not inpatient hospital settings or crisis stabilization programs may develop policies and procedures that limit the use of the telephone during the initial phase of treatment when sound therapeutic practice requires restriction, subject to the following conditions:

(1) Prior to implementation and when it proposes any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules to the LHRC and the human rights advocate for review and approval.

(2) When an individual applies for admission, the provider shall notify him of these restrictions.

8. Have or refuse visitors.

a. An individual's access to visitors may be limited or supervised only when, in the judgment of a licensed professional, the visits result in demonstrable harm to the individual or significantly affect the individual's treatment or when the visitors are suspected of bringing contraband or threatening harm to the individual in any other way.

b. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the individual's services record.

c. Residential substance abuse service providers that are not inpatient hospital settings or crisis stabilization programs may develop policies and procedures that limit visitors during the initial phase of treatment when sound therapeutic practice requires the restriction, subject to the following conditions:

(1) Prior to implementation and when proposing any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules to the LHRC and the human rights advocate for review and approval.

(2) The provider shall notify individuals who apply for admission of these restrictions.

9. Nothing in these provisions shall prohibit a provider from stopping, reporting, or intervening to prevent any criminal act.

D. The provider's duties.

1. Providers shall recognize, respect, support, and protect the dignity rights of each individual at all times. In the case of a minor, providers shall take into consideration the expressed preferences of the minor and the parent or guardian.

2. Providers shall develop, carry out, and regularly monitor policies and procedures that assure the protection of each individual's rights.

3. Providers shall assure the following relative to abuse, neglect, and exploitation:

a. Policies and procedures governing harm, abuse, neglect, and exploitation of individuals receiving their services shall require that, as a condition of employment or volunteering, any employee, volunteer, consultant, or student who knows of or has reason to believe that an individual may have been abused, neglected, or exploited at any location covered by these regulations, shall immediately report this information directly to the director.

b. The director shall immediately take necessary steps to protect the individual until an investigation is complete. This may include the following actions:

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(1) Direct the employee or employees involved to have no further contact with the individual. In the case of incidents of peer-on-peer aggression, protect the individuals from the aggressor in accordance with sound therapeutic practice and these regulations.

(2) Temporarily reassign or transfer the employee or employees involved to a position that has no direct contact with individuals receiving services.

(3) Temporarily suspend the involved employee or employees pending completion of an investigation.

c. The director shall immediately notify the human rights advocate and the individual's authorized representative. In no case shall notification be later than 24 hours after the receipt of the initial allegation of abuse, neglect, or exploitation.

d. In no case shall the director punish or retaliate against an employee, volunteer, consultant, or student for reporting an allegation of abuse, neglect, or exploitation to an outside entity.

e. The director shall initiate an impartial investigation within 24 hours of receiving a report of potential abuse or neglect. The investigation shall be conducted by a person trained to do investigations and who is not involved in the issues under investigation.

(1) The investigator shall make a final report to the director or the investigating authority and to the human rights advocate within 10 working days of appointment. Exceptions to this timeframe may be requested and approved by the department if submitted prior to the close of the sixth day.

(2) The director or investigating authority shall, based on the investigator's report and any other available information, decide whether the abuse, neglect or exploitation occurred. Unless otherwise provided by law, the standard for deciding whether abuse, neglect, or exploitation has occurred is preponderance of the evidence.

(3) If abuse, neglect or exploitation occurred, the director shall take any action required to protect the individual and other individuals. All actions must be documented and reported as required by 12VAC35-115-230.

(4) In all cases, the director shall provide his written decision, including actions taken as a result of the investigation, within seven working days following the completion of the investigation to the individual or the individual's authorized representative, the human rights advocate, the investigating authority, and the involved employee or employees. The decision shall be in writing and in the manner, format, and language that is most easily understood by the individual.

(5) If the individual affected by the alleged abuse, neglect, or exploitation or his authorized representative is not satisfied with the director's actions, he or his

authorized representative, or anyone acting on his behalf, may file a petition for an LHRC hearing under 12VAC35-115-180.

f. The director shall cooperate with any external investigation, including those conducted by the inspector general, the protection and advocacy agency, or other regulatory or enforcement agencies.

g. If at any time the director has reason to suspect that an individual may have been abused or neglected, the director shall immediately report this information to the appropriate local Department of Social Services (see §§ 63.2-1509 and 63.2-1606 of the Code of Virginia) and cooperate fully with any investigation that results.

h. If at any time the director has reason to suspect that the abusive, neglectful or exploitive act is a crime, the director or his designee shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that results.

4. Providers shall [ ~~notify a person the individual chooses~~ ~~afford the individual the opportunity to have an individual of his choice notified~~ ] of his general condition, location, and transfer to another facility.

## **12VAC35-115-80. Confidentiality.**

A. Each individual is entitled to have all identifying information that a provider maintains or knows about him remain confidential. Each individual has a right to give his authorization before the provider shares identifying information about him or his care unless another state law or regulation, or these regulations specifically require or permit the provider to disclose certain specific information.

B. The provider's duties.

1. Providers shall maintain the confidentiality of any information that identifies an individual. If an individual's services record pertains in whole or in part to referral, diagnosis or treatment of substance use disorders, providers shall disclose information only according to applicable federal regulations (see 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records).

2. Providers shall obtain and document in the individual's services record the individual's authorization or that of the authorized representative prior to disclosing any identifying information about him. The authorization must contain the following elements:

a. The name of the organization and the name or other specific identification of the person or persons or class of persons to whom disclosure is made;

b. A description of the nature of the information to be disclosed, the purpose of the disclosure, and an indication whether the authorization extends to the information placed in the individual's record after the authorization was given but before it expires;

- c. An indication of the effective date of the authorization and the date the authorization will expire, or the event or condition upon which it will expire; and
  - d. The signature of the individual and the date. If the authorization is signed by an authorized representative, a description of the authorized representative's authority to act.
3. Providers shall tell each individual and his authorized representative about the individual's confidentiality rights. This shall include how information can be disclosed and how others might get information about the individual without his authorization. If a disclosure is not required by law, the provider shall give strong consideration to any objections from the individual or his authorized representative in making the decision to disclose information.
4. Providers shall prevent unauthorized disclosures of information from services records and shall maintain and disclose information in a secure manner.
5. In the case of a minor, the authorization of the custodial parent or other person authorized to consent to the minor's treatment under § 54.1-2969 is required, except as provided below:
- a. Section 54.1-2969 E of the Code of Virginia permits a minor to authorize the disclosure of information related to medical or health services for a sexually transmitted or contagious disease, family planning or pregnancy, and outpatient care, treatment or rehabilitation for substance use disorders, mental illness, or emotional disturbance.
  - b. The concurrent authorization of the minor and custodial parent is required to disclose inpatient substance abuse records.
  - c. The minor and the custodial parent shall authorize the disclosure of identifying information related to the minor's inpatient psychiatric hospitalization when the minor is 14 years of age or older and has consented to the admission.
6. When providers disclose identifying information, they shall attach a statement that informs the person receiving the information that it must not be disclosed to anyone else unless the individual authorizes the disclosure or unless state law or regulation allows or requires further disclosure without authorization.
7. Providers may encourage individuals to name family members, friends, and others who may be told of their presence in the program and general condition or well-being. ~~[ Providers shall notify a person of the individual's choice of the individual's general condition, location, and transfer to another facility upon the individual's oral or written request. ]~~ Except for information governed by 42 CFR Part 2, providers may disclose to a family member, other relative, a close personal friend, or any other person identified by the individual, information that is directly

- relevant to that persons involvement with the individual's care or payment for his health care, if (i) the provider obtains the individual's agreement, (ii) the provider provides the individual with the opportunity to object to the disclosure, and (iii) the individual does not object or the provider reasonably infers for the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure. If the opportunity to agree or object cannot be provided because of the individual's incapacity or an emergency circumstance, the provider may, in the exercise of professional judgment, determine whether the disclosure is in the best interest of the individual and, if so, disclose only the information that is directly relevant to the person's involvement with the individual's health care.
8. Providers may disclose the following identifying information without authorization or violation of the individual's confidentiality, but only under the conditions specified in the following subdivisions of this subsection. Providers should always consult 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, if applicable, because these federal regulations may prohibit some of the disclosures addressed in this section.
- a. Emergencies: Providers may disclose information in an emergency to any person who needs that particular information for the purpose of preventing injury to or death of an individual or other person. The provider shall not disclose any information that is not needed for this specific purpose.
  - b. Providers or health plans: Providers may permit any full- or part-time employee, consultant, agent, or contractor of the provider to use identifying information or disclose to another provider, a health plan, the department, or a CSB, information required to give services to the individual or to get payment for the services.
  - c. Court proceedings: If the individual or someone acting for him introduces any aspect of his mental condition or services as an issue before a court, administrative agency, or medical malpractice review panel, the provider may disclose any information relevant to that issue. The provider may also disclose any records if they are properly subpoenaed, if a court orders them to be produced, or if involuntary admission or certification for admission is being proposed.
  - d. Legal counsel: Providers may disclose information to their own legal counsel or to anyone working on behalf of their legal counsel in providing representation to the provider. Providers of state-operated services may disclose information to the Office of the Attorney General or to anyone appointed by or working on behalf of that office in providing representation to the Commonwealth of Virginia.

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e. Human rights committees: Providers may disclose to the LHRC and the SHRC any information necessary for the conduct of their responsibilities under these regulations.

f. Others authorized or required by the commissioner, CSB, or private program director: Providers may disclose information to other persons if authorized or required for the following activities:

- (1) Licensing, human rights, or certification or accreditation reviews;
- (2) Hearings, reviews, appeals, or investigations under these regulations;
- (3) Evaluation of provider performance and individual outcomes (see §§ 37.2-508 and 37.2-608 of the Code of Virginia);
- (4) Statistical reporting;
- (5) Preauthorization, utilization reviews, financial and related administrative services reviews, and audits; or
- (6) Similar oversight and review activities.

g. Preadmission screening, services, and discharge planning: Providers may disclose to the department, the CSB, or to other providers information necessary to screen individuals for admission or to prepare and carry out a comprehensive individualized services or discharge plan (see § 37.2-505 of the Code of Virginia).

h. Protection and advocacy agency: Providers may disclose information to the protection and advocacy agency in accordance with that agency's legal authority under federal and state law.

i. Historical research: Providers may disclose information to persons engaging in bona fide historical research if all of the following conditions are met:

- (1) The request for historical research shall include, at a minimum, a summary of the scope and purpose of the research, a description of the product to result from the research and its expected date of completion, a rationale explaining the need to access otherwise private information, and the specific identification of the type and location of the records sought.
- (2) The commissioner, CSB executive director, or private program director has authorized the research;
- (3) The individual or individuals who are the subject of the disclosure are deceased;
- (4) There are no known living persons permitted by law to authorize the disclosure; and
- (5) The disclosure would in no way reveal the identity of any person who is not the subject of the historical research.

j. Protection of public safety: If an individual receiving services makes a specific threat to cause serious bodily injury or death to an identified or readily identifiable

person and the provider reasonably believes that the individual has the intent and the ability to carry out the threat immediately or imminently, the provider may disclose those facts necessary to alleviate the potential threat.

k. Inspector General: Providers may disclose to the Inspector General any individual services records and other information relevant to the provider's delivery of services.

l. Virginia Patient Level Data System: Providers may disclose financial and services information to Virginia Health Information as required by law (see Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia).

m. Psychotherapy notes: Providers shall obtain an individual's authorization for any disclosure of psychotherapy notes, except when disclosure is made:

- (1) For the provider's own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or improve their skills in group, joint, family or individual counseling;
- (2) To defend the provider or its employees or staff against any accusation or wrongful conduct;
- (3) In discharge of the provider's duty, in accordance with § 54.1-2400.1 B of the Code of Virginia, to take precautions to protect third parties from violent behavior or other serious harm;
- (4) As required in the course of an investigation, audit, review, or proceeding regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or
- (5) When otherwise required by law.

n. A law-enforcement official:

- (1) Pursuant to a search warrant or grand jury subpoena;
- (2) In response to their request, for the purpose of identifying or locating a suspect, fugitive, an individual required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information is disclosed:
  - (a) Name and address of the individual;
  - (b) Date and place of birth of the individual;
  - (c) Social Security number of the individual;
  - (d) Blood type of the individual;
  - (e) Date and time of treatment received by the individual;
  - (f) Date and time of death of the individual;
  - (g) Description of distinguishing physical characteristics of the individual; and
  - (h) Type of injury sustained by the individual.

(3) Regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct; or

(4) If the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises.

o. Other statutes or regulations: Providers may disclose information to the extent required or permitted by any other state or law or regulation. See also § 32.1-127.1:03 of the Code of Virginia for a list of circumstances in which records may be disclosed without authorization.

9. Upon request, the provider shall tell the individual or his authorized representative the sources of information contained in his services records and provide a written listing of disclosures of information made without authorization, except for disclosures:

- a. To employees of the department, CSB, the provider, or other providers;
- b. To carry out treatment, payment, or health care operations;
- c. That are incidental or unintentional disclosures that occur as a by-product of engaging in health care communications and practices that are already permitted or required;
- d. To an individual or his authorized representative;
- e. Pursuant to an authorization;
- f. For national security or intelligence purposes;
- g. To correctional institutions or law enforcement officials; or
- h. That were made more than six years prior to the request.

10. The provider shall include the following information in the listing of disclosures of information provided to the individual or his authorized representative under subdivision 9 of this subsection:

- a. The name of the person or organization that received the information and the address if known;
- b. A brief description of the information disclosed; and
- c. A brief statement of the purpose of the disclosure or, in lieu of such a statement, a copy of the written request for disclosure.

11. If the provider makes multiple disclosures of information to the same person or entity for a single purpose, the provider shall include the following:

- a. The information required in subdivision 10 of this subsection for the first disclosure made during the requested period;
- b. The frequency, periodicity, or number of disclosures made during the period for which the individual is requesting information; and

c. The date of the last disclosure during the time period.

12. If the provider makes a disclosure to a social service or protective services agency about an individual who the provider reasonably believes to be a victim of abuse or neglect, the provider is not required to inform the individual or his authorized representative of the disclosure if:

- a. The provider, in the exercise of professional judgment, believes that informing the individual would place the individual at risk of serious harm; or
- b. The provider would be informing the authorized representative, and the provider reasonably believes that the authorized representative is responsible for the abuse or neglect, and that informing such person would not be in the best interests of the individual.

VA.R. Doc. No. R09-2085; Filed September 26, 2012; 9:38 a.m.



## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

#### Final Regulation

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

**Title of Regulation:** 14VAC5-300. Rules Governing Credit for Reinsurance (amending 14VAC5-300-10, 14VAC5-300-30, 14VAC5-300-40, 14VAC5-300-60 through 14VAC5-300-160; adding 14VAC5-300-95, 14VAC5-300-170; repealing 14VAC5-300-20, 14VAC5-300-50).

**Statutory Authority:** §§ 12.1-13, 38.2-223, and 38.2-1316.7 of the Code of Virginia.

**Effective Date:** January 1, 2013.

**Agency Contact:** Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

**Summary:**

*The amendments incorporate revisions made by the National Association of Insurance Commissioners (NAIC) to its Credit for Reinsurance Model Regulation. The revisions provide the State Corporation Commission with the authority to (i) certify reinsurers or to recognize the certification issued by another NAIC-accredited state; (ii) evaluate a reinsurer that applies for certification and to assign a rating based on that evaluation; (iii) require that certified reinsurers post collateral in an amount that*

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*corresponds with its assigned rating, so that a United States ceding insurer is allowed full credit for the reinsurance ceded; (iv) evaluate a non-United States jurisdiction to determine if it is a "qualified jurisdiction" or choose to defer to an NAIC list of recommended qualified jurisdictions; and (v) require ceding insurers to take steps to manage their concentration risk and to diversify their reinsurance program.*

*Additional revisions to 14VAC5-300-95 A 4 clarify "catastrophic occurrence" and to 14VAC5-300-95 A 5 that clarify that both parties to a reinsurance contract must agree to an amendment before an existing reinsurance contract would fall under the new certified reinsurer requirements. Revisions to 14VAC5-300-90 E correct a citation reference and revisions to 14VAC5-300-150 add language regarding (i) an assuming insurer submitting to a court of competent jurisdiction and (ii) trust agreement requirements when the trust contains insufficient funds or is insolvent.*

*Additional changes to the repropounded version of the rules are made to 14VAC5-300-70 A 3 to provide for the filing of an electronic copy of the annual statement with the commission, and to 14VAC5-300-90 E 1 d and 14VAC5-300-95 D 3 and 4 to correct typographical errors.*

AT RICHMOND, SEPTEMBER 19, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2012-00058

Ex Parte: In the matter of  
Adopting Revisions to the Rules  
Governing Credit for Reinsurance

## ORDER ADOPTING RULES

By Order to Take Notice ("Order") entered April 3, 2012, all interested persons were ordered to take notice that subsequent to June 22, 2012, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to rules set forth in Chapter 300 of Title 14 of the Virginia Administrative Code entitled Rules Governing Credit for Reinsurance, 14 VAC 5-300-10 et seq. ("Rules"), which specifically amend the Rules at 14 VAC 5-300-10, 14 VAC 5-300-30, 14 VAC 5-300-40, 14 VAC 5-300-60, 14 VAC 5-300-70, 14 VAC 5-300-80, 14 VAC 5-300-90, 14 VAC 5-300-100, 14 VAC 5-300-110, 14 VAC 5-300-120, 14 VAC 5-300-130, 14 VAC 5-300-140, 14 VAC 5-300-150, and 14 VAC 5-300-160; propose new Rules at 14 VAC 5-300-95 and 14 VAC 5-300-170; and repeal the Rules at 14 VAC 5-300-20 and 14 VAC 5-300-50, unless on or before June 22, 2012, any person objecting to the adoption of the amendments to the Rules filed a request for a hearing with the Clerk of the Commission ("Clerk").

The Order also required all interested persons to file with the Clerk, on or before June 22, 2012, their comments in support of or in opposition to the proposed amendments to the Rules.

Allstate Insurance Company and Underwriters at Lloyd's, London timely filed comments with the Clerk to which the Commission's Bureau of Insurance ("Bureau") provided a response in the form of a Statement of Position filed with the Clerk on June 29, 2012. The Bureau also received comments from the Reinsurance Association of America, which the Bureau responded to in its Statement of Position.

As a result of these comments, the Bureau recommended that the proposed amendments to the Rules be further revised as follows:

(1) Amend the new rule at 14 VAC 5-300-95 at subsection A 4 to clarify that the deferral for posting collateral after a catastrophic event should be granted only in those instances where the catastrophic event is likely to result in significant insured losses.

(2) Amend the new rule at 14 VAC 5-300-95 at subsection A 5 to provide that the Rules do not apply retroactively unless the retroactive application is agreed to by both parties to the reinsurance contract.

(3) Amend the rule at 14 VAC 5-300-90 at subsection E to correct a citation reference.

(4) Amend the rule at 14 VAC 5-300-150 to include (1) language providing that an assuming insurer will submit to a court of competent jurisdiction, and (2) requirements for trust agreements in instances when a trust becomes insolvent.

The Bureau also recommended that the proposed amendments to the Rules and the revisions outlined above be exposed for additional comment until August 13, 2012.

On July 5, 2012, the Commission entered an Order to Take Notice of Revised Proposed Rules<sup>1</sup> in which it exposed the revised proposed amendments to the Rules for additional comments until August 13, 2012. No comments were filed regarding the revised proposed amendments to the Rules.

The Bureau has recommended technical amendments to the rule at 14 VAC 5-300-70 to provide for electronic filing of the annual statement and to the rules at 14 VAC 5-300-90 and 14 VAC 5-300-95 to correct typographical errors.

NOW THE COMMISSION, having considered the comments, the Bureau's response to the comments, the Bureau's recommendations, and the proposed amendments to the Rules, is of the opinion that the revised proposed amendments to the Rules should be adopted as amended, effective January 1, 2013.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing Credit For Reinsurance, 14 VAC 5-300-10 et seq., which specifically amend the Rules at 14 VAC 5-300-10, 14 VAC 5-300-30, 14 VAC 5-300-40, 14 VAC 5-300-60, 14 VAC 5-300-70, 14 VAC 5-300-80, 14 VAC 5-300-90, 14 VAC 5-300-100, 14 VAC 5-300-110, 14 VAC 5-300-120, 14 VAC 5-300-130, 14 VAC 5-300-140, 14 VAC 5-300-150, and 14 VAC 5-300-160; propose new Rules at 14 VAC 5-300-95 and 14 VAC 5-300-170; and repeal the Rules at 14 VAC 5-300-20 and



14 VAC 5-300-50, which are attached hereto and made a part hereof, are hereby ADOPTED effective January 1, 2013.

(2) AN ATTESTED COPY hereof, together with a copy of the adopted amended Rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the adoption of the amended Rules by mailing a copy of this Order, together with the amended Rules, to all licensed insurers, burial societies, fraternal benefit societies, health services plans, risk retention groups, home protection companies, joint underwriting associations, group self-insurance pools, and group self-insurance associations licensed by the State Corporation Commission, qualified reinsurers and certain interested parties designated by the Bureau of Insurance.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached amended Rules on the State Corporation Commission's website, <http://www.scc.virginia.gov/case>.

(4) The Bureau of Insurance shall file with the Clerk of the State Corporation Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

<sup>1</sup> Doc. Con. Cen. No. 120710179.

**14VAC5-300-10. Purpose.**

The purpose of this chapter (~~14VAC5-300-10 et seq.~~) is to set forth rules and procedural requirements which the ~~Commission~~ commission has determined are necessary to carry out the provisions of Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

**14VAC5-300-20. Severability. (Repealed.)**

~~If any provision of this chapter or its application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.~~

**14VAC5-300-30. Applicability and scope.**

This chapter (~~14VAC5-300-10 et seq.~~) shall apply to all insurers taking credit for reinsurance under the provisions of Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

**14VAC5-300-40. Definitions.**

For purposes of The following words and terms when used in this chapter (~~14VAC5-300-10 et seq.~~) shall have the following meanings unless the context clearly indicates otherwise:

"The Act" means the provisions concerning reinsurance set forth in Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

~~"Accredited reinsurer" has the meaning set forth in § 38.2-1316.1 of the Code of Virginia.~~

~~"Accredited state" means a state in which the supervising insurance official, state insurance department or regulatory agency is accredited by the National Association of Insurance Commissioners (NAIC) with respect to compliance with the NAIC Policy Statement on Financial Regulation Standards.~~

~~"Audited financial report" means and includes those items specified in 14VAC5-270-60 of this title, "Rules Governing Annual Audited Financial Reports."~~

"Beneficiary" means the entity for whose sole benefit the trust described in 14VAC5-300-120 ~~of this chapter~~, or the letter of credit described in 14VAC5-300-130 ~~of this chapter~~, has been established and any successor of the beneficiary by operation of law, including, without limitation, any receiver, conservator, rehabilitator or liquidator.

"Certified reinsurer" has the meaning set forth in § 38.2-1316.1 of the Code of Virginia.

~~"Credit" has the meaning defined in § 38.2-1316.1 of the Code of Virginia.~~

"Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. However, when such a trust is established in conjunction with a reinsurance agreement that qualifies for credit under 14VAC5-300-120 ~~of this chapter~~, the grantor shall not be an assuming insurer for which credit can be taken under § 38.2-1316.2 ~~or § 38.2-1316.3~~ of the Code of Virginia.

"Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either:

1. Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

a. Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 USCA § 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

b. Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a

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mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 USCA §§ 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 USCA § 1703; or

2. Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of items 1 a and b of this definition.

"NAIC" means the National Association of Insurance Commissioners.

"Obligations", as used in 14VAC5-300-120 B 6 of this chapter 14VAC5-300-120 A 11, means:

1. Reinsured losses and allocated loss ~~expense~~ expenses paid by the ceding company, but not recovered from the assuming insurer;
2. Reserves for reinsured losses reported and outstanding;
3. Reserves for reinsured losses incurred but not reported; and
4. Reserves for allocated reinsured loss expenses and unearned premiums.

"Promissory note" means, when used in connection with a manufactured home, a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

"Qualified United States financial institutions" has the meanings set forth in § 38.2-1316.1 of the Code of Virginia.

~~"Statutory financial statement" means financial statements filed on either a quarterly or annual basis with the supervising insurance official, insurance department or insurance regulatory agency of the assuming insurer's state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance. Any statutory financial statement required under this chapter shall be filed in accordance with the filing dates prescribed for the financial statements filed by licensed insurers pursuant to §§ 38.2-1300 and 38.2-1301 of the Code of Virginia.~~

~~"Substantially similar" standards means credit for reinsurance standards which the Commission determines equal or exceed the standards of the Act and this chapter (14VAC5-300-10 et seq.). An insurer licensed and domiciled, or entered through and licensed, in an accredited state is deemed to be subject to substantially similar standards for purposes of the Act and this chapter.~~

~~"Surplus to policyholders" (i) when applied to a domestic or foreign assuming insurer, has the meaning set forth in § 38.2-~~

~~100 of the Code of Virginia, and (ii), when applied to an alien assuming insurer, means "trusteed surplus" as defined in § 38.2-1031 of the Code of Virginia. In both instances as used in this chapter, the calculation and verification of such surplus shall be subject to the provisions of Title 38.2 of the Code of Virginia pertaining to admitted assets, investments, reserve requirements and other liabilities.~~

## ~~14VAC5-300-50. Credit for reinsurance generally. (Repealed.)~~

~~A. Except for those credits or reductions in liability allowed pursuant to § 38.2-1316.4 of the Act, a ceding insurer shall not receive reserve credits for reinsurance unless the assuming insurer meets certain financial and licensing requirements established by §§ 38.2-1316.2 and 38.2-1316.3 of the Act. The following subdivisions of this section and 14VAC5-300-60 through 14VAC5-300-90 of this chapter set forth requirements for such assuming insurers.~~

~~B. The Act also contains examination and jurisdiction submission requirements by which most assuming insurers are required to submit to the examination authority of the Commission and the limited jurisdiction of this Commonwealth. The assuming insurer may also be required to appoint the Clerk of the Commission as statutory agent for service of process in any action, suit or proceeding arising out of a reinsurance agreement for which credit is taken under the Act, and instituted by or on behalf of the ceding insurer. The following provisions shall apply whenever such submissions or appointments are required by the Act or this chapter:~~

~~1. The submissions shall be executed and filed in duplicate on forms approved by the Commission.~~

~~2. When the assuming insurer is an incorporated company, each appointment or submission shall be executed by a duly authorized officer of the corporation. When the assuming insurer is an unincorporated group of persons, such forms may be executed by a trustee or other duly appointed and authorized representative of the group. In no case shall the executing officer, trustee, or representative be affiliated with or employed by a corresponding ceding insurer.~~

~~3. A submission to limited jurisdiction and any appointment of the Clerk of the Commission as agent for service of process shall be accompanied by a current listing of ceding insurers for whom jurisdiction through courts in Virginia is acknowledged. The listing shall identify all ceding insurers domiciled in Virginia with whom reinsurance agreements are in effect. For each ceding insurer identified, the listing shall report the complete name, address, domicile, and, for those companies registered with the NAIC, the identifying NAIC number of the ceding insurer. Such listing shall be updated at least annually unless more frequent filings are requested by the Commission.~~

~~C. It is possible for a ceding insurer to take credit for a reinsurance transaction in one of two ways even if the~~

assuming company cannot satisfy the threshold financial and licensing requirements or is unwilling to make the examination and jurisdiction submissions provided for in the Act. In such instances, the controlling statute is § 38.2-1316.4 of the Act.

1. Under subdivision 1 of § 38.2-1316.4, credit may be taken if the transaction is required by law, however, the amount of credit may be restricted as provided in 14VAC5-300-100 of this chapter.

2. Under subdivision 2 of § 38.2-1316.4, credit may be taken in the form of a reduction from liability for collateralized transactions. 14VAC5-300-110 through 14VAC5-300-140 of this chapter relate to collateralized transactions, including those secured by letters of credit.

D. Regardless of whether a ceding insurer seeks credit pursuant to § 38.2-1316.2, § 38.2-1316.3 or § 38.2-1316.4 of the Act, no balance sheet adjustments can be made unless the reinsurance agreement satisfies the conditions of § 38.2-1316.5 of the Act and 14VAC5-300-150 of this chapter. Additional conditions set forth throughout this chapter can affect transactions involving trusteed funds or groups of assuming insurers.

E. The ceding insurer is responsible for determining, in advance of taking any credit for reinsurance, whether the assuming insurer is willing and able to satisfy the licensing and financial conditions, and make the examination and jurisdictional submissions provided for in § 38.2-1316.2 or § 38.2-1316.3 of the Act. If such conditions are not satisfied, or such submissions are not made in a proper and timely manner as required by this chapter, credit for reinsurance may be disallowed in the ceding insurer even though the required materials or filings may originate, by necessity or definition, with the assuming insurer.

For purposes of the Act, and except as otherwise approved by the Commission, an insurer shall not be considered "licensed" unless it is fully authorized to actively solicit and conduct its business in the appropriate jurisdiction.

F. Except as provided elsewhere in this chapter, all filings required by the Act or this chapter shall be filed (i) prior to the date of the statutory financial statement under which the ceding insurer in a given reinsurance agreement initially seeks credit according to the provisions of the Act, and (ii) on or before March 1 of each successive year in which the ceding insurer seeks credit or the assuming insurer seeks standing in this Commonwealth as an accredited reinsurer.

G. Unless an extension for the time of filing is first granted in writing, the failure to submit timely filings or to respond within 10 days to any request by the Commission for additional documents shall be considered grounds for disallowing credit and/or revoking the standing of an accredited reinsurer. Extensions may be granted for any period determined by the Commission, provided, the request for extension is in writing and is supported by a showing of good and valid cause.

**14VAC5-300-60. Credit for reinsurance; reinsurer licensed in this Commonwealth.**

Pursuant to §§ § 38.2-1316.2 A1 A 1 and 38.2-1316.3 A1 B of the Act, the ~~Commission~~ commission shall allow credit when reinsurance is ceded to an assuming insurer which is licensed to transact insurance in this Commonwealth. For purposes of this section, an insurer shall not be considered so "licensed" unless it is fully authorized to actively solicit and conduct its business in this Commonwealth and in its domiciliary state.

**14VAC5-300-70. Credit for reinsurance; accredited reinsurers.**

A. Pursuant to § 38.2-1316.2 A2 and § 38.2-1316.3 A1 A 2 of the Act, the ~~Commission~~ commission shall allow credit when reinsurance is ceded to an assuming insurer which is an accredited reinsurer as of the date of the ceding insurer's statutory financial statement.

B. An assuming insurer which satisfies the filing requirements of this section, and which maintains a surplus to policyholders in an amount not less than \$20 million shall be recognized in this Commonwealth as an accredited reinsurer.

1. Such insurer's initial request for standing as an accredited reinsurer shall be deemed granted 90 days following the Commission's receipt of documents required by subdivisions D 1 and D 2, unless the Commission specifically requests, in writing, information pursuant to subdivision D 3 of this section.

2. Any request by the Commission for additional information pursuant to subdivision D 3 of this section, shall toll the statutory provisions for automatic recognition as an accredited reinsurer.

C. An assuming insurer which fails to maintain surplus to policyholders of at least \$20 million may request recognition as an accredited reinsurer by filing, in addition to the other requirements set forth in this section, a letter of explanation as to why its surplus is less than \$20 million and justification as to why the Commission should recognize the accreditation of such assuming insurer.

1. Such insurers shall be recognized as accredited reinsurers only upon a showing of good and valid cause.

2. Such insurers' standing as accredited reinsurers may be limited to certain types of reinsurance transactions, or otherwise applicable only with regard to specified types of reinsurance contracts, such as pooling arrangements among affiliates within the same holding company system.

**D. Filing requirements:**

1. As a condition of accreditation, an accredited reinsurer shall file with the Commission:

a. Evidence of its submission to the Commission's authority to examine its books and records; and

b. Evidence of its submission to this Commonwealth's jurisdiction and appointment of the Clerk of the

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~~Commission as agent for service of process in any action, suit or proceeding instituted by or on behalf of the ceding company.~~

~~2. The following documents shall be filed prior to accreditation and annually thereafter for as long as the assuming insurer seeks standing in this Commonwealth as an accredited reinsurer:~~

~~a. A certified copy of a certificate of authority or of compliance or other evidence that it is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state.~~

~~b. A copy of its statutory financial statement, and~~

~~c. A copy of its most recent audited financial report.~~

~~3. In addition to the foregoing, the insurer shall file, upon the request of the Commission, any additional information, certifications or reports of the assuming insurer as the Commission determines are necessary to verify the licensing status or financial condition of the assuming insurer.~~

for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this Commonwealth as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer shall:

1. File a properly executed Certificate of Assuming Insurer as evidence of its submission to this Commonwealth's jurisdiction and to this Commonwealth's authority to examine its books and records;

2. File with the commission a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

3. File annually with the commission [ a an electronic ] copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

4. Maintain a surplus as regards policyholders in an amount not less than \$20 million, or obtain the affirmative approval of the commission upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

B. If the commission determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commission may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the

assuming insurer's accreditation has been revoked by the commission, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commission.

**14VAC5-300-80. Credit for reinsurance; reinsurer domiciled and licensed in another state, and neither licensed nor accredited in Virginia.**

A. Pursuant to the provisions of § 38.2-1316.2 A 3 of the Act, the Commission commission shall allow credit when a domestic insurer cedes reinsurance to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

~~1. Maintains a surplus to policyholders in an amount not less than \$20 million;~~

~~2. Is domiciled and licensed, or entered through and licensed, in a state which employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this chapter;~~

~~3. Submits to the Commission's authority to examine its books and records;~~

~~4. Submits to this Commonwealth's jurisdiction and designates the Clerk of the Commission as agent for service of process in any action, suit or proceeding instituted by or on behalf of the ceding company; and~~

~~5. Satisfies the applicable filing requirements set forth in subsection C of this section.~~

~~B. A foreign or alien ceding insurer taking credit pursuant to § 38.2-1316.3 A2 of the Act must cede reinsurance to an assuming insurer which:~~

~~1. Maintains a surplus to policyholders in an amount not less than \$20 million;~~

~~2. Is licensed and authorized to actively solicit and conduct its business in at least one state; and~~

~~3. Satisfies the applicable filing requirements set forth in subsection C of this section.~~

~~C. Filing requirements:~~

~~1. When credit is requested for a domestic ceding insurer, the Commission may require that the ceding insurer file or cause to be filed:~~

~~a. Evidence to support a finding by the Commission that the assuming insurer's state of domicile, or entry, employs standards regarding credit for reinsurance substantially similar to those set forth in the Act. Such evidence must be in a form acceptable to the Commission, and at the request of the Commission shall consist of statutes, regulations, and interpretations of the standards utilized by the state of domicile, or entry.~~

~~b. Such additional information, certifications, or reports of the assuming insurer as the Commission determines are necessary to verify the licensing status or financial condition of the assuming insurer.~~

~~2. When credit is requested for a foreign or alien ceding insurer, the Commission may require the ceding insurer to file or cause to be filed such information, certifications or reports of the assuming insurer as the Commission determines are necessary to verify the licensing status or financial condition of the assuming insurer.~~

~~3. When reinsurance is ceded by a domestic insurer and assumed pursuant to pooling arrangements among insurers in the same holding company, unless specifically required by the Commission, the \$20 million surplus to policyholder requirement shall be deemed waived. Notwithstanding this provision, the Commission may require the ceding insurer to file or cause to be filed:~~

- ~~a. A copy of the underlying pooling agreement.~~
- ~~b. Such additional information, certifications or reports of the members of the pooling arrangement as the Commission determines are necessary to verify the financial condition of the collective or individual members of the pooling arrangement.~~

for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

1. Is domiciled in (or, in the case of a United States branch of an alien assuming insurer, is entered through) a state that employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this chapter;

2. Maintains a surplus as regards policyholders in an amount not less than \$20 million; and

3. Files a properly executed Certificate of Assuming Insurer with the commission as evidence of its submission to this Commonwealth's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the commission determines equal or exceed the standards of the Act and this chapter.

**14VAC5-300-90. Credit for reinsurance; reinsurers maintaining trust funds.**

A. Pursuant to § 38.2-1316.2 A 4 ~~or § 38.2-1316.3 A 3~~ of the Act, the commission shall allow credit for reinsurance ceded to a trustee assuming insurer which, as of the date of the ceding insurer's statutory financial statement:

- 1. Maintains a trust fund and trustee surplus that complies with the provisions of § 38.2-1316.2 A 4 ~~of the Act;~~
- 2. Complies with the requirements set forth in subsections B, C and D of this section; and
- 3. Reports annually to the commission on or before June 1 of each year in which a ceding insurer seeks reserve credit

under the Act substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commission to determine the sufficiency of the trust fund. The accounting shall, among other things, set forth the balance to the trust and list the trust's investments as of the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

~~B. When credit is taken for reinsurance ceded to any trustee assuming insurer, the commission may require that the ceding insurer file or cause to be filed:~~

- ~~1. A copy of the trust agreement pertaining to the requisite trust funds along with a statement identifying and locating the specific provisions in the agreement which satisfy the form of trust requirements set forth in subsection E of this section;~~
- ~~2. Satisfactory evidence that the requisite trust funds are held in a qualified United States financial institution;~~
- ~~3. A certified statement and accounting of trustee surplus executed by a duly authorized officer or representative of the trustee assuming insurer;~~
- ~~4. A certified statement from the trustee of the trust listing the assets of the trust; and~~
- ~~5. A certified English translation for any foreign language documents filed pursuant to the Act or this chapter.~~

~~C. When credit is requested for reinsurance ceded to trustee assuming insurer which is a group including incorporated and individual unincorporated underwriters, the group shall make available to the commission annual certifications of solvency of each underwriter member of the group, prepared by the group's domiciliary regulator and its independent accountant, or if a certification is unavailable a financial statement, prepared by independent public accountants, of each underwriter member of the group.~~

~~D. When credit is requested for reinsurance ceded to a trustee assuming insurer which is a group of incorporated insurers under common administration, the group shall:~~

- ~~1. File evidence of its submission to the commission's authority to examine the books and records of any member of the group.~~
- ~~2. Certify that any member examined will bear the expense of any such examination.~~
- ~~3. Make available to the commission an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements prepared by independent public accountants of each underwriter member of the group.~~
- ~~4. If requested by the commission, file copies of annual statements for the three year period preceding the initial request for credit, or other documents satisfactory to the commission, which show that the group has continuously~~

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~~transacted an insurance business outside the United States for at least three years.~~

~~E. Form of Trust. The trust required under § 38.2-1316.2 A 4 of the Act and subdivisions A 2, A 3, B 1, and B 2 of this section shall provide that: B. The following requirements apply to the following categories of assuming insurer:~~

~~1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trustee surplus of not less than \$20 million, except as provided in subdivision 2 of this subsection.~~

~~2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.~~

~~3. a. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:~~

~~(1) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;~~

~~(2) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and~~

~~(3) In addition to these trusts, the group shall maintain a trustee surplus of which \$100 million shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.~~

~~b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commission:~~

~~(1) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or~~

~~(2) If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.~~

~~4. a. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10 billion (calculated and reported in substantially the same manner as prescribed by the NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:~~

~~(1) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;~~

~~(2) Maintain a joint trustee surplus of which \$100 million shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and~~

~~(3) File a properly executed Certificate of Assuming Insurer as evidence of the submission to this Commonwealth's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.~~

~~b. Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commission an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.~~

~~C. 1. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with~~

the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

~~1. a.~~ Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

~~2. b.~~ Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest;

~~3. c.~~ The trust and the assuming insurer shall be subject to examination as determined by the commission;

~~4. d.~~ The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

~~5. e.~~ No later than February 28 of each year the trustees of the trust (i) shall report to the commission in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end and (ii) shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next December 31.

~~F. Any amendment to the trust, required under § 38.2-1316.2 A 4 of the Act and subdivisions A 1, A 3, B 1, and B 2 of this section, shall be filed with the commission within 30 days after the effective date of the amendment.~~

2. a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

b. Reserves for losses reported and outstanding;

c. Reserves for losses incurred but not reported;

d. Reserves for allocated loss expenses; and

e. Unearned premiums.

2. For business ceded by domestic insurers authorized to write life, health, and annuity insurance:

a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

b. Aggregate reserves for accident and health policies;

c. Deposit funds and other liabilities without life or disability contingencies; and

d. Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to § 38.2-1316.2 A of the Act and this section shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in § 38.2-1316.1 of the Act, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in § 38.2-1316.1, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed 5.0% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under subdivisions 1 e, 3, 5 b, or 6 of this subsection, and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of § 38.2-1316.2 A-4 shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed, or guaranteed by:

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a. The United States or by any agency or instrumentality of the United States;

b. A state of the United States;

c. A territory, possession, or other governmental unit of the United States;

d. An agency or instrumentality of a governmental unit referred to in subdivisions 1 b and c of this subsection if the obligations shall be by law (statutory [ or ] otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this Commonwealth and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

3. Obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

4. An investment made pursuant to the provisions of subdivision 1, 2, or 3 of this subsection shall be subject to the following additional limitations:

a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed 5.0% of the assets of the trust;

b. An investment in any one mortgage-related security shall not exceed 5.0% of the assets of the trust;

c. The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust; and

d. Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subdivisions 2 a and c of this subsection, but shall not exceed 2.0% of the assets of the trust.

5. Equity interests.

a. Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(1) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 USC §§ 78 a to 78 kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this subdivision an amount exceeding 1.0% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed 1.0% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subdivision, when added to the aggregate cost of other investments in equity



interests then held pursuant to this subdivision, shall not exceed 10% of the assets in the trust;

6. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

7. Investment companies.

a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 USC § 80 a, are permissible investments if the investment company:

(1) Invests at least 90% of its assets in the types of securities that qualify as an investment under subdivision 1, 2, or 3 of this subsection or invests in securities that are determined by the commission to be substantively similar to the types of securities set forth in subdivision 1, 2, or 3 of this subsection; or

(2) Invests at least 90% of its assets in the types of equity interests that qualify as an investment under subdivision 5 a of this subsection;

b. Investments made by a trust in investment companies under this subdivision shall not exceed the following limitations:

(1) An investment in an investment company qualifying under subdivision 7 a (1) of this subsection shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust; and

(2) Investments in an investment company qualifying under subdivision 7 a (2) of this subsection shall not exceed 5.0% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subdivision 5 a of this subsection.

8. Letters of credit.

a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commission), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

F. A specific security provided to a ceding insurer by an assuming insurer pursuant to 14VAC5-300-100 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

**14VAC5-300-95. Credit for reinsurance; certified reinsurers.**

A. Pursuant to § 38.2-1316.2 B of the Act, the commission shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this Commonwealth at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commission. The security shall be in a form consistent with the provisions of § 38.2-1316.2 B and 14VAC5-300-110, 14VAC5-300-120, 14VAC5-300-130 or 14VAC5-300-140. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

<u>1. Ratings</u>	<u>Security Required</u>
<u>Secure – 1</u>	<u>0.0%</u>
<u>Secure – 2</u>	<u>10%</u>
<u>Secure – 3</u>	<u>20%</u>
<u>Secure – 4</u>	<u>50%</u>
<u>Secure – 5</u>	<u>75%</u>
<u>Vulnerable – 6</u>	<u>100%</u>

2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

3. The commission shall require the certified reinsurer to post 100%, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence that is likely to result in significant insured losses, as recognized by the commission. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related

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specifically to the catastrophic occurrence will be included in the deferral:

- a. Line 1: Fire
- b. Line 2: Allied Lines
- c. Line 3: Farmowners multiple peril
- d. Line 4: Homeowners multiple peril
- e. Line 5: Commercial multiple peril
- f. Line 9: Inland marine
- g. Line 12: Earthquake
- h. Line 21: Auto physical damage

5. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended by mutual agreement of the parties to the reinsurance contract after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

## B. Certification procedure.

1. The commission shall post notice on the Bureau of Insurance's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commission may not take final action on the application until at least 30 days after posting the notice required by this subdivision.

2. The commission shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection A of this section. The commission shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

- a. The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commission pursuant to subsection C of this section.
- b. The assuming insurer shall maintain capital and surplus, or its equivalent, of no less than \$250 million

calculated in accordance with subdivision 4 h of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250 million and a central fund containing a balance of at least \$250 million.

c. The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commission. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commission in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (1) Standard & Poor's;
- (2) Moody's Investors Service;
- (3) Fitch Ratings;
- (4) A.M. Best Company; or
- (5) Any other nationally recognized statistical rating organization.

d. The certified reinsurer shall comply with any other requirements reasonably imposed by the commission.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commission shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

<u>Ratings</u>	<u>Best</u>	<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch</u>
<u>Secure – 1</u>	<u>A++</u>	<u>AAA</u>	<u>Aaa</u>	<u>AAA</u>
<u>Secure – 2</u>	<u>A+</u>	<u>AA+, AA, AA-</u>	<u>Aa1, Aa2, Aa3</u>	<u>AA+, AA, AA-</u>
<u>Secure – 3</u>	<u>A</u>	<u>A+, A</u>	<u>A1, A2</u>	<u>A+, A</u>

Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB- B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB- B+, B, B-, CCC+, CC, CCC-, DD

b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

c. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC annual statement blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

d. For certified reinsurers not domiciled in the United States, a review annually of the Assumed Reinsurance Form CR-F (for property/casualty reinsurers) or the Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities Form CR-S (for life and health reinsurers) of this chapter;

e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

f. Regulatory actions against the certified reinsurer;

g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision 4 h of this subsection;

h. For certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the commission will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commission shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

k. Any other information deemed relevant by the commission.

5. Based on the analysis conducted under subdivision 4 e of this subsection of a certified reinsurer's reputation for prompt payment of claims, the commission may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commission shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subdivision 4 a of this subsection if the commission finds that:

a. More than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and that exceed \$100,000 for each cedent; or

b. The aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by 90 days or more exceeds \$50 million.

6. The assuming insurer shall submit a properly executed Certificate of Certified Reinsurer as evidence of its submission to the jurisdiction of this Commonwealth, appointment of the commission as an agent for service of process in this Commonwealth, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commission shall not certify any assuming insurer that is domiciled in a jurisdiction that the commission has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

7. The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commission, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that are not otherwise public information subject to disclosure shall be exempted from disclosure under §§ 38.2-221.3 and 38.2-1306.1 of the Act and shall be withheld from public disclosure. The applicable information filing requirements are, as follows:

a. Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

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b. Annually, Form CR-F or CR-S, as applicable;

c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision 7 d of this subsection;

d. Annually, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;

e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

g. Any other information that the commission may reasonably require.

## 8. Change in rating or revocation of certification.

a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commission shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subdivision 4 a of this subsection.

b. The commission shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commission to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

c. If the rating of a certified reinsurer is upgraded by the commission, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commission shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commission, the commission shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

d. Upon revocation of the certification of a certified reinsurer by the commission, the assuming insurer shall be required to post security in accordance with 14VAC5-300-110 in order for the ceding insurer to continue to

take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with 14VAC5-300-90, the commission may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commission to be at high risk of uncollectibility.

## C. Qualified jurisdictions.

1. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commission determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commission shall publish notice and evidence of such recognition in an appropriate manner. The commission may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commission shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commission shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commission as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with the commission with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commission, include but are not limited to the following:

a. The framework under which the assuming insurer is regulated.

b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

e. The domiciliary regulator's willingness to cooperate with United States regulators in general and the commission in particular.

f. The history of performance by assuming insurers in the domiciliary jurisdiction.

g. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commission has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.

h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

i. Any other matters deemed relevant by the commission.

3. A list of qualified jurisdictions shall be published through the NAIC committee process. The commission shall consider this list in determining qualified jurisdictions. If the commission approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commission shall provide thoroughly documented justification with respect to the criteria provided under subdivisions 2 a through i of this subsection.

4. United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of certification issued by an NAIC accredited jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commission has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Certificate of Certified Reinsurer and such additional information as the commission requires. The assuming insurer shall be considered to be a certified reinsurer in this Commonwealth.

2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this Commonwealth as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commission of any change in its status or rating within 10 days after receiving notice of the change.

3. The commission may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subdivision B [ 7 8 ] a of this section.

4. The commission may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commission suspends

or revokes the certified reinsurer's certification in accordance with subdivision B [ 7 8 ] b of this section, the certified reinsurer's certification shall remain in good standing in this Commonwealth for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this Commonwealth.

E. Mandatory funding clause. In addition to the clauses required under 14VAC5-300-150, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The commission shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

**14VAC5-300-100. Credit for reinsurance required by law.**

When an assuming insurer fails to meet the requirements of § 38.2-1316.2 ~~or § 38.2-1316.3~~ of the Act, the ceding insurer may take credit pursuant to subdivision 1 of § 38.2-1316.4 of the Act but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government.

**14VAC5-300-110. Reduction Asset or reduction from liability for reinsurance ceded to an assuming insurer not meeting the requirements of § 38.2-1316.2 or 38.2-1316.3 14VAC5-300-60 through 14VAC5-300-100.**

~~A. A ceding insurer taking credit pursuant to subdivision 2 of § 38.2-1316.4 of the Act for reinsurance ceded shall be allowed such reduction from liability only when the requirements of subdivision 2 of § 38.2-1316.4 of the Act and 14VAC5-300-120, 14VAC5-300-130 or 14VAC5-300-140 of this chapter are met.~~

~~B. In determining the appropriateness of the proposed security arrangement or accounting treatment, the Commission may consider the guidelines and other criteria as set forth in the NAIC Examiners' Handbook, NAIC practice and procedure manuals, or annual statement instructions in effect when the Commission exercises discretion under the Act or this chapter (14VAC5-300-10 et seq.).~~ A. Pursuant to § 38.2-1316.4 of the Act, the commission shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 38.2-1316.2 of the Act in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations

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under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in § 38.2-1316.1 of the Act. This security may be in the form of any of the following:

(1) Cash;

(2) Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the NAIC Securities Valuation Office, and qualifying as admitted assets;

(3) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in § 38.2-1316.1 of the Act, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the commission.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of 14VAC5-300-150 and the applicable portions of 14VAC5-300-120, 14VAC5-300-130, or 14VAC5-300-140 of this chapter have been satisfied.

## **14VAC5-300-120. Trust agreements qualified under 14VAC5-300-110 and subdivision 2 of § 38.2-1316.4 of the Act.**

A. When a ceding insurer takes credit pursuant to subdivision 2 of § 38.2-1316.4 of the Act for reinsurance transactions secured by funds held in trust, the underlying trust agreement shall meet the following conditions:

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution, as those terms are defined in this chapter ~~(14VAC5-300-10 et seq.)~~.

2. The trust agreement shall create a trust account into which assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States, ~~except that a bank may apply for the Commission's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this section. If the Commission approves the use of such foreign branch office~~

~~as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in subdivision A 4 of this section must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.~~

4. The trust agreement shall provide that:

a. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

b. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

c. It is not subject to any conditions or qualifications outside of the trust agreement; and

d. It shall not contain references to any other agreements or documents except as provided for under ~~subdivision 9~~ subdivisions 11 and 12 of this subsection;

~~e. At least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary; and~~

~~f. The trustee shall be liable for its own negligence, willful misconduct or lack of good faith.~~

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to:

a. Receive assets and hold all assets in a safe place;

b. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

c. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

d. Notify the grantor and the beneficiary, within 10 days, of any deposits to or withdrawals from the trust account;

e. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of such assets to such beneficiary; and

f. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

8. 9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commission), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

9. The reinsurance agreement entered into in conjunction with such a trust agreement may, but need not, contain provisions required by subdivision C 1 b of this section, so long as these required conditions are included in the trust agreement.

10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence or willful misconduct, or both.

11. Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days

prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in § 38.2-1316.1 of the Act apart from its general assets, in trust for such uses and purposes specified in subdivisions 11 a and b of this subsection as may remain executory after such withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this chapter, when a trust agreement is established to meet the requirements of 14VAC5-300-110 in conjunction with a reinsurance agreement covering life, annuities or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

a. To pay or reimburse the ceding insurer for:

(1) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(2) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

b. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

c. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in subdivisions 12 a and b of this subsection as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement shall stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and

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payable in United States dollars, and investments permitted by the Code of Virginia or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed 5.0% of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and health risks, then the provisions required by this subdivision shall be included in the reinsurance agreement.

B. When a ceding insurer seeks credit pursuant to subdivision 2 of § 38.2-1316.4 ~~of the Aet~~ for reinsurance transactions secured by funds held in trust, the underlying trust agreement may contain the following provisions subject to all conditions set forth:

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest, and accept substitutes of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest such funds and to accept such substitutions which the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subdivision C 1 b of this section.

4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

~~6. Notwithstanding other provisions of this chapter, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this chapter, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:~~

~~a. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;~~

~~b. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102% of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or~~

~~c. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to such termination date, to withdraw amounts equal to such obligations and deposit such amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in this chapter apart from its general assets, in trust for such uses and purposes specified in subdivisions a and b above as may remain executory after such withdrawal and for any period after such termination date.~~

C. Conditions applicable to reinsurance agreements entered into by a ceding insurer which takes credit pursuant to subdivision 2 of § 38.2-1316.4 ~~of the Aet~~ for reinsurance transactions secured by funds held in trust.

1. The reinsurance agreement may contain provisions that:

a. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what such agreement is to cover;

~~b. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by § 38.2-1316.4 of the Code of Virginia or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary and, provided, further, that the amount of credit taken or reduction from~~



liability allowed shall not, as a result of this subdivision, exceed the amount of credit or reduction from liability allowed a domestic insurer pursuant to Title 38.2. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then such trust agreement may contain the provisions required by this subdivision in lieu of including such provisions in the reinsurance agreement.

~~e. b.~~ Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments, ~~or~~ endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate any such assets without consent or signature from the assuming insurer or any other entity;

~~e. c.~~ Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

~~e. d.~~ Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitations any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

- (1) To pay or reimburse the ceding insurer for ~~the~~:
  - (a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;
  - (2) ~~To reimburse the ceding insurer for the~~ (b) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; and
  - (3) ~~To fund an account with the ceding insurer in an amount at least equal to the deduction for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement, which account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses, and unearned premium reserves; and~~

~~(4) To any (c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer claims are due under the reinsurance agreement; or~~

(2) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

2. The reinsurance agreement also may contain provisions that:

~~f. a.~~ Give the assuming insurer the right to seek approval (which shall not be unreasonably or arbitrarily withheld) from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer such assets to the assuming insurer, provided:

(1) The assuming insurer shall, at the time of such withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or

(2) After such withdrawal and transfer, the current fair market value of the trust account is no less than 102% of the required amount.

~~g. b.~~ Provide for: ~~(1) The the return of any amount withdrawn in excess of the actual amounts required for subdivisions C 1 e (1), (2), and (3), or in the case of subdivision C 1 e (4), any amounts that are subsequently determined not to be due and; (2) Interest subdivision C 1 d of this section, and for interest payments, at a rate not in excess of the prime rate of interest; on the such amounts held pursuant to subdivision C 1 e (3);~~

~~h. c.~~ Permit the award by any arbitration panel or court of competent jurisdiction of:

- (1) Interest at a rate different from that provided in subdivision ~~g (2) above,~~ 2 b of this subsection;
- (2) Court or arbitration costs;
- (3) Attorney's fees; and
- (4) Any other reasonable expenses.

~~2. D.~~ With regard to financial reporting, a trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the ~~Commission~~ commission in compliance with the provisions of this chapter when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations, as defined in this chapter (14VAC5-300-10 et seq.), under the

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reinsurance agreement that the trust account was established to secure;

~~3. E.~~ With regard to existing agreements and notwithstanding the effective date of this chapter ~~[effective March 1, 1992]~~, any trust agreement or underlying reinsurance agreement in existence prior to ~~January 1, 1992~~ July 1, 2012, will continue to be acceptable until ~~the first occurring anniversary or renewal date after December 31, 1991~~ January 1, 2013, at which time the agreements will have to be in full compliance with this chapter for the trust agreement to be acceptable; ~~and.~~

4. ~~F.~~ The failure of any trust agreement to specifically identify the beneficiary as defined in 14VAC5-300-40 of this chapter shall not be construed to affect any actions or rights which the ~~Commission~~ commission may take or possess pursuant to the provisions of the laws of this Commonwealth.

## **14VAC5-300-130. Letters of credit qualifying for § 38.2-1316.4 credit under 14VAC5-300-110.**

A. The letter of credit ~~must~~ shall be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in § 38.2-1316.1 of the Act. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subdivision H 1 of this section. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator). It cannot be conditioned on the delivery of any other documents or materials. It shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented.

B. The letter of credit must be irrevocable. It must provide that it cannot be modified, except for an increase in face amount, or revoked without the consent of the beneficiary, once the beneficiary is established.

~~C. The letter of credit must be unconditional. It shall indicate specifically that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain preference to any other agreements, documents or entities, except as provided in subdivision K 1 of this section.~~

~~D. B.~~ The heading of the letter of credit may include a boxed section which contains the name of the applicant and other

appropriate notations to provide a reference for such letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

~~E. C.~~ The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

~~F. D.~~ The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" ~~which automatically renews the letter of credit for a time certain should the issuer of the same fail to affirmatively signify its intention to non-renew upon expiry and which that~~ prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than 30 days notice prior to ~~expiry~~ expiration date for nonrenewal.

~~G. E.~~ The letter of credit shall state whether it is subject to and governed by the laws of this Commonwealth, the ceding insurer's state of domicile or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (~~Publication 500~~) Publication 600 (UCP 600) or International Standby Practices ISP98 of the International Chamber of Commerce, Publication 590, or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

~~H. F.~~ If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, then the letter of credit shall specifically address and ~~make provision~~ provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication 500, or any successor publication, occur.

~~I. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to the applicable definitions contained within § 38.2-1316.1 of the Act.~~

~~J. When a G. If the letter of credit, is issued by a financial institution not recognized by the Act and this chapter as a qualified United States financial institution authorized to issue letters of credit, is subsequently confirmed by other than a qualified United States financial institution, as described in subsection I A of this section, then the following additional requirements shall be met:~~

1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. The "evergreen clause" shall provide for ~~a period of no less than 30 days'~~ days notice prior to ~~expiry~~ the expiration date for nonrenewal.

~~K. H.~~ Reinsurance agreement provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

a. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

b. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other ~~provision provisions~~ in such the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(1) To pay or reimburse the ceding insurer for ~~the~~:

(a) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(2) To reimburse the ceding insurer for the (b) The assuming insurer's share under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(3) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

(4) To pay any (c) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer ~~claims are due under the reinsurance agreement.~~

(2) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in subdivision 1 b (1) of this subsection as may remain after withdrawal and for any period after the termination date.

c. All of the foregoing provisions of subdivision 1 of this subsection should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in subdivision 1 of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

a. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subdivision 1 b (3) of this subsection; ~~and/or or~~

b. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, ~~in the case of subdivision 1 b (4) of this subsection,~~ any amounts that are subsequently determined not to be due.

~~3. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then such reinsurance agreement may in lieu of subdivision 1 b of this subsection, require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.~~

~~L. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the Commission unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement.~~

**14VAC5-300-140. Other security.**

The Commission commission may allow credit pursuant to subdivision 2 d of § 38.2-1316.4 of the Act for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

**14VAC5-300-150. Reinsurance contract.**

A. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of 14VAC5-300-60, 14VAC5-300-70, 14VAC5-300-80, 14VAC5-300-90, and 14VAC5 300 110 of this chapter 14VAC5-300-95, or 14VAC5-300-100 or otherwise in compliance with § 38.2-1316.2 of the Act after the adoption of this chapter (14VAC5 300 10 et seq.) unless the reinsurance agreement:

1. Includes a proper insolvency clauses pursuant to subdivisions A 1 through A 3 of § 38.2-1316.5 of the Act; and clause that stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company;

2. Includes a provision ~~pursuant to subdivision A 4 of § 38.2-1316.5 of the Act § 38.2-1316.2~~ whereby the assuming insurer, if an unauthorized assuming insurer

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entering into a transaction with a domestic insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decisions of such court or panel; and

3. Includes a proper reinsurance intermediary clause, if applicable, that stipulates that the credit risk for the intermediary is carried by the assuming insurer.

B. If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this Commonwealth, the credit permitted pursuant to § 38.2-1316.2 A 3, A 4, and E shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the commission or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

2. This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

C. If the assuming insurer does not meet the requirements of § 38.2-1316.2 A 1, 2, or 3, the credit permitted by § 38.2-1316.2 A 4 or B shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

1. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by § 38.2-1316.2 A 4, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

2. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which

the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

3. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

4. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

## **14VAC5-300-160. Contracts affected.**

All new and renewal reinsurance transactions entered into after December 31, ~~1994~~ 2012, shall conform to the requirements of the Act and this chapter if credit is to be given to the ceding insurer for such reinsurance. Unless otherwise provided in this chapter, credits for cessions under reinsurance agreements in force on July 1, 2012, or commenced within six months thereafter, shall be governed by the requirements for such credits in effect on June 30, 2012.

## **14VAC5-300-170. Severability.**

If any provision in this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall not be affected thereby.

**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 (14VAC5-300)

[Certificate of Assuming Insurer - Year Ended December 31, 2012, R05 \[ ~~\(3/42\)~~ \(09/12\) \] \(eff. 01/13\).](#)

[Certificate of Certified Reinsurer - Year Ended December 31, 2012, R15\(03/12\) \(eff. 01/13\).](#)

[Schedule S, Part 1 - Part 6, 1994-2011 National Association of Insurance Commissioners \(eff. 01/13\).](#)

[Schedule F, Part 1 - Part 8, 1994-2011 National Association of Insurance Commissioners \(eff. 01/13\).](#)

[Form CR-F - Part 1 - Part 2, 2011 National Association of Insurance Commissioners \(eff. 01/13\).](#)

[Form CR-S - Part 1 - Part 3, 2011 National Association of Insurance Commissioners \(eff. 01/13\).](#)

DOCUMENTS INCORPORATED BY REFERENCE  
(14VAC5-300-9999)

[NAIC Policy Statement on Financial Regulation Standards, 2012, National Association of Insurance Commissioners.](#)

[NAIC Annual Statement Instructions, 2011 Life Annual Statement Instructions, September 15, 2011, National Association of Insurance Commissioners and the Center for Insurance Policy and Research.](#)

[NAIC Annual Statement Instructions, 2011 Property/Casualty Annual Statement Instructions, September 15, 2011, National Association of Insurance Commissioners and the Center for Insurance Policy and Research.](#)

[NAIC Accounting Practices & Procedures Manual, Volumes I, II, III, March 2011, National Association of Insurance Commissioners.](#)

[ICC Uniform Customs and Practice for Documentary Credits \(UCP 500\), 1993, International Chamber of Commerce.](#)

[ICC Uniform Customs and Practice for Documentary Credits \(UCP 600\), 2007, International Chamber of Commerce.](#)

[International Standby Practices ISP98, 1999, The Institute of International Banking Law and Practice, Inc.](#)

[Purposes and Procedures Manual of the NAIC Securities Valuation Office - Effective for Statements Ending December 31, 2011, Volume/Issue 11/01, 2011, National Association of Insurance Commissioners.](#)

VA.R. Doc. No. R12-3115; Filed September 24, 2012, 5:06 p.m.



## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.1030).

**Statutory Authority:** § 40.1-22 of the Code of Virginia.

**Effective Date:** January 1, 2013.

**Agency Contact:** John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219,

telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email [john.crisanti@doli.virginia.gov](mailto:john.crisanti@doli.virginia.gov).

**Summary:**

*Federal OSHA has made a technical amendment to its Bloodborne Pathogens Standard by moving the paragraph on sharps injury log requirements from paragraph (i), entitled "Dates," to paragraph (h), entitled "Recordkeeping." This action adopts this amendment into Virginia's general industry standards.*

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

**Statement of Final Agency Action:** On September 12, 2012, the Safety and Health Codes Board adopted the Corrections and Technical Amendment to federal OSHA's final rule for the Bloodborne Pathogens Standard, § 1910.1030, as published in 77 FR 19933 through 77 FR 19934 on April 3, 2012, with an effective date of January 1, 2013.

**Federal Terms and State Equivalents:** When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
April 3, 2012	January 1, 2013

VA.R. Doc. No. R13-3408; Filed September 28, 2012, 2:41 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** 16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.217, Appendix C to 16VAC25-90-1910.134).

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## 16VAC25-175. Federal Identical Construction Industry Standards (adding Appendix A to Subpart L of Part 1926).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

### Summary:

*Federal OSHA has corrected the medical evaluation questionnaire in Appendix C of its Respiratory Protection Standard, § 1910.134, by removing the term "fits" in a question. Also, it has corrected its Mechanical Power Presses Standard for General Industry, § 1910.217, by restoring requirements that were removed inadvertently from the regulatory text. The final revision to Subpart L of Scaffold Standards for Construction, Part 1926, corrects a cross reference made in two paragraphs in Appendix A. This action incorporates these changes into the Virginia general industry standards and construction industry standards.*

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On September 12, 2012, the Safety and Health Codes Board adopted federal OSHA's Corrections and Technical Amendments to Multiple Standards as published in 77 FR 46948 through 77 FR 46950 on August 7, 2012, with an effective date of January 1, 2013.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards and Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
August 7, 2012	January 1, 2013

V.A.R. Doc. No. R13-3409; Filed September 28, 2012, 2:43 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.106, 16VAC25-90-1910.107, 16VAC25-90-1910.119, 16VAC25-90-1910.120, 16VAC25-90-1910.123, 16VAC25-90-1910.124, 16VAC25-90-1910.125, 16VAC25-90-1910.252, 16VAC25-90-1910.1001, 16VAC25-90-1910.1003, 16VAC25-90-1910.1017, 16VAC25-90-1910.1018, 16VAC25-90-1910.1025, 16VAC25-90-1910.1026, 16VAC25-100-1910.1027, 16VAC25-90-1910.1028, 16VAC25-90-1910.1029, 16VAC25-90-1910.1043, 16VAC25-90-1910.1044, 16VAC25-90-1910.1045, 16VAC25-90-1910.1047, 16VAC25-90-1910.1048, 16VAC25-90-1910.1050, 16VAC25-90-1910.1051, 16VAC25-90-1910.1052, 16VAC25-90-1910.1200, 16VAC25-90-1910.1450).

16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-100-1915.1001, 16VAC25-100-1915.1026).

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.60, 16VAC25-175-1926.62, 16VAC25-175-1926.64, 16VAC25-175-1926.65, 16VAC25-175-1926.152, 16VAC25-175-1926.155, 16VAC25-175-1926.1101, 16VAC25-175-1926.1126, 16VAC25-175-1926.1127).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: January 1, 2013.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

### Summary:

*In this final rule, federal OSHA has modified its Hazard Communication Standard (HAZCOM) in General Industry, 29 CFR 1910; Construction, 29 CFR 1926; and Shipyard Employment, 29 CFR 1915, which contain hazard classification and communication provisions, to be internally consistent and aligned with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals (GHS) and enhance worker safety and facilitate international trade. The modifications to the standard include: revised criteria for classification of*

chemical hazards; revised labeling provisions that include requirements for use of standardized signal words, pictograms, hazard statements, and precautionary statements; a specified format for safety data sheets; and related revisions to definitions of terms used in the standard and requirements for employee training on labels and safety data sheets.

Federal OSHA has also modified provisions of other standards, including standards for flammable and combustible liquids for both General Industry and Construction, §§ 1910.106 and 1926.152, respectively, to align the requirements of the standards with the GHS hazard categories for flammable liquids.

Modifications to the Process Safety Management of Highly Hazardous Chemicals standard, § 1910.119, will ensure that the scope of the standard is not changed by the revisions to the HAZCOM. In addition, modifications have been made to most of OSHA's substance-specific health standards to ensure that requirements for signs and labels and safety data sheets (SDSs) are consistent with the modified HAZCOM.

This action incorporates these changes into the Virginia standards for general industry, construction, and shipyard employment. Like federal OSHA, VOSH is seeking to use the extended phase-in period for this final rule with the same federal date schedule for implementation so that the additional time granted to manufacturers, distributors, and users of chemicals will serve to reduce the transitional costs associated with this rule.

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards), 29 CFR 1915 (Shipyard Employment Standards), and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

**Statement of Final Agency Action:** On September 12, 2012, the Safety and Health Codes Board adopted federal OSHA's Final Rule for the Hazard Communication Standard, § 1910.1200, and Other Related Standards in Parts 1910, 1915, and 1926 with the exception of § 1910.6 (Incorporation by Reference), as published in 77 FR 17573 through 77 FR 17896 on March 26, 2012, with an effective date of January 1, 2013.

**Federal Terms and State Equivalents:** When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards, Shipyard Employment Standards, and Construction Industry Standards are applied to the

Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
May 25, 2012	January 1, 2013

VA.R. Doc. No. R13-3411; Filed September 28, 2012, 2:45 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.135).**

**16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-100-1915.155).**

**16VAC25-120. Federal Identical Marine Terminals Standards (amending 16VAC25-120-1917.93).**

**16VAC25-130. Federal Identical Longshoring Standards for Hazard Communications (amending 16VAC25-130-1918.103).**

**16VAC25-175. Federal Identical Construction Industry Standards (adding 16VAC25-175-1926.100).**

**Statutory Authority:** § 40.1-22 of the Code of Virginia.

**Effective Date:** January 1, 2013.

**Agency Contact:** John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

**Summary:**

*On June 22, 2012, federal OSHA issued this Direct Final Rule to revise the personal protective equipment (PPE) sections of its General Industry, Shipyard Employment, Longshoring, and Marine Terminals standards regarding requirements for head protection, along with an identical proposed rule, at 77 FR 37617. OSHA updated the references in §§ 1910.135(b)(1), 1915.155(b)(1), 1917.93(b)(1), and 1918.103(b)(1) to recognize the 2009 edition of the American National Standard for Industrial Head Protection (ANSI Z89.1). The provisions in the 2009 edition permit optional testing for helmets worn in the*

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backwards position ("reverse wearing"), optional testing for helmets at colder temperatures than provided in previous editions, and optional testing for the high-visibility coloring of helmets. Additionally, changes in the 2009 edition include: (1) removing the definition of "cap" and "hat" and inserting the definitions of "manufacturer" and "test plaque" in the 2009 edition; (2) permitting the testing facility to determine an appropriate size of the headform if the manufacturer did not specify the size; (3) requiring orientation of test samples in the normal wearing position when conducting various test procedures; and (4) removing vertical guard rails from the lists of necessary components for specified test equipment.

The 2009 revision to the General Industry and Maritime Industry personal protective equipment standards, however, did not address the construction standards requiring personal protective equipment. Therefore, the construction standards at § 1926.100 (b) and (c) still required compliance with the older ANSI Z89.1-1969 and ANSI Z89.2-1971, respectively. To bring the construction standard up to date and ensure consistency across all of its standards, federal OSHA amended § 1926.100 to permit compliance with ANSI Z89.1-1969 and ANSI Z89.2-1971, which set forth requirements regarding different types of helmets now addressed in ANSI Z89.1, and replaced these outdated head protection references with the same three most recent editions of ANSI Z89.1, referenced in the general industry and maritime industry standards: ANSI Z89.1-1997, ANSI Z89.1-2003, or ANSI Z89.1-2009.

The 2009 edition defines Type I and Type II helmets by the area of the head to which the helmets afford protection, rather than by whether the helmets have a brim. It also renames the classes of helmets tested for protection against electrical hazards (i.e., classes G, E, and C instead of A, B, and C), although it still bases helmet classification on the capacity of the helmet to protect employees from electrical hazards. In addition, the 2009 edition of ANSI Z89.1 eliminates a fourth class of helmets used in firefighting. Many requirements included in the 1969 and 1971 editions, such as requirements specifying the type of material manufacturers must use when making different components and specifications regarding helmet accessories, have been eliminated in the 2009 edition. Most importantly, ANSI revised the performance requirements and test methods. The 2009 edition includes fundamental updates such as more and different types of test methods and the use of different equipment for performing these test methods.

Additionally, on July 23, 2012, federal OSHA published a correction to the Direct Final Rule for Updating OSHA Construction Standards Based on National Consensus Standards; Head Protection at 77 FR 42988. In this correction to the Direct Final Rule, OSHA corrected instruction number 16 of the Direct Final Rule (77 FR 37600) with respect to the Construction Industry head

protection standards to eliminate confusion resulting from a drafting error in § 1926.100. The original instruction number 16 stated that § 1926.100 was amended by adding paragraph (b)(1) through (b)(3) and removed paragraph (c). The corrected instruction number 16 states that § 1926.100 was amended by removing paragraph (c) and revising paragraph (b).

This action incorporates these changes into the Virginia general industry, shipyard employment, marine terminals, longshoring, and construction industry standards.

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards), 29 CFR 1915 (Shipyard Employment Standards), 29 CFR 1917 (Marine Terminals Standards), 29 CFR 1918 (Safety and Health Regulations for Longshoring), and 29 CFR Part 1926 (Construction Industry Standards) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason these documents will not be printed in the Virginia Register of Regulations. A copy of each document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

**Statement of Final Agency Action:** On September 12, 2012, the Safety and Health Codes Board adopted federal OSHA's Direct Final Rule for Updating OSHA Standards for Head Protection and the Correction to the Direct Final Rule, as published in 77 FR 37587 through 77 FR 37600 on June 22, 2012, and in 77 FR 42988 through 77 FR 42989 on July 23, 2012, respectively, with an effective date of January 1, 2013.

**Federal Terms and State Equivalents:** When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards and Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
September 20, 2012	January 1, 2013

VA.R. Doc. No. R13-3412; Filed September 28, 2012, 2:46 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 Safety and Health Codes Board



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

**Titles of Regulations:** 16VAC25-175. **Federal Identical Construction Industry Standards (amending 6VAC25-175-1926.800, 16VAC25-175-1926.856, 16VAC25-175-1926.858).**

**Statutory Authority:** § 40.1-22 of the Code of Virginia.

**Effective Date:** January 1, 2013.

**Agency Contact:** John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

**Summary:**

*On August 17, 2012, federal OSHA issued a Direct Final Rule, along with a companion notice of proposed rulemaking at 77 FR 49741, that applies the requirements of the August 2010 Final Rule for Cranes and Derricks in Construction to demolition work and underground construction. This Direct Final Rule has applied the same crane rules to underground construction and demolition that were already being used by other construction sectors and has streamlined federal OSHA's standards by eliminating the separate Cranes and Derricks Standard currently used for underground and demolition work.*

*The Direct Final Rule also corrected several errors introduced in the 2010 rulemaking. To cover all construction work under Subpart CC and to correct errors, federal OSHA has amended (i) §§ 1926.856(c) and 1926.858(b) by replacing the requirements to comply with Subpart DD with requirements to comply with Subpart CC and (ii) § 1926.858(b) by reinstating the requirement to comply with Subpart N as well.*

*Also, federal OSHA has amended § 1926.800(t) to extend Subpart CC to underground construction and to resolve the technical errors set forth in that section. Federal OSHA has amended the introductory paragraph of § 1926.800(t) to restore the provision allowing employers to use cranes to hoist personnel for routine access to the underground worksites via a shaft without the need to show that conventional means of access are more hazardous or impossible for this purpose. This amendment excepts routine access of employees to an underground worksite via a shaft from the requirements of § 1926.1431(a), requirements that are virtually identical to the requirements of § 1926.550(g)(2). Federal OSHA has also restored § 1926.800(t)(1) through (4) and corrected three minor grammatical errors that appeared in the text of paragraphs § 1926.800(t)(3)(vi), (t)(4)(iii), and (t)(4)(iv) as previously published in the Code of Federal Regulations.*

*This action incorporates these changes into the Virginia construction industry standards.*

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1926 (Construction Industry Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

**Statement of Final Agency Action:** On September 12, 2012, the Safety and Health Codes Board adopted federal OSHA's Direct Final Rule for Cranes and Derricks in Construction; Demolition and Underground Construction, as published in 77 FR 49722 through 77 FR 49730 on August 17, 2012, with an effective date of January 1, 2013.

**Federal Terms and State Equivalents:** When the regulations as set forth in the revised final rule for Construction Industry Standards is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
November 15, 2012	January 1, 2013

VA.R. Doc. No. R13-3410; Filed September 28, 2012, 2:48 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** 16VAC25-175. **Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.251).**

**Statutory Authority:** § 40.1-22 of the Code of Virginia.

**Effective Date:** January 1, 2013.

**Agency Contact:** John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

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## Summary:

*In the final rule for OSHA's Standards Improvement Project - Phase III (June 8, 2011), federal OSHA stated that it was amending its standards regulating slings for general industry, shipyard employment, and construction by removing outdated tables that specify safe working loads and revising other provisions that referenced the outdated tables. In replacing these tables, federal OSHA added requirements that prohibit employers from loading slings in excess of the recommended safe working load prescribed on identification markings located on or attached to each sling; these requirements also prohibit the use of slings that do not have such markings. Although federal OSHA removed the load-capacity tables for slings from several standards, it failed to include in the regulatory text provisions to remove the tables in § 1926.251 (Construction; tables H-1 and H-3 through H-19) and redesignate Table H-2 to H-1 and Table H-20 to H-2. In this action, federal OSHA amended § 1926.251 by removing most of the existing rated capacity tables (H-1 and H-3 through H-19), redesignating Table H-2 as Table H-1 and Table H-20 as Table H-2, and revising paragraphs (b)(5) and (c)(5) to indicate the new table number. This action incorporates these changes into the Virginia construction standards.*

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1926 (Construction Industry Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

**Statement of Final Agency Action:** On September 12, 2012, the Safety and Health Codes Board adopted the Correction and Technical Amendment to federal OSHA's Final Rule for Rigging Equipment for Material Handling Construction Standard, § 1926.251, as published in 77 FR 23117 through 77 FR 23118 on April 18, 2012, with an effective date of January 1, 2013.

**Federal Terms and State Equivalents:** When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department

April 18, 2012

January 1, 2013

VA.R. Doc. No. R13-3413; Filed September 28, 2012; 2:49 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD FOR BRANCH PILOTS

#### Final Regulation

**Title of Regulation:** 18VAC45-20. Board for Branch Pilots Regulations (amending 18VAC45-20-5, 18VAC45-20-10, 18VAC45-20-20, 18VAC45-20-40, 18VAC45-20-50).

**Statutory Authority:** § 54.1-902 of the Code of Virginia.

**Effective Date:** December 1, 2012.

**Agency Contact:** Kathleen R. Nosbisch, Executive Director, Board for Branch Pilots, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email [branchpilots@dpor.virginia.gov](mailto:branchpilots@dpor.virginia.gov).

#### Summary:

*The amendments (i) update the physical examination requirements to include chemical testing for initial and renewal licensing requirements; (ii) modify the grounds for denial of initial licensure or licensure renewal, or discipline; (iii) reduce the amount of time a licensee has to report certain information to the board to seven days; (iii) require the medical review officer to report any delay or refusal by a licensee to report to a test or being tested; and (iv) add marijuana to the definitions of "chemical test" and "illegal drugs."*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

#### 18VAC45-20-5. Definitions.

The words and terms used in this chapter have the following meanings, unless the context requires a different meaning:

"Attempting to perform" means any time when a licensee has accepted an assignment to perform any of the duties of his office or job.

"Chemical test," except when applied to testing for the presence of alcohol, means any scientifically recognized test and analyses of an individual's breath, blood, urine, saliva, bodily fluids, hair or tissues for evidence of controlled substances listed in Schedules I - V of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) or marijuana. The words "chemical test" as used in this chapter in connection with the testing for the presence of alcohol refers to a scientifically recognized test involving saliva or breath.

"Illegal drugs" includes (i) any controlled substance as that term is defined in the Drug Control Act at § 54.1-3401 of the Code of Virginia listed in Schedule I; (§ 54.1-3446 of the Code of Virginia ~~or~~); (ii) those controlled substances

illegally acquired listed from Schedules II - V; ~~or~~ (§§ 54.1-3448, 54.1-3450, 54.1-3452 and 54.1-3454 of the Code of Virginia, respectively); or [ (iii) ] marijuana. It is the intent of these regulations that in the event the contents of Schedules I - V of the Drug Control Act are changed, that these regulations incorporate such changes at the time those controlled substances are made a part of the Drug Control Act in Virginia.

"Medical review officer" or "MRO" means a Virginia licensed physician with a current valid certification from the American College of Occupational and Environmental Medicine or the American Association of Medical Review Officers whose duties, authorities and responsibilities are delineated by these organizations.

"On duty" means the period of time the licensee is available to receive orders for an assignment.

**18VAC45-20-10. Initial licensing.**

A. Any person wishing to obtain a license as a limited branch pilot shall meet the following qualifications:

1. Satisfactorily complete a two-year apprenticeship in a program approved by the board;
2. Satisfactorily complete a comprehensive examination which shall be approved by the board and administered by the examining committee of the board. The examination shall be in two parts:
  - a. Written; and
  - b. Practical oral examination;
3. Comply with the board's regulations and Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 of the Code of Virginia;
4. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination shall include the chemical tests referred to in 18VAC45-20-5;
5. Notify the board of any chronic or acute physical or mental condition; and
6. Pay a licensing fee of \$60. Each check or money order shall be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

B. Any limited branch pilot wishing to obtain a full branch pilot license shall meet the following qualifications:

1. Satisfactorily complete a five-year apprenticeship in a program approved by the board;
2. Hold a limited branch pilot license in good standing;
3. Pass a practical examination approved by the board and administered by the board's examining committee;
4. Possess a valid unlimited Federal Inland Masters License with First Class Pilot endorsement issued by the United States Coast Guard for the same waters as his branch. Any such federal license acquired after January 1994 shall include an Automated Radar Plotting Aids

(ARPA) radar certificate. A copy of this license shall be filed with the clerk of the board immediately;

5. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination shall include the chemical tests referred to in 18VAC45-20-50;

6. Qualify in accordance with § 54.1-905 of the Code of Virginia; and

7. Pay a licensing fee of \$60. Each check or money order is to be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

**18VAC45-20-20. License renewal.**

A. Each pilot seeking renewal of his license shall complete a renewal application, comply with the provisions of this section, and appear before the board or its License Renewal Committee which shall determine if he possesses the qualifications to be renewed.

B. Any limited branch pilot seeking to renew his license shall meet the following standards:

1. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. If the branch pilot has not been subject to random chemical testing during the preceding 24 months, then this examination shall include the chemical tests referred to in 18VAC45-20-50;
2. Furnish to the board evidence that he has transited the waters embraced by his license during the preceding 12 months;
3. After three years of licensure as a limited branch pilot, possess a valid First Class Pilot License issued by the United States Coast Guard for the same waters as his limited branch. Any such federal license acquired after January 1994 shall include an Automated Radar Plotting Aids (ARPA) radar certificate; and
4. Pay a license renewal fee of \$60. Each check or money order is to be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

C. Any full branch pilot seeking to renew his license shall meet the following standards:

1. Possess a valid unlimited Federal Inland Masters License with First Class Pilot endorsement issued by the United States Coast Guard for the same waters as his branch; any such federal license renewed or acquired after January 1994 shall include an Automated Radar Plotting Aids (ARPA) radar certificate;
2. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. If the branch pilot has not been subject to random chemical testing during the preceding 24 months, then this examination shall include the chemical tests referred to in 18VAC45-20-50;

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3. Furnish to the board evidence that he has transited the waters embraced by his license during the preceding 12 months, and that he has piloted 12 or more ships during that time, at least six trips as a pilot within the first six months of the calendar year and six trips as a pilot within the last six months of the calendar year. Upon the showing of good cause, the board may waive the requirements of this subdivision when in its judgment the pilot is otherwise qualified;

4. Qualify in accordance with § 54.1-906 of the Code of Virginia; and

5. Pay a license renewal fee of \$60. Each check or money order is to be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

## **18VAC45-20-40. Grounds for denial of licensure, denial of renewal, or discipline.**

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. (i) Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude or any alcohol- or drug-related offense there being no appeal pending, therefrom or the time for appeal having elapsed.

(ii) Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor resulting from an arrest for any alcohol- or drug-related offense, there being no appeal pending therefrom or the time for appeal having elapsed.

Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction;

2. Failing to inform the board in writing within ~~30~~ seven calendar days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude or any alcohol- or drug-related offense;

3. Failing to report to the board in writing any reports of the National Transportation Safety Board involving the licensee, or the results of any disciplinary action taken by the United States Coast Guard against the licensee within ~~30~~ seven calendar days of that report or action;

4. Refusing or in any other way failing to carry out an order from the pilot officers for reasons other than the public's health, safety, or welfare;

5. Negligence or misconduct in the performance of duties;

6. Violating or cooperating with others in violating any provision of Chapter 9 (§ 54.1-900 et seq.) of the Title 54.1 of the Code of Virginia or any regulation of the board;

7. Failing to, as soon as possible under the circumstances, report to the pilot officers his finishing time and other required information relating to the particulars of the ship;

8. Failing to file immediately with the president or vice president of the board with a copy to the board administrator a complete written account of any violation of the statutes of Virginia or of the United States relating to pilotage or failing to report in writing to the president or vice president of the board with a copy to the board administrator an account of all collisions, groundings, or other maritime mishaps of any description that may occur during the discharge of the pilot's duties. This report shall be received no later than seven days after such an incident;

9. Failing to report to the board any physical or mental condition which may affect his ability to perform the duties of a pilot. Such reports shall be provided within ~~30~~ seven calendar days of the onset of the condition;

10. Refusing to comply with the board's requirement for a chemical test. Such test is required immediately and no later than 12 hours after involvement in a collision, grounding, or other incident resulting in personal injury, death, environmental hazard, or property damage in excess of \$100,000. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

11. Refusing to comply with any board requirement for chemical tests in any instance in which the board has cause to believe a test is necessary to protect the public health, safety, or welfare. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

12. Failing to send proof of any test required by subdivision 10 or 11 of this section to the president or vice president of the board with a copy to the board administrator within 48 hours of the administration of the test;

13. A positive finding as a result of, or on, any substance abuse or chemical test as a result of which the board believes there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

14. Evidence of impaired performance in any instance in which the board believes there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

- 15. Performing or attempting to perform any of the duties of his office or job while under the influence of illegal drugs;
- 16. Performing or attempting to perform any of the duties of his office or job while under the influence of alcohol or any medication (controlled substance or otherwise) to the extent that he was unfit for the performance of the duties of his office or job; and
- 17. Failing to comply with any of the provisions of 18VAC45-20-50.

**18VAC45-20-50. Random chemical testing.**

A. All Virginia licensed branch pilots shall be subject to the random chemical testing as set forth in this chapter. Random chemical testing shall be conducted at an annual selection rate of not less than 30% and not more than 100% of total licensees. Licensees shall be responsible for all costs associated with random chemical testing. The chemical test shall be a comprehensive drug screen acceptable to the board that includes testing for controlled substances in Schedules I - V of Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Only licensees on duty may be selected for random testing. A licensee selected for random chemical testing shall report for testing within two hours of notification. Failure to take a random chemical test is considered refusal to take the test.

**B. Duties of licensee.**

- 1. All licensees of this board shall enroll and participate in a random chemical testing program that meets the criteria of this chapter.
- 2. An on-duty licensee selected for random chemical testing shall report for testing within two hours of notification that he has been selected.
- 3. Licensees who receive a prescription for any medication from any health care provider shall have the following duties:
  - a. Give the health care provider a copy of the licensee's job description as a Virginia pilot;
  - b. Give the health care provider a complete list of medications used within the 30 days preceding the current visit;
  - c. Obtain a written statement from the health care provider stating if the new prescription is for a controlled substance (Schedules II - V of the Drug Control Act) and obtain a written statement from the health care provider as to the licensee's fitness to safely perform the duties found in the job description; and
  - d. If prescribed any medication containing a Schedule II - V controlled substance that is to be used within 12 hours of being on duty, make certain the MRO received by hand delivery or telefax each prescription written by any health care provider at the time such prescription is

written along with a complete list of medications used by the licensee within the preceding 30 days.

**C. The medical review officer shall:**

- 1. Be completely familiar with all duties of a Virginia pilot.
- 2. Receive, evaluate and maintain records of all medications given to him by or on behalf of each Virginia pilot.
- 3. Receive, evaluate and maintain a record of each random chemical test taken by a Virginia pilot.
- 4. Any time the MRO finds the presence of a drug or alcohol that may impair the safe discharge of any duty of a Virginia pilot such that he is unfit to perform those duties, report his written findings to the licensee and president or vice president of the board and to the board's administrator.
- 5. Report in writing to the licensee, president or vice-president of the board, and the board's administrator of any delay or refusal by a licensee in reporting to testing or being tested.
- ~~5.~~ 6. To the extent consistent with state and federal law, protect the confidentiality of all licensee records.
- ~~6.~~ 7. Judge fitness to safely perform duties in the context of the licensee's prescription medications and the licensee's available medical history. Any time the MRO finds evidence that the Virginia pilot may be impaired in the safe discharge of any of his duties such that he may be unfit to perform those duties, his written finding shall be reported to the licensee and president or vice president of the board and to the board's administrator.

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

**FORMS (18VAC45-20)**

- Branch Pilot License Renewal Application Form (rev. 3/07).
- Limited Branch Pilot License Renewal Application Form (rev. 3/07).

[Authorization and Consent for Drug & Alcohol Testing and Release of Test Results \(rev. 12/09\).](#)

VA.R. Doc. No. R09-1843; Filed September 27, 2012, 3:07 p.m.

**BOARD FOR CONTRACTORS**

**Proposed Regulation**

**Title of Regulation: 18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-30).**

**Statutory Authority:** §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

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# Regulations

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## Public Hearing Information:

November 2, 2012 - 11 a.m. - Department of Professional and Occupational Regulations, 2nd Floor, Board Room 3, 9960 Mayland Drive, Suite 400, Richmond, VA

## Public Comment Deadline: December 21, 2012.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

Basis: Section 54.1-201 of the Code of Virginia provides the board the authority to establish regulations. Section 54.1-1102 of the Code of Virginia provides the authority for the board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is up to the discretion of the board, but shall not be in conflict with the purposes of the statutory authority.

Purpose: Recent statutory and policy changes made by federal and state agencies that directly affect the regulant population of the board, as well as changes in the industry, warrant review and promulgation of regulations to ensure that they accurately reflect these changes and the current requirements and standards, and that they are consistent and clear. Ensuring that the regulations are as clear as possible will facilitate the regulations' compliance with the statutes and board's requirements, which will better protect the health, safety, and welfare of the public.

Substance: The new specialty accessibility services contracting and a definition of the scope of practice for this specialty is added to the current regulations. Also included is a separate specialty for contractors that perform work on limited use limited application (LULA) elevators.

The definition of manufactured/modular building contracting is amended to add the provisions of the current HUD requirements.

Issues: These changes are implemented to bring the current regulations into compliance with changes in statutes and regulations that have already been determined to be advantageous to the public. The failure of the Board for Contractors to bring its regulations into compliance with these changes could result in potential damage to businesses and individuals.

Failure to bring the manufactured housing contractors into conformity with current HUD requirements would place the Commonwealth out of compliance, which could result in action being taken by HUD. It would be advantageous to comply with the federal requirements.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Contractors (Board) proposes to add four occupational definitions to its definitions of specialty services.

**Result of Analysis.** There is insufficient information to ascertain whether benefits will likely exceed costs for these proposed changes.

**Estimated Economic Impact.** The Board of Contractors Regulations include a list of defined specialty services which contractors may be certified to provide. The Board now proposes to add four new specialty definitions to this list. Specifically, the Board proposes to add accessibility services contracting (ASC), accessibility services contracting limited use limited application (ASL), industrialized building contracting (IBC) and manufactured home contracting (MHC) to the list of specialty services.

Board staff reports that the definitions for manufactured home contracting (MHC) and industrialized building contracting (IBC) are being added so that these regulations conform to Department of Housing and Urban Development's (HUD) requirements and that ASC and ASL are being added so that contractors can work on wheelchair lifts, incline chairlifts and dumbwaiters in private homes without getting a more comprehensive elevator/escalator specialty. Board staff also reports that regulatory changes to flesh out the rights and responsibilities that will fall to contractors that work in these new specialties are being promulgated separately in another regulatory action that will follow. It will likely be more possible to measure the costs and benefits of adding these specialties in that regulatory action than it is in this one.

**Businesses and Entities Affected.** The Department of Professional and Occupational Regulation (DPOR) reports that the Board currently licenses 117 elevator/escalator contractors and 958 modular/manufactured home contractors.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** There is insufficient information to measure the impact that this regulatory action will have on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** There is insufficient information to measure the impact that this regulatory action will likely have on small businesses in the Commonwealth.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There is insufficient information to measure the impact that this regulatory action will likely have on small businesses in the Commonwealth.

**Real Estate Development Costs.** This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

**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 department concurs with the approval.

Summary:

*These proposed amendments add a new specialty to incorporate businesses that perform work related to the Certified Accessibility Mechanic program and amend the manufactured home specialty to comply with changes to the Code of Federal Regulations by the U.S. Department of Housing and Urban Development.*

**18VAC50-22-30. Definitions of specialty services.**

The following words and terms when used in this chapter unless a different meaning is provided or is plainly required by the context shall have the following meanings:

"Accessibility services contracting" (Abbr: ASC) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, and private residence elevators in accordance with the Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work. This specialty does not include work on limited use-limited application (LULA) elevators.

"Accessibility services contracting – LULA" (Abbr: ASL) means the service that provides for all work in connection with the constructing, installing, altering, servicing, repairing, testing, or maintenance of wheelchair lifts, incline chairlifts, dumbwaiters with a capacity limit of 300 pounds, private residence elevators, and limited use-limited application (LULA) elevators in accordance with the Uniform Statewide Building Code (13VAC5-63). The EEC specialty may also perform this work.

"Alternative energy system contracting" (Abbr: AES) means ~~that the service which~~ that provides for the installation, repair or improvement, from the customer's meter, of alternative energy generation systems, supplemental energy systems and associated equipment annexed to real property. No other classification or specialty service provides this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Asbestos contracting" (Abbr: ASB) means ~~that the service which~~ that provides for the installation, removal, or encapsulation of asbestos containing materials annexed to real property. No other classification or specialty service provides for this function.

"Asphalt paving and sealcoating contracting" (Abbr: PAV) means ~~that the service which~~ that provides for the installation of asphalt paving ~~and/or~~ or sealcoating, or both, on subdivision streets and adjacent intersections, driveways, parking lots, tennis courts, running tracks, and play areas, using materials and accessories common to the industry. This includes height adjustment of existing sewer manholes, storm drains, water valves, sewer cleanouts and drain grates, and all necessary excavation and grading. The H/H classification also provides for this function.

"Billboard/sign contracting" (Abbr: BSC) means ~~that the service which~~ that provides for the installation, repair, improvement, or dismantling of any billboard or structural sign permanently annexed to real property. H/H and BLD are the only other classifications that can perform this work except that a contractor in this specialty may connect or disconnect signs to existing electrical circuits. No trade related plumbing, electrical, or HVAC work is included in this function.

"Blast/explosive contracting" (Abbr: BEC) means ~~that the service which~~ that provides for the use of explosive charges for the repair, improvement, alteration, or demolition of any real property or any structure annexed to real property.

"Commercial improvement contracting" (Abbr: CIC) means ~~that the service which~~ that provides for repair or improvement to nonresidential property and multifamily property as defined in the Virginia Uniform Statewide Building Code. The BLD classification also provides for this function. The CIC classification does not provide for the construction of new buildings, accessory buildings, electrical, plumbing, HVAC, or gas work.

"Concrete contracting" (Abbr: CEM) means ~~that the service which~~ that provides for all work in connection with the processing, proportioning, batching, mixing, conveying and placing of concrete composed of materials common to the concrete industry. This includes but is not limited to finishing, coloring, curing, repairing, testing, sawing, grinding, grouting, placing of film barriers, sealing and waterproofing. Construction and assembling of forms, molds, slipforms, pans, centering, and the use of rebar is also

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included. The BLD and H/H classifications also provide for this function.

"Electronic/communication service contracting" (Abbr: ESC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or removal of electronic or communications systems annexed to real property including telephone wiring, computer cabling, sound systems, data links, data and network installation, television and cable TV wiring, antenna wiring, and fiber optics installation, all of which operate at 50 volts or less. A firm holding an ESC license is responsible for meeting all applicable tradesman licensure standards. The ELE classification also provides for this function.

"Elevator/escalator contracting" (Abbr: EEC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement or removal of elevators or escalators permanently annexed to real property. A firm holding an EEC license is responsible for meeting all applicable tradesman licensure standards. No other classification or specialty service provides for this function.

"Environmental monitoring well contracting" (Abbr: EMW) means ~~that~~ the service ~~which~~ that provides for the construction of a well to monitor hazardous substances in the ground.

"Environmental specialties contracting" (Abbr: ENV) means ~~that~~ the service ~~which~~ that provides for installation, repair, removal, or improvement of pollution control and remediation devices. No other specialty provides for this function. This specialty does not provide for electrical, plumbing, gas fitting, or HVAC functions.

"Equipment/machinery contracting" (Abbr: EMC) means ~~that~~ the service ~~which~~ that provides for the installation or removal of equipment or machinery including but not limited to conveyors or heavy machinery. Boilers exempted by the Virginia Uniform Statewide Building Code but regulated by the Department of Labor and Industry are also included in this specialty. This specialty does not provide for any electrical, plumbing, process piping or HVAC functions.

"Farm improvement contracting" (Abbr: FIC) means ~~that~~ the service ~~which~~ that provides for the installation, repair or improvement of a nonresidential farm building or structure, or nonresidential farm accessory-use structure, or additions thereto. The BLD classification also provides for this function. The FIC specialty does not provide for any electrical, plumbing, HVAC, or gas fitting functions.

"Fire alarm systems contracting" (Abbr: FAS) means ~~that~~ the service ~~which~~ that provides for the installation, repair, or improvement of fire alarm systems which operate at 50 volts or less. The ELE classification also provides for this function. A firm with an FAS license is responsible for meeting all applicable tradesman licensure standards.

"Fire sprinkler contracting" (Abbr: SPR) means ~~that~~ the service ~~which~~ that provides for the installation, repair,

alteration, addition, testing, maintenance, inspection, improvement, or removal of sprinkler systems using water as a means of fire suppression when annexed to real property. This specialty does not provide for the installation, repair, or maintenance of other types of fire suppression systems. The PLB classification allows for the installation of limited area sprinklers as defined by BOCA. This specialty may engage in the installation of backflow prevention devices in the fire sprinkler supply main and sprinkler system when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Fire suppression contracting" (Abbr: FSP) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or removal of fire suppression systems including but not limited to halon and other gas systems; dry chemical systems; and carbon dioxide systems annexed to real property. No other classification provides for this function. The FSP specialty does not provide for the installation, repair, or maintenance of water sprinkler systems.

"Gas fitting contracting" (Abbr: GFC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or removal of gas piping and appliances annexed to real property. A firm with a GFC license is responsible for meeting all applicable tradesman licensure standards.

"Home improvement contracting" (Abbr: HIC) means ~~that~~ the service ~~which~~ that provides for repairs or improvements to one-family and two-family residential buildings or structures annexed to real property. The BLD classification also provides for this function. The HIC specialty does not provide for electrical, plumbing, HVAC, or gas fitting functions. It does not include high rise buildings, buildings with more than two dwelling units, or new construction functions beyond the existing building structure other than decks, patios, driveways and utility out buildings.

"Industrialized building contracting" (Abbr: IBC) means the service that provides for the installation or removal of an industrialized building as defined in the Virginia Industrialized Building Safety Regulations (13VAC5-91). This classification covers foundation work in accordance with the provisions of the Uniform Statewide Building Code (13VAC5-63) and allows the licensee to complete internal tie-ins of plumbing, gas, electrical, and HVAC systems. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or installing the outside compressor for the HVAC system. The BLD classification also provides for this function.

"Landscape irrigation contracting" (Abbr: ISC) means ~~that~~ the service ~~which~~ that provides for the installation, repair, improvement, or removal of irrigation sprinkler systems or outdoor sprinkler systems. The PLB and H/H classifications also provide for this function. This specialty may install backflow prevention devices incidental to work in this



specialty when the installer has received formal vocational training approved by the board that included instruction in the installation of backflow prevention devices.

"Landscape service contracting" (Abbr: LSC) means ~~that the~~ service ~~which that~~ provides for the alteration or improvement of a land area not related to any other classification or service activity by means of excavation, clearing, grading, construction of retaining walls for landscaping purposes, or placement of landscaping timbers. The BLD classification also provides for this function.

"Lead abatement contracting" (Abbr: LAC) means ~~that the~~ service ~~which that~~ provides for the removal or encapsulation of lead-containing materials annexed to real property. No other classification or specialty service provides for this function, except that the PLB and HVA classifications may provide this service incidental to work in those classifications.

"Liquefied petroleum gas contracting" (Abbr: LPG) means ~~that the~~ service ~~which that~~ includes the installation, maintenance, extension, alteration, or removal of all piping, fixtures, appliances, and appurtenances used in transporting, storing or utilizing liquefied petroleum gas. This excludes hot water heaters, boilers, and central heating systems that require a HVA or PLB license. The GFC specialty also provides for this function. A firm holding a LPG license is responsible for meeting all applicable tradesman licensure standards.

"Manufactured home contracting" (Abbr: MHC) means the service that provides for the installation or removal of a manufactured home as defined in the Virginia Manufactured Home Safety Regulations (13VAC5-95). This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas, electrical, or HVAC equipment. It does not allow for installing additional plumbing, gas, electrical, or HVAC work such as installing the service meter or installing the outside compressor for the HVAC system. No other specialty provides for this function.

"Marine facility contracting" (Abbr: MCC) means ~~that the~~ service ~~which that~~ provides for the construction, repair, improvement, or removal of any structure the purpose of which is to provide access to, impede, or alter a body of surface water. The BLD and H/H classifications also provide for this function. The MCC specialty does not provide for the construction of accessory structures or electrical, HVAC or plumbing functions.

"Masonry contracting" (Abbr: BRK) means ~~that the~~ service ~~which that~~ includes the installation of brick, concrete block, stone, marble, slate or other units and products common to the masonry industry, including mortarless type masonry products. This includes installation of grout, caulking, tuck pointing, sand blasting, mortar washing, parging and cleaning and welding of reinforcement steel related to masonry

construction. The BLD classification and HIC and CIC specialties also provide for this function.

~~"Modular/manufactured building contracting" (Abbr: MBC) means that service which provides for the installation or removal of a modular or manufactured building manufactured under ANSI standards. This classification does not cover foundation work; however, it does allow installation of piers covered under HUD regulations. It does allow a licensee to do internal tie-ins of plumbing, gas and electrical or HVAC equipment. It does not allow for installing additional plumbing, electrical, or HVAC work such as installing the service meter, or installing the outside compressor for the HVAC system. The H/H and BLD classifications also provide for this function.~~

"Natural gas fitting provider contracting" (Abbr: NGF) means ~~that the~~ service ~~which that~~ provides for the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property. This does not include new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment which requires a HVA or PLB license. The GFC specialty also provides for this function. A firm holding a NGF license is responsible for meeting all applicable tradesman licensure standards.

"Painting and wallcovering contracting" (Abbr: PTC) means ~~that the~~ service ~~which that~~ provides for the application of materials common to the painting and decorating industry for protective or decorative purposes, the installation of surface coverings such as vinyls, wall papers, and cloth fabrics. This includes surface preparation, caulking, sanding and cleaning preparatory to painting or coverings and includes both interior and exterior surfaces. The BLD classification and the HIC and CIC specialties also provide for this function.

"Radon mitigation contracting" (Abbr: RMC) means ~~that the~~ service ~~which that~~ provides for additions, repairs or improvements to buildings or structures, for the purpose of mitigating or preventing the effects of radon gas. This function can only be performed by a firm holding the BLD classification or CIC (for other than one-family and two-family dwellings), FIC (for nonresidential farm buildings) or HIC (for one-family and two-family dwellings) specialty services. No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty.

"Recreational facility contracting" (Abbr: RFC) means ~~that the~~ service ~~which that~~ provides for the construction, repair, or improvement of any recreational facility, excluding paving and the construction of buildings, plumbing, electrical, and HVAC functions. The BLD classification also provides for this function.

"Refrigeration contracting" (Abbr: REF) means ~~that the~~ service ~~which that~~ provides for installation, repair, or removal of any refrigeration equipment (excluding HVAC equipment). No electrical, plumbing, gas fitting, or HVAC functions are provided by this specialty. This specialty is intended for those

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contractors who repair or install coolers, refrigerated casework, ice-making machines, drinking fountains, cold room equipment, and similar hermetic refrigeration equipment. The HVAC classification also provides for this function.

"Roofing contracting" (Abbr: ROC) means ~~that~~ the service ~~which that~~ provides for the installation, repair, removal or improvement of materials common to the industry that form a watertight, weather resistant surface for roofs and decks. This includes roofing system components when installed in conjunction with a roofing project, application of dampproofing or waterproofing, and installation of roof insulation panels and other roof insulation systems above roof deck. The BLD classification and the HIC and CIC specialties also provide for this function.

"Sewage disposal systems contracting" (Abbr: SDS) means ~~that the service which that~~ provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other on-site sewage disposal systems annexed to real property.

"Swimming pool construction contracting" (Abbr: POL) means ~~that the service which that~~ provides for the construction, repair, improvement or removal of in-ground swimming pools. The BLD classification and the RFC specialty also provide for this function. No trade related plumbing, electrical, backflow or HVAC work is included in this specialty.

"Vessel construction contracting" (Abbr: VCC) means ~~that the service which that~~ provides for the construction, repair, improvement, or removal of nonresidential vessels, tanks, or piping that hold or convey fluids other than sanitary, storm, waste, or potable water supplies. The H/H classification also provides for this function.

"Water well/pump contracting" (Abbr: WWP) means ~~that the service which that~~ provides for the installation of a water well system, which includes construction of a water well to reach groundwater, as defined in § 62.1-255 of the Code of Virginia, and the installation of the well pump and tank, including pipe and wire, up to and including the point of connection to the plumbing and electrical systems. No other classification or specialty service provides for construction of water wells. This regulation shall not exclude PLB, ELE or HVAC from installation of pumps and tanks.

Note: Specialty contractors engaging in construction ~~which that~~ involves the following activities or items or similar activities or items may fall under the CIC, HIC and/or FIC specialty services, or they may fall under the BLD classification.

Appliances	Fireplaces	Rubber linings
Awnings	Fireproofing	Sandblasting
Blinds	Fixtures	Scaffolding
Bulkheads	Floor coverings	Screens
Cabinetry	Flooring	Sheet metal

Carpentry	Floors	Shutters
Carpeting	Glass	Siding
Casework	Glazing	Skylights
Ceilings	Grouting	Storage bins and lockers
Chimneys	Grubbing	Stucco
Chutes	Guttering	Temperature controls
Conduit rodding	Insulation	Terrazzo
Curtains	Interior decorating	Tile
Curtain walls	Lubrication	Vaults
Decks	Metal work	Vinyl flooring
Doors	Millwrighting	Wall panels
Drapes	Mirrors	Wall tile
Drywall	Miscellaneous iron	Waterproofing
Epoxy	Ornamental iron	Weatherstripping
Exterior decoration	Partitions	Welding
Facings	Protective coatings	Windows
Fences	Railings	Wood floors
Fiberglass	Rigging	

**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 (18VAC50-22)

- ~~Contractor Licensing Information, 27INTRO (5/09).~~
- ~~Trade Related Examinations and Qualifications Information, 27EXINFO (5/09).~~
- ~~License Application, 27LIC (rev. 4/10).~~
- ~~Class C License Application (Short Form), 27CSF (rev. 4/10).~~
- ~~Additional License Classification/Specialty Designation Application, 27ADDCL (rev. 4/10).~~
- ~~Change of Qualified Individual Application, 27CHQI (rev. 4/10).~~
- ~~Change of Designated Employee Application, 27CHDE (rev. 4/10).~~
- ~~Changes of Responsible Management Form, 27CHRM (eff. 5/09).~~
- ~~Experience Reference, 27EXP (8/07).~~
- ~~Certificate of License Termination, 27TERM (5/09).~~

~~Education Provider Registration/Course Approval Application; Contractors Prelicense and Continuing Education, 27EDREG (rev. 6/09).~~

~~Certificate of License Termination, 27TERM (5/09).~~

~~Education Provider Listing Form, 27EDLIST (5/09).~~

~~Financial Statement, 27FINST (5/09).~~

~~Additional Qualified Individual Experience Reference Form, 27QIEXP (5/09).~~

[Contractor Licensing Information, A503-27INTRO \(9/12\).](#)

[Requirements for Qualified Individuals, A503-27EXINFO \(9/12\).](#)

[License Application, A503-27LIC \(9/12\).](#)

[Expedited Class A License Application, A503-2705A\\_ELIC \(9/12\).](#)

[Class C License Application \(Short Form\), A503-027CSF \(9/12\).](#)

[Additional Specialty Designation Application, A503-27ADDSP \(9/12\).](#)

[Change in Qualified Individual and Designated Employee Application, A503-27CH\\_QIDE \(9/12\).](#)

[Change of Responsible Management Application, A503-27CHRM3 \(7/11\).](#)

[Certificate of License Termination, A503-27TERM \(3/11\).](#)

[Education Provider Registration/Course Approval Application, A503-27EDREG \(10/11\).](#)

[Education Provider Listing Application, A503-27EDLIST \(3/11\).](#)

[Financial Statement, A503-27FINST \(7/11\).](#)

[Additional Qualified Individual Experience Reference Form, A503-27QIEXP \(3/11\).](#)

VA.R. Doc. No. R11-2636; Filed October 3, 2012, 8:27 a.m.

**BOARD OF DENTISTRY**

**Final Regulation**

**Title of Regulation:** **18VAC60-20. Regulations Governing Dental Practice (adding 18VAC60-20-18).**

**Statutory Authority:** §§ 54.1-2400 and 54.1-2708.2 of the Code of Virginia.

**Effective Date:** November 21, 2012.

**Agency Contact:** Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

**Summary:**

*In this regulatory action, the Board of Dentistry sets out the conditions and procedures for assessment of disciplinary costs relating to investigation and monitoring of a licensee for whom there is a finding that a violation of law or regulation has occurred. The hourly costs for an*

*investigation or monitoring will be set out annually in a guidance document, and then costs will be calculated for each case and assessed as a part of an order. Costs for monitoring and investigation will not exceed the statutory limit of \$5,000.*

**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.

**18VAC60-20-18. Recovery of disciplinary costs.**

**A. Assessment of cost for investigation of a disciplinary case.**

1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant, the board may assess the hourly costs relating to investigation of the case by the Enforcement Division of the Department of Health Professions and, if applicable, the costs for hiring an expert witness and reports generated by such witness.

2. The imposition of recovery costs relating to an investigation shall be included in the order from an informal or formal proceeding or as part of a consent order agreed to by the parties. The schedule for payment of investigative costs imposed shall be set forth in the order.

3. At the end of each fiscal year, the board shall calculate the average hourly cost for enforcement that is chargeable to investigation of complaints filed against its regulants and shall state those costs in a guidance document to be used in imposition of recovery costs. The average hourly cost multiplied by the number of hours spent in investigating the specific case of a respondent shall be used in the imposition of recovery costs.

**B. Assessment of cost for monitoring a licensee or registrant.**

1. In any disciplinary case in which there is a finding of a violation against a licensee or registrant and in which terms and conditions have been imposed, the costs for monitoring of a licensee or registrant may be charged and shall be calculated based on the specific terms and conditions and the length of time the licensee or registrant is to be monitored.

2. The imposition of recovery costs relating to monitoring for compliance shall be included in the board order from an informal or formal proceeding or as part of a consent order agreed to by the parties. The schedule for payment of monitoring costs imposed shall be set forth in the order.

3. At the end of each fiscal year, the board shall calculate the average costs for monitoring of certain terms and conditions, such as acquisition of continuing education, and shall set forth those costs in a guidance document to be used in the imposition of recovery costs.

**C. Total of assessment.** In accordance with § 54.1-2708.2 of the Code of Virginia, the total of recovery costs for investigating and monitoring a licensee or registrant shall not

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exceed \$5,000, but shall not include the fee for inspection of dental offices and returned checks as set forth in 18VAC60-20-30 or collection costs incurred for delinquent fines and fees.

V.A.R. Doc. No. R10-2178; Filed September 24, 2012, 3:01 p.m.

## **Fast-Track Regulation**

Title of Regulation: **18VAC60-20. Regulations Governing Dental Practice (amending 18VAC60-20-195).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 21, 2012.

Effective Date: December 6, 2012.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system. The Dental Practice Act (Chapter 27 of Title 54.1) permits the practice of dental assistants.

Purpose: The purpose of the amended regulation is to state more clearly the qualifications necessary for an unlicensed person to obtain certification in radiation safety. Without the amendments, dental hygiene and dental assisting programs are not clearly authorized to offer radiation safety courses. Persons who want to become dental assistants have fewer options to qualify them to place and expose dental x-rays, so there is concern about unavailability of qualified persons to perform those tasks in dental offices.

Additionally, the current regulations are unclear about which course and examination from the Dental Assisting National Board is acceptable. Without clarity in regulation, a person may present himself as "certified" by a short, three-hour refresher course, rather than the Radiation Health and Safety Review Course (12 hours) intended to cover the full scope of dental radiation safety. Such inadequate preparation could endanger the health and safety of dental patients throughout the Commonwealth.

Rationale for Using Fast-Track Process: The fast-track rulemaking process is necessary because all parties agree that recent changes to 18VAC60-20-195 eliminating "board-approved" courses and examinations has resulted in a reduction in the availability of radiation safety certification for unlicensed persons who assist in dental offices. The rule proposed by fast-track action is supported by submission of three petitions for rulemaking and numerous comments in support of those petitions.

Substance: The proposed amendments clarify the qualifications necessary for an unlicensed person to obtain certification in radiation safety. The proposal includes options

for (i) a course and examination offered by a dental assisting or dental hygiene program accredited by the Commission on Dental Accreditation and (ii) a specific course provided by the Dental Assisting National Board.

Issues: The primary advantage to the public is a regulation that clearly states the qualification options for persons who will be employed by dentists to expose x-rays in their offices. If clearly stated and accurate, the options for certification will be more attainable and offer greater protection for the public. The primary advantage to the agency is clarity in the rules to reduce the number of questions and be responsive to petitions. There are no disadvantages to the public or the agency.

### Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Dentistry (Board) proposes to clarify the qualifications necessary for an unlicensed person to obtain certification in radiation safety.

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

Estimated Economic Impact. In January 2011, the State Council of Higher Education (SCHEV) sought clarification from the Board about courses offered in dental radiation that claim to be in compliance with regulatory requirements of the Board. The Executive Director of the Board, after consultation with counsel, informed SCHEV that, in fact, the Board has no statutory authority to approve radiation safety courses and that regulations incorrectly state that there are guidelines or criteria for such approval.

Given the dilemma created by the existence of a regulation for which statutory authority does not exist and the problems for students who want to be certified and for schools seeking to offer radiation safety courses, the Board acted to eliminate option (iii) in Section 195 that references compliance with guidelines of the Board. Three options for radiation safety certification remain: 1) completion of a course and examination recognized by the Commission on Dental Accreditation of the American Dental Association, 2) certification by the American Registry of Radiologic Technologists, or 3) satisfactorily completed a radiation course and passed an examination given by the Dental Assisting National Board.

Subsequently, the Board received three petitions for rulemaking asserting that the elimination of a Board approved course and examination had created a dearth of available courses and a hardship for persons who wanted to be certified to expose x-rays. To resolve the problem in the short term, the Board decided to issue a guidance document stating that it interprets the "course or examination recognized by the Commission on Dental Accreditation of the American Dental Association" to include a "course with examination provided by a dental assisting, dental hygiene or dentistry program

accredited by the Commission on Dental Accreditation of the American Dental Association." (Guidance document 60-20).

This interpretation will allow Commission on Dental Accreditation of the American Dental Association (CODA)-accredited dental assisting and dental hygiene programs to offer a dental radiation course in order to certify persons to place or expose dental x-ray film in dental offices. Since CODA does not "recognize" courses or examination, the language in the current regulation remains incorrect and confusing. Therefore the Board proposes to amend Section 195 to clarify the authority of institutions with CODA-accredited dental programs to offer courses in radiation safety.

Additionally, regulations of the Department of Health for radiation protection specify that an x-ray machine can only be operated by a licensee of the Department of Health Professions or, in the case of a dental assistant, by someone who complies with the radiation certification requirements for Section 195 of 18VAC60-20-10 et seq. Therefore, it is necessary for someone to be licensed or qualified under Section 195 in order to place and expose x-rays in dental offices.

Without the amendments, dental hygiene and dental assisting programs are not clearly authorized to offer radiation safety courses. Persons who want to become dental assistants have fewer options to qualify them to place and expose dental x-rays, so there is concern about unavailability of qualified persons to perform those tasks in dental offices. Thus the proposed amendments are clearly beneficial and do not introduce any new cost.

**Businesses and Entities Affected.** The proposed amendments potentially affect persons interested in employment as dental assistants or chair-side assistants who take dental x-rays in dental offices. Since the Department of Health Professions does not regulate dental assistants who take dental x-rays, there is no estimate of the number of positions available and the number of persons who might seek training in radiation safety. There are currently 6,392 licensed dentists in the Commonwealth many of whom likely employ staff who will seek radiation safety certification.

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

**Projected Impact on Employment.** The proposed amendments reduce the likelihood that persons interested in employment as dental assistants or chair-side assistants who take dental x-rays are unable to find certification sufficient radiation safety training. Thus, the proposed amendments may have a moderate positive impact on employment.

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

**Small Businesses: Costs and Other Effects.** The proposed amendments reduce the likelihood that persons interested in

employment as dental assistants or chair-side assistants who take dental x-rays are unable to find approved training. Thus, the proposed amendments may moderately reduce potential costs for dental practices to obtain certification-sufficient radiation safety training for staff.

**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 Board of Dentistry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18VAC60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, relating to radiation safety certification.

**Summary:**

*The proposed amendments clarify the qualifications necessary for an unlicensed person to obtain certification in radiation safety. The proposal includes options for (i) a course and examination offered by a dental assisting or dental hygiene program accredited by the Commission on Dental Accreditation or (ii) a specific course provided by the Dental Assisting National Board.*

**18VAC60-20-195. Radiation certification.**

No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has one of the following:

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(i) ~~satisfactorily completed~~ satisfactory completion of a radiation safety course or and examination recognized given by an institution that maintains a program in dental assisting, dental hygiene, or dentistry accredited by the Commission on Dental Accreditation of the American Dental Association, (ii) ~~been certified~~ certification by the American Registry of Radiologic Technologists, or (iii) ~~satisfactorily completed a radiation course and passed an~~ satisfactory completion of the Radiation Health and Safety Review Course provided by the Dental Assisting National Board or its affiliate and passage of the Radiation Health and Safety examination given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

VA.R. Doc. No. R13-2827; Filed September 21, 2012, 11:48 a.m.

## Final Regulation

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

**Title of Regulation:** 18VAC60-20. **Regulations Governing Dental Practice (amending 18VAC60-20-20, 18VAC60-20-30, 18VAC60-20-70, 18VAC60-20-90, 18VAC60-20-91).**

**Statutory Authority:**

18VAC60-20-20, 18VAC60-20-70, and 18VAC60-20-90: § 54.1-2400 of the Code of Virginia.

18VAC60-20-30: §§ 54.1-2400 and 54.1-2708.3 of the Code of Virginia.

18VAC60-20-91: §§ 54.1-2400 and 54.1-2711.1 of the Code of Virginia.

**Effective Date:** November 21, 2012.

**Agency Contact:** Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

**Summary:**

*This action conforms the requirements for temporary and faculty licenses to changes in the Code of Virginia enacted by Chapters 20 and 116 of the 2012 Acts of Assembly. The amendments (i) clarify requirements for the board to issue a faculty license to a qualified person from out of state to teach dentistry or dental hygiene in a Virginia dental school or program, (ii) clarify what patient care activities are allowed for a person enrolled in a Virginia dental education program who has a temporary license to practice dentistry while in the program, and (iii) specify that all parts of the National Dental Examination must be completed prior to application for dental licensure.*

## Part II Renewal and Fees

### 18VAC60-20-20. Renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license or a dental assistant II registration or a ~~full-time~~ faculty license shall, on or before March 31, renew his license or registration. Every person holding a ~~teacher's license~~, temporary resident's license, a restricted volunteer license to practice dentistry or dental hygiene, or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, request renewal of his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be \$285, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be \$75. The fee for renewal of registration as a dental assistant II shall be \$50.

2. The fee for renewal of an inactive license shall be \$145 for dentists and \$40 for dental hygienists. The fee for renewal of an inactive registration as a dental assistant II shall be \$25.

3. The fee for renewal of a restricted volunteer license shall be \$15.

4. The application fee for temporary resident's license shall be \$60. The annual renewal fee shall be \$35 a year. An additional fee for late renewal of licensure shall be \$15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of \$100 for dentists with an active license, \$25 for dental hygienists with an active license, and \$20 for a dental assistant II with active registration. The late fee shall be \$50 for dentists with an inactive license, \$15 for dental hygienists with an inactive license, and \$10 for a dental assistant II with an inactive registration. The board shall renew a license or dental assistant II registration if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license or registration of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice as a dentist, dental hygienist, or dental assistant II shall be illegal.

1. Any person whose license or dental assistant II registration has expired for more than one year and who wishes to reinstate such license or registration shall submit to the board a reinstatement application and the reinstatement fee of \$500 for dentists, \$200 for dental hygienists, or \$125 for dental assistants II.

2. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, practicing in Virginia with an expired

license or registration may subject the licensee to disciplinary action by the board.

3. The executive director may reinstate such expired license or registration provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18VAC60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18VAC60-20-50 and may also include evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license or dental assistant II registration previously revoked or indefinitely suspended. Any person whose license or registration has been revoked shall submit to the board for its approval a reinstatement application and fee of \$1,000 for dentists, \$500 for dental hygienists, and \$300 for dental assistants II. Any person whose license or registration has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of \$750 for dentists, \$400 for dental hygienists, and \$250 for dental assistants II.

**18VAC60-20-30. Other fees.**

A. Dental licensure application fees. The application fee for a dental license by examination, ~~a license to teach dentistry~~, a ~~full-time~~ faculty license, or a temporary permit as a dentist shall be \$400. The application fee for dental license by credentials shall be \$500.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a faculty license to teach dental hygiene, or a temporary permit as a dental hygienist shall be \$175. The application fee for dental hygienist license by endorsement shall be \$275.

C. Dental assistant II registration application fee. The application fee for registration as a dental assistant II shall be \$100.

D. Wall certificate. Licensees desiring a duplicate wall certificate or a dental assistant II desiring a wall certificate shall submit a request in writing stating the necessity for a wall certificate, accompanied by a fee of \$60.

E. Duplicate license or registration. Licensees or registrants desiring a duplicate license or registration shall submit a request in writing stating the necessity for such duplicate, accompanied by a fee of \$20. If a licensee or registrant maintains more than one office, a notarized photocopy of a license or registration may be used.

F. Licensure or registration certification. Licensees or registrants requesting endorsement or certification by this board shall pay a fee of \$35 for each endorsement or certification.

G. Restricted license. Restricted license issued in accordance with § 54.1-2714 of the Code of Virginia shall be at a fee of \$285.

H. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with § 54.1-2712.1 or § 54.1-2726.1 of the Code of Virginia shall be \$25.

I. Returned check. The fee for a returned check shall be \$35.

J. Inspection fee. The fee for an inspection of a dental office shall be \$350.

K. Mobile dental clinic or portable dental operation. The application fee for registration of a mobile dental clinic or portable dental operation shall be \$250. The annual renewal fee shall be \$150 and shall be due by December 31. A late fee of \$50 shall be charged for renewal received after that date.

**18VAC60-20-70. Licensure examinations; registration certification.**

A. Dental examinations.

1. All applicants shall have successfully completed ~~Part I and Part II~~ all parts of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board.

2. All applicants to practice dentistry shall satisfactorily pass the complete board-approved examinations in dentistry. Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of 14 hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

B. Dental hygiene examinations.

1. All applicants are required to successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board for licensure.

2. All applicants to practice dental hygiene shall successfully complete the board-approved examinations in dental hygiene, except those persons eligible for licensure pursuant to 18VAC60-20-80.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of seven hours of additional clinical training in each section of the examination to be retested in

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order to be approved by the board to sit for the examination a fourth time.

C. Dental assistant II certification. All applicants for registration as a dental assistant II shall provide evidence of a current credential as a Certified Dental Assistant (CDA) conferred by the Dental Assisting National Board or another certification from a credentialing organization recognized by the American Dental Association and acceptable to the board, which was granted following passage of an examination on general chairside assisting, radiation health and safety, and infection control.

D. All applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure or registration by this board may be required to retake the board-approved examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure or registration.

E. All applicants for licensure by examination or registration as a dental assistant II shall be required to attest that they have read and understand and will remain current with the applicable Virginia dental and dental hygiene laws and the regulations of this board.

## **18VAC60-20-90. Temporary permit, teacher's license, and full-time faculty license.**

A. A temporary permit shall be issued only for the purpose of allowing dental and dental hygiene practice as limited by §§ 54.1-2715 and 54.1-2726 of the Code of Virginia.

B. A temporary permit will not be renewed unless the permittee shows that extraordinary circumstances prevented the permittee from taking the licensure examination during the term of the temporary permit.

C. A ~~full-time~~ faculty license shall be issued to any dentist who meets the entry requirements of § 54.1-2713 of the Code of Virginia; or to any dental hygienist who meets the entry requirements of § 54.1-2725 of the Code of Virginia and who is certified by the dean of a dental school or the program director of a program accredited by the Commission on Dental Accreditation of the American Dental Association in the Commonwealth and who is serving full-time to be on the faculty of a dental school or its affiliated clinics intramurally in the Commonwealth or accredited program. The dean's or program director's certification shall include an assessment of the clinical competency and experience of the applicant.

1. A dentist or dental hygienist holding a faculty license may perform activities that are part of his faculty duties, including all patient care activities associated with teaching, research, and the delivery of patient care, that take place only within educational facilities owned or operated by or affiliated with the dental school or program.

~~1. 2.~~ A ~~full-time~~ faculty license shall remain valid only while the license holder is serving ~~full-time~~ on the faculty of a dental school or accredited program in the Commonwealth. When any such license holder ceases to continue serving ~~full-time~~ on the faculty of the dental school or program for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of ~~full-time~~ employment. The dean of the dental school or program director shall notify the board within five working days of such termination of ~~full-time~~ employment.

~~2. 3.~~ A ~~full-time~~ faculty licensee working in a ~~faculty intramural clinic~~ facility owned or operated by or affiliated with a dental school or accredited program may accept a fee for service.

D. A temporary permit, a teacher's license issued pursuant to § 54.1-2714 of the Code of Virginia, and a ~~full-time~~ faculty license may be revoked for any grounds for which the license of a regularly licensed dentist or dental hygienist may be revoked and for any act indicating the inability of the permittee or licensee to practice dentistry that is consistent with the protection of the public health and safety as determined by the generally accepted standards of dental practice in Virginia.

E. Applicants for a ~~full-time~~ faculty license or temporary permit shall be required to attest to having read and understand and to remaining current with the laws and the regulations governing the practice of dentistry in Virginia.

## **18VAC60-20-91. Temporary licenses to persons enrolled in advanced dental education programs.**

A. A dental intern, resident or postdoctoral certificate or degree candidate applying for a temporary license to practice in Virginia shall:

~~1. Successfully complete a D.D.S. or D.M.D. dental degree program required for admission to board-approved examinations and submit a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.~~

~~2. Submit~~ submit a recommendation from the dean of the dental school or the director of the ~~aeereditied~~ accredited graduate program accredited by the Commission on Dental Accreditation specifying the applicant's acceptance as an intern, resident or post-doctoral certificate or degree candidate in an advanced dental education program. The beginning and ending dates of the internship, residency or post-doctoral program shall be specified.

B. The temporary license applies only to practice in the hospital or outpatient clinics of the hospital or dental school where the internship, residency or post-doctoral time is served. Outpatient clinics in a hospital or other facility must be ~~a recognized part of an advanced dental education program~~



owned or operated by, or affiliated with, the dental school or program.

C. The temporary license may be renewed annually, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited graduate program, certifying continued enrollment in the accredited advanced education program.

D. The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency or postdoctoral candidacy is served. The temporary licensee is prohibited from employment outside of the advanced dental education program where a full license is required.

E. The temporary license holder shall abide by the accrediting requirements for an advanced dental education program as approved by the Commission on Dental Accreditation of the American Dental Association.

VA.R. Doc. No. R13-3373; Filed September 20, 2012, 10:12 a.m.

**Final Regulation**

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

Title of Regulation: **18VAC60-20. Regulations Governing Dental Practice (amending 18VAC60-20-220).**

Statutory Authority: §§ 54.1-2400 and 54.1-2722 of the Code of Virginia.

Effective Date: November 21, 2012.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4538, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

*Chapter 102 of the 2012 Acts of Assembly requires the Board of Dentistry to adopt the protocol of the Virginia Department of Health (VDH) for remote supervision by a dentist of the practice of a dental hygienist employed by VDH. This action amends 18VAC60-20-220, relating to the practice of dental hygienists, to incorporate the VDH protocol by reference.*

**18VAC60-20-220. Dental hygienists.**

A. The following duties shall only be delegated to dental hygienists under direction and may be performed under indirect supervision:

1. Scaling and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices under anesthesia.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-20-81.

B. The following duties shall only be delegated to dental hygienists and may be delegated by written order in accordance with § 54.1-3408 of the Code of Virginia to be performed under general supervision when the dentist may not be present:

1. Scaling and/or root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices.
2. Polishing of natural and restored teeth using air polishers.
3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for further evaluation and diagnosis by the dentist.
4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents.
5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed in subsection A of this section and those listed as nondelegable in 18VAC60-20-190.

C. Nothing in this section shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

D. A dentist hygienist employed by the Virginia Department of Health may provide educational and preventative dental care under remote supervision, as defined in subsection D of § 54.1-2722 of the Code of Virginia, of a dentist employed by the Virginia Department of Health and in accordance with the Protocol adopted by the Commissioner of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, September 2012, which is hereby incorporated by reference.

**DOCUMENTS INCORPORATED BY REFERENCE (18VAC60-20)**

Current Dental Terminology 2007-2008, Code on Dental Procedures and Nomenclature, American Dental Association.

Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, October 2001, American Dental Association.

[Protocol adopted by Virginia Department of Health \(VDH\) for Dental Hygienists to Practice in an Expanded Capacity](#)

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[under Remote Supervision by Public Health Dentists, September 2012.](#)

VA.R. Doc. No. R13-3383; Filed September 20, 2012, 10:13 a.m.

## BOARD OF MEDICINE

### Final Regulation

**Title of Regulation:** 18VAC85-20. **Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-22, 18VAC85-20-120, 18VAC85-20-121, 18VAC85-20-131, 18VAC85-20-140, 18VAC85-20-220, 18VAC85-20-235, 18VAC85-20-290, 18VAC85-20-400).**

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

**Effective Date:** November 21, 2012.

**Agency Contact:** William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

**Summary:**

*The amendments (i) clarify that the cost for reinstatement of licensure includes both the reinstatement application fee and a late fee by combining the fees; (ii) eliminate the requirement for applicants discharged from the military to submit discharge papers; (iii) remove a restriction that only allows interns and residents to renew licensure five times; (iv) remove the requirement that individuals who are renewing their licenses also fill out a form that lists their continuing education activities; and (v) create an exception to the 10-hour definition of immediate use so that drugs that include a fat emulsion must be used within one hour of being mixed, diluted, or reconstituted.*

**Summary of Public Comments and Agency's Response:** No public comments were received by the promulgating agency.

**18VAC85-20-22. Required fees.**

A. Unless otherwise provided, fees established by the board shall not be refundable.

B. All examination fees shall be determined by and made payable as designated by the board.

C. The application fee for licensure in medicine, osteopathic medicine, and podiatry shall be \$302, and the fee for licensure in chiropractic shall be \$277.

D. The fee for a temporary authorization to practice medicine pursuant to § 54.1-2927 B (i) and (ii) of the Code of Virginia shall be \$25.

E. The application fee for a limited professorial or fellow license issued pursuant to 18VAC85-20-210 shall be \$55. The annual renewal fee shall be \$35. An additional fee for late renewal of licensure shall be \$15.

F. The application fee for a limited license to interns and residents pursuant to 18VAC85-20-220 shall be \$55. The

annual renewal fee shall be \$35. An additional fee for late renewal of licensure shall be \$15.

G. The fee for a duplicate wall certificate shall be \$15; the fee for a duplicate license shall be \$5.

H. The fee for biennial renewal shall be \$337 for licensure in medicine, osteopathic medicine, and podiatry and \$312 for licensure in chiropractic, due in each even-numbered year in the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be \$115 for licensure in medicine, osteopathic medicine, and podiatry and \$105 for licensure in chiropractic.

I. The fee for requesting reinstatement of licensure or certification pursuant to § 54.1-2408.2 of the Code of Virginia or for requesting reinstatement after any petition to reinstate the certificate or license of any person has been denied shall be \$2,000.

J. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia that has expired for a period of two years or more shall be ~~\$382~~ \$497 for licensure in medicine, osteopathic medicine, and podiatry (\$382 for reinstatement application in addition to the late fee of \$115) and ~~\$367~~ \$472 for licensure in chiropractic (\$367 for reinstatement application in addition to the late fee of \$105). The fee shall be submitted with an application for licensure reinstatement.

K. The fee for a letter of verification of licensure ~~to another jurisdiction~~ shall be \$10, and the fee for certification of grades to another jurisdiction by the board shall be \$25. Fees shall be due and payable upon submitting a request for verification or certification to the board.

L. The fee for biennial renewal of an inactive license shall be \$168, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$55 for each renewal cycle.

M. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$75, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$25 for each renewal cycle.

N. The fee for a returned check shall be \$35.

### Part III

#### Licensure: General and Educational Requirements

**18VAC85-20-120. Prerequisites to licensure.**

~~A.~~ Every applicant for licensure shall:

1. Meet the educational requirements specified in 18VAC85-20-121 or 18VAC85-20-122 and the examination requirements as specified for each profession in 18VAC85-20-140;
2. File the complete application and appropriate fee as specified in 18VAC85-20-22 with the executive director of the board; and
3. File the required credentials with the executive director ~~by a date established by the board and~~ as specified below:

a. Graduates of an approved institution shall file:  
 (1) Documentary evidence that he received a degree from the institution; and

(2) A complete chronological record of all professional activities since graduation from professional school, giving location, dates, and types of services performed.

b. Graduates of an institution not approved by an accrediting agency recognized by the board shall file:

(1) Documentary evidence of education as required by 18VAC85-20-122;

(2) A translation made and endorsed by a consul or by a professional translating service of all such documents not in the English language; and

(3) A complete chronological record of all professional activities since graduation from professional school, giving location, dates, and types of services performed.

~~B. Every applicant discharged from the United States military service within the last five years shall in addition file with his application a notarized copy of his discharge papers.~~

**18VAC85-20-121. Educational requirements: Graduates of approved institutions.**

A. Such an applicant shall be a graduate of an institution that meets the criteria appropriate to the profession in which he seeks to be licensed, which are as follows:

1. For licensure in medicine. The institution shall be approved or accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, or by the Committee for the Accreditation of Canadian Medical Schools or its appropriate subsidiary agencies or any other organization approved by the board.

2. For licensure in osteopathic medicine. The institution shall be approved or accredited by the Bureau of Professional Education of the American Osteopathic Association or any other organization approved by the board.

3. For licensure in podiatry. The institution shall be approved and recommended by the Council on ~~Podiatry~~ Podiatric Medical Education of the American ~~Podiatry~~ Podiatric Medical Association or any other organization approved by the board.

B. Such an applicant for licensure in medicine, osteopathic medicine, or podiatry shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

C. For licensure in chiropractic.

1. If the applicant matriculated in a chiropractic college on or after July 1, 1975, he shall be a graduate of a chiropractic college accredited by the Commission on

Accreditation of the Council of Chiropractic Education or any other organization approved by the board.

2. If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college accredited by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.

**18VAC85-20-131. Requirements to practice acupuncture.**

A. To be qualified to practice acupuncture, licensed doctors of medicine, osteopathic medicine, podiatry, and chiropractic shall first have obtained at least 200 hours of instruction in general and basic aspects of the practice of acupuncture, specific uses and techniques of acupuncture, and indications and contraindications for acupuncture administration. ~~After December 5, 2001, at~~ At least 50 hours of the 200 hours of instruction shall be clinical experience supervised by a person legally authorized to practice acupuncture in any jurisdiction of the United States. Persons who held a license as a physician acupuncturist prior to July 1, 2000, shall not be required to obtain the 50 hours of clinical experience.

B. The use of acupuncture as a treatment modality shall be appropriate to the doctor's scope of practice as defined in § 54.1-2900 of the Code of Virginia.

Part IV

Licensure: Examination Requirements

**18VAC85-20-140. Examinations, general.**

A. The Executive Director of the Board of Medicine or his designee shall review each application for licensure and in no case shall an applicant be licensed unless there is evidence that the applicant has passed an examination equivalent to the Virginia Board of Medicine examination required at the time he was examined and meets all requirements of Part III (18VAC85-20-120 et seq.) of this chapter. If the executive director or his designee is not fully satisfied that the applicant meets all applicable requirements of Part III of this chapter and this part, he shall refer the application to the Credentials Committee for a determination on licensure.

B. A Doctor of Medicine or Osteopathic Medicine who has passed the examination of the National Board of Medical Examiners or of the National Board of Osteopathic Medical Examiners, ~~FLEX~~ Federation Licensing Examination, or the United States Medical Licensing Examination, or the examination of the Licensing Medical Council of Canada or other such examinations as prescribed in § 54.1-2913.1 of the Code of Virginia may be accepted for licensure.

C. A Doctor of Podiatry who has passed the National Board of Podiatric Medical Examiners examination and has passed a clinical competence examination ~~equivalent to the Virginia Board of Medicine examination~~ acceptable to the board may be accepted for licensure.

D. A Doctor of Chiropractic who has met the requirements of one of the following may be accepted for licensure:

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1. An applicant who graduated after January 31, 1996, shall document successful completion of Parts I, II, III, and IV of the National Board of Chiropractic Examiners examination (NBCE).

2. An applicant who graduated from January 31, 1991, to January 31, 1996, shall document successful completion of Parts I, II, and III of the National Board of Chiropractic Examiners examination (NBCE).

3. An applicant who graduated from July 1, 1965, to January 31, 1991, shall document successful completion of Parts I, II, and III of the NBCE, or Parts I and II of the NBCE and the Special Purpose Examination for Chiropractic (SPEC), and document evidence of licensure in another state for at least two years immediately preceding his application.

4. An applicant who graduated prior to July 1, 1965, shall document successful completion of the SPEC, and document evidence of licensure in another state for at least two years immediately preceding his application.

E. The following provisions shall apply for applicants taking Step 3 of the United States Medical Licensing Examination or the Podiatric Medical Licensing Examination:

1. Applicants for licensure in medicine and osteopathic medicine may be eligible to sit for Step 3 of the United States Medical Licensing Examination (USMLE) upon evidence of having passed Steps 1 and 2 of the United States Medical Licensing Examination (USMLE).

2. Applicants who sat for the United States Medical Licensing Examination (USMLE) shall provide evidence of passing Steps 1, 2, and 3 within a 10-year period unless the applicant is board certified in a specialty approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists of the American Osteopathic Association.

3. Applicants shall have completed the required training or be engaged in their final year of required postgraduate training.

4. Applicants for licensure in podiatry shall provide evidence of having passed the National Board of Podiatric Medical Examiners Examination to be eligible to sit for the Podiatric Medical Licensing Examination (PMLEXIS) in Virginia.

## **18VAC85-20-220. Temporary licenses to interns and residents.**

A. An intern or resident applying for a temporary license to practice in Virginia shall:

1. Successfully complete the preliminary academic education required for admission to examinations given by the board in his particular field of practice, and submit a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.

2. Submit a recommendation from the applicant's chief or director of graduate medical education of the approved internship or residency program specifying acceptance. The beginning and ending dates of the internship or residency shall be specified.

3. Submit evidence of a standard Educational Commission for Foreign Medical Graduates (ECFMG) certificate or its equivalent if the candidate graduated from a school not approved by an accrediting agency recognized by the board.

B. The intern or resident license applies only to the practice in the hospital or outpatient clinics where the internship or residency is served. Outpatient clinics in a hospital or other facility must be a recognized part of an internship or residency program.

C. The intern or resident license shall be renewed annually upon the recommendation of the chief or director of graduate medical education of the internship or residency program ~~no more than five times~~.

A residency program transfer request shall be submitted to the board in lieu of a full application.

D. The extent and scope of the duties and professional services rendered by the intern or resident shall be confined to persons who are bona fide patients within the hospital or who receive treatment and advice in an outpatient department of the hospital or outpatient clinic where the internship or residency is served.

E. The intern and resident shall be responsible and accountable at all times to a fully licensed member of the staff where the internship or residency is served. The intern and resident is prohibited from employment outside of the graduate medical educational program where a full license is required.

F. The intern or resident shall abide by the respective accrediting requirements of the internship or residency as approved by the Liaison Council on Graduate Education of the American Medical Association, American Osteopathic Association, American Podiatric Medical Association, or Council on Chiropractic Education.

## **18VAC85-20-235. Continued competency requirements for renewal of an active license.**

A. In order to renew an active license biennially ~~on or after January 1, 2002~~, a practitioner shall ~~complete the Continued Competency Activity and Assessment Form ("Form") which is provided by the board and which shall indicate~~ attest to completion of at least 60 hours of continuing learning activities within the two years immediately preceding renewal as follows:

1. A minimum of 30 of the 60 hours shall be in Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession.

a. Type 1 hours in chiropractic shall be clinical hours that are approved by a college or university accredited by the

Council on Chiropractic Education or any other organization approved by the board.

b. Type 1 hours in podiatry shall be accredited by the American Podiatric Medical Association, the American Council of Certified Podiatric Physicians and Surgeons or any other organization approved by the board.

2. No more than 30 of the 60 hours may be Type 2 activities or courses, which may or may not be approved by an accredited sponsor or organization but which shall be chosen by the licensee to address such areas as ethics, standards of care, patient safety, new medical technology, and patient communication.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records ~~the completed Form with~~ all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit of ~~at least 1.0% to 2.0%~~ of its active licensees to determine compliance. The practitioners selected for the audit shall provide ~~the completed Form and~~ all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board may grant an exemption for all or part of the requirements for a licensee who:

1. Is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board; or
2. Is practicing solely as a medical examiner, provided the licensee obtains six hours of medical examiner training per year provided by the Office of the Chief Medical Examiner.

**18VAC85-20-290. Reporting of medical malpractice judgments and settlements.**

A. In compliance with requirements of § 54.1-2910.1 of the Code of Virginia, a doctor of medicine, osteopathic medicine, or podiatry licensed by the board shall report all medical malpractice judgments and settlements of ~~\$10,000 or more~~ than \$10,000 in the most recent 10-year period within 30 days of the initial payment. A doctor shall report a medical malpractice judgment or settlement of less than \$10,000 if

any other medical malpractice judgment or settlement has been paid by or for the licensee within the preceding 12 months. Each report of a settlement or judgment shall indicate:

1. The year the judgment or settlement was paid.
2. The specialty in which the doctor was practicing at the time the incident occurred that resulted in the judgment or settlement.
3. The total amount of the judgment or settlement in United States dollars.
4. The city, state, and country in which the judgment or settlement occurred.

B. The board shall not release individually identifiable numeric values of reported judgments or settlements but shall use the information provided to determine the relative frequency of judgments or settlements described in terms of the number of doctors in each specialty and the percentage with malpractice judgments or settlements within the most recent 10-year period. The statistical methodology used will include any specialty with more than 10 judgments or settlements. For each specialty with more than 10 judgments or settlements, the top 16% of the judgments or settlements will be displayed as above average payments, the next 68% of the judgments or settlements will be displayed as average payments, and the last 16% of the judgments or settlements will be displayed as below average payments.

C. For purposes of reporting required under this section, medical malpractice judgment and medical malpractice settlement shall have the meanings ascribed in § 54.1-2900 of the Code of Virginia. A medical malpractice judgment or settlement shall include:

1. A lump sum payment or the first payment of multiple payments;
2. A payment made from personal funds;
3. A payment on behalf of a doctor of medicine, osteopathic medicine, or podiatry by a corporation or entity comprised solely of that doctor of medicine, osteopathic medicine, or podiatry; or
4. A payment on behalf of a doctor of medicine, osteopathic medicine, or podiatry named in the claim where that doctor is dismissed as a condition of, or in consideration of the settlement, judgment or release. If a doctor is dismissed independently of the settlement, judgment or release, then the payment is not reportable.

Part IX

Mixing, Diluting, or Reconstituting of Drugs for Administration

**18VAC85-20-400. Requirements for immediate-use sterile mixing, diluting, or reconstituting.**

A. For the purposes of this chapter, the mixing, diluting, or reconstituting of sterile manufactured drug products when there is no direct contact contamination and administration

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begins within 10 hours of the completion time of preparation shall be considered immediate-use with the exception of drugs in fat emulsion for which immediate use shall be one hour. If manufacturers' instructions or any other accepted standard specifies or indicates an appropriate time between preparation and administration of less than 10 hours, the mixing, diluting, or reconstituting shall be in accordance with the lesser time. No direct contact contamination means that there is no contamination from touch, gloves, bare skin, or secretions from the mouth or nose. Emergency drugs used in the practice of anesthesiology and administration of allergens may exceed 10 hours after completion of the preparation, provided administration does not exceed the specified expiration date of a multiple use vial and there is compliance with all other requirements of this section.

B. Doctors of medicine or osteopathic medicine who engage in immediate-use mixing, diluting, or reconstituting shall:

1. Utilize the practices and principles of disinfection techniques, aseptic manipulations and solution compatibility in immediate-use mixing, diluting, or reconstituting;
2. Ensure that all personnel under their supervision who are involved in immediate-use mixing, diluting, or reconstituting are appropriately and properly trained in and utilize the practices and principles of disinfection techniques, aseptic manipulations, and solution compatibility;
3. Establish and implement procedures for verification of the accuracy of the product that has been mixed, diluted, or reconstituted to include a second check performed by a doctor of medicine or osteopathic medicine or a pharmacist, or by a physician assistant or a registered nurse who has been specifically trained pursuant to subdivision 2 of this subsection in immediate-use mixing, diluting, or reconstituting. Mixing, diluting, or reconstituting that is performed by a doctor of medicine or osteopathic medicine, a pharmacist, or by a specifically trained physician assistant or registered nurse or mixing, diluting, or reconstituting of vaccines does not require a second check;
4. Provide a designated, sanitary work space and equipment appropriate for aseptic manipulations;
5. Document or ensure that personnel under his supervision documents in the patient record or other readily retrievable record that identifies the patient; the names of drugs mixed, diluted or reconstituted; and the date of administration; and
6. Develop and maintain written policies and procedures to be followed in mixing, diluting, or reconstituting of sterile products and for the training of personnel.

C. Any mixing, diluting, or reconstituting of drug products that are hazardous to personnel shall be performed consistent with requirements of all applicable federal and state laws and regulations for safety and air quality, to include but not be

limited to those of the Occupational Safety and Health Administration (OSHA). For the purposes of this chapter, Appendix A of the National Institute for Occupational Safety and Health publication (NIOSH Publication No. 2004-165), Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings is incorporated by reference for the list of hazardous drug products and can be found at [www.cdc.gov/niosh/docs/2004-165](http://www.cdc.gov/niosh/docs/2004-165).

**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 (18VAC85-20)

[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 \(rev. 10/09\).](#)

[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 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 \(rev. 3/09\).](#)

[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 \(rev. 7/11\).](#)

[Practitioner's Help Section \(rev. 11/10\).](#)

[Practitioner Questionnaire \(rev. 7/11\).](#)

VA.R. Doc. No. R09-1755; Filed September 24, 2012, 3:00 p.m.

## REAL ESTATE APPRAISER BOARD

### Fast-Track Regulation

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-90, 18VAC130-20-130).**

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 21, 2012.

Effective Date: January 1, 2013.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

Basis: Section 54.1-2013 of the Code of Virginia states that the Real Estate Appraiser Board "shall have all the powers under Chapter 2 (§ 54.1-200 et seq.) of Title 54.1 of the Code of Virginia and may do all things necessary and convenient for carrying into effect the provisions of this chapter and all things required or expected of a state appraiser certifying and licensing agency under Title 11 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 USC § 3331 et seq.)."

Section 54.1-2013 of the Code of Virginia further states that the board "shall include in its regulations, provisions for the enforcement of standards of professional appraiser practice."

Section 54.1-2017 of the Code of Virginia states, "Each licensed residential real estate appraiser, certified residential real estate appraiser, and certified general real estate appraiser shall comply with the standards of professional appraisal practice and code of ethics adopted by the Board."

Purpose: The board's regulations require that all certified, licensed, and trainee real estate appraiser applicants and licensees be assessed a \$21 biennial fee for a copy of the Uniform Standards of Professional Appraisal Practice (USPAP) that is provided to licensees by the board. This \$21 fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant/licensee in accordance with the fee charged by the Appraisal Foundation. The Appraisal Foundation adjusted the fee for each copy of USPAP from \$22 to \$30 on October 1, 2009. The regulations are being amended to comply with this adjustment by amending the biennial USPAP fee for all certified, licensed, and trainee real estate appraisers from \$21 to \$30.

Rationale for Using Fast-Track Process: The Appraisal Foundation, the sole source of USPAP, changed the price it charges state appraiser regulatory agencies for a copy of USPAP from \$22 to \$30 on October 1, 2009. By regulation, the board must provide each appraiser license applicant and

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licensee with a new copy of USPAP every two years. The board only charges its applicants and licensees \$21 every two years for a copy of USPAP. The board is spending \$9.00 more than it receives for every copy of USPAP purchased.

This regulatory action should be noncontroversial because all appraisers understand that the board provides them with a copy of USPAP every two years. In addition, the Appraisal Foundation charges state regulatory boards a discount price of \$30 for each copy of USPAP, while the Appraisal Foundation charges individual appraisers \$75 for each copy of USPAP.

Substance: The Real Estate Appraiser Board's existing regulations are being amended to adjust the fee to cover the actual cost of the copy of USPAP provided by the board to its licensees. The current regulations list the cost of USPAP at \$21. The proposed regulations will list the cost of USPAP at \$30.

Issues: There appear to be no issues or disadvantages associated with the proposed regulation.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Real Estate Appraiser Board (Board) proposes to raise the biennial fees it charges to certified, licensed and trainee real estate appraisers by \$9.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. Section 54.1-2013 of the Code of Virginia states that the Board "may do all things necessary and convenient for carrying into effect the provisions of this chapter and all things required or expected of a state appraiser certifying and licensing agency under Title 11 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989." The Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) was passed by Congress in 1989 as a result of the savings and loan crisis; it requires the state licensing of real estate appraisers. FIRREA created the Appraisal Subcommittee which monitors and reviews the practices, procedures, activities, and organizational structure of the Appraisal Foundation. The Appraisal Foundation promulgates the Uniform Standards of Professional Appraisal Practice (USPAP) which are the generally accepted appraisal standards by which appraisals must be performed.

The Appraisal Foundation, the sole source of USPAP, changed the price it charges state appraiser regulatory agencies for a copy of USPAP from \$22 to \$30 on October 1, 2009. By regulation, the Board must provide each appraiser license applicant and licensee with a new copy of USPAP every two years. According to the Department of Professional and Occupational Regulation (Department), significant changes to USPAP occur over the two year period. Currently the Board only charges its applicants and licensees \$21 every

two years for a copy of USPAP. The Board is spending \$9 more than it receives for every copy of USPAP purchased. Thus the proposal to raise the biennial fees it charges to certified, licensed and trainee real estate appraisers by \$9 will allow the Board to recover its cost of supplying the USPAP, but does not subsidize any other function. Given that the Appraisal Foundation charges state regulatory boards a discount price of \$30 for each copy of USPAP versus \$75 per copy to individual appraisers, the Department believes this proposal will be non-controversial.

Businesses and Entities Affected. The proposed amendments affect certified, licensed and trainee real estate appraisers and firms which employ them.

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

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

Effects on the Use and Value of Private Property. The proposed amendments will increase costs for certified, licensed and trainee real estate appraisers by \$4.50 per year.

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

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

Real Estate Development Costs. The proposed amendments are unlikely to have a large impact on 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 agency concurs with the approval.

Summary:

*The amendments raise the biennial fees charged to certified, licensed, and trainee real estate appraiser applicants and licensees by \$9.00 to cover the cost of the Uniform Standards of Professional Appraisal Practice that is provided to licensees by the board.*

**18VAC130-20-90. Application and registration fees.**

There will be no pro rata refund of these fees to licensees who resign or upgrade to a higher license or to licensees whose licenses are revoked or surrendered for other causes. All application fees for licenses and registrations are nonrefundable.

1. Application fees for registrations, certificates and licenses are as follows:

Registration of business entity	\$100
Certified General Real Estate Appraiser	<del>\$141</del> <u>\$150</u>
Temporary Certified General Real Estate Appraiser	\$45
Certified Residential Real Estate Appraiser	<del>\$141</del> <u>\$150</u>
Temporary Certified Residential Real Estate Appraiser	\$45
Licensed Residential Real Estate Appraiser	<del>\$141</del> <u>\$150</u>
Temporary Licensed Residential Real Estate Appraiser	\$45
Appraiser Trainee	<del>\$96</del> <u>\$105</u>
Upgrade of license	\$65
Instructor Certification	\$135

Application fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a ~~\$21~~ \$30 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

2. Examination fees. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.

3. An \$80 National Registry fee assessment for all permanent license applicants is to be assessed of each applicant in accordance with § 1109 of the Financial

Institutions Reform, Recovery, and Enforcement Act of 1989 (12 USC §§ 3331-3351). This fee may be adjusted and charged to the applicant in accordance with the Act. If the applicant fails to qualify for licensure, then this assessment fee will be refunded.

**18VAC130-20-130. Fees for renewal and reinstatement.**

A. All fees are nonrefundable.

B. National Registry fee assessment. In accordance with the requirements of § 1109 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, \$80 of the biennial renewal or reinstatement fee assessed for all certified general real estate appraisers, certified residential and licensed residential real estate appraisers shall be submitted to the Appraisal Subcommittee. The registry fee may be adjusted in accordance with the Act and charged to the licensee.

Renewal and reinstatement fees for a certified general real estate appraiser, a certified residential real estate appraiser, a licensed residential real estate appraiser and an appraiser trainee include a ~~\$21~~ \$30 fee for a copy of the Uniform Standards of Professional Appraisal Practice. This fee is subject to the fee charged by the Appraisal Foundation and may be adjusted and charged to the applicant in accordance with the fee charged by the Appraisal Foundation.

C. Renewal fees are as follows:

Certified general real estate appraiser	<del>\$141</del> <u>\$150</u>
Certified residential real estate appraiser	<del>\$141</del> <u>\$150</u>
Licensed residential real estate appraiser	<del>\$141</del> <u>\$150</u>
Appraiser trainee	<del>\$61</del> <u>\$70</u>
Registered business entity	\$60
Certified instructor	\$125

D. Reinstatement fees are as follows:

Certified general real estate appraiser	<del>\$201</del> <u>\$210</u>
Certified residential real estate appraiser	<del>\$201</del> <u>\$210</u>
Licensed residential real estate appraiser	<del>\$201</del> <u>\$210</u>
Appraiser trainee	<del>\$121</del> <u>\$130</u>
Registered business entity	\$100
Certified instructor	\$230

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

# Regulations

FORMS (18VAC130-20)

~~Real Estate Appraiser Board License Application, 40LIC (rev. 1/12).~~

[Real Estate Appraiser Board License Application, 40LIC \(rev. 12/12\).](#)

[Real Estate Appraiser Board Experience Log, 40EXP \(rev. 7/10\).](#)

[Real Estate Appraiser Board Experience Verification Form, 40EXPVER \(rev. 4/09\).](#)

[Real Estate Appraiser Board Experience Requirements, 40EXPREQ \(rev. 4/10\).](#)

~~Real Estate Appraiser Board Appraiser Trainee License Application, 40TRLIC (rev. 6/10).~~

[Real Estate Appraiser Board Appraiser Trainee License Application, 40TRLIC \(rev. 12/12\).](#)

[Real Estate Appraiser Board Trainee Supervisor Verification Form, 40TRSUP \(rev. 4/09\).](#)

[Real Estate Appraiser Board Business Registration Application, 40BUS \(rev. 12/09\).](#)

[Real Estate Appraiser Board Pre-License Course Application, 40CRS \(rev. 4/09\).](#)

[Real Estate Appraiser Board Instructor Certificate Application, 40INSTR \(rev. 5/09\).](#)

[Real Estate Appraiser Board Pre-License Renewal Course Application, 40RENCRS \(rev. 2/09\).](#)

[Real Estate Appraiser Board Activate Application, 40ACT \(rev. 4/09\).](#)

[Real Estate Appraiser Board Temporary Appraiser License Application, 40TLIC \(rev. 6/10\).](#)

V.A.R. Doc. No. R13-3051; Filed September 27, 2012, 9:43 a.m.

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

### Forms

Title of Regulation: **18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations.**

Agency Contact: Trisha Henshaw, Executive Director, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0362, or email trisha.henshaw@dpor.virginia.gov.

**NOTICE:** Forms used in administering the following regulation have been filed by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available 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 (18VAC160-20)

[Continuing Professional Education \(CPE\) Certificate of Completion, 19CPE \(rev. 05/09\).](#)

[Application for Training Course Approval, 19CRS \(rev. 05/09\).](#)

[Experience Verification Form, 19EXP \(eff. 07/09\).](#)

[Experience Verification Application – Onsite Sewage System Applicants Only, A436-19EXP \(rev. 10/12\).](#)

[Education & Training Substitution Form, 19ET\\_SUB \(eff. 07/09\).](#)

[Licensure Fee Notice, 19FEE \(eff. 07/09\).](#)

[Interim Onsite Soil Evaluator - VDH Employees Only License Application, 1930LIC \(eff. 07/09\).](#)

[Interim Onsite Sewage System Installer License Application, 1931\\_32LIC \(eff. 07/09\).](#)

[Interim Onsite Sewage System Operator License Application, 1933\\_34LIC \(eff. 07/09\).](#)

[Onsite Soil Evaluator Exam & License Application, 1940\\_41EXLIC \(eff. 07/09\).](#)

~~Onsite Sewage System Installer Exam & License Application, 1944\_45EXLIC (eff. 07/09).~~

[Onsite Sewage System Installer Exam & License Application, A465-1944EXLIC \(rev. 12/12\).](#)

[Onsite Sewage System Operator Exam & License Application, 1942\\_43EXLIC \(eff. 07/09\).](#)

[Suspension of Examination – Conventional Onsite Sewage System Installer License Application, 1944WAIV \(eff. 07/12\).](#)

V.A.R. Doc. No. R13-3424; Filed September 27, 2012, 12:36 p.m.

## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Final Regulation

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

Title of Regulation: **20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-15, 20VAC5-309-90, 20VAC5-**

**309-110, 20VAC5-309-120; adding 20VAC5-309-165, 20VAC5-309-190, 20VAC5-309-200).**

Statutory Authority: §§ 12.1-13 and 56-265.30 of the Code of Virginia.

Effective Date: October 1, 2012.

Agency Contact: Shane Ayers, Safety Program Manager, Utility and Railroad Safety Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9561, FAX (804) 371-9734, or email shane.ayers@scc.virginia.gov.

Summary:

*The amendments to this chapter are:*

*20VAC5-309-15. Definitions. This amendment moves the definition of "Clear Evidence" from 20VAC5-309-120 to 20VAC5-309-15 and adds a definition for "GPS" which is used in proposed rule 20VAC5-309-190.*

*20VAC5-309-90. Emergency excavation or demolition. This amendment prevents potential abuse of emergency notices for nonemergency excavations and demolitions.*

*20VAC5-309-110. General marking requirements. This amendment defines the marking requirements clearly in the rule independent of an external document (the Virginia Underground Utility Marking Standards Booklet) to allow updating the best practices in this booklet, when necessary, without the need to change the reference in the rules.*

*20VAC5-309-120. Notification of clear evidence. This amendment prevents potential abuse of three hour notices when an excavator has not observed clear evidence of an unmarked utility line and simply wishes to have the site remarked without waiting the period required by the Underground Utility Damage Prevention Act.*

*20VAC5-309-165. Operator's responsibilities for abandoned utility lines. This new section clearly defines an operator's responsibility to timely respond to an excavator's request regarding the status of an unmarked utility line (i.e., active or abandoned). This information will reduce downtime costs for excavators and capture additional information regarding such lines on operators' records, which will assist in preventing future confusion on excavations performed at or near the same location.*

*20VAC5-309-190. Delineating specific location of a proposed excavation or demolition. This new section further delineates means by which a person serving notice of proposed excavation or demolition to the notification center can describe their work area. If work areas are too large, operators responding to the notices incur additional cost by wasting valuable time and resources marking utility lines in areas where no excavation or demolition will occur.*

*20VAC5-309-200. Reporting damage by calling 911. This new section better defines the requirements of § 56-265.24 E of the Code of Virginia, enhances public safety in the*

*event of a pipeline incident, and brings Virginia's requirements more in line with the federal Pipeline Safety Act of 2011.*

*Since publication of the proposed regulation, changes were made to 20VAC5-309-190 to (i) stress utilization, as opposed to approval, of GPS nomenclature; (ii) address the possibility of multiple structures on a parcel and oddly shaped parcels; and (iii) identify the perspective from which the quadrants are to be identified.*

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. URS-2012-00183

Ex Parte: In the matter concerning Rules implementing the State Corporation Commission's authority to enforce the Underground Utility Damage Prevention Act

ORDER ADOPTING REGULATIONS

On May 29, 2012, the State Corporation Commission ("Commission") initiated a rulemaking pursuant to § 56-265.30 of the Code of Virginia ("Code"), which authorizes the Commission to enforce the provisions of Chapter 10.3 of Title 56 of the Code,<sup>1</sup> also known as the Underground Utility Damage Prevention Act ("Act"). Section 56-265.30 of the Code also authorizes the Commission to promulgate any rules or regulations necessary to implement the Commission's authority to enforce the Act.

The Commission's Division of Utility and Railroad Safety ("Division") proposed that the Commission adopt several additional rules for the enforcement of the Act following an extensive collaborative process involving the Division, the Advisory Committee (established in accordance with § 56-265.31 of the Code), and industry stakeholders. In addition, the Division proposed several revisions to existing rules to better define the marking standards for underground utility lines. Finally, a new rule was proposed to better align Virginia and federal statutory requirements in the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous or corrosive gas or liquid.<sup>2</sup>

The Commission's May 29, 2012 Order for Notice and Comment ("May 29, 2012 Order") set out the rules proposed by the Division and provided that public notice of the Proposed Rules be given so as to afford any interested person or entity an opportunity to comment on the Proposed Rules, to request a hearing thereon, or to propose modifications or supplements to the Proposed Rules.

Notice of the proceeding was published in the Virginia Register on June 18, 2012, and in newspapers of general circulation throughout the Commonwealth.<sup>3</sup> Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before July 9, 2012.

Comments in this proceeding were submitted by: Roanoke Gas Company, Columbia Gas of Virginia, Inc. ("Columbia Gas"), the Virginia Association of Municipal Wastewater

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Agencies, Inc. ("VAMWA"), and the Virginia Telecommunications Industry Association ("VTIA"). The Commission did not receive a request for a hearing on the Proposed Rules.

Specifically, comments submitted in this proceeding proposed certain modifications to Proposed Rules 20 VAC 5-309-110,<sup>4</sup> 20 VAC 5-309-165, 20 VAC 5-309-190, and 20 VAC 5-309-200. Regarding Proposed Rule 20 VAC 5-309-165 ("Proposed Rule 165"), VAMWA offered several revisions "to clarify the purpose of the requirement and to better reference existing Virginia Code sections regarding unmarked utility lines."<sup>5</sup> VAMWA also recommended that the 27-hour requirement for reporting the status of an abandoned utility line and the 96-hour deferral thereof be modified to begin with the operator's response, as opposed to the excavator's notice of an unmarked utility line to the notification center. VAMWA's modifications also contemplated a scenario where an excavator and operator cannot agree to a time period in excess of 27 hours for the operator to provide Proposed Rule 165's required information to the excavator. Further, VAMWA's comments emphasized that ownership of an abandoned line should trigger the responsibilities contained in Proposed Rule 165.<sup>6</sup> VTIA recommended modification to Proposed Rule 165 in order "to clarify that a declaration of 'extraordinary circumstances' as defined in § 56-265.15 of the Code does not require the mutual agreement of the excavator and the operator."<sup>7</sup>

Columbia Gas and VTIA expressed concerns that Proposed Rule 20 VAC 5-309-190 ("Proposed Rule 190") fails to contemplate multiple structures on a single parcel.<sup>8</sup> Columbia Gas also offered additional language to Proposed Rule 190 "to clarify that the intent of the Proposed Rule is for operators and excavators to utilize GPS nomenclature approved by the Advisory Committee as opposed to simply requiring that the Advisory Committee approve such GPS nomenclature"<sup>9</sup> and "to clarify the intent of the perspective from which the quadrants of a parcel or property are to be identified."<sup>10</sup> Columbia Gas further expressed concern that provisions of Proposed Rule 190 B may lead to confusion in certain circumstances.<sup>11</sup>

Finally, regarding Proposed Rule 20 VAC 5-309-200 ("Proposed Rule 200"), VTIA recommended adding the words "reasonably observable" to support their position that "it is not feasible to require an excavator, or anyone for that matter, to call 911 to report something of which they are not aware."<sup>12</sup>

As directed by the May 29, 2012 Order, the Division filed a report ("Response") on July 19, 2012, in response to the comments received on the Proposed Rules. In response to comments submitted on Proposed Rule 165, the Division opposed VAMWA's revisions, stating that "it is unnecessary to incorporate established statutory requirements for responding to and marking unmarked utility lines in this Proposed Rule,"<sup>13</sup> and that, because the operator's additional

notice to the notification center pursuant to § 56-265.17 C is verifiable, "starting the clock at the time of notice to the notification center is much more feasible than VAMWA's alternative."<sup>14</sup> The Division further noted that the definition of "operator" found in § 56-265.15 of the Code is not based solely on ownership of an underground utility line and, regarding communication of the status of an abandoned line, stated "it is reasonable to require the operator and excavator to negotiate 'a mutually agreeable time period in excess of 27 hours,' as contemplated by this Proposed Rule."<sup>15</sup> The Division also opposed VTIA's suggested modification to Proposed Rule 165 concerning time requirements for certain communications in extraordinary circumstances. The Division stated that "even in extraordinary circumstances, the Division believes that the Proposed Rule provides sufficient time to determine the status of the utility line and provide that information to the excavator."<sup>16</sup> The Division recommended that the Commission adopt Proposed Rule 165 without the modifications suggested by VAMWA and VTIA.

Addressing concerns raised about Proposed Rule 190, the Division agreed that the Proposed Rule could benefit from additional clarification (i) stressing utilization, as opposed to approval, of GPS nomenclature; (ii) regarding the possibility of multiple structures on a parcel and oddly shaped parcels; and (iii) identifying the perspective from which the quadrants are to be identified.<sup>17</sup> The Division did not oppose additional specific language offered by Columbia Gas to address some of these concerns.<sup>18</sup> The comments received in this proceeding did not recommend any particular modifications to address the issue of dividing oddly shaped parcels into quadrants for purposes of describing limits of proposed excavation or demolition. Therefore, the Division suggested amending Proposed Rule 190 to include the words "if geographically feasible" to address this concern.<sup>19</sup> In response to other circumstances in which Columbia Gas suggested Proposed Rule 190 could lead to confusion, the Division stated that it "disagrees that the location of a single structure on the parcel could result in confusion."<sup>20</sup>

In response to VTIA's modification to Proposed Rule 200, the Division noted that the purpose of the Proposed Rule is "to better align Virginia and federal statutory requirements in the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous or corrosive gas or liquid"<sup>21</sup> and stated that it believes that Proposed Rule 200, as drafted, "is consistent with the current federal requirement."<sup>22</sup> Accordingly, the Division recommended that the Commission adopt Proposed Rule 200 without modification.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the proposed regulations as revised and set forth in the Division's Response should be adopted. We find that Columbia Gas's Motion to Withdraw should be granted and note that modifications to Proposed Rules 165, 190, and 200, as discussed herein, remain at issue in this proceeding. We agree with the

Division, for the reasons stated in its Response, that Proposed Rules 165 and 200 should be adopted as proposed in the May 29, 2012 Order without further modification. We further agree that clarifying revisions to Proposed Rule 190 are appropriate and find that such modifications should be adopted as set forth in the Division's Response.

Accordingly, IT IS ORDERED THAT:

(1) Columbia Gas's Motion to Withdraw is hereby granted.

(2) The Commission's regulations regarding Rules for Enforcement of the Underground Utility Damage Prevention Act, 20 VAC 5-309-10 et seq., are hereby adopted as shown in Appendix A to this Order, and shall become effective as of October 1, 2012.

(3) A copy of these regulations as set out in Appendix A of this Order shall be forwarded to the Registrar of Regulations for publication in the Virginia Register.

(4) There being nothing further to come before the Commission, this case hereby is dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Robert C. Steidel, Virginia Association of Municipal Wastewater Agencies, Inc., P.O. Box 51, Richmond, Virginia 23218-0051; Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; John B. Williamson, III, Roanoke Gas, 518 Kimball Avenue, NE, P.O. Box 13007, Roanoke, Virginia 24030; and James S. Copenhaver, Assistant General Counsel, NiSource Corporate Services Company, 1809 Coyote Drive, Chester, Virginia 23836; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Utility and Railroad Safety.

<sup>1</sup>Va. Code §§ 56-265.14 et seq.

<sup>2</sup>The proposed revisions to existing rules, together with all proposed additional rules, are collectively referred to herein as the "Proposed Rules."

<sup>3</sup>See Memoranda from Laura S. Martin of the Commission's Division of Information Resources, filed in this docket on June 20, 2012, and June 27, 2012.

<sup>4</sup>On July 16, 2012, Columbia Gas filed a Motion for Leave to Withdraw Comments Re: Proposed Rule 20 VAC 5-309-110(P) ("Motion to Withdraw") in which it sought to withdraw its comments related to that Proposed Rule.

<sup>5</sup>Comments of VAMWA at 1.

<sup>6</sup>*Id.* at 2.

<sup>7</sup>Comments of VTIA at 2.

<sup>8</sup>*Id.*; Comments of Columbia Gas at 4.

<sup>9</sup>Comments of Columbia Gas at 6.

<sup>10</sup>*Id.* at 5.

<sup>11</sup>*Id.* at 4-6.

<sup>12</sup>Comments of VTIA at 3.

<sup>13</sup>Response at 2.

<sup>14</sup>*Id.* at 3.

<sup>15</sup>*Id.* at 4.

<sup>16</sup>*Id.* at 4-5.

<sup>17</sup>*Id.* at 5-7.

<sup>18</sup>*Id.* at 5, 7.

<sup>19</sup>*Id.* at 8.

<sup>20</sup>*Id.* at 6.

<sup>21</sup>*Id.* at 9 (quoting May 29, 2012 Order at 1).

<sup>22</sup>*Id.* at 10.

### **20VAC5-309-15. Definitions.**

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

"Act" means the Underground Utility Damage Prevention Act (Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia).

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line.

"Division" means the State Corporation Commission's Division of Utility and Railroad Safety.

"GPS" means global positioning system.

"Installation records of a utility line" means maps, drawings, diagram, sketches, or any other depictions or descriptions of an underground utility line that reflect the location at the time of installation in a reasonably accurate manner.

"Locate" or "marking" means an operator's or its contract locator's markings of an underground utility line.

"Serious impact on public health" means any condition involving a water or sewer utility line that creates, or may create, a danger to the health and well being of the public.

### **Part III**

#### **Emergency Excavation or Demolition**

### **20VAC5-309-90. Emergency excavation or demolition.**

A. No person shall serve an emergency notice on the notification center unless the work to be performed is in response to an "emergency," as the term is defined in § 56-265.15 of the Code of Virginia.

B. When excavation or demolition is required during an emergency as defined in § 56-265.15 of the Code of Virginia, all reasonable precautions shall be taken to protect underground utility lines that may be located at the site of the excavation. These precautions shall include, but are not limited to, the following:

1. Dispatched personnel or crews responding to the emergency shall notify the notification center and request an emergency locate of the underground utility lines at the earliest reasonable opportunity;
2. After arriving at the site, the person responding to the emergency shall determine the need for immediate action;
3. If immediate action is required, all reasonable precautions shall be taken to protect the underground utility lines. These actions shall include, but are not limited to, the following:

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- a. Conduct a thorough site assessment to determine the location of underground utility lines;
- b. Locate the underground utility lines with acceptable equipment, if possible;
- c. Hand dig around the underground utility lines;
- d. Directly notify the utility line operators, if necessary; and
- e. If prudent, the excavator shall wait for marking of the excavation area by operators having utility lines in the excavation area.

## **20VAC5-309-110. General marking requirements.**

A. All markings shall be suitable for their intended purpose for a period of 15 working days beginning at 7 a.m. on the next working day following notice by the excavator to the notification center.

B. Markings shall be made at sufficient intervals to clearly indicate the approximate horizontal location and direction of the underground utility line. However, the distance between any two marks indicating the same utility line shall not exceed 20 feet. Site conditions or directional changes of the underground utility line shall be considered to determine the need for shorter distance between marks.

C. Markings of underground utility lines shall be by means of stakes, paint, flags, or combination thereof. The terrain, site conditions, and the type and extent of the proposed excavation shall be considered to determine the most suitable means to mark underground utility lines.

D. Paint marks shall be approximately 8 to 10 inches in length and one to two inches in width except when "spot" marking is necessary.

E. A minimum of three separate marks shall be made for each underground utility line marking.

F. Valve box covers that are at grade and visible shall be marked with the appropriate color in accordance with the Act.

G. If in the process of marking an underground utility line, a customer-owned underground utility line of the same type is discovered, the operator or its contract locator shall make a reasonable effort to contact the excavator or the customer to advise of the presence of the line.

H. Where the proposed excavation crosses an underground utility line, markings shall be at intervals that clearly define the route of the underground line.

I. All markings shall extend if practical, a reasonable distance beyond the boundaries of the specific location of the proposed work as detailed on the ticket.

J. If the use of line marking is considered damaging to property (driveways, landscaping, historic locations to the extent boundaries are known), "spot" marking or other suitable marking methods shall be used.

K. Markings shall be valid for an excavation site for 15 working days beginning at 7 a.m. on the next working day

following notice to the notification center by the excavator or until one of the following events occurs:

1. The markings become faded, illegible or destroyed; or
2. If the markings were placed in response to an emergency and the emergency condition has ceased to exist.

L. Where permitted by the operator's records, all utility lines of the same type in the same trench owned by the same operator shall be marked individually or by a single mark. If a single mark is used, the number of the utility lines shall be indicated at every other mark.

M. Operators or their contract locators shall use all information necessary to mark their facilities accurately.

N. Markings of an underground pipeline greater than 12 inches in nominal outside dimension shall include the size in inches at every other mark.

O. ~~Duct structures and conduit systems shall be marked in accordance with the horizontal marking symbols for such structures and conduit systems as shown in item nine of the Virginia Underground Utility Marking Best Practices as provided in the Virginia Underground Utility Marking Standards (March 2004) published by the division ([http://www.state.va.us/sec/division/urs/mutility/va\\_uums.pdf](http://www.state.va.us/sec/division/urs/mutility/va_uums.pdf))~~ with line markings indicating the approximate outer dimensions of the duct structure or conduit system and a solid closed circle over the approximate center of the duct structure or conduit system.

P. ~~In areas where marks would be destroyed, offset markings shall be made using horizontal marking symbols as shown in item 15 of the Virginia Underground Utility Marking Best Practices as provided in the Virginia Underground Utility Marking Standards (March 2004) published by the division ([http://www.state.va.us/sec/division/urs/mutility/va\\_uums.pdf](http://www.state.va.us/sec/division/urs/mutility/va_uums.pdf))~~ such as high traffic areas, gravel areas, dirt areas, or where surface conditions are such that the placement of marks directly over the utility line is not possible, offset markings shall be used. The offset marks shall be placed on a permanent surface, which is not likely to be destroyed. Offset marks shall include a line marking placed parallel to the underground utility line and an arrow, pointing in the direction of the utility line, with the distance in feet and inches to the location of the utility line shown on the right side of the arrow and size, material type, and the operator's letter designation information on the left side of the arrow. When possible, offset marks shall be used in conjunction with locate marks placed in accordance with the Act.

Q. The assigned letter designations for each operator to be used in conjunction with markings of underground utility lines shall be the same as those assigned by the notification center certified for a geographic area, subject to the review of the same and approval of such designations in writing by the advisory committee. Such approved designations by the advisory committee shall be deemed final unless appealed to the commission within 30 days of the advisory committee's

written evidence of approval. Operators wishing to appeal the letter designations assigned in accordance with this section may file an appropriate formal pleading with the commission seeking review of the assigned letter designation within 30 days of the issuance of the written approval of the advisory committee.

R. The symbols for marking of underground utility lines in compliance with § 56-265.19 F (ii) of the Act shall be the same as those shown in the Virginia Underground Utility Marking Standards (March 2004) published by the division ([http://www.state.va.us/sec/division/urs/mutility/va\\_uums.pdf](http://www.state.va.us/sec/division/urs/mutility/va_uums.pdf)) placed in response to a notice of proposed excavation or demolition.

Part V  
Supplemental Rules, Etc.

**20VAC5-309-120. Clear Notification of clear evidence.**

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line. No person shall serve a notice on the notification center regarding clear evidence of the presence of an unmarked utility line pursuant to § 56-265.24 C of the Code of Virginia unless (i) the excavator has previously notified the notification center of the proposed excavation pursuant to § 56-265.17 A of the Code of Virginia, (ii) the excavator has complied with the requirements of 20VAC5-309-180, and (iii) the excavator has observed clear evidence of the presence of an unmarked utility line in the area of the proposed excavation.

**20VAC5-309-165. Operator's responsibilities for abandoned utility lines.**

A. Upon receipt of an additional notice to the notification center pursuant to § 56-265.24 C of the Code of Virginia, if the operator determines that an abandoned utility line exists, the operator shall provide the status of the utility line to the excavator within 27 hours, excluding Saturdays, Sundays, and legal holidays, from the time the excavator makes the additional notice to the notification center. The excavator and operator may negotiate a mutually agreeable time period in excess of 27 hours for the operator to provide such information to the excavator if site conditions prohibit the operator from making such a determination or extraordinary circumstances exist, as defined in § 56-265.15 of the Code of Virginia. If the site conditions prohibit the operator from making such a determination or extraordinary circumstances exist, the operator shall directly notify the person who proposes to excavate or demolish and shall, in addition, notify that person of the date and time when the status of the utility line will be determined. The deferral to determine the status of the utility line shall be no longer than 96 hours from 7 a.m. on the next working day following the excavator's additional notice to the notification center.

B. The operator shall record and maintain the location information of the abandoned utility line as determined by the operator. Such records need not include abandoned underground electric, telecommunications, cable television, water, and sewer lines connected to a single family dwelling unit.

**20VAC5-309-190. Delineating specific location of a proposed excavation or demolition.**

A. Any person, as defined in § 56-265.15 of the Code of Virginia, providing notice of a proposed excavation or demolition shall clearly describe the limits of the proposed excavation or demolition with sufficient detail to enable the operators to ascertain the location of the proposed excavation. The specific location of the proposed excavation or demolition may include, but is not limited to:

1. GPS coordinates taken at a single point where work is planned or GPS coordinates taken to delineate a line, multi-segment line, or polygon. When providing a single point, line, or multi-segment line, the person providing notice shall include an area measured in feet from the coordinates that describe the work area. If a polygon is used, the proposed work area shall be inside the polygon. GPS nomenclatures used for providing coordinates to the notification center shall be [ as ] approved by the advisory committee.
2. White lining to delineate the area where excavation will take place. For single point excavation, the area shall be marked using dots, dashes, or white flags to show the operators the area of excavation. If utility markings are desired outside a white lined area, the excavator shall provide clear instructions, to include the distance in feet outside the white lined area, to the notification center. For continuous excavations, such as trenching and boring, the excavator shall mark the center line of excavation by the use of dots or dashes. The excavation width, in feet, shall be indicated on either side of the center line in legible figures or noted in the marking instructions given to the notification center.
3. White lining performed by electronic means using aerial imagery. White lining performed by electronic means shall follow the same requirements as listed in subdivision 2 of this subsection.
4. A reference to the two nearest intersecting streets, if available, or driving directions.

B. In the event that a proposed excavation or demolition is planned at a single address [ at which there is no more than one structure ], the area of proposed excavation or demolition may [ , if geographically feasible, ] be described by dividing the parcel or property into four quadrants [ as facing from the perspective of facing the front of ] the property using the center of the structure as the center point of the four quadrants. If no structure exists on the property, the center of the parcel or property will be used as the center point of the four quadrants. These four quadrants shall be referred to as

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Front Left, Front Right, Rear Left, and Rear Right. If the proposed area consists only of Front Left and Front Right quadrants, the term "Front" shall be sufficient. If the proposed area of excavation consists only of Rear Left and Rear Right quadrants, the term "Rear" shall be sufficient. If the proposed area of excavation consists only of Front Left and Rear Left quadrants, the term "Left Side" shall be sufficient. If the proposed area of excavation consists only of Front Right and Rear Right quadrants, the term "Right Side" shall be sufficient. If the proposed area of excavation includes three out of the four quadrants, the entire property may be used for the proposed excavation or demolition.

## **20VAC5-309-200. Reporting damage by calling 911.**

In the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous, or corrosive gas or liquid, the excavator shall, in addition to complying with §§ 56-265.24 D and E of the Code of Virginia, promptly report the damage to the appropriate authorities by calling the 911 emergency telephone number.

VA.R. Doc. No. R12-3230; Filed September 23, 2012, 5:49 p.m.

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## **TITLE 22. SOCIAL SERVICES**

### **DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** Enactments 59 through 71 of Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Department for the Aging and transferred its regulations to the newly created Department for Aging and Rehabilitative Services effective July 1, 2012. The following action transfers the Department for the Aging regulation numbered [22VAC5-30](#) to the Department for Aging and Rehabilitative Services and rennumbers the regulation as [22VAC30-70](#).

This regulatory action is excluded from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department for Aging and Rehabilitative Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** [22VAC30-70. The Virginia Public Guardian and Conservator Program \(adding 22VAC30-70-10 through 22VAC30-70-60\).](#)

**Statutory Authority:** § 51.5-131 of the Code of Virginia.

**Effective Date:** November 22, 2012.

**Agency Contact:** Vanessa S. Rakestraw, Ph.D., CRC, Policy Analyst, Department for Aging and Rehabilitative Services,

8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TTY (800) 464-9950, or email [vanessa.rakestraw@dars.virginia.gov](mailto:vanessa.rakestraw@dars.virginia.gov).

#### **Summary:**

*All references to the Department for the Aging have been changed to the Department for Aging and Rehabilitative Services to reflect the name of the new agency that has been created to assume the powers of the former Department of Rehabilitative Services and the Department for the Aging. This new agency was created as a result of the Governor's reorganization of the Executive Branch of state government. In addition to the agency name change, the agency and chapter numbers to each section of the regulation have been changed as a result of the regulation being promulgated by the newly created agency. Also, references to Code of Virginia citations have been updated accordingly.*

### **CHAPTER 30 70 THE VIRGINIA PUBLIC GUARDIAN AND CONSERVATOR PROGRAM**

#### **~~22VAC5-30-10.~~ [22VAC30-70-10](#), Definitions.**

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

"Advisory board" means the Virginia Public Guardian and Conservator Advisory Board as authorized by §§ 2.2-2411 and 2.2-2412 of the Code of Virginia.

"Client" means a person who has been adjudicated incapacitated and who is receiving services from a public guardian program.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person and, where the context plainly indicates, includes a "limited conservator" or a "temporary conservator." The term includes (i) a local or regional program designated by the ~~Department for the Aging~~ Department for Aging and Rehabilitative Services as a public conservator pursuant to ~~Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 §§ 51.5-149, 51.5-150, and 51.5-151~~ of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide conservatorial services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the ~~Virginia Department for the Aging (VDA)~~ Virginia Department for Aging and Rehabilitative Services as a public conservator, it may also serve as a conservator for other individuals. Incorporated by reference to this definition is the definition of "conservator" found in § 37.2-1000 of the Code of Virginia and any successor language thereof.



"Department" means the Department for Aging and Rehabilitative Services.

"Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, therapeutic treatment, and, if not inconsistent with an order of involuntary admission, residence. Where the context plainly indicates, the term includes a "limited guardian" or a "temporary guardian." The term includes (i) a local or regional program designated by the ~~Department for the Aging department~~ as a public guardian pursuant to ~~Article 2 (§ 2.2-711 et seq.) of Chapter 7 of Title 2.2 §§ 51.5-149, 51.5-150, and 51.5-151~~ of the Code of Virginia or (ii) any local or regional tax-exempt charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code to provide guardian services to incapacitated persons. Such tax-exempt charitable organization shall not be a provider of direct services to the incapacitated person. If a tax-exempt charitable organization has been designated by the ~~Virginia Department for the Aging department~~ as a public guardian, it may also serve as a guardian for other individuals. Incorporated by reference to this definition is the definition of "guardian" found in § 37.2-1000 of the Code of Virginia and any successor language thereof.

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual displays poor judgment alone shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of Virginia and Title 24.2 of the Code of Virginia unless the court order entered pursuant to this chapter specifically provides otherwise. Incorporated by reference to this definition is the definition of "incapacitated person" found in § 37.2-1000 of the Code of Virginia and any successor language thereof.

"Indigency" means the client is a current recipient of a state-funded or federally funded public assistance program for the indigent or as otherwise defined in § 19.2-159 of the Code of Virginia.

"Least restrictive alternatives" means, but is not limited to money management services including bill payer and representative payee services, care management, and services

provided pursuant to a financial or health care power of attorney.

"Minimal fee" means allowable fees collected or payable from government sources and shall not include any funds from an incapacitated person's estate.

"Public guardian program" means a local or regional public or private nonprofit entity or program designated by ~~VDA the~~ department as a public guardian, a public conservator or both, pursuant to ~~§§ 2.2-712 and 2.2-713 §§ 51.5-150 and 51.5-151~~ of the Code of Virginia, and operating under a contract entered into with ~~VDA the department~~.

**~~22VAC5-30-20.~~ 22VAC30-70-20. Introduction and purpose.**

A. Introduction. Pursuant to ~~§ 2.2-711 § 51.5-149~~ of the Code of Virginia, the General Assembly declared that the policy of the Commonwealth is to ensure the appointment of a guardian or conservator to persons who cannot adequately care for themselves because of incapacity to meet essential living requirements where (i) the incapacitated person is indigent, and (ii) there is no other proper and suitable person willing and able to serve in such capacity.

B. Purpose. This regulation sets forth requirements for the statewide program of local and regional public guardian programs and establishes the requirements for local and regional entities to operate a designated public guardian program.

**~~22VAC5-30-30.~~ 22VAC30-70-30. Public guardian programs.**

A. Designation. ~~VDA The department~~ shall select public guardian programs in accordance with the requirements of the Virginia Public Procurement Act. Only those programs that contract with ~~VDA the department~~ will be designated as public guardian programs. Funding for public guardian programs is provided by the appropriation of general funds.

B. Authority. A public guardian program appointed as a guardian, a conservator, or both as a guardian and conservator, shall have all the powers and duties specified in Article 1 (§ 37.2-1000 et seq.) of Chapter 10 of Title 37.2 of the Code of Virginia, except as otherwise specifically limited by a court.

C. Structure.

1. Each public guardian program shall have a program director who supervises and is responsible for providing guardianship services to any incapacitated persons assigned by the court and to provide overall administration for the public guardian program. The program director must be a full-time employee of the program and have experience as a service provider or administrator in one or more of the following areas: social work, case management, mental health, nursing or other human service programs. The program director must also demonstrate, by objective criteria, a knowledge and understanding of Virginia's guardianship laws, alternatives

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to guardianship, and surrogate decision making activities. The program director shall attend all training and activities required by ~~VDA~~ the department.

2. Each public guardian program shall establish a multidisciplinary panel to (i) screen cases for the purpose of ensuring that appointment of a guardian or conservator is appropriate under the circumstances and is the least restrictive alternative available to assist the incapacitated person. This screening shall include a duty to recommend the most appropriate limitations on the power of the guardian or conservator, if any, to ensure that the powers and duties assigned are the least restrictive, and (ii) annually review cases being handled by the program to ensure that a guardian or conservator appointment remains appropriate. Composition of a multidisciplinary panel should include representatives from various human services agencies serving the city, county, or region where the public guardian program accepts referrals. If serving a region, the multidisciplinary panel shall have at least one representative from each local jurisdiction within the region. To the extent appropriate disciplines are available, this panel should include but is not limited to representation from:

- a. Local departments of social services, adult protective services;
- b. Community services boards or behavioral health authorities;
- c. An attorney licensed by the Virginia State Bar;
- d. Area agencies on aging;
- e. Local health departments;
- f. Nursing home, assisted living, and group home administrators; and
- g. Physicians and community representatives.

#### D. Client ratio to paid staff.

1. Each public guardian program shall maintain a direct service ratio of clients to paid staff that does not exceed ~~VDA's~~ the department's established ideal ratio of 20 incapacitated persons to every one paid full-time staff person 20:1.

2. Each public guardian program shall have in place a plan to immediately provide notice to the circuit court(s) in its jurisdiction and to ~~VDA~~ the department when the program determines that it may exceed its ideal ratio of clients to paid staff.

3. In an emergency or unusual circumstance, each program, in its discretion, may exceed ~~VDA's~~ the department's established ideal ratio by no more than five additional incapacitated persons. Each program shall have in place a policy to immediately provide notice to ~~VDA~~ the department when such an emergency or unusual circumstance occurs and when the emergency or unusual circumstance ends and the ideal ratio has returned to 20:1.

The notice to ~~VDA~~ the department shall comply with policy established by ~~VDA~~ the department. Other than an emergency or unusual circumstance as described in the preceding sentence, a waiver must be requested to exceed ~~VDA's~~ the department's established ideal ratio. ~~VDA~~ The department, in consultation with the advisory board, shall establish written procedures for public guardian programs to obtain appropriate waivers regarding deviations in the ideal ratio of clients to paid staff. Procedures shall comply with ~~§§ 2.2-712 and 2.2-713~~ §§ 51.5-150 and 51.5-151 of the Code of Virginia. ~~VDA~~ The department shall report waiver requests and status of granted waivers to the advisory board at its regularly scheduled meetings. ~~VDA~~ The department shall review such waivers every six months to ensure that there is no immediate threat to the person or property of any incapacitated person nor that exceeding ~~VDA's~~ the department's established ideal ratio is having or will have a material and adverse effect on the ability of the program to properly serve all of the incapacitated persons it has been designated to serve.

#### E. Appointments.

1. Prior to the public guardian program accepting an individual for services, the multidisciplinary panel, described in ~~22VAC5-30-30 C 2,~~ 22VAC30-70-30 C 2 shall screen referrals to ensure that:

- a. The public guardian program is appointed as guardian, or conservator, or both only in those cases where guardianship or conservatorship is the least restrictive alternative available to assist the individual;
- b. The appointment is consistent with serving the type of client identified by the established priorities of the public guardian program;
- c. The individual cannot adequately care for himself;
- d. The individual is indigent; and
- e. There is no other proper or suitable person or entity to serve as guardian.

f. In the case of an individual who receives case management services from a community services board (CSB) or behavioral health authority (BHA), the multidisciplinary panel may also request the results of the "determination of capacity" as authorized by 12VAC35-115-145 (Determination of capacity to give consent or authorization) and verification that no other person is available or willing to serve as guardian pursuant to 12VAC35-115-146 E (Authorized representatives).

2. Appointments by a circuit court shall name the public guardian program, rather than an individual person, as the guardian, the conservator or both guardian and conservator.

3. A public guardian program shall only accept appointments as guardian, conservator, or both guardian and conservator that generate no fee or that generate a minimal fee.

F. Services.

1. A public guardian program shall have a continuing duty to seek a proper and suitable person who is willing and able to serve as guardian, conservator, or both guardian and conservator for the incapacitated person.
2. The guardian or conservator shall encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage his personal affairs to the extent feasible.
3. The multidisciplinary panel, described in ~~22VAC5-30-30 C 2~~, 22VAC30-70-30 C 2 shall review active cases at least once every 12 months to determine that:
  - a. The client continues to be incapacitated;
  - b. The client continues to be indigent; and
  - c. There is no other proper or suitable person or entity to serve as guardian, conservator, or both guardian and conservator.
4. Each public guardian program shall set priorities with regard to services to be provided to incapacitated persons in accordance with its contract with ~~VDA the department~~.
5. Each public guardian program shall develop written procedures and standards to make end-of-life decisions or other health-related interventions in accordance with the expressed desires and personal values of the incapacitated person to the extent known. If expressed desires or personal values are unknown, then written procedures, including an ethical decision-making process, shall be used to ensure that the guardian or conservator acts in the incapacitated person's best interest and exercises reasonable care, diligence and prudence on behalf of the client.
6. The public guardian program shall avoid even the appearance of a conflict of interest or impropriety when dealing with the needs of the incapacitated person. Impropriety or conflict of interest arises where the public guardian program has some personal or agency interest that might be perceived as self-serving or adverse to the position or the best interest of the incapacitated person. Examples include, but are not limited to, situations where the public guardian program provides services such as housing, hospice or medical care directly to the client. ~~VDA The department~~ reserves the right to monitor all administrative, programmatic, and financial activities related to the public guardian program to ensure compliance with the terms of the contract between ~~VDA the department~~ and the public guardian program.
7. Each public guardian program and its employees are required to report any suspected abuse, neglect, or exploitation in accordance with § 63.2-1606 of the Code of Virginia that provides for the protection of aged or incapacitated adults, mandates reporting, and provides for a penalty for failure to report.

8. Each public guardian program shall submit data and reports as required by ~~VDA the department~~ and maintain compliance with ~~VDA the department's~~ program guidelines. ~~VDA The department~~ shall periodically monitor administrative, programmatic, and financial activities related to the public guardian program to ensure compliance with the terms of the contract between the public guardian program and ~~VDA the department~~.

~~22VAC5-30-40~~, 22VAC30-70-40. Personnel standards.

- A. Each paid staff who is working in the public guardian program and has direct contact with clients or client estates shall:
  1. Complete an orientation program concerning guardian and conservator duties to include the following subjects:
    - a. Privacy and confidentiality requirements;
    - b. Recordkeeping;
    - c. Services provided, and standards for these services;
    - d. A historical and factual review about the needs of the elderly and people with disabilities; and
    - e. Indications of and actions to be taken where adult abuse, neglect, or exploitation is suspected.
  2. Have a satisfactory work record and be a person of good character; demonstrate a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of an incapacitated person; and have not been convicted of any criminal offense involving any physical attack, neglect or abuse of a person, lying, cheating, or stealing nor convicted of any felony. A criminal record check will be conducted on each person hired on or after January 1, 2009.
  3. Be free of illegal drug use as confirmed by a drug screening test conducted prior to the assumption of any duties with an incapacitated person for each person hired on or after January 1, 2009.
  4. Demonstrate, by objective criteria, knowledge of Virginia's guardianship laws and alternatives to guardianship. For each person hired on or after January 1, 2009, minimum education requirements apply and include a high school diploma or general education diploma (GED) from a Virginia accredited program and training or course work on (i) the duties and powers of guardians and conservators in Virginia, including an understanding of surrogate decision making and how it differs from substituted judgment decision-making standards, (ii) mandatory reporting requirements to the Department of Social Services and Commissioner of Accounts where applicable, and (iii) working with special needs populations including individuals with physical and mental disabilities. Program directors have additional requirements as specified in ~~22VAC5-30-30 C 1~~ 22VAC30-70-30 C 1.

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5. Participate in mandatory training programs required by ~~VDA~~ the department.

## B. Volunteers.

1. Volunteers may be recruited and used to supplement paid staff. However, volunteers shall not be included in the public guardian program direct service ratio of 20 incapacitated persons to every one paid staff person as required under ~~22VAC5-30-30 D 1~~ 22VAC30-70-30 D 1.

2. Volunteers may not exercise the authority of a guardian or conservator.

3. Each public guardian program that uses volunteers shall develop and implement written procedures for volunteer management and supervision including requirements that each volunteer shall:

a. Complete an orientation program that provides an overview of the Virginia Public Guardian and Conservator Program (~~§ 2.2-711 et seq.~~ (§§ 51.5-149, 51.5-150, and 51.5-151 of the Code of Virginia).

b. Complete an orientation program that provides an overview of the local public guardian program for which the person intends to serve as a volunteer, including (i) services provided by the local program, (ii) specific duties of the volunteer, (iii) privacy and confidentiality requirements, (iv) recordkeeping and documentation requirements, and (v) indications of and action to be taken where adult abuse, neglect, or exploitation is suspected.

c. Have a satisfactory work record and personal record and be a person of good character and have not been convicted of any criminal offense involving any physical attack, neglect or abuse of a person, lying, cheating, or stealing nor convicted of any felony. A criminal record check will be conducted on each volunteer accepted by the local program on or after January 1, 2009.

## ~~22VAC5-30-50~~, 22VAC30-70-50, Recordkeeping.

A. Each public guardian program shall maintain an accurate and complete client record for each incapacitated person. Records shall be kept confidential. Access to client records shall be limited to the client's legal representative; as directed by court order; as directed by duly authorized government authorities or as specifically authorized by the Code of Virginia or federal statutes, including by written consent of the client's legal representative. Provision shall be made for the safe storage of client records or accurate and legible reproductions for a minimum of five years following termination of the guardian or conservator court order.

B. The client's record shall contain a Virginia Uniform Assessment Instrument (UAI) or a similar comprehensive assessment instrument, a care plan, a values history, the annual report by guardians submitted to the Department of Social Services as required by ~~§ 37.2-1021~~ § 64.2-2020 of the Code of Virginia, the annual accounting to the Commissioner of Accounts as required by ~~§ 26-17.4~~ § 64.2-1305 of the Code

of Virginia, and all applicable court orders and petitions. A client's record shall be completed and on file within 60 days of the program's appointment as guardian.

C. Each public guardian program shall maintain all records, provide reports, including audit information and documents in accordance with its contract with ~~VDA~~ the department.

## ~~22VAC5-30-60~~, 22VAC30-70-60, Evaluation and monitoring of public guardian programs.

~~VDA~~ The department shall periodically administer, monitor, evaluate, provide technical assistance and expertise, and shall ensure fiscal accountability and quality of service of public guardian programs.

VA.R. Doc. No. R13-3313; Filed September 25, 2012, 11:28 a.m.

## STATE BOARD OF SOCIAL SERVICES

### Proposed Regulation

Title of Regulation: **22VAC40-730. Investigation of Child Abuse and Neglect in Out of Family Complaints (amending 22VAC40-730-10, 22VAC40-730-20, 22VAC40-730-30, 22VAC40-730-40, 22VAC40-730-60, 22VAC40-730-70, 22VAC40-730-80, 22VAC40-730-90, 22VAC40-730-100, 22VAC40-730-110, 22VAC40-730-115, 22VAC40-730-130).**

Statutory Authority: § 63.2-217 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 21, 2012.

Agency Contact: Mary Walter, Child Protective Services Consultant, Department of Social Services, Division of Family Services, 801 East Main Street, 11th Floor, Richmond, VA 23219, telephone (804) 726-7569, FAX (804) 726-7499, TTY (800) 828-1120, or email mary.walter@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia authorizes the State Board of Social Services to promulgate regulations to carry out the administration of social services in the Commonwealth. Sections 63.2-1506, 63.2-1511 and 63.2-1516.1 of the Code of Virginia provide additional legal mandates for child protective services (CPS) investigations in out of family settings.

Purpose: As a result of a review of 22VAC40-730, Investigation of Child Abuse and Neglect in Out of Family Complaints, inconsistencies were identified with definitions in 22VAC40-705, Child Protective Services, which sets out the main requirements of CPS processes. Proposed changes to 22VAC40-730 provide technical amendments that are necessary to ensure conformity in definitions and content between CPS regulations providing for the investigation of child abuse and neglect. Conformity across CPS regulations is essential for consistency in critical decisions involving the health, safety, and welfare of children and families involved in the CPS process. The goal of updating definitions and

correcting inconsistencies is to provide clarity for local departments of social services when conducting investigations of child abuse and neglect in out of family complaints.

Substance: Substantive changes to the regulation include: (i) incorporating by reference the definitions of Child Protective Services regulation 22VAC40-705; (ii) eliminating duplicate definitions; (iii) clarifying existing definitions to reflect updated terminology; and (iv) conforming language throughout the regulation to reflect updated definitions as appropriate. Because the definitions and requirements of 22VAC40-705 must be followed in out of family CPS complaints, conformity in definitions and content between the two regulations is essential to maintain consistency across regulations for the investigation of child abuse and neglect.

Issues: The primary advantage of this proposed regulatory action is to promote consistency for local departments of social services authorized by the Code of Virginia to conduct CPS investigations in out of family complaints; thus, providing for consistency in investigations involving alleged abusers and victims and families and proper coordination with other regulatory authorities. This regulatory action poses no disadvantages to the public or the Commonwealth.

#### Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to amend its regulations that govern the investigation of child abuse and neglect in out of family complaints to make definitions and regulatory language consistent between these regulations and regulations that govern child protective services (CPS) (22VAC40-705).

Result of Analysis. Benefits likely outweigh costs for all proposed changes.

Estimated Economic Impact. Current language in the Board's regulations that govern the investigation of child abuse and neglect in out of family complaints is stylistically, but not substantively, inconsistent with the language in its CPS regulations. Since all child abuse complaints must be investigated in a manner that is consistent with the CPS regulations, the Board proposes to modify definitions and regulatory language in these proposed regulations so that they mirror the CPS regulations. For instance, the Board proposes to change every reference to "complain" to read "valid complaint" instead and propose to use the word "department" instead of "agency" because that is the phrasing used in the CPS regulations.

All of the changes that are proposed for these regulations will harmonize the language used with that in the CPS regulations but will not change any investigatory practices. Consequently, no affected entity is likely to incur any costs on account of these regulatory changes. The clarity that these changes bring will, however, benefit individuals who found the language differences between the regulations confusing.

Businesses and Entities Affected. These proposed regulatory changes will affect all 120 local Departments of Social Services.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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

Agency's Response to Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

#### Summary:

*The State Board of Social Services proposes to amend its regulation governing the investigation of child abuse and*

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*neglect in out of family complaints to make definitions and regulatory language consistent between this regulation and the regulation that governs child protective services (22VAC40-705).*

## Part I Definitions

### 22VAC40-730-10. Definitions.

~~The~~ In addition to the definitions contained in 22VAC40-705-10, the following words and terms when used in conjunction with this chapter shall have the following meanings unless the context clearly indicates otherwise:

~~"Caretaker," for the purpose of this chapter, means any individual determined to have the responsibility of caring for a child.~~

~~"Child day center" means a child day program operated in other than the residence of the provider or any of the children in care, responsible for the supervision, protection, and well-being of children during absence of a parent or guardian, as defined in § 63.2-100 of the Code of Virginia. For the purpose of this chapter, the term shall be limited to include only state licensed child day centers and religiously exempted child day centers.~~

~~"Child Protective Services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser.~~

~~"Complaint" means a valid report of suspected child abuse or neglect which must be investigated by the local department of social services.~~

~~"Department" means the Department of Social Services.~~

~~"Disposition" means the determination of whether abuse or neglect occurred.~~

~~"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of children as defined in § 63.2-100 of the Code of Virginia.~~

~~"Facility" means the generic term used to describe the setting in out of family abuse or neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, child day centers programs, ~~state regulated family day homes~~, and residential facilities.~~

~~"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.~~

~~"Family day home," for the purpose of this chapter, means a child day program as defined in § 63.2-100 of the Code of Virginia where the care is provided in the provider's home~~

~~and is state regulated; locally approved or regulated homes are not included in this definition.~~

~~"Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.~~

~~"Local agency" means the local department of social services responsible for conducting investigations of child abuse or neglect complaints as per § 63.2-1503 of the Code of Virginia.~~

~~"Participate" means to take part in the activities of the joint investigation as per a plan for investigation developed by the CPS worker with the facility administrator or regulatory authority or both.~~

~~"Physical plant" means the physical structure/premises of the facility.~~

~~"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a facility for children.~~

~~"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24-hour care, maintenance, protection, and guidance is provided to children separated from their parents or legal guardians, that is subject to licensure or certification pursuant to the provisions of the Code of Virginia and includes, but is not limited to, group homes, ~~group residences~~, secure ~~eustody~~ facilities, ~~self contained residential facilities~~, temporary care facilities, and respite care facilities.~~

## Part II

### Policy

#### Article 1

#### Out of Family Investigation Policy

### 22VAC40-730-20. General.

~~Complaints~~ Valid complaints of child abuse or neglect involving caretakers in out of family settings are for the purpose of this chapter valid complaints in state licensed and religiously exempted child day ~~centers programs~~, ~~regulated family day homes~~, private and public schools, ~~group~~ residential facilities, hospitals, or institutions. These valid complaints shall be investigated by qualified staff employed by local departments of social services ~~or welfare~~.

Staff shall be determined to be qualified based on criteria identified by the department. All staff involved in investigating a valid complaint must be qualified.

This regulation is limited in scope to the topics contained herein. All issues regarding investigations, findings and appeals are found in Child Protective Services, 22VAC40-705, and as such are cross referenced and incorporated into and apply to out of family cases to the extent that they are not inconsistent with this regulation.

In addition to the authorities and the responsibilities specified in department policy for all child protective services investigations, the policy for investigations in out of family settings is set out in 22VAC40-730-30 through 22VAC40-730-130.

**22VAC40-730-30. Initial safety assessment.**

If the valid complaint information received is such that the local agency department is concerned for the child's immediate safety, contact must be initiated with the facility administrator immediately to ensure the child's safety. If, in the judgment of the child protective services/CPS worker, the situation is such that the child or children should be immediately removed from the facility, the parent or parents, guardian or agency holding custody shall be notified immediately to mutually develop a safety plan which addresses the child's or children's immediate safety needs.

**22VAC40-730-40. Involvement of regulatory agencies.**

The authority of the local agency department to investigate valid complaints of alleged child abuse or neglect in regulated facilities overlaps with the authority of the public agencies which have regulatory responsibilities for these facilities to investigate alleged violations of standards.

1. For valid complaints in state regulated facilities and religiously exempted child day centers programs, the local agency department shall contact the regulatory authority and share the valid complaint information. The regulatory authority will appoint a staff person to participate in the investigation to determine if there are regulatory concerns.
2. The CPS worker assigned to investigate and the appointed regulatory staff person will discuss their preliminary joint investigation plan.
  - a. The CPS worker and the regulatory staff person shall review their respective needs for information and plan the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.
  - b. The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the facility's staff, the victim child or children, and the other children at the facility.

**22VAC40-730-60. Contact with CPS regional coordinator.**

A. The local agency department shall contact the department's regional CPS coordinator as soon as is practical after the receipt of the valid complaint. The regional coordinator will review the procedures to be used in investigating the valid complaint and provide any case planning assistance the local worker may need.

B. The regional coordinator shall be responsible for monitoring the investigative process and shall be kept informed of developments which substantially change the original case plan.

C. At the conclusion of the investigation the local agency department shall contact the department's regional CPS coordinator to review the case prior to notifying anyone of the disposition. The regional coordinator shall review the facts gathered and policy requirements for determining whether or not abuse or neglect occurred. However, the statutory authority for the disposition rests with the local agency department. This review shall not interfere with the requirement to complete the investigation in the legislatively mandated time frame.

**22VAC40-730-70. Contact with the facility administrator.**

A. The CPS worker shall initiate contact with the facility administrator or designee at the onset of the investigation.

B. The CPS worker shall inform the facility administrator or his designee of the details of the valid complaint. When the administrator or designee chooses to participate in the joint investigation, he will be invited to participate in developing the plan for investigation, including decisions about who is to be present in interviews. If the administrator or designee is the alleged abuser or neglector, this contact should be initiated with the individual's superior, which may be the board of directors, etc. If there is no superior, the CPS worker may use discretion in sharing information with the administrator.

C. Arrangements are to be made for:

1. Necessary interviews;
2. Observations including the physical plant; and
3. Access to information, including review of pertinent policies and procedures.

D. The CPS worker shall keep the facility administrator or designee apprised of the progress of the investigation. In a joint investigation with a regulatory staff person, either party may fulfill this requirement.

**22VAC40-730-80. Contact with the alleged victim child.**

The CPS worker shall interview the alleged victim child and shall determine along with a regulatory staff person or facility administrator or designee who may be present in the interview. Where there is an apparent conflict of interest, the CPS agency local department shall use discretion regarding who is to be included in the interview.

**22VAC40-730-90. Contact with the alleged abuser or neglector.**

A. The CPS worker shall interview the alleged abuser or neglector according to a plan developed with the regulatory staff person, facility administrator, or designee. Where there is an apparent conflict of interest, the CPS agency local department shall use discretion regarding who is to be included in the interview. At the onset of the initial interview with the alleged abuser or neglector, the CPS worker shall notify him in writing of the general nature of the valid complaint and the identity of the alleged victim child to avoid any confusion regarding the purpose of the contacts.

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# Regulations

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B. The alleged abuser or neglector has the right to involve a representative of his choice to be present during his interviews.

## **22VAC40-730-100. Contact with collateral children.**

The CPS worker shall interview nonvictim children as collaterals if it is determined that they may have information which would help in determining the finding in the valid complaint. Such contact should be made with prior consent of the nonvictim child's parent, guardian or agency holding custody. If the situation warrants contact with the nonvictim child prior to such consent being obtained, the parent, guardian or agency holding custody should be informed as soon as possible after the interview takes place.

## **22VAC40-730-110. Report the findings.**

Written notification of the findings shall be submitted to the facility administrator or designee and the regulatory staff person involved in the investigation, if applicable, at the same time the alleged abuser or neglector is notified.

If the facility administrator is the abuser or neglector, written notification of the findings shall be submitted to his superior if applicable.

## **22VAC40-730-115. Procedures for conducting an investigation of a teacher, principal or other person employed by a local school board or employed in a nonresidential school operated by the Commonwealth.**

A. Each local department of social services and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

B. These procedures for investigating school personnel amplify or clarify other Child Protection Services (CPS) regulations.

1. In determining the validity of a report of suspected abuse or neglect pursuant to § 63.2-1511 of the Code of Virginia, the local department must consider whether the school employee used reasonable and necessary force. The use of reasonable and necessary force does not constitute a valid report.

2. The local department shall conduct a face-to-face interview with the person who is the subject of the valid complaint or report.

3. At the onset of the initial interview with the alleged abuser or neglector, the local department shall notify him in writing of the general nature of the valid complaint and the identity of the alleged child victim regarding the purpose of the contacts.

4. The written notification shall include the information that the alleged abuser or neglector has the right to have an attorney or other representative of his choice present

during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the valid complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.

5. If the local department determines that the alleged abuser's actions were within the scope of his employment and were taken in good faith in the course of supervision, care or discipline of students, then the standard for determining a founded finding of abuse or neglect is whether such acts or omissions constituted gross negligence or willful misconduct.

6. Written notification of the findings shall be submitted to the alleged abuser or neglector. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.

7. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.

8. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:

- a. The identity of the person making the report.
- b. Information provided by any law-enforcement official.
- c. Information that may endanger the well-being of the child.
- d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

No information shall be released by the local department in cases that are being criminally investigated unless the release is authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

## Article 2

### Local Staff Qualifications in Out of Family Investigations

## **22VAC40-730-130. Requirements.**

A. In order to be determined qualified to conduct investigations in out of family settings, local CPS staff workers shall meet minimum education standards established by the department including:

1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and
2. Completion of out of family policy training.

B. The department and each local agency department shall maintain a roster of personnel determined qualified to conduct these out of family investigations.

V.A.R. Doc. No. R11-2527; Filed September 20, 2012, 3:42 p.m.



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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### Proposed Amendments to Northern Virginia Vehicle Emissions Inspection and Maintenance Program

Notice of action: The State Air Pollution Control Board is considering amendments to the Regulation for the Control of Motor Vehicle Emissions in Northern Virginia; specifically, provisions to implement a clean screen program that allows a motor vehicle owner to voluntarily certify compliance with the emissions standards by means of on-road remote sensing. The regulation of the board affected by this regulatory action is: Regulation for the Control of Motor Vehicle Emissions in Northern Virginia, 9VAC5-91, Clean Screen (Rev. MN).

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the (i) proposal, (ii) costs and benefits of the proposal, (iii) effects of the proposal on farm and forest land preservation, and (iv) impacts of the proposal on small businesses. The board is also seeking comment as to whether infrared light remote sensing devices (RSD) are the only technology to be used for clean screening vehicles or whether the regulation should include other technologies such as remote on-board diagnostics (OBD III). To that end, the proposal in 9VAC5-91-185 contains Option A (language that includes only infrared RSD) and Option B (language that includes both infrared and OBDIII).

Public comment period: September 24, 2012, to October 25, 2012.

Public comment stage: Notice of Public Comment.

Description of proposal: The proposed amendments are being made to conform to state law for the testing of emissions, including remote sensing, from motor vehicles located or primarily operated in Northern Virginia. Sections 46.2-1176 through 46.2-1187.3 of the Virginia Air Pollution Control Law (Chapter 10 of Title 46.2 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations for the control of motor vehicle emissions and for emissions testing including remote sensing. Specifically, the 2012 amendments to § 46.2-1178 C require the establishment by regulation of a phase-in of on-road testing requirements according to the following schedule: 10% of eligible vehicles subject to inspection requirements between July 1, 2012, and before July 1, 2013; 20% between July 1, 2013, and before July 1, 2014; and 30% after July 1, 2014.

The major provisions of the proposal are summarized below:

1. Include definitions that address the requirement for a clean screen program including terms such as: "Clean screen vehicle," "Clean screen notification," "Clean screen vehicle standard," "High emitter values," "Motor vehicle emissions," "On-road clean screen program," "On-road emissions inspector," "On-road emissions measurement," "On-road high emitter emissions standard" and "Specific engine family."

2. Modify definitions as necessary to incorporate the clean screen program into the existing emissions inspection program including: "Confirmation test," "Emissions inspector," "Enhanced emissions inspection program," "Inspection area," "Inspection fee," and "Remote sensing."

3. Provide clarity to distinguish between the high emitter program and the clean screen program and the vehicle emission standards for both. Add language that allows the criteria for clean screen vehicle selection and standards to be adjusted to comply with federal program requirements.

4. Provide language to integrate the clean screen program into the registration requirements of the enhanced emissions inspection program to ensure compliance with any necessary provisions of the existing inspection program.

5. Add provisions to address the legislative mandate to implement the clean screen program according to the statutory schedule of no more than 10% starting January 2012; no more than 20% starting January 2013; and no more than 30% starting January 2014, and ensure the program is compatible with the timing of the vehicle registration renewal notice from DMV. This also includes provisions so that owners may utilize the clean screen notification as proof of emissions inspection for vehicle registration purposes and language to ensure the contractor identifying clean screen vehicles may charge a fee for such notification that is comparable to the fee currently charged at service stations conducting emissions inspections.

6. Provide language in the alternate language of 9VAC5-91-185, Option B, necessary to allow for an on-road clean screen program utilizing remote onboard diagnostics.

The current vehicle inspection program in Northern Virginia requires that affected vehicles be presented to emissions inspection stations biennially to receive an emissions inspection. This is accomplished through a network of service stations, repair garages, and other similar facilities that perform the inspections. Cars and trucks that weigh up to 10,000 pounds and are 24 years old and newer are subject to an exhaust emissions inspection using ASM equipment which tests cars under "loaded" conditions using a dynamometer. On-Board Diagnostics Systems (OBD) on vehicles so equipped is also inspected. In addition, random testing of vehicles is accomplished using a remote sensing device next to the roadway. Vehicles which fail the on-road test are required to report to an inspection for an out-of-cycle test.

Locality particularly affected: The geographic coverage of the program consists of the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The amendments to the regulation establish an additional means for an owner to demonstrate a vehicle's compliance with emissions standards with no impact on air quality expected. Therefore, no locality in the program area

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## General Notices/Errata

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will bear any disproportionate material air quality impact from any other locality within the program area.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address and telephone number of the person commenting and be received by DEQ on the last day of the comment period. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All comments, exhibits and documents received are part of the public record.

To review regulation documents: The proposal and an analysis conducted by DEQ (including a summary, legal basis, purpose, substance, issues, requirements more restrictive than federal, localities particularly affected, public participation, economic impact, alternatives, regulatory flexibility analysis, regulatory advisory panel, and family impact), are available on the DEQ Air Public Notices for Regulations website (<http://www.deq.state.va.us/Programs/Air/PublicNotices/AirRegulations.aspx>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070, and
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, (804) 698-4423, FAX (804) 698-4510, TDD (804) 698-4021, or email [mary.major@deq.virginia.gov](mailto:mary.major@deq.virginia.gov).

### **APPRENTICESHIP COUNCIL**

#### **Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Labor and Industry and the Virginia Apprenticeship Council are conducting a periodic review of 16VAC20-11, Public Participation Guidelines. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent

with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 22, 2012, and ends on November 13, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Reba O'Connor, Regulatory Coordinator, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov).

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

### **STATE CORPORATION COMMISSION**

#### **Bureau of Insurance**

October 1, 2012

Administrative Letter 2012-10

To: All Property and Casualty Insurers and Other Interested Parties

Re: Licensing of Public Adjusters in Virginia, effective January 1, 2013

During the 2012 General Assembly session, the Virginia General Assembly enacted legislation that established standards for the licensing of public adjusters in the Commonwealth of Virginia. House Bill No. 872 and Senate Bill No. 520, which currently appear in Article 4.1 of Chapter 18 (§§ 38.2-1845.1 through 38.2-1845.23) of Title 38.2 of the Code of Virginia, provide that beginning on January 1, 2013, any resident and nonresident individual or business entity that acts as a public adjuster in Virginia must obtain a license from the State Corporation Commission's Bureau of Insurance ("Bureau").

This licensing requirement applies to any individual or business entity that receives a salary, fee, commission, or other compensation, either directly or indirectly, for investigating, negotiating, adjusting, or providing advice to an insured in relation to first party claims arising under insurance contracts that insure real or personal property of an insured with the purpose of effecting the settlement of a claim on behalf of the insured.

All public adjuster applicants, including both individual and business entities, are required to meet certain pre-licensing and renewal requirements. All resident individual public adjuster applicants must: (i) pass the Virginia pre-licensing

Public Adjuster examination, (ii) obtain a Virginia Criminal History Record Report from the Virginia State Police, (iii) pay a \$250.00 nonrefundable application processing fee, (iv) meet the delineated continuing education ("CE") requirements discussed below, and (v) certify via electronic attestation that they have, and will keep in force for as long as the license remains in effect, a \$50,000 bond in favor of the Commonwealth with corporate sureties licensed by the Commission.

All licensed public adjusters are required to renew their licenses every twenty-four (24) months from the original public adjuster license issue date. In conjunction with this renewal process, Virginia resident public adjusters must complete a minimum of twenty-four (24) hours of CE courses, including three (3) hours of ethics, and pay a nonrefundable \$15 CE processing fee. If a resident public adjuster fails to meet such renewal or CE requirements, the resident public adjuster's license will not be renewed.

Article 4.1 of Chapter 18 of Title 38.2 requires that nonresident public adjusters: (i) be in good standing and currently licensed or otherwise authorized as a resident public adjuster in their home state, and (ii) pay a \$250.00 nonrefundable application processing fee. While nonresident public adjusters must comply with the renewal requirements discussed above, the corresponding CE requirements do not apply to nonresident public adjuster licensees who have met the CE requirements of their home state.

Visit [www.scc.virginia.gov/boi/pro/adj.aspx](http://www.scc.virginia.gov/boi/pro/adj.aspx) to review the Public Adjuster Guide and beginning December 17, 2012, to submit the electronic public adjuster application.

To register for the public adjuster pre-licensing examination, which will be available on November 1, 2012, visit Pearson VUE's website, [www.asisvcs.com/indhome.asp?CPCAT=1253INS](http://www.asisvcs.com/indhome.asp?CPCAT=1253INS).

To obtain a Virginia Criminal History Record Report from the Virginia State Police, visit [www.vsp.state.va.us](http://www.vsp.state.va.us).

Questions concerning this administrative letter may be addressed to: Preston Winn, Manager, Producer Licensing Section, Bureau of Insurance, State Corporation Commission, [preston.winn@scc.virginia.gov](mailto:preston.winn@scc.virginia.gov), telephone (804) 371-9631.

/s/ Jacqueline K. Cunningham  
Commissioner of Insurance

## BOARD OF CORRECTIONS

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Corrections is currently reviewing each of the regulations listed below to determine whether it should be terminated, amended, or retained in its current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and

§ 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

6VAC15-11, Public Participation Guidelines

6VAC15-70, Standards for Community Residential Programs

The comment period begins October 22, 2012, and ends on November 21, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Jim Bruce, Agency Regulatory Coordinator, P.O. Box 26963, Richmond, VA 23261-6963, telephone (804) 674-3303, ext. 1130, FAX (804) 674-3017, or email [james.bruce@vadoc.virginia.gov](mailto:james.bruce@vadoc.virginia.gov).

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Total Maximum Daily Load Study for Banister River in Halifax County

The Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for the Halifax County streams on Thursday, November 1, 2012. The meeting will start at 7 p.m. in the Mary Bethune Complex, Bethune Public Meeting Room located at 1030 Mary Bethune Street, Halifax, VA 24558. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Banister River (VAC-L71R\_BAN06A08, VAC-L71R\_BAN04A00, and VAC-L71R\_BAN05A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the Primary Contact Use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Winn Creek (VAC-L71R\_WNN01A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the Primary Contact Use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

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Gibson Creek (VAC-L71R\_GIB01A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the Aquatic Life Use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for dissolved oxygen.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop a total maximum daily load for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at the Halifax County meeting will extend from November 1, 2012, to December 3, 2012. For additional information or to submit comments, contact Paula Nash, Virginia Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6216 or email [paula.nash@deq.virginia.gov](mailto:paula.nash@deq.virginia.gov).

### **Bacteria TMDL Modification of Pamunkey River Basin TMDL in Hanover, King William, and New Kent Counties**

The Department of Environmental Quality (DEQ) seeks public comment from interested persons on proposed minor modifications of the total maximum daily loads (TMDLs) developed for impaired segments Totopotomoy Creek (F13R-02) and the Pamunkey River (F13E-02). The TMDL was approved by the Environmental Protection Agency on August 2, 2006, and is available at <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/yorkrvr/pamunk.pdf>.

Description of proposed changes to the Totopotomoy Creek (F13R-02) TMDL: The Totopotomoy Sewage Treatment Plant (STP) (permit #VA0089915) is a VPDES major municipal facility with a design flow of 0.010 MGD (million gallons per day). In a recent modification, this facility was mistakenly allocated to the Totopotomoy Creek watershed, when it should have been allocated to the Pamunkey River (F13E-02) watershed. To correct this error, DEQ proposes to revise the TMDL by taking the newly allocated WLA of 1.74E+10 E. coli (cfu/yr) that was assigned to the Totopotomoy STP and moving it to Future Growth. This change will not affect the total WLA or LA values and results in a 0% change with respect to the TMDL.

Description of proposed changes to the Pamunkey River (F13E-02) TMDL:

1. The Totopotomoy Sewage Treatment Plant (STP) (permit #VA0089915) is a VPDES major municipal facility with a design flow of 10 MGD (million gallons per day). DEQ proposes to revise the TMDL by assigning a WLA of 1.74E+13 E. coli (cfu/yr) to accommodate this facility at a maximum design flow of 10 MGD and an E. coli concentration at the WQS of 126 cfu/100 ml. DEQ proposes to allocate the WLA by retaining the existing Future Growth and subtracting from Load Allocation (non-point source), which results in a change of the LA value from 7.40E+12 to 7.22E+14 E. coli (cfu/yr). This will result in a cumulative change of 2.4% with respect to the TMDL. In some circumstances, changes >1.0% change with respect to the TMDL necessitate the need to consider a re-evaluation of the TMDL model. In this case, the Totopotomoy STP was a discharger mistakenly left out of the TMDL during development and the TMDL for this segment is contracted for redevelopment in 2013. Therefore, DEQ does not believe the proposed WLA for the facility will cause or contribute to the nonattainment of the Pamunkey River basin and the TMDL remodeling issue will be resolved over the next year in the new TMDL.

2. DEQ proposes to correct the bacteria load allocation and revise the reduction percentage values stated in Table 5.37 of the document to be consistent with Table 3.6 (where livestock reductions of 99% are described) and to accommodate load allocation revisions.

The public comment period for these modifications will begin on October 22, 2012, and will end on November 23, 2012. Please send comments to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, email at [margaret.smigo@deq.virginia.gov](mailto:margaret.smigo@deq.virginia.gov), or FAX (Attn. Margaret Smigo) at (804) 527-5106. Following the comment period, a modification letter and comments received will be sent to EPA for approval final approval. For more information please contact Margaret Smigo.

## **DEPARTMENT OF FORESTRY**

### **Notice of Periodic Review**

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Forestry is conducting a periodic review of 4VAC10-11, Public Participation Guidelines. The review of this regulation will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the

economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 22, 2012, and ends on November 14, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Ron Jenkins, Assistant State Forester, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22901, telephone (434) 220-9022, FAX (434) 977-7749, or email [ron.jenkins@dof.virginia.gov](mailto:ron.jenkins@dof.virginia.gov).

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## STATE BOARD OF HEALTH

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health is currently reviewing each of the regulations listed below to determine whether it should be terminated, amended, or retained in its current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

12VAC5-215, Rules and Regulations Governing Health Data Reporting

12VAC5-216, Methodology to Measure Efficiency and Productivity of Health Care Institutions

12VAC5-217, Regulations of the Patient Level Data System

12VAC5-218, Rules and Regulations Governing Outpatient Data Reporting

The comment period begins October 22, 2012, and ends on November 12, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Kim Barnes, Policy Planning

Specialist, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7661, FAX (804) 864-7156, or email [kim.barnes@vdh.virginia.gov](mailto:kim.barnes@vdh.virginia.gov). Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health is currently reviewing each of the regulations listed below to determine whether it should be terminated, amended, or retained in its current form. The review of the regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

12VAC5-220, Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations

12VAC5-408, Regulation for the Certificate of Quality Assurance of Managed Care Health Insurance Plan (MCHIP) Licensees

The comment period begins October 22, 2012, and ends on November 12, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Carrie Eddy, Policy Analyst, Office of Licensure and Certification, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email [carrie.eddy@vdh.virginia.gov](mailto:carrie.eddy@vdh.virginia.gov). Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## DEPARTMENT OF LABOR AND INDUSTRY

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Labor and Industry is conducting a periodic review of 16VAC15-11, Public Participation Guidelines. The review of this regulation

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will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia.

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 22, 2012, and ends on November 13, 2012.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Reba O'Connor, Regulatory Coordinator, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov).

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

### 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 September 24, 2012. 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 Ninety-Seven (12)

"You Activate/We Pay" Virginia Lottery Retailer Incentive Program Requirements (effective September 20, 2012)

#### Director's Order Number One Hundred (12)

"Fas Mart/Shore Stop Sip, Scratch & Win 2" Virginia Lottery Retailer Incentive Program Requirements (effective September 24, 2012)

#### Director's Order Number One Hundred Six (12)

Virginia's Instant Game Lottery 1385 "Black Cherry Doubler" Final Rules for Game Operation (effective September 24, 2012)

#### Director's Order Number One Hundred Seven (12)

Virginia's Instant Game Lottery 1391 "Money In The Bank" Final Rules for Game Operation (effective September 24, 2012)

### STATE WATER CONTROL BOARD

#### Proposed Consent Order for Fork Union Sanitary District

An enforcement action has been proposed for the Fork Union Sanitary District for violations in Fluvanna County. A proposed consent order describes a settlement to resolve unauthorized discharge violations from the Omohundro Well and Morris Well water treatment plants. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email at [steven.hetrick@deq.virginia.gov](mailto:steven.hetrick@deq.virginia.gov), FAX (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from October 22, 2012, to November 21, 2012.

#### Proposed Consent Special Order for Harvest Garden Pro, LLC

An enforcement action has been proposed for Harvest Garden Pro, LLC, for alleged violations at Harvest Garden Pro, LLC, Doswell Site, 17554 and 17560 Washington Highway, Hanover County, VA. The State Water Control Board proposes to issue a consent special order to Harvest Garden Pro, LLC to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Gina Pisoni will accept comments by email at [gina.pisoni@deq.virginia.gov](mailto:gina.pisoni@deq.virginia.gov), FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 22, 2012, to November 24, 2012.

#### Proposed Consent Special Order for The McGurn Company, Inc.

An enforcement action has been proposed for The McGurn Company, Inc., for alleged violations at Green Top Center Drive Development, Hanover County, Virginia. The State Water Control Board proposes to issue a consent special order to The McGurn Company, Inc., to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Gina Pisoni will accept comments by email at [gina.pisoni@deq.virginia.gov](mailto:gina.pisoni@deq.virginia.gov), FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 22, 2012, to November 24, 2012.

## Proposed Consent Special Order for Vane Line Bunkering

An enforcement action has been proposed for Vane Line Bunkering, Inc., for an alleged discharge of petroleum products at the mouth of the York River at New Point Comfort, Mathews County, Virginia. The State Water Control Board proposes to issue a consent special order to Vane Line Bunkering to address noncompliance with State Water Control Board law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Frank Lupini will accept comments by email at [frank.lupini@deq.virginia.gov](mailto:frank.lupini@deq.virginia.gov), FAX (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 22, 2012, to November 22, 2012.

## Proposed Consent Order for Watts Petroleum Corporation

An enforcement action has been proposed for Watts Petroleum Corporation for violations of the State Water Control Law and Regulation in Bedford County. The State Water Control Board proposes to issue a Consent Order to Watts Petroleum Corporation to resolve violations regarding a petroleum spill which occurred on US 460 East in the vicinity of Montvale on May 28, 2012. A description of the proposed action is available at the Department of Environmental Quality office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). G. Marvin Booth, III will accept comments by email at [marvin.booth@deq.virginia.gov](mailto:marvin.booth@deq.virginia.gov), FAX (434) 582-5125 or postal mail at Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, from October 23, 2012, to November 21, 2012.

## Amendment of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board (board) is considering the amendment of the regulation on water quality management planning in accordance with the Public Participation Procedures for Water Quality Management Planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt nine total maximum daily load (TMDL) waste load allocations.

Public comment period: October 22, 2012, to November 26, 2012.

Description of proposed action: DEQ staff will propose amendments of the state's Water Quality Management Planning regulation for the New River Basin (9VAC25-720-

130 A). Statutory authority for promulgating these amendments can be found in § 62.1-44.15 (10) of the Code of Virginia.

Staff intends to recommend (i) that the board approve the TMDL report as the plan for the pollutant reductions necessary for attainment of water quality goals in the impaired segments and (ii) that the board adopt nine TMDL waste load allocations as part of the state's Water Quality Management Planning Regulation in accordance with §§ 2.2-4006 A 4 c and 2.2-4006 B of the Code of Virginia.

The TMDL report was developed in accordance with federal regulations (40 CFR § 130.7) and is exempt from the provisions of Article 2 of the Virginia Administrative Process Act. The report was subject to the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL. EPA approved the TMDL presented under this public notice. The approved report can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx>

Affected Waterbodies and Localities:

In the New River Basin (9VAC25-720-130 A):

Total Maximum Daily Load (TMDL) Development Little River Watershed, Virginia.

- The Little River Watershed TMDL, located in Floyd, Franklin, Montgomery, Patrick and Pulaski counties, provides temperature and sediment reductions for the watershed. It provides one wasteload allocation for sediment in the entire watershed and the wasteload allocation is 116.49 tons/year of sediment. It provides eight wasteload allocations for temperature in the watershed's streams and the wasteload allocations with their respective streams are: Little River (VAW-N19\_LRV01A00), 1.66 Joules/m<sup>2</sup>/second; Little River (VAW-N19R\_LRV02A00), 1.44 Joules/ m<sup>2</sup>/second; Little River (VAW-N19R\_LRV03A00), 1.03 Joules/ m<sup>2</sup>/second; Pine Creek, 1.35 Joules/ m<sup>2</sup>/second; West Fork Dodd Creek, 0.99 Joules/ m<sup>2</sup>/second; Dodd Creek (VAW-N20R\_DDD02A00), 1.3 Joules/ m<sup>2</sup>/second; Dodd Creek (VAW-N20R\_DDD01A00), 0.82 Joules/ m<sup>2</sup>/second; Big Indian Creek, 1.2 Joules/ m<sup>2</sup>/second.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens

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## General Notices/Errata

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that submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL report is available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx> and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests, and additional information: Liz McKercher; Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX: (804) 698-4116, or email [elizabeth.mckercher@deq.virginia.gov](mailto:elizabeth.mckercher@deq.virginia.gov).

### **Approval of Water Quality Management Planning Actions**

Notice of action: The State Water Control Board (board) is considering the approval of one total maximum daily load (TMDL) modification and granting authorization to include the modification in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve one TMDL modification as Virginia's plan for the pollutant reductions necessary for attainment of water quality goals an impaired waterbody. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period begins October 22, 2012, and ends on November 26, 2012.

Description of proposed action: Department of Environmental Quality (DEQ) staff intends to recommend that the DEQ Director approve the TMDL modification listed below as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments. No regulatory amendments are required for these TMDLs and their associated waste load allocations.

At previous meetings, the board voted unanimously to delegate to the DEQ Director the authority to approve TMDLs that do not include waste load allocations requiring regulatory adoption by the board, provided that a summary report of the action the Director plans to take is presented to the board prior to the Director approving the TMDL reports. The TMDLs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with federal regulations (40 CFR § 130.7) and are exempt from the provisions of Article 2 of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation

Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. EPA approved all TMDL reports presented under this public notice. The approved reports can be found at <https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jsp>.

Affected Waterbodies and Localities:

In the James River Basin:

Modification to "Total Maximum Daily Load Development for the James River and Tributaries – Lower Piedmont Region"

- The modification includes the addition of four Domestic Dischargers to the TMDL.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL reports and TMDL implementation plans are available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/ApprovedTMDLReports.aspx> and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, or email [elizabeth.mckercher@deq.virginia.gov](mailto:elizabeth.mckercher@deq.virginia.gov).

### **Approval of Water Quality Management Planning Actions**

Notice of action: The State Water Control Board (board) is considering the approval of seven total maximum daily load implementation plans (TMDL IPs) and granting authorization to include the TMDL implementation plans in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve seven TMDL IPs as Virginia's plans for the management actions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period begins October 22, 2012, and ends on November 26, 2012.



Description of proposed action: Department of Environmental Quality (DEQ) staff intends to recommend that the DEQ Director approve the TMDL IPs listed below as Virginia's plans for the management actions necessary for attainment of water quality goals in the impaired segments. No regulatory amendments are required for these TMDL IPs.

At previous meetings, the board voted unanimously to delegate to the DEQ Director the authority to approve TMDL implementation plans, provided that a summary report of the action the Director plans to take is presented to the board prior to the Director's approval. The TMDL Implementation Plans included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with 1997 Water Quality Monitoring, Information and Restoration Act (WQMIRA, §§ 62.1-44.19:4 through 62.1-44.19:8 of the Code of Virginia) and federal recommendations. The TMDL IPs were developed in accordance with DEQ's Public Participation Procedures for Water Quality Management Planning. Extensive public participation was solicited during the development of the plans, and the public comment process provided the affected stakeholders with opportunities for comment on the proposed plans. The final TMDL IPs can be found at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx>.

Affected Waterbodies and Localities:

In the Tennessee/Big Sandy River Basin:

1. "A Plan to Reduce Fecal Bacteria, Sediment and Total Dissolved Solids in the Upper Clinch River Watershed"
  - The IP proposes management actions needed to reduce bacteria and sediment and restore the recreation and aquatic life uses in the Upper Clinch River watershed, located in Tazewell County.

In the New River Basin:

2. "Little River Total Maximum Daily Load Implementation Plan"
  - The IP proposes management actions needed to restore the natural trout and stockable trout temperature water quality standards, and reduce bacteria and sediment to restore the primary contact (swimming) and aquatic life designated uses in the Little River watershed located in Floyd and Montgomery counties.

In the James River Basin:

3. "TMDL Implementation Plan for Hoffler Creek"
  - The IP proposes management actions needed to reduce bacteria and restore the primary contact

(swimming) use in Hoffler Creek located in Suffolk and Portsmouth.

4. "Implementation Plan for the Fecal Coliform TMDL for the Upper Nansemond River"

- The IP proposes management actions to reduce bacteria and restore the primary contact (swimming) and shellfishing uses in the Upper Nansemond River and Shingle Creek located in Suffolk and Isle of Wight counties.

In the Roanoke River Basin:

5. "A Plan to Reduce Bacteria Sources in the Upper Banister River and Tributary Watersheds"

- The IP proposes management actions to reduce bacteria and restore the primary contact (swimming) use in Upper Banister River, Bearskin Creek, Cherrystone Creek, Stinking River, and Whitehorn Creek located in Pittsylvania County.

In the Rappahannock River Basin:

6. "Upper Hazel River Bacteria Total Maximum Daily Load Implementation Plan"

- The IP proposes management actions to reduce bacteria and restore the primary contact (swimming) use in Upper Hazel River, Rush River, and Hughes River located in Rappahannock County.

In the Chesapeake Bay - Small Coastal - Eastern Shore Basin:

7. "TMDL Implementation Plan for Mill Creek"

- The IP proposes management actions to improve dissolved oxygen and pH levels to restore the aquatic life use in Mill Creek located in Northampton County.

How to comment: DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL implementation plans are available on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx> and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: Liz McKercher, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4291, FAX (804) 698-4116, or email [elizabeth.mckercher@deq.virginia.gov](mailto:elizabeth.mckercher@deq.virginia.gov).

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## General Notices/Errata

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### Proposed FY2013 Revolving Load Fund List

The Board is presenting its draft list of targeted FY 2013 loan recipients for public review and comment. A public meeting will be held at 2 p.m. on Wednesday, November 7, 2012, in the Department of Environmental Quality's (DEQs) 11th Floor Conference Room, 629 East Main Street, Richmond, VA 23219. The public review and comment period will end immediately following the public meeting.

On May 31, 2012, DEQ solicited applications from the Commonwealth's localities and wastewater authorities as well as potential land conservation applicants and Brownfield remediation clientele. July 13, 2012, was established as the deadline for receiving applications. Based on this solicitation, DEQ received thirteen (13) wastewater improvement applications requesting \$53,083,546 and one (1) stormwater management application for an additional \$1,060,650.

All 13 wastewater applications were evaluated in accordance with the program's "Funding Distribution Criteria" and the Board's "Bypass Procedures." In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type and impact on state waters, the locality's compliance history and fiscal stress, and the project's readiness-to-proceed. The one stormwater application was reviewed in accordance with the Board's Priority Ranking Criteria for Stormwater projects, in consultation with the Department of Conservation and Recreation. All applications are considered to be of good quality and should provide significant water quality and environmental improvement.

Based on these considerations, the Board approved the staff recommendation to authorize funding for \$54,144,196 for all 14 projects (City of Lynchburg, Town of Rural Retreat, City of Salem, Scott Co. Public Service Authority, Town of Grottoes, Augusta Co. Service Authority, Town of Clifton Forge, King George Co. Service Authority, City of Norfolk, Tazewell Co. Public Service Authority, Town of Coeburn, C-N-W Waste Water Treatment Authority, Loudoun Water, and City of Richmond - stormwater).

Contact Information: Walter Gills, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, or email [walter.gills@deq.virginia.gov](mailto:walter.gills@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](mailto: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 use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works 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.