



# VIRGINIA

## REGISTER OF REGULATIONS

VOL. 29 ISS. 16

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

APRIL 8, 2013

### TABLE OF CONTENTS

<b>Register Information Page</b> .....	1959
<b>Publication Schedule and Deadlines</b> .....	1960
<b>Petitions for Rulemaking</b> .....	1961
<b>Notices of Intended Regulatory Action</b> .....	1962
<b>Regulations</b> .....	1963
2VAC5-210. Rules and Regulations Pertaining to Meat and Poultry Inspection under the Virginia Meat and Poultry Products Inspection Act (Final) .....	1963
4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (Proposed) .....	1965
8VAC45-10. Weapons on Campus (Final) .....	1992
9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities (Final) .....	1993
9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (Proposed) .....	2017
18VAC60-20. Regulations Governing Dental Practice (Final) .....	2036
20VAC5-10. In General (Proposed) .....	2036
20VAC5-200. Public Utility Accounting (Proposed) .....	2036
20VAC5-201. Rules Governing Utility Rate Applications and Annual Informational Filings (Proposed) .....	2036
20VAC5-202. Regulations Governing the Functional Separation of Incumbent Electric Utilities under the Virginia Electric Utility Restructuring Act (Proposed) .....	2036
20VAC5-304. Rules Governing Cost/Benefit Measures Required for Demand-Side Management Programs (Proposed) .....	2036
20VAC5-312. Rules Governing Retail Access to Competitive Energy Services (Proposed) .....	2036
20VAC5-314. Regulations Governing Interconnection of Small Electrical Generators (Proposed) .....	2036
20VAC5-320. Regulations Governing Transfer of Transmission Assets to Regional Transmission Entities (Proposed) .....	2037
20VAC5-403. Rules Governing Small Investor-Owned Telephone Utilities (Proposed) .....	2037
<b>Governor</b> .....	2078
<b>General Notices/Errata</b> .....	2080

---

# THE VIRGINIA REGISTER INFORMATION PAGE

---

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

*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. Taverner**; **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.

---

## PUBLICATION SCHEDULE AND DEADLINES

---

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

---

### April 2013 through April 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
30:7	November 13, 2013	December 2, 2013
30:8	November 26, 2013 ( <b>Tuesday</b> )	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 ( <b>Monday</b> )	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014

\*Filing deadlines are Wednesdays unless otherwise specified.

---

# PETITIONS FOR RULEMAKING

---

## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Initial Agency Notice

**Title of Regulation: 8VAC20-390. Rules Governing Division Superintendent of Schools.**

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

**Name of Petitioner:** John Butcher.

**Nature of Petitioner's Request:** 8VAC20-390-80 provides: "It shall be the duty of the division superintendent to visit and inspect each school in his division. He shall inquire into all matters relating to the management of the school, the course of study, method of instruction, and use of textbooks, and shall give particular attention to the conditions of the school buildings." The petitioner requests the Board of Education to render its regulation enforceable by amending 8VAC20-390-80 to append the following paragraph: The division superintendent shall document each such visit, setting forth the date(s) and time(s) of the required visits and detailing the results of his inquiries. The resulting records shall be kept as public records, subject to inspection under the Freedom of Information Act. The division superintendent shall forward each year's records to the Department within 30 days after the close of the fiscal year.

**Agency Plan for Disposition of Request:** The agency has received the petitioner's request and announces a 21-day comment period, which will be published in the Virginia Register of Regulations.

**Public Comment Deadline:** April 28, 2013.

**Agency Contact:** Melissa Luchau, Director for Board Relations, Department of Education, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2924, or email melissa.luchau@doe.virginia.gov.

VA.R. Doc. No. R13-20; Filed March 15, 2013, 10:57 a.m.

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHYSICAL THERAPY

#### Agency Decision

**Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy.**

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

**Name of Petitioner:** Sharan Zirges, PT.

**Nature of Petitioner's Request:** Sentara would like to ask the board to amend the rule (18VAC112-20-131) regarding who

can provide educational experiences to include health care organizations accredited by any Centers for Medicare and Medicaid Services (CMS) approved accrediting body empowered to deem CMS accredited provider status.

All Sentara hospital facilities are now accredited by DNV. DNV Healthcare is the leading accreditor of U.S. hospitals integrating ISO 9001 quality compliance with the Medicare Conditions of Participation per their website. In addition, DNV accreditation requires an annual survey and the organization's continual compliance with the DNV accreditation process. Sentara Home Care services are accredited by CHAP – Community Health Accreditation Program, which is an independent, not-for-profit, accrediting body for community-based health care organizations. CHAP through "deeming authority" granted by the CMS has the regulatory authority to survey agencies providing home health, hospice, and home medical equipment services to determine if they meet the Medicare Conditions of Participation and CMS Quality Standards.

**Agency's Decision:** Request granted.

**Statement of Reasons for Decision:** The board has adopted an amendment to 18VAC112-20-131 by a fast-track action to replace the Joint Commission on Accreditation of Healthcare Organizations with "a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation."

**Agency Contact:** Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R13-10; Filed March 21, 2013, 2:23 p.m.

---

# NOTICES OF INTENDED REGULATORY ACTION

---

## TITLE 22. SOCIAL SERVICES

### DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department for the Blind and Vision Impaired intends to consider repealing **22VAC45-50, Regulation Governing Provisions of Services in Vocational Rehabilitation**, and promulgating **22VAC45-51, Regulations Governing Provisions of Services in Vocational Rehabilitation**. The purpose of the proposed action is to repeal existing regulation 22VAC45-50 concurrently with the promulgation of new regulation 22VAC45-51. The current regulation, last revised in 1990, is outdated. The new regulation 22VAC45-51, will incorporate updated federal language, update the names of two agencies, eliminate one section that is not necessary to ensure compliance with federal regulations, separate one section into two separate sections to provide greater clarification, and combine two sections that are duplicative.

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

Statutory Authority: § 51.5-65 of the Code of Virginia.

Public Comment Deadline: May 8, 2013.

Agency Contact: Susan D. Payne, Program Director, Vocational Rehabilitation, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3351, TTY (804) 371-3140, or email [susan.payne@dbvi.virginia.gov](mailto:susan.payne@dbvi.virginia.gov).

VA.R. Doc. No. R09-1168; Filed March 12, 2013, 9:03 a.m.

---

# REGULATIONS

---

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

---

## Symbol Key

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

---

## TITLE 2. AGRICULTURE

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

#### Final Regulation

**REGISTRAR'S NOTICE:** The Commissioner of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the commissioner when promulgating regulations pursuant to § 3.2-5406 of the Code of Virginia.

**Title of Regulation:** **2VAC5-210. Rules and Regulations Pertaining to Meat and Poultry Inspection under the Virginia Meat and Poultry Products Inspection Act (amending 2VAC5-210-10, 2VAC5-210-30, 2VAC5-210-41).**

**Statutory Authority:** § 3.2-5406 of the Code of Virginia.

**Effective Date:** May 8, 2013.

**Agency Contact:** Dr. Richard C. Hackenbracht, Program Manager, Meat and Poultry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4569, FAX (804) 786-1003, TTY (800) 828-1120, or email richard.hackenbracht@vdacs.virginia.gov.

#### Summary:

*The amendments adopt 9 CFR Part 418 (2013) of the Code of Federal Regulations, which requires new and existing inspected establishments to have written recall procedures. Recall procedures and any associated records must be made available for review and copying by the inspection authority. The amendment requires establishments to notify the inspection authority within 24 hours of learning or determining that an adulterated or misbranded meat, meat food, poultry, or poultry product received by or originating from the establishment has entered commerce.*

#### Part I

##### Adoption by Reference

#### 2VAC5-210-10. Adoption by reference.

The following rules and regulations governing the meat and poultry inspection of the United States Department of Agriculture specified in this part, as contained in Title 9, Chapter III, Subchapters A and E, ~~CFR, dated January 1, 2006,~~ of the Code of Federal Regulations, as it exists and has been published in the January 1, 2013, update with amendments and with administrative changes therein as

needed to make them appropriate and applicable to intrastate operations and transactions subject to the Virginia Meat and Poultry Products Inspection Act, are hereby adopted by reference.

#### 2VAC5-210-30. Mandatory meat and poultry products inspection and voluntary inspection and certification.

The Commissioner of the Department of Agriculture and Consumer Services hereby adopts the following provisions of ~~Chapter III~~ of Title 9, Chapter III, Subchapter A of the Code of Federal Regulations (~~rev. January 1, 2007~~) as described in 2VAC5-210-10:

Subchapter A -- Agency organization and terminology; mandatory meat and poultry products inspection and voluntary inspection and certification.

Part 302. Application of inspection and other requirements.

Part 303. Exemptions.

Any establishment, firm, person or corporation operating under Section 303.1(a)(2) of this subchapter is required to apply for and receive a permit of exemption in accordance with requirements set forth by the Commissioner of Agriculture and Consumer Services or his delegate.

Part 304. Application for inspection; grant or refusal of inspection.

Part 305. Official numbers; inauguration of inspection; withdrawal of inspection; reports of violation.

Part 306. Assignment and authorities of program employees.

Part 307. Facilities for inspection.

Part 309. Ante-mortem inspection.

Part 310. Post-mortem inspection.

Part 311. Disposal of diseased or otherwise adulterated carcasses and parts.

Part 312. Official marks, devices and certificates.

Part 313. Humane slaughter of livestock.

Part 314. Handling and disposal of condemned or other inedible products at official establishments.

Part 315. Rendering or other disposal of carcasses and parts passed for cooking.

Part 316. Marking products and their containers.

Part 317. Labeling, marking devices, and containers.

Part 318. Entry into official establishments; reinspection and preparation of products.

Part 319. Definitions and standards of identity or composition.

---

# Regulations

---

- Part 320. Records, registration, and reports.
- Part 325. Transportation.
- Part 329. Detention; seizure and condemnation; criminal offenses.
- Part 335. Rules of practice governing proceedings under the federal Meat Inspection Act.
- Part 350. Special services relating to meat and other products.
- Part 352. Exotic animals; voluntary inspection.
- Part 354. Voluntary inspection of rabbits and edible products thereof.
- Part 355. Certified products for dogs, cats, and other carnivora; inspection, certification, and identification as to class, quality, quantity, and condition.
- Part 362. Voluntary poultry inspection regulations.
- Part 381. Poultry products inspection regulations.
  - Subpart B. Administration; application of inspection and other requirements. Deleting Section 381.5-Publications.
  - Subpart C. Exemptions.

Any establishment, firm, person or corporation operating under § 381.10 (5), (6) or (7) of this subchapter is required to apply for and receive a permit of exemption in accordance with requirements set forth by the Commissioner of Agriculture and Consumer Services or his delegate.
  - Subpart D. Application for inspection; grant or refusal of inspection.
  - Subpart E. Inauguration of inspection; official establishment numbers; separation of establishments and other requirements; withdrawal of inspection.
  - Subpart F. Assignment and authorities of program employees; appeals.
  - Subpart G. Facilities for inspection; overtime and holiday service; billing establishments.
  - Subpart H. Sanitation.
  - Subpart I. Operating procedures.
  - Subpart J. Ante-mortem inspection.
  - Subpart K. Post-mortem inspection; disposition of carcasses and parts.
  - Subpart L. Handling and disposal of condemned or other inedible products at official establishments.
  - Subpart M. Official marks, devices, and certificates; export certificates; certification procedures.

Except as otherwise required in this subchapter all referrals and instructions relative to export or import are deleted from adoption.
  - Subpart N. Labeling and containers.

- Subpart O. Entry of articles into official establishments; processing inspection and other reinspections; processing requirements.
- Subpart P. Definitions and standards of identity or composition.
- Subpart Q. Records, registration, and reports.
- Subpart S. Transportation; exportation; or sale of poultry or poultry products.
- Subpart U. Detention; seizure and condemnation; criminal offenses.
- Subpart X. Canning and canned products.
- Subpart Y. Nutrition labeling.

~~Part 416. Sanitation.~~

~~Part 417. Hazard Analysis and Critical Control Point (HACCP) Systems.~~

## **2VAC5-210-41. Regulatory requirements.**

The Commissioner of the Department of Agriculture and Consumer Services hereby adopts the following provisions of ~~Chapter III~~ of Title 9, Chapter III, Subchapter E of the Code of Federal Regulations (~~rev. October 9, 2008~~) as described in 2VAC5-210-10:

Subchapter E. Regulatory requirements under the federal Meat Inspection Act and the Poultry Products Inspection Act.

Part 416. Sanitation.

Part 417. Hazard analysis and critical control point (HACCP) systems.

Part 418. Recalls.

Part 424. Preparation and processing operations.

Part 430. Requirements for specific classes of product.

Part 441. Consumer protection standards: raw products.

Part 442. Quantity of contents labeling and procedures and requirements for accurate weights.

Part 500. Rules of practice.

VA.R. Doc. No. R13-3529; Filed March 21, 2013, 9:14 a.m.



## **TITLE 4. CONSERVATION AND NATURAL RESOURCES**

### **VIRGINIA SOIL AND WATER CONSERVATION BOARD**

#### **Proposed Regulation**

**REGISTRAR'S NOTICE:** The Virginia Soil and Water Conservation 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 Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act

(§ 10.1-603.1 et seq.) of Title 10.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

**Title of Regulation:** **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-1100 through 4VAC50-60-1170; repealing 4VAC50-60-1180, 4VAC50-60-1182, 4VAC50-60-1184, 4VAC50-60-1186, 4VAC50-60-1188, 4VAC50-60-1190).**

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

**Public Hearing Information:**

May 13, 2013 - 10 a.m. - Virginia Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA

May 16, 2013 - 10 a.m. - Spotsylvania County Government Complex, 9104 Courthouse Road, 1st Floor, Spotsylvania, VA

May 20, 2013 - 10 a.m. - Roanoke County Government Offices, 5204 Bernard Drive, 4th Floor, Roanoke, VA

**Public Comment Deadline:** June 7, 2013.

**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:**

*This proposed regulatory action amends and reissues the General Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1100 et seq.) (Part XIV). This action to update and reissue the General Permit is authorized under the federal Clean Water Act (33 USC § 251 et seq.) and the Stormwater Management Act (§ 10.1-603.2 et seq. of the Code of Virginia), which require that state permits be effective for a fixed term not to exceed five years. The existing five-year General Permit became effective on July 1, 2009; thus necessitating the promulgation of a new General Permit before the July 1, 2014, expiration date.*

*The proposed general permit regulates stormwater discharges from construction activities. The term construction activity is defined in 4VAC50-60-10 as any clearing, grading, or excavation associated with large construction activity or associated with small construction activity. This general permit authorizes discharges of*

*stormwater from regulated construction activities to surface waters within the boundaries of the Commonwealth of Virginia and includes enhanced criteria for impaired and exceptional waters. The board has determined that this category of discharges is appropriately controlled under a general permit, as the category of discharges to be included involves facilities with the same or similar types of operations that discharge the same or similar types of stormwater.*

*The key elements of the amendments to the proposed permit regulations include:*

- 1. Updating, removing, and adding definitions, agency references, and effective dates;*
- 2. Removing unnecessary language and clarifying existing language;*
- 3. Incorporation and clarification of the federal effluent limitation guidelines (ELGs);*
- 4. Reorganization of the regulation for clarity and simplification; and*
- 5. Repealing sections no longer needed for the 2014 permit.*

Part XIV

General 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



---

# Regulations

---

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.

"Immediately" means as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. In the context of this permit, "immediately" is used to define the deadline for initiating stabilization measures.

"Impaired waters" means surface waters identified as impaired on the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report.

"Initiation of stabilization activities" means:

1. Prepping the soil for vegetative or nonvegetative stabilization;
2. Applying mulch or other nonvegetative product to the exposed area;
3. Seeding or planting the exposed area;
4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area; or
5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

This list of examples is not exhaustive.

"Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over 24 hours.

## **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~~ surface waters or through a municipal or nonmunicipal separate storm sewer system to ~~state~~ surface waters. Stormwater discharges associated with industrial activity that originate from ~~the site~~ after construction activities that 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.~~

## **4VAC50-60-1120. Effective date of the permit.**

This general permit is effective on July 1, ~~2009~~ 2014. The general permit will expire on June 30, ~~2014~~ 2019. This general permit is effective for any covered operator upon compliance with all provisions of 4VAC50-60-1130.

## **4VAC50-60-1130. Authorization to discharge.**

A. Any operator ~~governed~~ covered by this general permit is authorized to discharge ~~to state~~ stormwater associated with construction activities including stormwater associated with emergency-related construction related activities to surface waters of the Commonwealth of Virginia in accordance with 4VAC50-60-1150 A 4 provided that the operator ~~has filed~~ submits a complete and accurate registration statement in accordance with 4VAC50-60-1150 and receives acceptance of the registration statement by the board, submitted ~~submits~~ 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 complies with the requirements of 4VAC50-60-1170 and provided that:~~

1. ~~Prior to commencing construction land disturbing activities, 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 unless the operator receives from the VESCP authority an "agreement in lieu of a plan" as defined in 4VAC50-30-10, or is exempt from the 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); obtains approval of:~~

a. An erosion and sediment control plan from the appropriate VESCP authority as authorized under the Virginia Erosion and Sediment Control Regulations, 4VAC50-30, unless the operator receives from the VESCP an "agreement in lieu of a plan" as defined in 4VAC50-30-10 or prepares the erosion and sediment control plan in accordance with annual standards and specifications approved by the board. The operator of any land-disturbing activity that is not required to obtain erosion and sediment control plan approval from a VESCP authority or is not required to adopt department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval prior to land disturbance; and

b. A stormwater management plan from the appropriate VSMP authority as authorized under the Virginia Stormwater Management Program Regulations,

4VAC50-60. The operator of any land-disturbing activity that is not required to obtain stormwater management plan approval from a VSMP authority or is not required to adopt department-approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval prior to land disturbance.

Emergency related construction activities are not required to obtain the approvals specified in subdivisions 1 a and b of this subsection prior to the commencement of land disturbance.

2. ~~The stormwater discharge~~ Discharges authorized by this state permit may be ~~combined~~ commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the ~~combined~~ commingled discharge is in compliance with this state permit. ~~Any discharge~~ Discharges authorized by a ~~different~~ separate 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~~ permit requirements;

3. Discharges to ~~impaired~~ waters for which a "total maximum daily load" (TMDL) ~~wasteload allocation has been established, including discharges to surface waters located within a TMDL watershed~~ are not eligible for coverage under this general permit unless ~~they are otherwise authorized in accordance with 4VAC50 60 1170 Section H D 6 and~~ the operator develops, implements, and maintains a stormwater pollution prevention plan that minimizes applicable observed sources identified in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report, minimizes pollutants of concern identified in a TMDL approved prior to July 1, 2014, and is consistent with the requirements and assumptions assumptions and requirements of the wasteload allocations in the TMDL all applicable TMDL wasteload allocations. This only applies when construction activities discharge or are reasonably expected to discharge an applicable observed source identified in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report or a pollutant of concern identified in a TMDL approved prior to July 1, 2014; 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.

4. Authorized nonstormwater discharges. The following nonstormwater discharges are authorized by this permit:

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Water used to wash vehicles where detergents have not been used and the wash water has been treated;

d. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;

e. Potable water source, including uncontaminated waterline flushings;

f. Routine external building wash down that does not use detergents, solvents, or other wash chemicals and that have been filtered, settled, or similarly treated prior to discharge;

g. Pavement washwater where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled material has been removed prior to washing); where detergents, solvents, or other wash chemicals are not used; and where the washwater has been filtered, settled, or similarly treated prior to discharge;

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, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and

l. Landscape irrigation.

B. In addition to other prohibitions, the following discharges are not eligible for coverage under this general permit. The board will notify an operator that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. Discharges for which the operator has been The operator is required to obtain an individual permit according to 4VAC50-60-410 B;

2. Discharges The operator is proposing discharges to state surface waters specifically named in other State Water Control Board or Virginia Soil and Water Conservation Board regulations or policies that prohibit such discharges; and

3. Stormwater discharges that the 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). The discharges cause, may reasonably be expected to cause, or contribute to a violation of water quality standards (9VAC25-260) as determined in consultation with the State Water Control Board;

4. The discharges violate or would violate the antidegradation policy in the Virginia Water Quality Standards (9VAC25-260-30) as determined in consultation with the State Water Control Board; or

5. The discharges are not consistent with the assumptions and requirements of a TMDL approved prior to July 1, 2014.

---

# Regulations

---

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 state permit coverage for discharges of stormwater associated with construction activity applying for state permit coverage;
2. The support activity is not a commercial operation serving or does not serve 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. The support activity is identified in the registration statement at the time of state permit coverage;
3. 4. 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; and
5. All applicable, state, federal, and local approvals are obtained for the support activity.

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 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 Approval for coverage under 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 department may allow exceptions to technical criteria contained in the state permit in accordance with Part III of this chapter.~~

F. Continuation of permit coverage. Any operator that was authorized to discharge under the general permit issued in 2009 under 4VAC50-60-1170 Section III M and that submits a complete registration statement that is stamped as received by the department or postmarked 90 days prior to the effective date of this general permit is authorized to continue to discharge under the terms of the 2009 general permit until such time as the board either:

1. Issues coverage to the operator under this general permit or
2. Notifies the operator that the discharge is not eligible for coverage under this general permit.

## **4VAC50-60-1140. Virginia erosion and sediment control programs Delegation of authorities to state and local programs.**

~~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 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 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.

A board-approved VSMP authority is authorized to administer requirements of this general permit, including but not limited to (i) registration statement acceptance, (ii) fee collection, (iii) plan review and approval, and (iv) permit compliance and enforcement dependent upon conditions established as part of the board approval.

## **4VAC50-60-1150. State permit application (registration statement).**

A. Deadlines for submitting registration statement.

1. Except as provided in subdivision 3 of this subsection, operators must certify that all information required in subsection B of this section has been entered completely and accurately into the available electronic database provided by the department and submit a complete and accurate registration statement to the VSMP authority 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 certify that all information required in subsection B of this section has been entered completely and accurately into the available electronic database provided by the department and 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

2014, that received authorization to discharge for those projects under the construction stormwater general permit issued in ~~2004~~ 2009 must:

a. ~~Submit~~ Certify that all information required in subsection B of this section has been entered completely and accurately into the available electronic database provided by the department and submit a complete and accurate registration statement by June 1, 2009 to the department 90 days prior to the effective date of this general permit. Provided that a complete and accurate registration statement is submitted by ~~the June 1 reapplication date~~ at least 90 days before the expiration date of the existing state permit, 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~~ 2013; and

b. Update their stormwater pollution prevention plan to comply with the requirements of this general permit ~~within no later than~~ 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 VSMP authority as the administering entity for the board unless notification of coverage is made by the 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 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. 4. 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 department VSMP authority, department, board, and the EPA reserves the right to take enforcement action for any unpermitted discharges that occur between the commencement of construction and discharge authorization.~~

~~5. Any discharge from a construction activity that was previously permitted under the 2009 General Permit but failed to maintain uninterrupted permit coverage is considered an unauthorized discharge.~~

B. Registration statement. The operator shall submit a registration statement on ~~the official department form~~ a form specified by the department 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 latitude and longitude (degrees, minutes, seconds), 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~~ 2012 § 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;~~

10. Certifications. All information required by 4VAC-50-60-1150 B has been entered into the electronic database provided by the department. By signing the registration statement, the operator certifies that all information has been entered completely and accurately. By signing the registration statement, the operator certifies that all necessary approvals required by the permit will be obtained prior to land disturbance;

11. A stormwater pollution prevention plan (SWPPP) must be prepared in accordance with the requirements of the General Permit for Stormwater Discharges from Construction Activities prior to ~~submitting the registration statement~~ land disturbance. By signing the registration

---

# Regulations

---

statement the operator certifies that the SWPPP ~~has been~~ will be prepared prior to land disturbance; 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 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 VSMP authority as the administering entity for the board.

E. Registration statements in the custody of the 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 certify that all information required in subsection B of this section has been entered completely and accurately into the electronic database provided by the department and shall submit a notice of termination on the official department form on a form specified by the department 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 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~~ should 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 unless otherwise notified by the VSMP authority or the department.

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 ~~stormwater~~ general permit registration 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 or employed to meet the post-development stormwater quality criteria at the construction activity site. For each permanent control measure that was installed or employed, the following information shall be included:

a. Where applicable, the following information related to onsite control measures:

(1) Type of onsite 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);~~ (2) Latitude and longitude may additionally be included if available; (in degrees, minutes, and seconds to the nearest 15 seconds) of the permanent control measure outfall;

~~c. Waterbody the control measure discharges into; and~~

~~d. Number of acres treated (to the nearest one-tenth of an acre).~~

(3) Construction activity acres treated onsite (to the nearest one-tenth of an acre); and

(4) Construction activity nutrient reductions achieved onsite (lbs. per acre per year).

~~6. Where applicable, the following information related to participation in a regional stormwater management plan:~~

~~b. Where applicable, the following information related to offsite control measures:~~

(1) Type of offsite permanent control measure to which the construction activity contributes (e.g., a permanent control measure installed as part of a larger common plan of development or a permanent control measure installed in accordance with a comprehensive stormwater management plan adopted pursuant to 4VAC50-60-92);

(2) Approximate latitude and longitude (in degrees, minutes, and seconds to the nearest 15 seconds) of the offsite control measure; and

(3) Construction activity nutrient reductions achieved offsite (lbs. per acre per year).

~~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);~~

- e. 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. c. Where applicable, the following information related to perpetual nutrient offsets credits that were acquired in accordance with § 10.1-603.8:1 of the Code of Virginia:

(1) Name of the nonpoint source nutrient bank from which nutrient credits were acquired; and

(2) Number of nutrient credits acquired (lbs. per acre per year).

- 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).

6. Any instrument recorded for the long term maintenance of any permanent stormwater management facilities, required pursuant to 4VAC50-60-112 has been submitted to the VSMP authority.

8. 7. 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 VSMP authority as the administering entity for the board.

E. Termination by the department in coordination with the VSMP authority. ~~The department in coordination with the VSMP authority~~ board 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 ~~department~~ board or its designated authority 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) therein. No more than one operator may receive coverage under each registration statement.

General Permit No.: VAR10

Effective Date: July 1, ~~2009~~ 2014

Expiration Date: June 30, ~~2014~~ 2019

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 surface~~ state surface 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 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 the following construction activities:

a. New construction activities. Construction activities for which initial permit coverage is sought under this permit provided permit compliance is maintained or construction activities previously covered under the 2009 Virginia General Permit for Stormwater Discharges for Construction Activities and for which a registration statement was submitted in accordance with Section III M of the 2009 permit in order to maintain uninterrupted coverage.

b. Previously covered construction activities. Construction activities that have obtained VSMP permit coverage under the 2009 Construction Activities and submitted a registration statement in accordance with

---

# Regulations

---

Section III M of the 2009 permit in order to maintain uninterrupted permit coverage.

c. Emergency-related construction activities. Construction activities in response to a public emergency (e.g., natural disaster, disruption in essential public services), and the related work requires immediate authorization to avoid imminent endangerment to human health, public safety, or the environment. The operator shall have coverage under this permit in order to address these public emergencies provided that:

(1) The operator advises the VSMP authority of the construction activity within seven days of commencing land disturbance;

(2) State permit coverage is applied for within 30 days of commencing the land-disturbing activity; and

(3) Documentation is provided with the registration statement to substantiate the occurrence of the public emergency.

2. This state permit ~~may also authorize~~ authorizes 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~~ activity applying for state permit coverage ~~for discharges of stormwater associated with construction activity;~~

b. The support activity is not a commercial operation ~~servicing or does not serve~~ 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. The support activity is identified in the registration statement at the time of coverage;

e. d. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and

e. All applicable state, federal, and local approvals are obtained for the support activity.

~~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~~ Limitations 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 sites covered under the permit registration, has undergone final stabilization. ~~Post construction industrial stormwater discharges may need to be covered by a separate VPDES~~

~~permit and permit coverage has been terminated. 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. 2. 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 are 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.~~

3. Limitations on coverage for discharges to impaired waters. This only applies when construction activities discharge or are reasonably expected to discharge an applicable observed source identified in the 2012 § 305(b)/303(d) Water Quality Integrated Report or a pollutant of concern identified in a TMDL approved prior to July 1, 2014.

a. Discharges to impaired waters, including discharges to surface waters located within a TMDL watershed, are not eligible for coverage under this general permit unless the following requirements are implemented:

(1) The impaired water(s), associated impairment(s), TMDL name(s), and TMDL pollutant(s) of concern when applicable shall be identified in the registration statement and in the SWPPP;

(2) The operator shall develop, implement, and maintain a SWPPP that minimizes applicable observed sources identified in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report, minimizes pollutants of concern identified in a TMDL approved prior to July 1, 2014, and is consistent with the assumptions and requirements of all associated TMDL wasteload allocations when applicable; and

(3) The following modifications to the SWPPP inspection schedule shall be implemented:

(a) Inspections shall be conducted at a frequency of:

(i) At least once every four days; or

(ii) At least once every seven days and no later than 48 hours following any measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between normal working days, the inspection shall be conducted on the next working day.

(b) 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 continuous frozen ground exists), the inspection frequency may be reduced to once every 30 days. If unexpected weather conditions (such as above freezing temperature or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

(c) Representative inspections utilized by utility line installation, pipeline construction, or other similar linear construction activities in Section II F 2 c shall also inspect all outfalls discharging directly to an impaired water.

(4) The requirements of Sections I B 3 a (1) through I B 3 a (3) shall be implemented for:

(a) All construction activities outside of Tidewater Virginia, as defined in § 10.1-2101 of the Code of Virginia, that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 20 acres;

(b) All construction activities inside of Tidewater Virginia, as defined in § 10.1-2101 of the Code of Virginia, that discharge to a surface water in the Chesapeake Bay watershed and disturb greater than or equal to 10 acres;

(c) All construction activities that discharge to a surface water located within a TMDL watershed other than the Chesapeake Bay watershed and disturb greater than or equal to five acres; and

(d) All construction activities that discharge directly to an impaired water. For the purposes of this permit, a construction activity will be considered to discharge directly to an impaired water if the first surface water to which it discharges has been identified in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report as not meeting an applicable water quality standard. For discharges that enter a storm sewer system prior to discharge, the surface water to which the operator discharges is the first surface water that receives the stormwater discharge from the storm sewer system.

b. Discharges to impaired waters, including discharges to surface waters located within a TMDL watershed, where sediment, a sediment related parameter (e.g., total suspended solids or turbidity) or nutrients (e.g., nitrogen

or phosphorus) are an applicable observed source identified in the 2012 § 305(b)/303(d) Water Quality Assessment Integrated Report or a pollutant of concern identified in a TMDL approved prior to July 1, 2014, shall also implement the following requirements:

(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; and

(2) Nutrients shall be applied in accordance with manufacturer's recommendations and shall not be applied during rainfall events.

4. Limitations on coverage for new discharges to exceptional waters identified in 9VAC25-260-30 A 3 c Discharges from new construction activities to exceptional waters are not eligible for coverage under this general permit unless the following requirements are implemented:

a. The exceptional water shall be identified in the registration statement and in the SWPPP;

b. 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;

c. The following modifications to the SWPPP inspection schedule shall be implemented:

(1) Inspections shall be conducted at a frequency of:

(a) At least once every four days; or

(b) At least once every seven days and no later than 48 hours following any measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between normal working days, the inspection shall be conducted on the next working day.

(c) 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 continuous frozen ground exists), the inspection frequency may be reduced to once every 30 days. If unexpected weather conditions (such as above freezing temperature or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

(2) Representative inspections utilized by utility line installation, pipeline construction, or other similar linear construction activities in Section II F 2 c shall also inspect all outfalls discharging directly to an exceptional water.

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

C. Commingled discharges. Any discharge authorized by a different state or VPDES permit may be commingled with discharges authorized by this state permit. Discharges authorized by this permit may be commingled. Discharges authorized by a separate VSMP or VPDES permit may be commingled with discharges authorized by this permit.



---

# Regulations

---

D. Prohibition of nonstormwater discharges. ~~4.~~ Except as provided in ~~Sections I A 2, I C and I D 2~~ Sections I A 2, I C and I E, all discharges covered by this state permit shall be composed entirely of stormwater associated with construction activity. All other discharges including the following are prohibited:

1. Wastewater from washout of concrete, unless managed by an appropriate control as described at Section II A 2 d (5) (e);

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

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

4. Oils, toxic substances, or hazardous substances from spills or other releases; and

5. Soaps and solvents used in equipment and vehicle washing.

~~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):~~

E. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this permit when discharged in compliance with this permit:

a. 1. Discharges from fire fighting activities;

b. 2. Fire hydrant flushings;

e. 3. Waters used to wash vehicles where detergents are not have not been used and the wash water has been treated;

d. 4. Water used to control dust that has been filtered, settled or similarly treated prior to discharge;

e. 5. Potable water sources, including uncontaminated waterline flushings;

f. 6. Routine external building wash down which does not use detergents, solvents or other wash chemicals and that have been filtered, settled, or similarly treated prior to discharge;

g. 7. Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) (or where all spilled material has been removed) and; where detergents, solvents, or other wash chemicals are not used; and where the washwater has been filtered, settled, or similarly treated prior to discharge;

h. 8. Uncontaminated air conditioning or compressor condensate;

i. 9. Uncontaminated ground water or spring water;

j. 10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;

k. 11. Uncontaminated excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and

l. 12. 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 VSMP 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. F. Termination of state permit coverage. Coverage under this state permit may be terminated in accordance with 4VAC50-60-1160.~~

~~H. G. Water quality protection.~~

~~1. The operator must select, install, implement and maintain control measures as identified in the SWPPP 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 standard.~~

~~2. If it is determined by the department in consultation with the State Water Control Board at any time that the operator's stormwater discharges are causing, have reasonable potential to cause, or contribute are contributing to an excursion above any applicable water quality standard, the department shall, in consultation with the VSMP authority, may take appropriate enforcement action and require the operator to:~~

- a. Modify control measures in accordance with Section II C B 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 ~~land disturbance 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. Construction activities that are part of a common plan of development and disturb less than one acre may utilize a SWPPP template provided by the department and need not provide a separate stormwater management plan if one has been prepared and implemented for the planned development.

2. The SWPPP shall include:

- ~~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~~
- ~~e. Comply with the terms and conditions of this state permit-~~

a. General Information.

- (1) A copy of the Registration for Coverage under the General Permit for Discharges of Stormwater for Construction Activities signed in accordance with 4VAC50-60-370;
- (2) Upon receipt of coverage, a copy of the Notice of Coverage under the General Permit for Discharges of Stormwater from Construction Activities;
- (3) A copy of the General Permit for Discharges of Stormwater from Construction Activities;
- (4) 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.);
- (5) A legible site plan identifying:

(a) Directions of stormwater flow and approximate slopes anticipated after major grading activities;

(b) Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed;

(c) Locations of major structural and nonstructural control measures including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter or similarly treat sediment that will be installed between disturbed areas and the undisturbed vegetated areas, in order to increase sediment removal and maximize stormwater infiltration;

(d) Locations of surface waters;

(e) Locations where concentrated stormwater is discharged;

(f) Location of the on-site rain gauge, or a description of the methodology to identify measurable storm events established in consultation with the VSMP authority, used to identify a measurable storm event for inspection purposes; and

(g) Locations of on-site and off-site, when applicable and when required by the VSMP authority, support activities, including: (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids, fuels, fertilizers and other lawn care chemicals; (iii) concrete wash-out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage.

(6) Previously covered construction activities, as identified in Section I A 1 b, shall review and update their SWPPP no later than 30 days following permit coverage to include the required information listed in Section II A 2 a.

b. Erosion and Sediment Control Plan.

(1) An erosion and sediment control plan or an agreement in lieu of a plan, as defined in 4VAC50-30-10, approved by a board-approved VESCP authority or, where appropriate, an erosion and sediment control plan designed in accordance with annual standards and specifications approved by the department. The operator of any land-disturbing activity that is not required to obtain erosion and sediment control plan approval from a VESCP authority or adopts department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval prior to land disturbance. Plan approval prior to land disturbance does not apply to emergency-related construction activities.

(2) For off-site support activities such as borrow or fill areas, all required erosion and sediment control plans approved by a VESCP authority or, where appropriate,

---

# Regulations

---

an erosion and sediment control plan designed in accordance with annual standards and specifications approved by the department. The operator of any land disturbing activity that is not required to obtain erosion and sediment control plan approval from a VESCP authority or adopts department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval prior to land disturbance.

(3) All erosion and sediment control plans shall include a statement describing the maintenance responsibilities required for the erosion and sediment controls utilized.

(4) Unless there is evidence as the result of an inspection as required under Section II F, an approved and properly implemented erosion and sediment control plan; an agreement in lieu of a plan approved by the VESCP authority without exception; or an erosion and sediment control plan designed and implemented in accordance with annual standards and specifications approved by the department that adequately:

(a) Controls the volume and velocity of stormwater runoff within the site to minimize soil erosion;

(b) Controls 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;

(c) Minimizes the disturbance of steep slopes;

(d) Minimizes the amount of soil exposed during construction activity;

(e) Minimizes sediment discharges from the site in a manner that addresses 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;

(f) Provides and maintains natural buffers around surface waters, directs stormwater to vegetated areas to increase sediment removal, and maximizes stormwater infiltration, unless infeasible;

(g) Minimizes soil compaction and preserves topsoil where feasible;

(h) Ensures that stabilization will begin immediately upon installation of earthen structures such as dams, dikes, and diversions and that stabilization of denuded areas shall be initiated immediately upon reaching final grade or for areas that may not be at final grade but will remain dormant for longer than 14 days. Temporary stabilization shall be installed within seven days of initiation; and

(i) Discharges stormwater from the surface of basins and other impoundments when the impoundment is designed to include wet storage and is designed to discharge above the permanent pool elevation.

(5) Previously covered construction activities, as identified in Section I A 1 b, shall implement the inspection requirements in Section II F and update their erosion and sediment control plan no later than 30 days following permit coverage to include the required modifications resulting from the inspection requirements.

c. Stormwater Management Plan. A stormwater management plan from the appropriate VSMP authority as authorized under the Virginia Stormwater Management Program Regulations, 4VAC50-60. The operator of any land-disturbing activity that is not required to obtain stormwater management plan approval from a VSMP authority or is not required to adopt department-approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval prior to land disturbance. Plan approval prior to land disturbance does not apply to emergency-related construction activities.

d. Pollution Prevention Plan. A pollution prevention plan that addresses expected pollutant-generating activities from both on-site and off-site support activities covered under the general permit that may reasonably be expected to affect the quality of stormwater discharges. In order to comply with 4VAC50-60-56, the pollution prevention plan shall:

(1) Identify the potential pollutant-generating activities and the pollutant that is expected to be exposed to stormwater for on-site and off-site activities, including support activities;

(2) Describe the location where the pollutant-generating activities will occur, or if identified on the site plan, reference to the site plan;

(3) Identify all nonstormwater discharges, as authorized in Section I E of this permit, that are or will be commingled with stormwater discharges from the construction activity at the site;

(4) Identify the person responsible for the pollution prevention activities for each pollutant-generating activity (if other than the person listed as the qualified personnel);

(5) Describe procedures and practices that will be implemented to:

(a) Prevent and respond to leaks, spills and other releases including (i) procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Section III G;

(b) Eliminate the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available);

(c) Prevent the discharge of soaps, detergents, solvents, and wash water from construction materials, such as clean up of stucco, paint form release oils, and curing compounds, by providing (i) cover (e.g., plastic sheeting or temporary roofs) to prevent contact with stormwater; (ii) collection and proper disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants.

(d) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water and other types of washing (e.g., locating activities away from surface waters and stormwater inlets or conveyance and directing wash waters to sediment basins or traps, using filtration devices such as filter bags or sand filters or using similarly effective controls);

(e) Direct concrete wash water into a leak-proof container or leak-proof settling basin that is designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters;

(f) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, styrofoam, concrete, and other trash or building materials;

(g) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, and sanitary wastes; and

(h) Address any other discharges from the potential pollutant generating activity not addressed above.

(6) The pollution prevention plan shall describe procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices and applicable disposal locations of such wastes, to personnel in order to comply with the conditions of this permit. The operator shall implement the procedures described in the SWPPP.

(7) Previously covered construction activities, as identified in Section I A 1 b, shall review and update their pollution prevention plan no later than 30 days following permit coverage to ensure compliance with these permit conditions.

e. Applicable state or local programs. Certain requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Section II A 2 a. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator must develop the missing elements and include them in the SWPPP.

f. SWPPP requirements for discharges to impaired waters, surface waters located within a TMDL watershed, and exceptional waters. The SWPPP shall:

(1) Identify impaired water(s) associated impairment(s), TMDL name(s), TMDL pollutant(s) of concern, and exceptional waters when applicable; and

(2) Provide clear direction that:

(a) 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, when applicable;

(b) Nutrients shall be applied in accordance with manufacturer's recommendations and shall not be applied during wet weather events when applicable; and

(c) A modified inspection schedule shall be implemented, when applicable.

g. Qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this permit.

h. Delegation of authority. The individuals or positions with delegated authority, in accordance with Section III K, to sign inspection reports or modify the SWPPP.

i. SWPPP signature. The SWPPP shall be signed and dated in accordance with Section III K.

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 prior to the commencement of land disturbance.

---

# Regulations

---

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 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 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 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 that 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 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.~~

~~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 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 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 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 VESCP authority is necessary, control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

---

# Regulations

---

~~(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.~~

~~e. 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 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.~~

~~(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 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 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.

e. 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.



---

# Regulations

---

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.

## B. SWPPP modification, updates, and records.

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 surface 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, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction site. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or the department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures must be accomplished as described in Section II G.

3. Revisions to the SWPPP shall be signed and dated 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) that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be revised to identify any new contractor that will implement and maintain a control measure.

5. The operator shall update the SWPPP no later than seven days following any modifications to its implementation. All modifications or changes to the SWPPP shall be noted. Updates and modifications shall be signed and dated in accordance with Section III K and shall include:

a. A record of dates when:

(1) Major grading activities occur;

(2) Construction activities temporarily or permanently cease on a portion of the site; and

(3) Stabilization measures are initiated.

b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and where modified as soon as possible;

c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;

d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;

e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release;

f. Measures taken to prevent the reoccurrence of any prohibited discharge;

g. Measures taken to address any evidence identified as a result of an inspection required under Section II F; and

h. Updates necessary to reflect any revisions to applicable federal, state, or local requirements that affect the control measures implemented at the site.

C. Public Notification. Upon commencement of land disturbance, the operator shall maintain and post conspicuously near the main entrance of the construction activity:

1. A copy of the Notice of Coverage letter;

2. For linear projects, the operators shall post the information at a publicly accessible location near an active part of the construction project (e.g., where a pipeline project crosses a public road); and

3. The operator shall maintain the posted information until termination of permit coverage.

## D. SWPPP availability.

1. 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 use by those identified as having responsibilities under the SWPPP whenever they are on the construction site.

2. The operator shall make SWPPPs and all updates available upon request to the department, the VSMP authority, the EPA, VESCP authorities, local government officials, or the operator of a municipal separate storm

sewer system receiving discharges from the construction activity. 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 of the construction site.

E. SWPPP implementation. The operator shall implement the SWPPP and subsequent updates from commencement of construction activity until permit termination.

1. 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 F identify control measures that are not operating effectively, corrective action shall be performed as soon as practicable, but no later than seven days after discovery, to maintain the continued effectiveness of stormwater controls.

2. If site inspections required by Section II F identify existing control measures that need to be modified or if additional control measures are necessary for any reason, implementation shall be completed prior to the next anticipated storm event. If implementation prior to the next anticipated storm even is impracticable, then the situation shall be documented in the SWPPP and alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery.

#### F. Inspections.

1. Personnel responsible for on-site and off-site inspections. Inspections required by this permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for insuring that the qualified personnel conduct the inspection.

#### 2. Inspection schedule.

a. Inspections shall be conducted at a frequency of:

(1) At least once every seven days; or

(2) At least once every 14 days and no later than 48 hours following any measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between normal working days, the inspection shall be conducted no later than the next business day.

b. 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 continuous frozen ground exists), the inspection frequency may be reduced to once every 30 days. If unexpected weather conditions (such as above freezing temperature or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

c. Representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that:

(1) Temporary or permanent stabilization has been installed and where vehicle access may compromise temporary or permanent stabilization and potentially cause additional disturbance of soils increasing the potential for erosion;

(2) Inspections occur on the same frequencies as other construction projects. Controls are inspected along the construction site of 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 without compromising temporary or permanent stabilization; and

(3) Inspection locations shall be listed in the report required by Section II F.

#### 3. Inspection requirements.

a. As part of the inspection, the qualified personnel shall:

(1) Record the date and time of the inspection and the amount of cumulative rainfall since the last inspection;

(2) Record the information and a description of any discharges occurring at the time of the inspection;

(3) Record any land disturbing activities that have occurred outside of the approved erosion and sediment control plan;

(4) Inspect the following for installation in accordance with the approved erosion and sediment control plan, identify maintenance needs and evaluate effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:

(a) All perimeter erosion and sediment controls, such as silt fence;

(b) Soil stockpiles and borrow areas for stabilization or sediment trapping measures;

(c) Completed earthen structures, such as dams, dikes, ditches, and diversions for stabilization;

(d) Cut and fill slopes;

(e) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from concentrated stormwater;

(f) Temporary or permanent channel, flume, or other slope drain structures installed to convey concentrated runoff flowing down cut and fill slopes;

(g) Storm inlets that have been made operational to ensure that sediment laden stormwater does not enter without first being filtered or similarly treated; and

(h) Construction vehicle access routes that intersect or access paved roads for minimizing sediment tracking.

(5) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for initiation of stabilization activities;

(6) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for completion of

---

# Regulations

---

stabilization activities within seven days of reaching grade or stopping work;

(7) Inspect for evidence that the erosion and sediment control plan has not been properly implemented and is not meeting the requirements of Section II A 2 b (4). Evidence includes but is not limited to:

(a) Evidence of concentrated flows of stormwater such as rills, rivulets or channels that cause erosion when such flows are not filtered, settled or similarly treated prior to discharge;

(b) Sediment laden or turbid flows of stormwater that are not filtered or settled to remove sediments prior to discharge;

(c) Deposits of sediment in areas that drain to unprotected stormwater inlets or to catch basins that discharge to surface waters. Inlets and catch basins with failing sediments controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected;

(d) Deposits of sediment from the construction activity on any property (including public and private streets) outside of the construction activity covered by this permit;

(e) Portions of the site where required stabilization has not been initiated or completed;

(f) Sediment basins without a dewatering device allowing for discharge from below the designed permanent pool elevation;

(g) Sediment traps without adequate wet and dry storage and without restricted discharge from the drawdown of dry storage portion of the trap; and

(h) Land disturbance outside of the delineated area to be disturbed;

(8) Inspect pollutant generating activities identified in the pollution prevention plan for the proper implementation, maintenance and effectiveness of the procedures and practices;

(9) Identify any pollutant generating activities not identified in the pollution prevention plan; and

(10) Identify and document the presence of any evidence of the discharge of pollutants prohibited by this permit.

4. Inspection report. Each inspection shall document in a report:

a. The date and time of the inspection;

b. Summarized findings of the inspection;

c. The location(s) of prohibited discharges;

d. The location(s) of control measures that require maintenance;

e. The location(s) of control measures that failed to operate as designed or proved inadequate for a particular location;

f. The location(s) where evidence identified under Section II F 3 a (7) exists;

g. The location(s) where additional control measures are needed that did not exist at the time of inspection;

h. A list of corrective actions required including any changes to the SWPPP that are necessary to implement as a result of the inspection and in order to maintain permit compliance;

i. Documentation of any corrective actions required from a previous inspection that have yet to be implemented; and

j. The date and signature of the qualified personnel and operator or the authorized representative.

The inspection report and 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 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 permit.

G. Corrective actions.

1. The operator shall implement the corrective action(s) identified as a result of an inspection as soon as practicable but no later than seven days after discovery. If approval by a regulatory authority (e.g., VSMP authority, VESCP authority) of a corrective action is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

2. The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by this permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the department and obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

## SECTION III

### CONDITIONS APPLICABLE TO ALL 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 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 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 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 surface 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, EPA, or ~~other~~ 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 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 surface waters or who discharges or causes or allows a discharge that may reasonably be expected to enter state 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, the Department of Environmental Quality, and the 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;

---

# Regulations

---

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 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 surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department, the Department of Environmental Quality, and the 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 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 surface waters or may endanger public health.

1. An oral report to the department, the Department of Environmental Quality, and the 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 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 department 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 state surface 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 Management Division, appropriate Department of Environmental Quality's Regional Office Pollution Response Program, and the 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 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 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 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 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 signed and dated written authorization is included in the SWPPP. A copy must be provided to the 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 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

---

# Regulations

---

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 surface 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 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 department may approve an anticipated bypass, after considering its adverse effects, if the 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 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 whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. State permit actions. 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. 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 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 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 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.

**4VAC50-60-1180. Applicability. (Repealed.)**

~~Operators receiving coverage under this general permit shall remain subject to the water quality and quantity criteria set forth in 4VAC50-60-1182 through 4VAC50-60-1190, which specify technical criteria for every land-disturbing activity regulated by this general permit.~~

**4VAC50-60-1182. General. (Repealed.)**

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



---

# Regulations

---

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

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

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

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

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

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

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

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

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

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

## ~~4VAC50-60-1184. Water quality. (Repealed.)~~

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

~~B. Performance based criteria. For land disturbing activities, the calculated 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. Design standards and specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency will be available at the department.

Table 1\*

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

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

**4VAC50-60-1186. Stream channel erosion. (Repealed.)**

A. Properties and receiving waterways downstream of any land disturbing activity shall be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of

stormwater runoff in accordance with the minimum design standards set out in this section.

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

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

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

1. Criteria and procedures for channel analysis and classification.
2. Procedures for channel data collection.
3. Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.
4. Criteria for the selection of proposed natural or manmade channel linings.

**4VAC50-60-1188. Flooding. (Repealed.)**

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

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

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

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

---

# Regulations

---

## **4VAC50-60-1190. Regional (watershed-wide) stormwater management plans. (Repealed.)**

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

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

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

- ~~1. The specific stormwater management issues within the targeted watersheds.~~
- ~~2. The technical criteria in 4VAC50-60-1180 through 4VAC50-60-1188 as needed based on subdivision 1 of this section.~~
- ~~3. The implications of any local comprehensive plans, zoning requirements, local ordinances pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and other planning documents.~~
- ~~4. Opportunities for financing a watershed plan through cost sharing with neighboring agencies or localities, implementation of regional stormwater utility fees, etc.~~
- ~~5. Maintenance of the selected stormwater management facilities.~~
- ~~6. Future expansion of the selected stormwater management facilities in the event that development exceeds the anticipated level.~~

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 \(09/12\).](#)~~

~~[General Permit for Discharges of Stormwater from Construction Activities \(VAR10\) Registration Statement, DCR 199-146 \(03/09\).](#)~~

[General Permit Notice of Termination - Construction Activity Stormwater Discharges \(VAR10\), DCR 199-147 \(03/09\).](#)

~~[General Permit for Discharges of Stormwater from Construction Activities \(VAR10\) Transfer Agreement, DCR199-191 \(03/09\).](#)~~

[General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems \(VAR04\), DCR 199-148 \(07/08\).](#)

VA.R. Doc. No. R12-3208; Filed March 20, 2013, 10:21 a.m.

---

## TITLE 8. EDUCATION

### JAMES MADISON UNIVERSITY

#### Final Regulation

**REGISTRAR'S NOTICE:** James Madison 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:** **8VAC45-10. Weapons on Campus (adding 8VAC45-10-10, 8VAC45-10-20, 8VAC45-10-30).**

**Statutory Authority:** § 23-164.6 of the Code of Virginia.

**Effective Date:** March 29, 2013.

**Agency Contact:** Donna Harper, Vice President for Access and Enrollment, James Madison University, 800 South Main Street, MSC 7614, Harrisonburg, VA 22807, telephone (540) 568-3705 or email harperdl@jmu.edu.

**Summary:**

*This regulatory action establishes the prohibition of weapons on university property.*

#### CHAPTER 10 WEAPONS ON CAMPUS

#### **8VAC45-10-10. Definitions.**

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

"Police officer" means law-enforcement officials appointed pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 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 or sworn federal law-enforcement officers.

"University property" means any property owned, leased, or controlled by James Madison University.

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

**8VAC45-10-20. Possession of weapons prohibited.**

Possession or carrying of any weapon by any person, except a police officer, is prohibited on university property in any buildings or any outdoor area to which access is restricted to members of the university community and invited guests, or while attending any university events or university sanctioned events. Entry upon the aforementioned university property in violation of this prohibition is expressly forbidden.

**8VAC45-10-30. Person lawfully in charge.**

In addition to individuals authorized by university policy, James Madison University police officers are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property while possessing or carrying weapons in violation of this chapter.

VA.R. Doc. No. R13-3635; Filed March 29, 2013; 2:49 p.m.



**TITLE 9. ENVIRONMENT**

**STATE WATER CONTROL BOARD**

**Final Regulation**

**REGISTRAR'S NOTICE:** The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 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:** **9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities (amending 9VAC25-193-10 through 9VAC25-193-70; adding 9VAC25-193-15).**

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

**Effective Date:** October 1, 2013.

**Agency Contact:** Eleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804)

698-4032, TTY (804) 698-4021, or email eleanor.daub@deq.virginia.gov.

**Summary:**

*The regulatory action reissues the existing Virginia Pollutant Discharge Elimination System (VPDES) general permit that expires on September 30, 2013. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from concrete products facilities to surface waters.*

*Substantive changes (i) add two reasons authorization to discharge cannot be granted (if the antidegradation policy is not met or if the discharge is not consistent with a total maximum daily load (TMDL)), (ii) add language to allow for administrative continuances of coverage, (iii) add approval of representative outfalls and closure plans for portable plants as part of the registration, (iv) reduce monitoring requirements from monthly to quarterly, (v) clarify that total petroleum hydrocarbon monitoring was only necessary when vehicle degreasing was occurring on site, (vi) add benchmark monitoring concentrations for storm water, and (vii) remove total petroleum hydrocarbon and iron monitoring from the storm water limits page.*

*In the special conditions, the changes clarify what information is required for temporary and long-term facility closure plans and add (i) that no oil sheen shall be present and waste water should be reused or recycled when feasible, (ii) that settling basins must be lined if they are expanded, (iii) quantification levels of total suspended solids and total petroleum hydrocarbons, (iv) that discharges to TMDL waters must implement measures and controls consistent with the TMDL, (v) an allowance for deleting or adding outfalls, (vi) procedures for termination of coverage, (vii) instructions for allowing temporary closures for inactive and unstaffed sites, (viii) that discharges must meet water quality standards, and (ix) that coverage under the permit did not relieve an owner of compliance with any other federal, state, or local statute, ordinance, or regulation.*

*This action revises Part II (Storm Water Management) to make it more consistent with the 2009 Industrial Storm Water General Permit (9VAC25-151) conditions. Changes make this general permit similar to other general permits issued recently and respond to staff and technical advisory committee members' requests to clarify and update permit limits and conditions.*

*The changes made to the proposed regulation are for clarification and are not substantive.*

**9VAC25-193-10. 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 (VPDES Permit Regulation), unless the context clearly

---

# Regulations

---

indicates otherwise, except that for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices and prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Department" or "DEQ" means the Virginia Department of Environmental Quality.

"Industrial activity" means facilities or those portions of a facility where the primary purpose is classified as:

1. Standard Industrial Classification (SIC) Code 3271—Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);
2. SIC Code 3272—Concrete Products, Except Block and Brick; or
3. SIC Code 3273—Ready-Mixed Concrete, including both permanent and portable plants.

These facilities are collectively defined as "Concrete Products Facilities".

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, 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 Clean Water Act (CWA) (33 USC § 1251 et seq.) that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).

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

"Significant spills" includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.) (see 40 CFR 302.4).

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point

source discharges and load allocations (LAs) for nonpoint sources or natural background, or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Vehicle or equipment degreasing" means the washing or steam cleaning of engines or other drive components of a vehicle or piece of equipment in which the purpose is to degrease and clean petroleum products from the equipment for maintenance purposes. Removing sediment and concrete residue is not considered vehicle or equipment degreasing.

## **9VAC25-193-15. 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, 2013, with the effective date as published in the Federal Register notice or October 1, 2013, whichever is later~~ of July 1, 2012 ].

## **9VAC25-193-20. Purpose.**

This general permit regulation governs the discharge of process waste water, noncontact cooling water, and storm water associated with industrial activity from concrete products facilities classified as Standard Industrial Classification Codes 3271, 3272 and 3273, provided that the discharge is through a point source to surface waters.

## **9VAC25-193-30. Delegation of authority.**

The director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

## **9VAC25-193-40. Effective date of the permit.**

This general VPDES permit ~~became~~ will become effective on ~~October 1, 2008~~ October 1, 2013, and it will expire on ~~September 30, 2013~~ September 30, 2018. ~~With respect to a particular facility, this~~ This general permit shall become ~~is~~ effective for any covered owner upon the facility owner's compliance with all the provisions of 9VAC25-193-50 ~~and the receipt of a copy of the general VPDES permit.~~

## **9VAC25-193-50. Authorization to discharge.**

A. Any owner governed by this general permit is hereby authorized to discharge process water, storm water associated with this industrial activity, cooling water, or commingled discharges of these types to surface waters of the Commonwealth of Virginia provided that ~~the owner has filed with the department the registration statement described in 9VAC25-193-60, has filed the required permit fee, has complied or will comply with the effluent limitations and other requirements of 9VAC25-193-70, and has complied with the following conditions:~~

1. The owner submits a registration statement in accordance with 9VAC25-193-60 and that registration statement is accepted by the board;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-193-70; and
4. 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 ~~shall not have been~~ is required to obtain an individual permit ~~as may be required~~ in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation; ~~and~~
2. The owner ~~shall not be authorized by this general permit~~ is proposing to discharge to state waters specifically named in other board regulations or policies which ~~that~~ prohibit such discharges;
3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; or
4. 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 (33 USC § 1251 et seq.) [ ; and ] 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.

D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the concrete products general permit issued in 2008 and that submits a complete registration statement on or before October 1, 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 reissued 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).

**9VAC25-193-60. Registration statement.**

~~A. Deadlines for submitting registration statement. The owner shall file a complete General VPDES Permit registration statement which shall serve as a notice of intent to be covered under the general VPDES permit for concrete products facilities. 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 concrete products facility. Any owner of an existing concrete products facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing concrete products facility not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. 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 concrete products facilities.~~

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 30 days prior to the date planned for commencement 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 October 1, 2008, and who intends to continue coverage under this general permit shall submit a complete registration statement to the board on or before July 1, 2013.

B. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 b of this section will be accepted after October 1, 2013, but authorization to discharge will not be retroactive. Owners described in subdivision A 2 b of this section that submit registration statements after July 1, 2013, are authorized to discharge under the provisions of 9VAC25-193-50 D if a

---

# Regulations

---

complete registration statement is submitted on or before October 1, 2013.

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

~~B. The owner shall submit a registration statement that contains the following information:~~

~~1. Name and location of the facility;~~

~~2. Name, mailing address, and telephone number of the facility owner;~~

~~3. Name, mailing address, and telephone number of the operator if different than owner;~~

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

2. Operator or other contact name, mailing address, telephone number, and email address (if available) if different from owner;

4. 3. Facility's Standard Industrial Classification (SIC) Code(s);

5. 4. Nature of business at facility;

6. 5. Indicate if the facility is proposed or existing; if the facility has a current VPDES and/or VPA Permit; and Permit Number(s) for any current VPDES and/or VPA Permits;

7. 6. Description of the wastewater treatment or reuse/recycle system(s); indicate if there are any system(s) which operate in a "no discharge" mode;

8. 7. If settling basins are used for treatment and control of process wastewater and commingled storm water, indicate the original date of construction, and whether these basins are lined with concrete or any other impermeable materials;

9. 8. Indicate if there are ~~vehicle/equipment maintenance~~ vehicle or equipment degreasing activities performed on site. If yes, indicate if there is any process wastewater generated from these activities;

10. 9. Indicate if a noncontact cooling water system is in use and if this facility discharges noncontact cooling water from a geothermal unit or other system. If yes, ~~description of the source of noncontact cooling water;~~ 11. Indicate if any chemical additives are used in the geothermal or other system which discharges noncontact cooling water. If yes, list of chemical additive employed and its purpose; proposed schedule and quantity of chemical usage, and estimated concentration in the discharge; description of any wastewater treatment or retention during the use of the additives, if applicable; and a Material Safety Data Sheet (MSDS) and available aquatic toxicity information for each additive proposed for use; provide the following:

a. Describe the source of noncontact cooling water; and

b. If applicable, list chemical additives employed and their purpose, proposed schedule and quantity of chemical usage, estimated concentration in the discharge, description of any wastewater treatment or retention during the use of the additives, and a [Material (Material)] Safety Data Sheet [ ~~(MSDS)~~ (SDS) ] and available aquatic toxicity information for each additive proposed for use;

~~12. 10. Description of any measures employed to reclaim, reuse or disposal of the waste residual concrete materials;~~

~~13. 11. A schematic drawing which shows the source(s) of water used on the property, the industrial operations contributing to or using water, and the conceptual design of the methods of treatment and disposal of wastewater and solids [ . ] and the storm water pollution prevention plan site map (see 9VAC25-193-70 Part II G 6 c);~~

~~14. 12. A USGS 7.5 minute topographic map or equivalent computer generated map, extending to at least one mile beyond property boundary, which shows the ~~outline of the facility property boundary,~~ the location of each of its existing and proposed intake and discharge points, and the locations of any wells, springs, and other surface water bodies;~~

~~15. 13. Discharge outfall information, including outfall number(s), ~~processes involved~~ description of wastewater discharged from each outfall, estimated flow (gallons per day), receiving water bodies, and duration and frequency of each discharge (hours per day and days per week), and latitude and longitude of outfall location;~~

14. Indicate which storm water outfalls will be representative outfalls (if any). For storm water outfalls that are to be represented by other outfall discharges, provide the following:

a. The locations of the outfalls;

b. Why the outfalls are expected to discharge substantially identical effluents including, where available, evaluation of monitoring data;

c. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and

d. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%);

~~16. For a proposed facility that discharges storm water, indicate~~ 15. Indicate if a Storm Water Pollution Prevention Plan has been prepared;

16. Whether the facility will discharge to a municipal separate storm sewer system (MS4). If so, provide 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. For portable concrete products operations, submit a closure plan and include the requirements specified by the operation and maintenance manual in 9VAC25-70 Part I B 9 a (4) of the permit; and

18. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. 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 the requirements of 9VAC25-31-110.

**9VAC25-193-70. General permit.**

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

General Permit No: VAG11

Effective Date: ~~October 1, 2008~~ October 1, 2013

Expiration Date: ~~September 30, 2013~~ September 30, 2018

GENERAL PERMIT FOR CONCRETE PRODUCTS FACILITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

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

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

Part I  
Effluent Limitations, Monitoring Requirements, and Special Conditions.

A. Effluent limitations and monitoring requirements.

1. Process wastewater.

During the period beginning ~~on the permit's effective date with the permittee's coverage under this general permit~~ and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater which may contain input from ~~vehicle/equipment maintenance activities~~ vehicle wash water, or vehicle or equipment degreasing activities, and may be commingled with noncontact cooling water ~~or~~ storm water associated with industrial activity, or both. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s)\_\_\_\_\_.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency <sup>(6)</sup>	Sample Type
Flow (MGD)	NL	NL	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Estimate
Total Suspended Solids (mg/l)	30	60	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Grab
pH (standard units)	NA	9.0 <sup>(1)</sup>	6.0 <sup>(1)</sup>	<sup>(6)</sup> <u>1/3 Months</u>	Grab
Total Petroleum Hydrocarbons <sup>(2)</sup> (mg/l)	NA	15	<del>NL</del> <u>NA</u>	1/3 Months	Grab
Total Residual Chlorine <sup>(3)</sup> (mg/l)	0.016	0.016	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Grab
Ammonia-N <sup>(3)</sup> (mg/l)	NA	NL	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Grab
Temperature <sup>(4)</sup> (°C)	NA	<sup>(5)</sup>	<del>NL</del> <u>NA</u>	<sup>(6)</sup> <u>1/3 Months</u>	Immersion Stabilization

NL = No limitation, monitoring required



# Regulations

NA = Not applicable

<sup>(1)</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>(2)</sup>Total Petroleum Hydrocarbons limitation and monitoring are only required where a discharge contains process wastewater generated from the ~~vehicle/equipment maintenance~~ vehicle or equipment degreasing activities. Total Petroleum Hydrocarbons shall be analyzed using the ~~Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW 141 (1995), or by EPA SW-846 Method 8015 B (1996), 8015C (2000), 8015C (2007), 8015 D (2003) for diesel range organics, or by EPA SW 846 Method 8270D (2007) or EPA 40 CFR [ Part ] 136. If Method 8270D is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.~~

<sup>(3)</sup>Chlorine limitation and monitoring are only required where the discharge contains cooling water that is chlorinated. Ammonia monitoring is only required where the discharge contains cooling water that is disinfected using chloramines.

<sup>(4)</sup>Temperature limitation and monitoring are only required where a discharge contains cooling water.

<sup>(5)</sup>The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. No maximum temperature limit applies to discharges to estuarine waters.

For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C.

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>(6)</sup>For a facility that was covered by the previous general permit, and reduced monitoring was granted and compliance demonstrated, monitoring frequency shall be 1/quarter. In all other cases, 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 and the permittee receives authorization 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~~ 1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.

## Part I. Effluent Limitations and Monitoring Requirements

### A. Effluent limitations and monitoring requirements.

#### 2. Noncontact cooling water.

During the period beginning ~~on the permit's effective date~~ with the permittee's coverage under this general permit 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 outfall(s)\_\_\_\_\_.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency <sup>(4)</sup>	Sample Type
Flow (MGD)	NL	NL	NA	<sup>(4)</sup> <u>1/3 Months</u>	Estimate
pH (standard units)	NA	9.0 <sup>(1)</sup>	6.0 <sup>(1)</sup>	<sup>(4)</sup> <u>1/3 Months</u>	Grab
Total Residual Chlorine <sup>(2)</sup> (mg/l)	0.016	0.016	NA	<sup>(4)</sup> <u>1/3 Months</u>	Grab
Ammonia-N <sup>(2)</sup> (mg/l)	NA	NL	NA	<sup>(4)</sup> <u>1/3 Months</u>	Grab
Temperature (°C)	NA	<sup>(3)</sup>	NA	<sup>(4)</sup> <u>1/3 Months</u>	Immersion Stabilization

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</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>(2)</sup>Chlorine limitation and monitoring are only required where the source of cooling water is chlorinated. Ammonia monitoring is only required where cooling water is disinfected using chloramines.

<sup>(3)</sup>The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. No maximum temperature limit applies to discharges to estuarine waters. For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C. 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>(4)</sup>For a facility that was covered by the previous general permit, and reduced monitoring was granted and compliance demonstrated, monitoring frequency shall be 1/quarter. In all other cases, 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 and the permittee receives authorization 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 be reverted 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 1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.~~

**Part I. Effluent Limitations and Monitoring Requirements**

**A. Effluent limitations and monitoring requirements.**

3. Storm water associated with industrial activity—storm event benchmark monitoring.

During the period beginning ~~on the permit's effective date with the permittee's coverage under this general permit~~ and lasting until the permit's expiration date, the permittee is authorized to discharge storm water associated with industrial activity which does not combine with other process wastewaters or noncontact cooling water prior to discharge. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s) \_\_\_\_\_.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS <u>BENCHMARK MONITORING</u>		MONITORING REQUIREMENTS <sup>(3)</sup> <sup>(5)</sup>	
	Maximum	Minimum	Frequency <sup>(4)</sup>	Sample Type
Flow <del>(MGD)</del> (MG)	NL	NA	1/Year	Estimate <sup>(1)</sup>
<del>Total Petroleum Hydrocarbons<sup>(3)</sup> (mg/l)</del>	<del>NL</del>	<del>NA</del>	<del>1/Year</del>	<del>Grab<sup>(2)</sup></del>
Total Suspended Solids (mg/l)	NL <sup>(2)</sup>	NA	1/Year	Grab <sup>(2)</sup>
<del>Total Recoverable Iron (mg/l)</del>	<del>NL</del>	<del>NA</del>	<del>1/Year</del>	<del>Grab<sup>(2)</sup></del>
pH (standard units)	NL <sup>(2)</sup>	<del>NA</del> <u>NL<sup>(2)</sup></u>	1/Year	Grab <sup>(2)</sup>

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup>Estimate of the total volume of the discharge during the storm event in accordance with the Operation and Maintenance Manual.

~~<sup>(2)</sup>The grab sample shall be taken during the first 30 minutes of the discharge. If during the first 30 minutes it was impracticable, then a grab sample shall be taken during the first hour of discharge, and the permittee shall submit with the Discharge Monitoring Report a description of why a grab sample during the first 30 minutes was impracticable.~~

~~<sup>(3)</sup>Total Petroleum Hydrocarbons shall be analyzed using the Wisconsin Department of Natural Resources Modified Diesel Range Organics Method as specified in Wisconsin publication SW 141 (1995), or by EPA SW 846 Method 8015C (2007) for~~

---

# Regulations

---

diesel range organics, or by EPA SW 846 Method 8270D (2007). If Method 8270D is used, the lab must report the combination of diesel range organics and polynuclear aromatic hydrocarbons.

~~4. All storm water samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Specific storm event data shall be reported with the Discharge Monitoring Report in accordance with Part II A.~~

~~5. Reports of annual monitoring shall be submitted to the DEQ regional office no later than the 10th day of January of each year.~~

~~6. A quarterly visual monitoring shall be performed and recorded in accordance with Part II D.~~

<sup>(2)</sup>Should the benchmark monitoring for TSS exceed 100 mg/l maximum or the pH fall outside of the range of 6.0-9.0 standard units, the permittee shall evaluate the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in the routine facility inspection or comprehensive site compliance evaluation.

<sup>(3)</sup>Specific storm event data shall be reported with the Discharge Monitoring Report (DMR) in accordance with Part II A.

<sup>(4)</sup>1/year means one sample taken per calendar year with the annual [ ~~report~~ DMR ] due to the DEQ regional office no later than the 10th day of January of each year.

<sup>(5)</sup>Quarterly visual monitoring shall be performed and recorded in accordance with Part II D.

## B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts. There shall be no solids deposition or oil sheen from petroleum products in surface water as a result of the industrial activity in the vicinity of the outfall.

2. Except as expressly authorized by this permit, 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, byproduct 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 surface waters.

3. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to minimize the potential or actual point source pollution of surface waters. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up ~~to the maximum extent practicable~~ and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.

4. All washdown and washout of trucks, mixers, transport buckets, forms or other equipment shall be conducted within designated washdown and washout areas. All ~~washout/washdown~~ washdown and washout water shall be collected for recycle or collected and treated to meet the limits in Part I A prior to discharge to the receiving stream.

5. Any waste concrete and dredged solids from the settling basins shall be managed within a designated area, and any wastewaters including storm water generated from these activities shall be collected for recycle or treated prior to discharge.

6. Wastewater should be reused or recycled whenever feasible.

~~6.~~ 7. No domestic sewage discharges to surface waters are permitted under this general permit.

~~7.~~ 8. For geothermal or other system which discharges noncontact cooling water, the use of any chemical additives, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ Regional Office before any changes are made to the chemical usage in the geothermal or other system. Requests for approval of chemical use shall be made in writing and shall include the following information:

- a. The chemical additive to be employed and its purpose;
- b. The proposed schedule and quantity of chemical usage, and the estimated concentration in the discharge;
- c. The wastewater treatment or retention (if any) to be provided during the use of the additive; and
- d. A [ ~~Material~~ (Material) ] Safety Data Sheet [ ~~(MSDS)~~ (SDS) ] and ~~available~~ any of the manufacturer's aquatic toxicity information for each additive proposed for use.

~~8.~~ 9. Operations and Maintenance (O&M) Manual.

a. Within 180 days after the date of coverage under this general permit, the permittee shall develop or review and update, as appropriate, an Operations and Maintenance (O&M) Manual for the permitted facility. The O&M Manual shall include procedures and practices for the mitigation of pollutant discharges ~~and~~ for the protection

of state waters from the facility's operations and to ensure compliance with the requirements of the permit. The manual shall address, at a minimum, ~~operations;~~

(1) Operations and maintenance practices for the wastewater treatment process units and chemical and material storage areas; ~~solids;~~

(2) Methods for estimating process wastewater flows;

(3) Solids management and disposal procedures; ~~temporary;~~

(4) Temporary and long-term facility closure plans; ~~testing that shall include (i) treatment, removal, and final disposition of residual wastewater, contaminated storm water held at the facility, and solids; (ii) fate of structures; (iii) a removal plan for all exposed industrial materials; and (iv) description of the stabilization of land in which they were stored or placed;~~

(5) Testing requirements and procedures; ~~recordkeeping;~~

(6) Recordkeeping and reporting requirements ~~and the duties; and~~

(7) Duties and roles of responsible officials.

~~b. The permittee shall implement the O&M Manual procedures and practices as soon as possible but no later than 12 months after the date of coverage under this general permit. The manual shall be kept on site at the permitted facility and shall be made available to the department upon request. operate the treatment works in accordance with the O&M manual. The O&M manual shall be reviewed and updated at least annually and shall be signed and certified in accordance with Part III K of this permit. The O&M manual shall be made available for review by department personnel upon request.~~

~~For a facility that was covered by the previous permit, an O&M Manual was required to be developed and implemented for that facility. Within 90 days after the date of coverage under this general permit, the existing O&M Manual shall be reviewed and modified, as appropriate, to conform to the requirements of this permit. The existing O&M Manual shall continue to be implemented until the manual, if required, is revised and implemented.~~

9. 10. If the concrete products facility discharges through a municipal separate 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 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.

~~10.~~ 11. The permittee shall ensure that all basins and lagoons maintain a minimum freeboard of one foot at all times except during a 72-hour transition period after a

measurable rainfall event. During the 72-hour transition period, no discharge from the basins and lagoons shall occur unless it is in accordance with this permit. Within 72 hours after a measurable rainfall event, the freeboard in all basins and lagoons shall ~~return~~ be returned to the minimum freeboard of one foot. Where basins are operated in a series mode of operation, the one-foot freeboard requirement for the upper basins may be waived provided the final basin will maintain the freeboard requirements of this special condition. Should the one-foot freeboard not be maintained, the permittee shall immediately notify the DEQ Regional Office, describe the problem and corrective measures taken to correct the problem. Within five days of notification, the permittee shall submit a written statement to the ~~regional office of explanation~~ DEQ Regional Office with an explanation of the problem and corrective measures taken. In order to demonstrate compliance with this special condition, the permittee shall conduct daily inspections while the facility is in operation and maintain an inspection log. The inspection log shall include at least the date and time of inspection, the weather data including the occurrence of a measurable rainfall event, the printed name and the handwritten signature of the inspector, the freeboard measurement in inches, a notation of observation made, and any corrective measures, if appropriate, taken. The log shall be kept onsite and be made available to the department upon request.

~~11.~~ 12. For treatment systems which operate only in a "no discharge" mode, there shall be no discharge of pollutants to surface waters from these systems except in the case of a storm event which is greater than a 25 year-24 hour storm event. The operation of these systems shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law.

~~12.~~ 13. The permittee shall notify the department as soon as he knows or has 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; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (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.

# Regulations

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.

~~13.~~ 14. All settling basins used for treatment and control of process wastewater or process wastewater commingled with storm water that were constructed on or after February 2, 1998, shall be lined with concrete or any other impermeable materials. Regardless of date of construction, all settling basins used for treatment and control of process wastewater or process wastewater commingled with storm water that are expanded or dewatered for major structural repairs shall be lined with concrete or any other impermeable materials.

~~14. Treated~~ 15. Settled wastewater may be used on site for the purposes of dust suppression or for spraying stockpiles. ~~Dust suppression~~ These activities shall be carried out as a best management practice but not a wastewater disposal method. No ponding or surface runoff shall occur as a result of such activity. There shall be no direct discharge to surface waters from dust suppression or as a result of spraying stockpiles.

~~15.~~ 16. Compliance reporting under Part I A.

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

Effluent Characteristic	Quantification Level
<u>TSS</u>	<u>1.0 mg/l</u>
<u>TPH</u>	<u>5.0 mg/l</u>
Chlorine	0.10 mg/l
Ammonia-N	0.20 mg/l

b. Reporting.

(1) Monthly Average. Compliance with the monthly average limitations and/or reporting requirements for the parameters listed in Part I A shall be determined as follows: All concentration data below the QL listed in ~~subsection 15~~ subdivision 16 a of this subsection shall be treated as zero. All concentration data equal to or above the QL listed shall be treated as it is reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, for the month. This arithmetic average shall be reported on the DMR as calculated. If all data are below the QL then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is

<QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(2) Daily Maximum. Compliance with the daily maximum limitations and/or reporting requirements for the parameters listed in Part I A shall be determined as follows: All concentration data below the QL listed in subdivision [ ~~15~~ 16 ] a of this subsection shall be treated as zero. All concentration data equal to or above the QL shall be treated as reported. An arithmetic average of the values shall be calculated using all reported data, including the defined zeros, collected for each day during the reporting month. The maximum value of these daily averages thus determined shall be reported on the DMR as the Daily Maximum. If all data are below the QL then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(3) Any single datum required shall be reported as "<QL" if it less than the QL listed in subdivision ~~15~~ 16 a of this subsection. Otherwise the numerical value shall be reported.

(4) The permittee shall report at least two significant digits for a given parameter. Regardless of the rounding convention used (i.e. five always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

17. 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.

18. Adding or deleting outfalls. The permittee may add new or delete existing outfalls at the facility as necessary and appropriate. The permittee shall update the O&M manual and storm water pollution prevention plan (SWPPP) and notify the department of all outfall changes within 30 days of the change. New outfalls require a new or updated registration statement including an updated SWPPP site map.

19. 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 discharges of process wastewater, noncontact cooling water, or storm water associated with the industrial activity;

(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 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 general permit registration number for the facility; 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, a closure plan has been implemented according to the O&M manual, and there are no longer discharges from the facility;

(c) A statement indicating that all 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 concrete products waste water and storm 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 concrete products waste water or storm water in accordance with the general permit, and that discharging pollutants 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 submitted to the department and signed in accordance with Part III K.

20. Temporary closure at inactive and unstaffed sites waiver.

a. When the permittee is unable to conduct effluent monitoring, benchmark monitoring, [ ~~and/or~~ or ] storm water management requirements at an inactive and

unstaffed site, a waiver of these requirements may be exercised by the board as long as the facility remains inactive and unstaffed and there are no industrial materials or activities exposed to storm water. The waiver request shall be submitted to the [ ~~department board~~ ] for approval and shall include the information in the temporary closure plan specified in Part I B 9 a (4). If this waiver is granted, the permittee must retain a copy of the request and the board's written approval of the waiver in accordance with Part III B.

b. To reactivate the site the permittee must notify the department 30 days prior to reopening the facility and commencing any point source discharges of either treated process wastewater or storm water runoff associated with industrial activities. Upon this notification all effluent monitoring, benchmark monitoring, [ ~~and/or~~ or ] storm water management [ ~~requirement or~~ ] requirements of this permit shall be required. This notification must be submitted to the department, signed in accordance with Part III K, and retained on site at the facility covered by this permit in accordance with Part III B.

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

22. 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.

## Part II-

### Storm Water Management.

#### A. Monitoring instructions.

1. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part III A.

2. When and how to sample. A minimum of one grab sample shall be taken resulting from a storm event that results in an actual discharge from the site (defined as a "measureable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document with the discharge monitoring report (DMR) that less than a 72-hour interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first hour of discharge [ ~~provide~~ provided ] that the permittee explains with the DMR why a grab sample during the first 30 minutes was impractical.

A. 3. Recording of results. For each discharge measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall

---

# Regulations

---

record and report with the Discharge Monitoring Reports (DMRs) the following information:

- ~~The date~~ a. Date and duration (in hours) of the storm event(s) sampled;
- ~~The rainfall~~ b. Rainfall measurements or estimates (in inches) of the storm event which generated the sampled discharge; and
- ~~The duration~~ c. Duration between the storm event sampled and the end of the previous measurable (~~greater than 0.1 inch rainfall~~) storm event.

B. Representative discharge. ~~When~~ If a facility has two or more exclusively storm water outfalls that discharge substantially identical effluents, based on a consideration of industrial activity similarities of the industrial activities, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluent, the permittee may test the effluent of one of such outfalls and include with the DMRs an explanation that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each exclusively storm water outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40%), medium (40% to 65%) or high (above 65%)) shall be provided. size of drainage areas, and storm water management practices occurring within the drainage areas of the outfalls, the permittee may monitor the effluent of just one of the outfalls. Representative outfalls must be identified in the registration statement submitted for coverage under this permit. Substantially identical outfalls can apply to quarterly visual and benchmark monitoring. The permittee must include the following information in the storm water pollution prevention plan (SWPPP):

1. The locations of the outfalls;
2. Why the outfalls are expected to discharge substantially identical effluents;
3. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and
4. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).

C. ~~Sampling waiver~~ waivers.

~~1. When a permittee is unable to collect storm water samples required in Part I A or other applicable sections of this permit within a specified sampling period~~ conduct benchmark monitoring or visual examinations within the specified sampling period due to no "measurable" storm event or adverse ~~elimatie~~ weather conditions, the permittee shall collect a substitute sample from a the next separate

~~qualifying event in the next period and submit these data along with the data for the routine sample in that period documentation explaining a facility's inability to conduct benchmark monitoring or visual examinations (including dates and times the outfalls were viewed and sampling was attempted) of no "measurable" storm event or of adverse weather conditions with the DMR to the DEQ. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Acceptable documentation includes, but is not limited to National Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data. All documentation shall also be maintained with the SWPPP.~~

2. Sampling waiver for inactive and unstaffed sites. See Part I B 20.

D. Quarterly visual examination of storm water quality. The permittee shall perform and document a visual examination of a storm water discharge associated with industrial activity from each outfall, except discharges ~~exempted below~~ waived in subdivision D 1 and subsection C of this section. The visual examination(s) must be made during daylight hours (e.g., normal working hours), at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.

1. Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examination shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The examination must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm 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~~ results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The ~~required~~ 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. If no qualifying storm event resulted in discharge from the facility during a monitoring period, visual monitoring is exempted provided

that the permittee ~~document~~ documents that no qualifying storm event occurred that resulted in a storm water discharge during that quarter. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term.

2. Visual examination reports must be maintained onsite with the ~~pollution prevention plan~~ SWPPP. The report shall include the outfall location, the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), visual quality of the receiving stream (including observations of solids deposition and oil sheen from the industrial activity) in the vicinity of the outfall (including ditches and conveyances) and probable sources of any observed storm water contamination.

~~3. If the facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the examination data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (i.e., low (under 40%), medium (40 to 65%), or high (above 65%)) shall be provided in the plan.~~

~~4. When the permittee is unable to conduct the visual examination due to adverse climatic conditions, the permittee must document the reason for not performing the visual examination and retain this documentation onsite with the records of the visual examinations. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).~~

E. Allowable nonstorm water discharges.

1. The following nonstorm water discharges are authorized by this permit provided the nonstorm water component of the discharge is in compliance with Part II E 2 below.

- a. Discharges from fire fighting activities;
- b. Fire hydrant flushings;
- c. Potable water including water line flushings;

- d. Uncontaminated air conditioning or compressor condensate;
- e. Irrigation drainage;
- f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions;
- g. Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);
- h. Routine external building wash down which does not use detergents;
- i. Uncontaminated ground water or spring water;
- j. Foundation or footing drains where flows are not contaminated with process materials ~~such as solvents~~ [ ; ] and [ ÷ ]
- k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but NOT intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

2. Except for flows from fire fighting activities, the ~~Storm Water Pollution Prevention Plan~~ SWPPP must include:

- a. Identification of each allowable nonstorm water source;
- b. The location where it is likely to be discharged; and
- c. Descriptions of appropriate BMPs best management practices (BMPs) for each source.

~~3. If mist blown from cooling towers is included as one of the allowable nonstorm water discharges, the facility must specifically evaluate the potential for the discharges to be contaminated by chemicals used in the cooling tower. The permittee must determine that the levels of such chemicals in the discharges will not cause or contribute to a violation of an applicable water quality standard after implementation of the BMPs selected to control such discharges. permittee shall specifically evaluate the discharge for the presence of chemicals used in the cooling tower. This evaluation shall be included in the SWPPP.~~

F. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the storm water discharge(s) from this facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan SWPPP for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an onsite spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 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 (1998), 40 CFR



---

# Regulations

---

Part 117 (1998), or 40 CFR Part 302 (1998) occurs during a 24-hour period, the:

1. The permittee is required to notify the department in accordance with the requirements of Part III G as soon as he has knowledge of the discharge;

2. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4; and

3. In addition, the storm water pollution prevention plan The SWPPP required by this permit ~~must~~ shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate. ~~This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110 (1998), 40 CFR Part 117 (1998) and 40 CFR Part 302 (1998) or § 62.1 44.34:19 of the Code of Virginia.~~

G. Storm water pollution prevention plans (SWPPP). ~~A storm water pollution prevention plan is required to be developed for the facility. The plan shall be prepared in accordance with good engineering practices, and shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the storm water pollution prevention plan as a condition of this permit. A SWPPP shall be developed and implemented for the facility. The plan shall include BMPs that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained in accordance with good engineering practices to eliminate or reduce the pollutants in all storm water discharges from the facility. The SWPPP shall also include any control measures necessary [ from for ] the storm water discharges to meet applicable water quality standards.~~

~~The storm water pollution prevention plan SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or best management practices (BMP) BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of Part II G 4 6 (Contents of Plan). If an erosion and sediment control plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Virginia Erosion and Sediment Control Regulation, 4VAC50-30. All plans incorporated by reference into the storm water~~

~~pollution prevention plan SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all the requirements of Part II G 6, the permittee shall develop the missing SWPPP elements and include them in the required plan.~~

1. Deadlines for plan preparation and compliance.

~~a. For a storm water discharge associated with industrial activity that is existing on or before the effective date of this permit, the storm water pollution prevention plan shall be prepared and implemented as expeditiously as practicable, but not later than 270 days from the date of coverage under this permit. For a facility that was covered by the previous permit, a storm water pollution prevention plan was required to be developed and implemented for that facility. Within 120 days after the date of coverage under this permit, the existing storm water pollution prevention plan shall be reviewed and modified, as appropriate, to conform to the requirements of this permit. The existing storm water pollution prevention plans shall continue to be implemented until a new plan, if required, is developed and implemented.~~

~~b. The plan for any facility where industrial activity commences after the effective date of this permit, and except as provided elsewhere in this permit, shall be prepared, implemented and provide for compliance with the terms of the plan and this permit on or before the date of submission of a registration statement to be covered under this permit.~~

~~e. In cases where construction is necessary to implement measures required by the plan, the plan shall contain a schedule that provides compliance with the plan as expeditiously as practicable, but no later than three years from the date of coverage under this permit. Where a construction compliance schedule is included in the plan, the schedule shall include appropriate nonstructural and/or temporary controls to be implemented in the affected portion(s) of the facility prior to completion of the permanent control measure.~~

~~a. Owners of facilities that were covered under the 2008 Concrete Products General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP not later than January 1, 2014.~~

~~b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit shall prepare and implement the SWPPP prior to commencing operations.~~

~~c. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of the ownership change.~~

- d. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.
2. Signature and plan review.
- a. The ~~plan~~ SWPPP shall be signed in accordance with Part III K, and be retained on-site at the facility covered by this permit in accordance with Part III B.
- b. The permittee shall make the ~~storm water pollution prevention plan~~ SWPPP, annual site compliance inspection report, or other information available to the department upon request.
- c. The director, or his designee, may notify the permittee in writing at any time that the ~~plan does~~ SWPPP, BMPs, or other components of the facility's storm water program ~~do~~ not meet one or more of the ~~minimum~~ requirements of this part. Such notification shall identify ~~those specific~~ provisions of the permit ~~which that~~ are not being met ~~by the plan, and identify which provisions of the plan require modifications in order to meet the minimum requirements of this part and may include required modifications to the storm water program, additional monitoring requirements, and special reporting requirements.~~ Within 60 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.
3. Keeping plans current. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the state or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part II G 4 b of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP as appropriate whenever:
- a. There is construction or a change in design, operation, or maintenance that has a significant effect on the discharge or the potential for the discharge of pollutants to surface waters;
- b. Routine inspections or compliance evaluations determine that there are deficiencies in the BMPs;
- c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;
- d. There is a spill, leak, or other release at the facility; or
- e. There is an unauthorized discharge from the facility.
4. SWPPP modifications shall be made within 30 calendar days after discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified

BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II G 7) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

5. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

4. ~~6.~~ Contents of plan. The plan shall include, at a minimum, the following items:

a. Pollution prevention team. Each ~~plan shall identify a specific individual or individuals within the facility organization as members of a storm water pollution prevention team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan. Each plan shall identify the staff individuals by name or title that comprise the facility's storm water pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.~~

b. Description ~~Summary~~ of potential pollutant sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum: The plan shall identify where industrial materials or activities at the facility are exposed to storm water. Industrial materials or activities include, but are not limited to: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities include, but are not limited to: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product. The description shall include:

---

# Regulations

---

(1) A list of the activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams); and

(2) A list of the associated pollutant(s) or pollutant constituents (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.) for each activity. The pollutant list shall include all significant materials handled, treated, stored or disposed that have been exposed to storm water in the three years prior to the date this SWPPP was prepared or amended. This list shall include any hazardous substances or oil at the facility.

~~(1) Drainage. A site map indicating an~~ c. Site map. The site map shall document:

~~(1) An outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each;~~

~~(2) Each existing structural control measure to reduce pollutants in storm water runoff, surface;~~

~~(3) Surface water bodies, locations;~~

~~(4) Locations where significant materials are exposed to precipitation, locations;~~

~~(5) Locations where major spills or leaks identified under Part II G 4 b (3) II G 6 d have occurred, and the locations;~~

~~(6) Locations of the following activities: fueling stations, vehicle and or equipment maintenance and/or cleaning areas; degreasing activities, maintenance areas, loading/unloading loading or unloading areas, vehicle wash down areas, vehicle wash out areas, bag house or other dust control device, recycle/sedimentation pond recycle ponds, sedimentation ponds, clarifier or other device or clarifiers or other devices used for the treatment of process wastewater; (and the areas that drain to the treatment device), locations;~~

~~(7) Locations used for the storage or disposal of wastes; liquid storage tanks; processing areas; and storage areas. The map must indicate the outfall;~~

~~(8) Outfall locations, designation (e.g., 001) and the types of discharges contained in the drainage areas of the outfalls; and for~~

~~(9) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of locations of storm water conveyances including ditches, pipes, swales, and inlets, and the directions of storm water flow; and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants; and~~

~~(10) Flows with a significant potential for causing erosion shall be identified.~~

~~(2) Inventory of exposed materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three years prior to the date of coverage under this general permit and the present; method and location of on site storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of three years prior to the date of coverage under this general permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.~~

~~(3) d. Spills and leaks. A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.~~

~~(4) e. Sampling data. A The plan shall include a summary of existing storm water discharge sampling data describing pollutants in storm water discharges from taken at the facility, including a. The summary of sampling shall include, at a minimum, any data collected during the term of this permit previous three years.~~

~~(5) Risk identification and summary of potential pollutant sources. A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and on site waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.~~

~~e. Measures and f. Storm water controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:~~

~~(1) BMPs shall be implemented for all areas identified in Part II G 6 b to prevent or control pollutants in storm~~

water discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to storm water.

~~(1)~~ (2) Good housekeeping. Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to storm waters discharges. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants in storm water. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, vehicle fueling and maintenance areas, and loading/unloading areas. The plan shall describe procedures performed to minimize the discharge of: spilled cement, aggregate (including sand and gravel), kiln dust, fly ash, settled dust, or other significant material in storm water from paved portions of the site that are exposed to storm water. Regular sweeping of impervious areas or other equivalent measures to minimize the presence of these materials shall be employed. The frequency of sweeping or equivalent measures shall be specified in the plan based upon a consideration of the amount of industrial activity occurring in the areas and the frequency of precipitation, but it shall be a minimum of once a week if cement, aggregate, kiln dust, fly ash or settled dust are being handled/processed. Where practicable, efforts must be made to prevent the exposure of fine granular solids (cement, fly ash, etc.) to storm water by storing these materials in enclosed silos/hoppers, buildings or under other covering. The introduction of raw, final, or waste materials to exposed areas of the facility shall be minimized to the maximum extent practicable. The generation of dust, along with off-site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized to the maximum extent practicable.

~~(2)~~ (3) Preventive maintenance. A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) inspecting and testing facility regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to uncover conditions that could cause avoid breakdowns or failures resulting in discharges of pollutants to surface waters, and appropriate maintenance of such equipment and systems. that could result in leaks, spills and other releases. This program is in addition to the specific BMP maintenance required under Part II G 7 (Maintenance of BMPs).

~~(3)~~ (4) Spill prevention and response procedures. Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their

~~accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel. The plan shall describe the procedures that will be followed for preventing and responding to spills and leaks.~~

(a) Preventive measures include barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling.

(b) Response procedures shall include (i) notification of appropriate facility personnel, emergency agencies, and regulatory agencies and (ii) procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the pollution prevention team.

(c) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and in other locations where it will be readily available.

~~(4)~~ (5) Routine facility inspections. Facility personnel who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan shall be identified to possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility and who can also evaluate the effectiveness of BMPs shall regularly inspect designated equipment and areas of the facility. Inspections shall be conducted while the facility is in operation and include, but are not limited to, the following areas exposed to storm water: material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, and truck wash down/equipment cleaning areas. The inspection frequency shall be specified in the plan based on a consideration of the level of industrial activity at the facility, but it shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit. When practical, the routine facility inspection should be conducted once each calendar year during a period when a storm water discharge is occurring. A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be

---

# Regulations

---

maintained with the pollution prevention plan. These inspections are in addition to, or as part of, the comprehensive site compliance evaluation required under Part II G 8. At least one member of the pollution prevention team shall participate in the routine facility inspections.

Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

(5) (6) Employee training. Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training. The permittee shall implement a storm water employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to storm water and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

(6) Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(7) Sediment and erosion control. The plan shall identify areas ~~which, that,~~ due to topography, ~~activities,~~ land disturbance (e.g., construction, landscaping, sit grading), or other factors, have a high potential for significant soil erosion, ~~and~~. The permittee shall identify and implement structural, vegetative, and/or stabilization ~~measures to be~~

used to limit erosion. BMPs to prevent or control on-site and off-site erosion and sedimentation.

(8) Management of runoff. The plan shall ~~contain a narrative consideration of the appropriateness of traditional~~ describe the storm water run-off management practices ~~(practices other than those which control the generation or source(s) of pollutants)~~ (i.e., permanent structural BMPs) for the facility. These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise ~~manage storm water runoff in a manner that reduces~~ reduce pollutants in storm water discharges from the site. ~~The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity shall be considered when determining reasonable and appropriate measures.~~ Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, wet detention/retention devices; or other equivalent measures. Some structural BMPs may require a separate permit under § 404 of the Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

7. Maintenance of BMPs. All BMPs identified in the SWPPP shall be maintained in effective operating condition. Storm water BMPs identified in the SWPPP should be observed during active operation where feasible (i.e., during a storm water runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs and shall include a description of the back-up practices that are in place should a runoff event occur while a BMP is off line. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

If site inspections required by Part II G 6 f (5) (Routine facility inspections) or Part II G 8 (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of

maintenance and repairs of BMPs, including the date(s) of regular maintenance, date(s) of discovery of areas in need of repair or replacement, and for repairs, date(s) that the BMP(s) returned to full function, and the justification for any extended maintenance or repair schedules.

~~4. 8. Comprehensive site compliance evaluation. Qualified facility personnel who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. The permittee shall conduct comprehensive site compliance evaluations at least once a year. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility and who can also evaluate the effectiveness of BMPs. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility. Such evaluations shall include the following:~~

~~(1) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.~~

~~a. Industrial materials, residue or trash that may have or could come into contact with storm water;~~

~~b. Leaks or spills from industrial equipment, drums, barrels, tanks, or other containers that have occurred within the past three years;~~

~~c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;~~

~~d. Evidence of or the potential for pollutants entering the drainage system;~~

~~e. Evidence of pollutants discharging to surface waters at all facility outfalls and the condition of and around the outfall, including flow dissipation measures to prevent scouring;~~

~~f. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs;~~

~~g. Documentation that all outfalls have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than storm water; the authorized nonstorm water discharges described in Part II E; or~~

discharges covered under a separate VPDES permit, other than this permit). The documentation shall include:

(1) The date of the evaluation;

(2) A description of the evaluation criteria used;

(3) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;

(4) A description of the results of the evaluation for the presence of unauthorized discharges; and

(5) The actions taken to eliminate unauthorized discharges, if any were identified (i.e., a floor drain was sealed, a sink drain was rerouted to sanitary, or a VPDES permit application was submitted for a cooling water discharge);

h. Results of both visual and any analytical monitoring done during the past year shall be taken into consideration during the evaluation;

~~(2) i. Based on the results of the evaluation, the description of potential pollutant sources identified in the plan in accordance with Part II G 4 b and pollution prevention measures and controls identified in the plan in accordance with Part II G 4 c shall be revised as appropriate within two weeks of such evaluation and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the evaluation. the SWPPP shall be modified as necessary (e.g., show additional controls on the site map required by Part II G 6 c; revise the description of storm water controls required by Part II G 6 f to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within 30 days following the evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department;~~

~~(3) j. Compliance evaluation report. A report shall be written summarizing the scope of the inspection evaluation, names(s) of personnel making the inspection evaluation, the date(s) date of the inspection, major evaluation, and all observations relating to the implementation of the storm water pollution prevention plan SWPPP, and actions taken in accordance with Part II G 4 d shall be made and retained as part of the storm water pollution prevention plan as required in Part III B. including elements stipulated in Part II G 8 a through e above. Observations shall include such things as: the location(s) of discharges of pollutants from the site; locations(s) of previously unidentified sources of pollutants; location(s) of BMPs that need to be maintained or repaired; locations(s) of failed BMPs that~~

---

# Regulations

---

need replacement; and location(s) where additional BMPs are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the ~~storm water pollution prevention plan SWPPP~~ and this permit. The report shall be signed in accordance with Part III K- and maintained with the SWPPP; and

(4) ~~k~~. Where compliance evaluation schedules overlap with routine inspections required under Part II G 4-e (4) ~~6 f (5)~~, the annual compliance evaluation may be ~~conducted in place of one such inspection used as one of the routine inspections.~~

## 5. ~~Special pollution prevention plan requirements:~~

~~a. Additional requirements for storm water discharges associated with industrial activity from facilities subject to § 313 of the Emergency Planning and Community Right to Know Act of 1986 (EPCRA) reporting requirements. Potential pollutant sources for which the facility has reporting requirements under EPCRA 313 must be identified in the summary of potential pollutant sources as per Part II G 4 b.~~

~~b. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes must be enclosed or covered to prevent exposure to precipitation (except for exposure resulting from adding or removing materials from the pile). Piles do not need to be enclosed or covered where storm water from the pile is not discharged to surface waters or the discharges from the piles are authorized under another permit.~~

### Part III-

#### 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 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 (i) records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, (ii) copies of all reports required by this permit, and (iii) 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 that coverage under this permit expires or is terminated.~~ 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 coverage under 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~~ its discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, 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 III F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III 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 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 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 subdivision:
  - 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 III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

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

NOTE: The immediate (within 24 hours) reports required in Parts III G, H and I may be made to the department's regional office by telephone ~~or by fax, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.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



---

# Regulations

---

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, 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) 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 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 ~~if~~ 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 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 Part 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 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 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 Part 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 Parts 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 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 application at least ~~180~~ 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

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

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III 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 assure efficient operation. These bypasses are not subject to the provisions of Parts III 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 III 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

---

# Regulations

---

(3) The permittee submitted notices as required under Part III 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 III 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 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. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the causes of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part III I; and
- d. The permittee complied with any remedial measures required under Part III 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 his designee, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy at reasonable times any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by

the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

## Y. Transfer of permits.

~~[ 1. ]~~ Permits are not transferable to any person except after notice to the department. ~~[ Except as provided in Part III 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 III Y 1, this~~ This permit may be automatically transferred to a new permittee if:

~~[ a. 1. ]~~ 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 ~~[ unless permission for a later date has been granted by the board ]~~;

~~[ b. 2. ]~~ 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. 3. ]~~ The board does not notify the existing permittee and the proposed new permittee of its intent to ~~[ modify or revoke and reissue ]~~ deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in ~~[ Part III Y 2 b ]~~ Part III Y 2 ].

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 (9VAC25-193)

Standard Industrial Classification Manual, 1987, Office of Management and Budget.

Standard Methods for the Examination of Water and Wastewater, 18th, 19th, 20th and 21st Editions, 1992, 1995, 1998 and 2005, American Public Health Association.

~~Method 8270D, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 4, February 2007, U.S. Government Printing Office.~~

[Method 8015B, Nonhalogenated Organics Using GC/FID, Revision 2, December 1996, U.S. Government Printing Office.](#)

[Method 8015C, Nonhalogenated Organics Using GC/FID, Revision 3, November 2000, U.S. Government Printing Office.](#)

Method 8015C, Nonhalogenated Organics Using GC/FID, Revision 3, February 2007, U.S. Government Printing Office.

Method 8015D, Nonhalogenated Organics Using GC/FID, Revision 4, June 2003, U.S. Government Printing Office.

~~Modified DRO Method for Determining Diesel Range Organics, PUBL SW 141, September 1995, Wisconsin Department of Natural Resources.~~

VA.R. Doc. No. R12-3072; Filed March 19, 2013; 2:44 p.m.

**Proposed Regulation**

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

**Title of Regulation:** **9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (amending 9VAC25-800-10, 9VAC25-800-20, 9VAC25-800-30, 9VAC25-800-60; adding 9VAC25-800-15).**

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act.

**Public Hearing Information:**

May 17, 2013 - 3 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA

**Public Comment Deadline:** June 7, 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.

**Summary:**

*This action is proposed to reissue the existing VPDES general permit that expires on December 31, 2013. The permit must be reissued to make coverage under the general permit available to operators after December 31, 2013. The existing regulation contains the general permit requirements to control point source discharges of chemical pesticide residues and biological pesticides applied in or over, including near, surface waters. As most*

*likely to reach surface waters, the areas covered under the existing general permit include: mosquito and other flying insect pest control; weed, algae, and pathogen control; animal pest control; and forest canopy pest control.*

*Changes include updates to narrative technology and water quality based permit requirements, monitoring requirements, and special conditions (best management practices, recordkeeping, and adverse incident reporting and responses). The changes are based on the 2011 EPA Pesticide General Permit (PGP) for Discharges from the Application of Pesticides, technical advisory committee recommendations, public comment, and agency needs.*

**9VAC25-800-10. Definitions.**

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Action threshold" means the point at which pest populations or environmental conditions ~~can no longer be tolerated necessitating~~ necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. ~~Sighting a single pest does not always mean control is needed.~~ An action threshold may be based on current or past environmental factors that are or have been demonstrated to be conducive to pest emergence or growth, as well as past or current pest presence. Action thresholds ~~help determine~~ are those conditions that indicate both the need for control actions and the proper timing of such actions. ~~Action thresholds are site specific and part of integrated pest management decisions.~~

"Active ingredient" means any substance (or group of structurally similar substances if specified by the federal Environmental Protection Agency (EPA) that will prevent, destroy, repel, or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of § 2 (a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (7 USC § 136 et seq.). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance.

"Adverse incident" means an unusual or unexpected incident that the operator observes upon inspection or of which otherwise becomes aware, in which there is evidence that:

1. A person or nontarget organism has likely been exposed to a pesticide residue; and
2. The person or nontarget organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within surface waters on nontarget plants, fish, or wildlife that are unusual or unexpected (e.g., effects are to

---

# Regulations

---

organisms not described on the pesticide product labels or not expected to be present) as a result of exposure to a pesticide residue and may include any of the following:

1. Distressed or dead juvenile and small fishes;
2. Washed up or floating fish;
3. Fish swimming abnormally or erratically;
4. Fish lying lethargically at water surface or in shallow water;
5. Fish that are listless or nonresponsive to disturbance;
6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants; and
7. Other dead or visibly distressed nontarget aquatic or semi-aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes), domesticated animals or wildlife (e.g., vomiting, lethargy) that occur either directly or indirectly from a discharge from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to surface waters that are temporally and spatially related to exposure to a pesticide residue.

~~"Best management practices" or "BMPs" means, for purposes of this chapter, schedules of activities, prohibitions of practices, maintenance procedures, preventative practices (pre-emergent applications) and other management practices to prevent or reduce the pollution of surface waters. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage, or leaks.~~

"Biological control" means organisms that can be introduced to sites, such as herbivores, predators, parasites, and hyperparasites.

"Biological pesticides" or "biopesticides" include microbial pesticides, biochemical pesticides, and plant-incorporated protectants (PIP).

1. "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that:
  - a. Is a eucaryotic microorganism, including but not limited to protozoa, algae, and fungi;
  - b. Is a procaryotic microorganism, including but not limited to Eubacteria and Archaeobacteria; or
  - c. Is a parasitically replicating microscopic element, including but not limited to viruses.
2. "Biochemical pesticide" means a pesticide that:
  - a. Is a naturally occurring substance or structurally similar and functionally identical to a naturally occurring substance;
  - b. Has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the

case of a synthetically derived biochemical pesticide, is equivalent to a naturally occurring substance that has such a history; and

c. Has a nontoxic mode of action to the target pest(s).

3. "Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce thereof.

"Chemical pesticides" means all pesticides not otherwise classified as biological pesticides.

~~"Control measure" means any best management practice (BMP) or other method used to meet the effluent limitations in this permit. Control measures must comply with label directions and relevant legal requirements. Additionally, control measures could include other actions, including nonchemical tactics (e.g., cultural methods), that a prudent operator would implement to reduce or eliminate discharges resulting from pesticide application to surface waters to comply with the effluent limitations in this permit.~~

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Declared pest emergency situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than 10 days after identification of the need for pest control. This public declaration may be based on:

1. Significant risk to human health;
2. Significant economic loss; or
3. Significant risk to:
  - a. Endangered species;
  - b. Threatened species;
  - c. Beneficial organisms; or
  - d. The environment.

"DEQ" or "department" means the Virginia Department of Environmental Quality.

~~"Discharge of a pollutant" means, for purposes of this chapter, any the addition of any "pollutant" or combination of pollutants to surface waters from any point source, or any the addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source.~~

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.) as amended.

"Impaired water" or "water quality impaired water" or "water quality limited segment" means any stream segment where the water quality does not or will not meet applicable water quality standards, even after the application of

technology-based effluent limitations required by §§ 301(b) and 306 of the Clean Water Act (CWA) (33 USC § 1251 et seq. as of 1987). Impaired waters include both impaired waters with approved or established TMDLs, and impaired waters for which a TMDL has not yet been approved or established.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by EPA), other than an active ingredient, that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.

"Integrated pest management" or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.

"Labeling" means all labels and other written, printed, or graphic matter:

1. Upon the pesticide or device or any of its containers or wrappers;
2. Accompanying the pesticide or device at any time; or
3. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Virginia Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.

"Mechanical/physical methods" means mechanical tools or physical alterations of the environment, for pest prevention or removal.

"Minimize" means to reduce or eliminate pesticide discharges to surface waters through the use of ~~control measures~~ pest management measures to the extent technologically available and economically practicable and achievable.

"Nontarget organisms" means ~~any organisms that are not the target of the pesticide~~ the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Operator" means, ~~for purposes of this chapter,~~ any person involved in the application of a pesticide that results in a discharge to state surface waters that meets either or both of the following two criteria:

1. The person who has control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or
2. The person who performs the application of a pesticide or who has day-to-day control of ~~or performs activities that are necessary to ensure compliance with the permit (e.g., they are authorized to direct workers to carry out activities required by the permit or perform such activities themselves)~~ the application (e.g., they are authorized to direct workers to carry out those activities that result in discharges to surface waters).

"Person" means, ~~for purposes of this chapter,~~ an individual; a corporation; a partnership; an association; a local, state, or federal governmental body; a municipal corporation; or any other legal entity.

"Pest" means any deleterious organism that is:

1. Any vertebrate animal other than man;
2. Any invertebrate animal excluding any internal parasite of living man or other living animals;
3. Any plant growing where not wanted, and any plant part such as a root; or
4. Any bacterium, virus, or other microorganisms (~~except, except~~ for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § ~~321(g)(4)~~ 321(g)(1)), and cosmetics (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § 321(i)).

Any organism classified by state or federal law or regulation as endangered, ~~or threatened, or otherwise protected under federal or state laws~~ shall not be deemed a pest for the purposes of this chapter.

"Pest management area" means the area of land, including any water, for which pest management activities covered by this permit are conducted.

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards, and recommended industry practices related to the application of pesticides, relevant legal requirements and other provisions that a prudent operator

---

# Regulations

---

would implement to reduce or eliminate pesticide discharges to surface waters.

"Pesticide" means:

1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Commissioner of Agriculture and Consumer Services shall declare to be a pest;
2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and
3. Any substance which is intended to become an active ingredient thereof.

Pesticides that are used or applied shall only be those that are approved and registered for use by the Virginia Department of Agriculture and Consumer Services.

"Pesticide product" means a pesticide in the particular form (including active and inert ingredients, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide research and development" means activities undertaken on a systematic basis to gain new knowledge (research) or ~~the application of~~ apply research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development). ~~These types of activities are generally categorized under 5417 under the 2007 North American Industry Classification System (NAICS).~~

"Pesticide residue" ~~includes~~ means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means, ~~for purposes of this chapter,~~ any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, or container from which pollutants are or may be discharged. This includes biological pesticides or pesticide residuals coming from a container or nozzle of a pesticide application device. This term does not include return flows from irrigated agriculture or agricultural storm water run-off.

"Pollutant" means, ~~for purposes of this chapter,~~ biological pesticides and any pesticide residue resulting from use of a chemical pesticide.

"Surface waters" means:

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

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

- a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
- b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
- c. That are used or could be used for industrial purposes by industries in interstate commerce.

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

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

6. The territorial sea; and

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

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

"Target pest" means the organism toward which pest ~~control~~ management measures are being directed.

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

"Treatment area" means the area of land including any waters, or the linear distance along water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area.

Treatment area includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Treatment area calculations for pesticide applications that occur at water's edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied.

"VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.

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

**9VAC25-800-15. 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 (CFR) is referenced and incorporated herein, that regulation shall be as it exists and has been published as of the July 1, 2012, CFR update.

**9VAC25-800-20. Purpose; delegation of authority; effective date of permit.**

A. This general permit regulation governs discharges resulting from the application of pesticides to surface waters.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general VPDES permit will become effective on ~~October 31, 2014~~ January 1, 2014, and expire on December 31, ~~2013~~ 2018.

**9VAC25-800-30. Authorization to discharge.**

A. Any operator that meets the eligibility requirements in subsection B of this section is hereby authorized for his discharges resulting from the application of pesticides to surface waters of the Commonwealth of Virginia.

The definition of operator in 9VAC25-800-10 provides that more than one person may be responsible for the same discharge resulting from pesticide application. Any operator authorized to discharge under this general permit is responsible for compliance with the terms of this permit for discharges resulting from the application of pesticides.

B. Eligibility. This permit is available to operators who discharge to surface waters from the application of (i) biological pesticides, or (ii) chemical pesticides that leave a

residue (hereinafter collectively "pesticides"), when the pesticide application is for one of the following pesticide use patterns:

1. Mosquito and other flying insect pest control - to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. ~~Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.~~
2. ~~Weed, and algae, and pathogen~~ pest control - to control ~~invasive or other nuisance~~ weeds, algae, and pathogens ~~that are pests~~ in surface waters.
3. Animal pest control - to control ~~invasive or other~~ animal pests in surface waters.
4. Forest ~~canopy~~ pest control - ~~application of a pesticide to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively in the forest where, to target pests effectively,~~ a portion of the pesticide unavoidably will be applied over and deposited to surface water. Forest pest control includes aerial forest canopy pest control, aerial utility transmission, or aerial distribution line pest control.

C. Operators applying pesticides are required to maintain a pesticide discharge management plan (PDMP) if they exceed the annual calendar year treatment area thresholds in Table 1 of this subsection:

Table 1. Annual Treatment Area Thresholds

Pesticide Use	Annual Threshold
<del>Mosquitoes</del> <u>Mosquito and Other Flying Insect Pests Pest Control</u>	6400 acres of treatment area
<del>Weed, and Algae, and Pathogen</del> <u>Pest Control:</u> - In Water - At Water's Edge	80 acres of treatment area <sup>1</sup> 20 linear miles of treatment area at water's edge <sup>2</sup>
Animal Pest Control: - In Water - At Water's Edge	80 acres of treatment area <sup>1</sup> 20 linear miles of treatment area at water's edge <sup>2</sup>
Forest <del>Canopy</del> <u>Pest Control</u>	6400 acres of treatment area



---

# Regulations

---

<sup>1</sup>Calculations include the area of the applications made to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a 10 acre site is counted as 20 acres of treatment area.

<sup>2</sup>Calculations include the linear extent of the application made along the water's edge adjacent to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity or area only once as a separate activity. For example, treating both sides of a 10 mile ditch twice a year is equal to 10 miles of water treatment area applying pesticides twice a year to a one mile linear feature (e.g., ditch) equals two miles of treatment area regardless of whether one or both sides of the ditch are treated. Applying pesticides twice a year along one mile of lake shoreline equals two miles of treatment area.

D. An operator's discharge resulting from the application of pesticides is not authorized under this permit in the event of any of the following:

1. The operator is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation.
2. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards. Discharges resulting from the application of pesticides are temporary and allowable in exceptional waters (see 9VAC25-260-30 A 3 (b) (3)).
3. The operator is proposing a discharge from a pesticide application to surface waters that have been identified as impaired by that pesticide or its degradates. Impaired waters include both impaired waters with board-adopted, EPA-approved or EPA-imposed TMDLs, and impaired waters for which a TMDL has not yet been approved, established, or imposed.

If the proposed discharge would not be eligible for coverage under this permit because the surface water is listed as impaired for that specific pesticide, but the applicant has evidence that shows the water is no longer impaired, the applicant may submit this information to the board and request that coverage be allowed under this permit.

E. Discharge authorization date. Operators are not required to submit a registration statement and are authorized to discharge under this permit immediately upon the permit's effective date of ~~October 31, 2014~~ January 1, 2014.

F. Compliance with this general permit constitutes compliance with the federal Clean Water Act, (33 USC § 1251 et seq.) and the State Water Control Law, and applicable regulations under either, with the exceptions stated in

9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general VPDES permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation. For example, this permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling.

## G. Continuation of permit coverage.

1. This general permit shall expire on December 31, ~~2013~~ 2018, except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.
2. General permit coverages continued under this section remain fully effective and enforceable.
3. When the operator that was covered under the expiring or expired pesticides general permit is not in compliance with the conditions of that permit, the board may choose to do any or all of the following:
  - a. Initiate enforcement action based upon the pesticides general permit that has been continued;
  - b. Issue a notice of intent to deny coverage under a reissued pesticides general permit. If the general permit coverage is denied, the operator would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit;
  - c. Issue an individual permit with appropriate conditions; or
  - d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

## 9VAC25-800-60. General permit.

Any operator who is authorized to discharge shall comply with the requirements contained herein and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAG87

Effective Date: ~~October 31, 2014~~ January 1, 2014

Expiration Date: December 31, ~~2013~~ 2018

### GENERAL PERMIT FOR DISCHARGES RESULTING FROM THE APPLICATION OF PESTICIDES TO SURFACE WATERS OF VIRGINIA

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

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, operators that apply pesticides that result in a

discharge to surface waters are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements, and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth herein. Coverage under this general VPDES permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation, including the pesticide product label.

Part I

Effluent Limitations, Monitoring Requirements, and Special Conditions

A. Effluent limitations.

1. Technology-based effluent limitations. To meet the effluent limitations in this permit, the operator shall implement ~~site-specific control~~ pest management measures that minimize discharges of pesticides to surface waters.

a. Minimize pesticide discharges to surface waters. All operators who perform the application of pesticides or who have day-to-day control of applications shall minimize the discharge of pollutants resulting from the application of pesticides, and:

(1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;

(2) No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material. All pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall be leak proof. All spray distribution systems shall be leak proof, and any pumps that these systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of pesticide application; ~~and~~

(3) All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over ~~non-target~~ nontarget areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are not required for separate water storage tanks used to fill pesticide application equipment by gravity systems when

the fill spout, tube, or pipe is not allowed to contact or fall below the water level of the application equipment being filled, and no other possible means of establishing a back siphon or backflow exists; and

(4) Assess weather conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to ensure application is consistent with product label requirements.

b. Integrated pest management (IPM) practices. The operator with control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions, shall implement to the extent practicable consider integrated pest management practices to ensure that discharges resulting from the application of pesticides to surface waters are minimized. Operators that exceed the annual treatment area thresholds established in 9VAC25-800-30 C are also required to maintain a pesticide discharge management plan (PDMP) in accordance with ~~Part I-C~~ Part I C of this permit. The PDMP documents the operator's IPM practices.

The operator's IPM practices shall consider the following for each pesticide use pattern:

(Note: If the operator's discharge of pollutants results from the application of a pesticide that is being used solely for the purpose of "pesticide research and development," as defined in 9VAC25-800-10, the operator is only required to fully implement IPM practices to the extent that the requirements do not compromise the research design.)

(1) Mosquito and other flying insect pest control. This subpart applies to discharges resulting from the application of pesticides to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. ~~Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.~~

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

- (i) Identify target ~~mosquito or flying insect~~ pests;
- (ii) Establish densities for ~~larval and adult mosquito or flying insect~~ pest populations or identify environmental conditions, either current or based on historical data, to serve as action thresholds for implementing pest management ~~strategies~~ measures;
- (iii) Identify known breeding sites for source reduction, larval control program, and habitat management; ~~and~~

---

# Regulations

---

(iv) Analyze existing surveillance data to identify new or unidentified sources of ~~mosquito or flying insect~~ pest problems as well as sites that have recurring pest problems; and

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in subdivision A 1 b (1) (a) above.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective ~~means~~ of pest management measures that minimize discharges resulting from application of pesticides to control mosquitoes or other flying insect pests. In developing these pest management ~~strategies~~ measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action;
- (ii) Prevention;
- (iii) Mechanical or physical methods;
- (iv) Cultural methods;
- (v) Biological control; and
- (vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage mosquitoes or flying insect pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct larval or adult surveillance ~~or assess environmental conditions that can no longer be tolerated based on economic, human health, aesthetic, or other effects prior to each pesticide application to in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent areas prior to each pesticide application to assess the pest management area and to determine when the action thresholds are threshold is met that necessitate the need for pest management;~~

~~(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area prior to each pesticide application to identify whether existing environmental conditions support development of pest populations and are suitable for control activities;~~

~~(iii)~~ (ii) Reduce the impact on the environment and on nontarget organisms by applying the pesticide only when the action threshold has been met;

~~(iv)~~ (iii) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when larval action thresholds have been met; and

~~(v)~~ (iv) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when adult action thresholds have been met.

(2) Weed, and algae, ~~and pathogen~~ pest control. This subpart applies to discharges resulting from the application of pesticides to control ~~invasive or other nuisance~~ weeds, algae, and pathogens that are pests in surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

- (i) Identify target ~~weed and algae~~ pests;
- (ii) Identify areas with ~~weed, algae, or pathogen~~ pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);
- (iii) Identify possible factors causing or contributing to the ~~weed or algae~~ pest problem (e.g., nutrients, invasive species, etc); and
- (iv) Establish past or present ~~weed, algae, or pathogen~~ pest densities to serve as action thresholds for implementing pest management strategies; and

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in subdivision A 1 b (2) (a) above.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective ~~means~~ of pest management measures that minimize discharges resulting from application of pesticides to control ~~weeds, algae, or pathogens~~ pests. In developing these pest management ~~strategies~~ measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action;
- (ii) Prevention;
- (iii) Mechanical or physical methods;

- (iv) Cultural methods;
- (v) Biological control; and
- (vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage ~~weeds, algae, or pathogens~~ pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

- (i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and
- (ii) Reduce the impact on the environment and nontarget organisms by applying the pesticide only when the action threshold has been met.

(3) Animal pest control. This subpart applies to discharges resulting from the application of pesticides to control ~~invasive or other~~ animal pests in surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

- (i) Identify target ~~animal~~ pests;
- (ii) Identify areas with ~~animal~~ pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);
- (iii) Identify possible factors causing or contributing to the problem (e.g., nutrients and invasive species); ~~and~~
- (iv) Establish past or present ~~animal~~ pest densities to serve as action thresholds for implementing pest management strategies; ~~and~~

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in subdivision A 1 b (3) (a) above.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, the operator shall select and implement, for each pest management area, efficient and effective ~~means of~~ pest management measures that minimize discharges resulting from application of pesticides to control animal pests. In developing these pest management ~~strategies~~ measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action;
- (ii) Prevention;
- (iii) Mechanical or physical methods;
- (iv) Biological control; and
- (v) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

- (i) Conduct surveillance prior to each application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and
- (ii) Reduce the impact on the environment and nontarget organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold has been met.

(4) Forest ~~canopy~~ pest control. This subpart applies to discharges resulting from the application of pesticides to the forest ~~canopy~~ to control the population of a pest species (~~e.g., insect or pathogen~~) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface ~~water~~ waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the operator shall consider the following for each pest management area:

- (i) Identify target pests;
- (ii) Establish target pest densities to serve as action thresholds for implementing pest management ~~strategies~~ measures; ~~and~~

(iii) Identify current distribution of the target pest and assess potential distribution in the absence of ~~control~~ measures. pest management measures; and

(iv) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the condition in subdivision A 1 (b) (4) (a) above.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective ~~means of~~ pest management measures that minimize discharges resulting from application of pesticides to control forestry pests. In developing these pest management ~~strategies~~ measures, the operator shall evaluate the following management

# Regulations

options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

- (i) No action;
- (ii) Prevention;
- (iii) Mechanical or physical methods;
- (iv) Cultural methods;
- (v) Biological control; and
- (vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage forestry pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

- (i) Conduct surveillance prior to each application to assess the pest management area and to determine when the pest action threshold is met that necessitates the need for pest management;
- (ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to identify conditions that support target pest development and are conducive for treatment activities;
- (iii) Reduce the impact on the environment and nontarget organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met; and
- (iv) Evaluate using pesticides against the most susceptible developmental stage.

2. Water quality-based effluent limitations. The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards for any discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time the operator become aware, or the board determines, that the operator's discharge of pollutants causes or contributes to an excursion of applicable water quality standards, corrective action must be taken as required in Part I D 1 of this permit.

## B. Monitoring requirements.

### 1. ~~Monitoring requirements for pesticide applicators.~~

~~a. The amount of pesticide applied shall be monitored to ensure that the lowest effective amount is used to control the pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label.~~

~~b. Pesticide application activities shall be monitored to ensure that regular maintenance activities are being performed and that application equipment is in proper operating condition to reduce the potential for leaks, spills, or other unintended discharge of pesticides to surface waters.~~

~~e. Pesticide application activities shall also be monitored to ensure that the application equipment is in proper operating condition by adhering to any manufacturer's conditions and industry practices and by calibrating, cleaning, and repairing equipment on a regular basis.~~

~~2. Visual monitoring assessment requirements for all operators.~~ All operators covered under this permit must conduct a visual monitoring assessment (i.e., spot checks in the area to and around where pesticides are applied) for possible and observable adverse incidents caused by application of pesticides, including but not limited to the unanticipated death or distress of nontarget organisms and disruption of wildlife habitat, recreational, or municipal water use.

A visual monitoring assessment is only required during the pesticide application when feasibility and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances. Visual monitoring assessments of the application site must be performed:

- ~~a. 1.~~ During any post-application surveillance or efficacy check that the operator conducts, if surveillance or an efficacy check is conducted.
- ~~b. 2.~~ During any pesticide application, when considerations for safety and feasibility allow.

C. Pesticide discharge management plan (PDMP). Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must prepare a PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration of coverage under this general permit, even if discharges subsequently fall below the annual application threshold levels. The operator applying pesticides shall develop a PDMP consistent with the deadline outlined in Table I-1 below.

Table I-1. Pesticide Discharge Management Plan Deadline

Category	PDMP Deadline
Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to first pesticide application covered under this permit.
Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to exceeding an annual treatment area threshold.

Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.	No later than 90 days after responding to declared pest emergency situation.
--	--

The PDMP does not contain effluent limitations; the limitations are contained in Parts I A 1 and I A 2 of the permit. The PDMP documents how the operator will implement the effluent limitations in Parts I A 1 and I A 2 of the permit, including the evaluation and selection of ~~control~~ pest management measures to meet those effluent limitations and minimize discharges. In the PDMP, the operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If other documents are being relied upon by the operator to describe how compliance with the effluent limitations in this permit will be achieved, such as a pre-existing integrated pest management (IPM) plan, a copy of ~~any~~ the portions of any documents that are being used to document the implementation of the effluent limitations shall be attached to the PDMP. The ~~control~~ pest management measures implemented must be documented and the documentation must be kept up to date.

1. Contents of the pesticide discharge management plan. The PDMP must include the following elements:

- a. Pesticide discharge management team;
- ~~b. Pest management area description.~~
- ~~c. Control measure description.~~
- ~~d. Schedules and procedures.~~

~~(1) Pertaining to control measures used to comply with the effluent limitations in Part I A 1:~~

- ~~(a) Application rate and frequency procedures.~~
- ~~(b) Spill prevention procedures.~~
- ~~(c) Pesticide application equipment procedures.~~
- ~~(d) Pest surveillance procedures.~~
- ~~(e) Assessing environmental conditions procedures.~~

~~(2) Pertaining to other actions necessary to minimize discharges:~~

- ~~(a) Spill response procedures.~~
- ~~(b) Adverse incident response procedures.~~
- ~~(c) Pesticide monitoring schedules and procedures.~~

~~e. Documentation to support eligibility considerations under other federal laws.~~

- b. Problem identification;
- c. Pest management options evaluation;
- d. Response procedures;

(1) Spill response procedures;

(2) Adverse incident response procedures; and  
f. e. Signature requirements.

2. PDMP team. The operator shall identify all the persons (by name and contact information) who compose the team as well as each person's individual responsibilities, including:

- a. Persons responsible for managing pests in relation to the pest management area;
- b. Persons responsible for developing and revising the PDMP; and
- c. Persons responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements; and
- ~~d. Persons responsible for pesticide applications.~~

3. ~~Pest management area description.~~ Problem identification. The operator shall document the following:

- a. Pest problem description. ~~A description of the pest problem at the pest management area shall be documented to include~~ Describe the pest problem at the pest management area, including identification of the target pests, ~~source~~ sources of the pest problem, and ~~source~~ sources of data used to identify the problem in Parts I A 1 b (1), I A 1 b (2), I A 1 b (3), and I A 1 b (4).
- b. Action thresholds. ~~The~~ Describe the action thresholds for the pest management area ~~shall be described, including a description of~~ how they were determined.
- c. General ~~service area~~ location map. ~~The plan shall include~~ Include a general ~~service area~~ location map that identifies the geographic boundaries of the ~~service~~ area to which the plan applies and location of major surface waters.

~~4. Control measure description. The operator shall document an evaluation of control measures for the pest management area. The documentation shall include the control measures that will be implemented to comply with the effluent limitations required in Parts I A 1 and I A 2. The operator shall include in the description the active ingredients evaluated.~~

5. Schedules and procedures. The operator shall document the following schedules and procedures in the PDMP:

a. Pertaining to control measures used to comply with the effluent limitations in Part I A 1. The following must be documented in the PDMP:

~~(1) Application rate and frequency (see Part I A 1 a (1)). Procedures for determining the lowest effective amount of pesticide product per application (without exceeding the maximum allowable rate of the product label) and the optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance.~~

~~(2) Spill prevention (see Part I A 1 a (2)). Procedures and schedule of maintenance activities for preventing spills~~

---

# Regulations

---

and leaks of pesticides associated with the application of pesticides covered under this permit.

~~(3) Pesticide application equipment (see Part I A 1 a (3)). Schedules and procedures for maintaining the pesticide application equipment in proper operating condition, including calibrating, cleaning, and repairing the equipment in accordance with 2VAC20 20 170.~~

~~(4) Pest surveillance (see Parts I A 1 b (1) (c), I A 1 b (2) (c), I A 1 b (3) (c), and I A 1 b (4) (c)). Procedures and methods for conducting preapplication pest surveillance.~~

~~(5) Assessing environmental condition (Parts I A 1 b (1) (c) (ii) and I A 1 b (4) (c) (ii)). Procedures and methods for assessing environmental conditions in the treatment area.~~

~~b. Pertaining to other actions necessary to minimize discharges resulting from pesticide application. The following must be documented in the PDMP:~~

4. Integrated pest management options evaluation. Operators shall document the evaluation of the pest management options, including a combination of the pest management options, to control the target pests. Pest management options include the following: no action, prevention, mechanical/physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, decision makers shall consider the impact to water quality, impact to nontarget organisms, feasibility, cost effectiveness, and any relevant previous pest management measures.

5. Response procedures. Document the following procedures in the PDMP:

(1) a. Spill response procedures. At a minimum the PDMP must have:

~~(a)~~ (1) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to surface waters. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

~~(b)~~ (2) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

~~(2)~~ b. Adverse incident response procedures. At a minimum the PDMP must have:

~~(a)~~ (1) Procedures for responding to any incident resulting from pesticide applications; and

~~(b)~~ (2) Procedures for notification of the incident, both internal to the operator's agency or organization and external. Contact information for DEQ, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

~~(3) Pesticide monitoring schedules and procedures. The operator shall document procedures for monitoring consistent with the requirements in Part I B including:~~

~~(a) The process for determining the location of any monitoring;~~

~~(b) A schedule for monitoring;~~

~~(c) The person or position responsible for conducting monitoring; and~~

~~(d) Procedures for documenting any observed impacts to nontarget organisms resulting from your pesticide discharge.~~

6. Signature PDMP signature requirements.

a. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in this subsection Part II G 1 or by a duly authorized representative of that person described in ~~Part I C 6 b~~ Part II G 2.

~~(1) For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~

~~(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or~~

~~(3) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this subsection, a principal executive officer of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency.~~

~~b. A person is a duly authorized representative only if:~~

~~(1) The authorization is made in writing by a person described in Part I C 6 a;~~

~~(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated activity such as the position of superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and~~

~~(3) The signed and dated written authorization is included in the PDMP. A copy of this authorization must be submitted to the department if requested.~~

~~e. b.~~ All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

~~d. c.~~ Any person signing documents in accordance with ~~Part I C 6 a or Part I C 6 b~~ subdivision C 6 a above must include the following certification: certification from Part II G 4.

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

7. PDMP modifications and availability.

a. PDMP modifications. The operator shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part I D 1 a, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with ~~Part I C 6~~ Part II G.

~~The operator shall review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area.~~

b. PDMP availability. The operator shall retain a copy of the current PDMP, along with all supporting maps and documents. The operator shall make the PDMP and supporting information available to the department upon request. The PDMP is subject to the provisions and

exclusions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

D. Special conditions.

1. Corrective action.

a. Situations requiring revision of ~~control~~ pest management measures. If any of the following situations occur, the operator shall review and, as necessary, revise the evaluation and selection of ~~control~~ pest management measures to ensure that the situation is eliminated and will not be repeated in the future:

(1) An unauthorized release or discharge associated with the application of pesticides occurs (e.g., spill, leak, or discharge not authorized by this or another VPDES permit);

(2) The operator becomes aware, or the board concludes, that the ~~control~~ pest management measures are not adequate or sufficient for the discharge of pollutants to meet applicable water quality standards;

(3) Any monitoring activities indicate that the operator failed to meet the ~~requirements of~~ technology-based effluent limitations in Part 1 A 1 a of this permit;

(4) An inspection or evaluation of the operator's activities by DEQ, VDACS, EPA, or a locality reveals that modifications to the ~~control~~ pest management measures are necessary to meet the non-numeric effluent limits in this permit, or

(5) The operator observes (e.g., during visual monitoring that is required in ~~Part I B 2~~ Part I B) or is otherwise made aware of an adverse incident.

b. Corrective action deadlines. If the operator determines that changes to the ~~control~~ pest management measures are necessary to eliminate any situation identified in Part I D 1 a, such changes must be made before the next pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.

~~e. Corrective action documentation. For situations identified in Part I D 1 a, other than for adverse incidents (see Part I D 2), or reportable spills or leaks (see Part I D 3), the operator shall document the situation triggering corrective action and the planned corrective action within five days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:~~

~~(1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;~~

~~(2) Brief description of the situation;~~

~~(3) Date the problem was identified;~~

~~(4) Brief description of how the problem was identified, how the operator learned of the situation, and the date the operator learned of the situation;~~



---

# Regulations

---

~~(5) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and~~

~~(6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.~~

## 2. Adverse incident documentation and reporting.

a. Twenty-four hour adverse incident notification. If the operator observes or is otherwise made aware of an adverse incident that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the department (see Part I D 5). This notification must be made by telephone within 24 hours of when the operator becomes aware of the adverse incident and must include at least the following information:

- (1) The caller's name and telephone number;
- (2) Operator's name and mailing address;
- (3) The name and telephone number of a contact person if different than the person providing the 24-hour notice;
- (4) How and when the operator became aware of the adverse incident;
- (5) Description of the location of the adverse incident;
- (6) Description of the adverse incident identified and the EPA pesticide registration number for each product that was applied in the area of the adverse incident; and
- (7) Description of any steps the operator has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If the operator is unable to notify the department within 24 hours, notification shall be made as soon as possible and the rationale for why the notification was not possible within 24 hours shall be provided.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA § 6(a)(2) and its implementing regulations at 40 CFR Part 159.

b. Reporting of adverse incidents is not required under this permit in the following situations:

- (1) The operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application.
- (2) The operator has been notified in writing by the board that the reporting requirement has been waived for this incident or category of incidents.
- (3) The operator receives notification of ~~an~~ a potential adverse incident but that notification and supporting information are clearly erroneous.
- (4) An adverse incident occurs to pests that are similar in kind to pests identified as potential targets.

c. Five-day adverse incident written report. Within five days of a reportable adverse incident pursuant to Part I D 2 a, the operator shall provide a written report of the adverse incident to the appropriate DEQ regional office at the address listed in Part I D 5. The adverse incident report must include at least the following information:

- (1) Information required to be provided in Part I D 2 a;
- (2) Date and time the operator contacted DEQ notifying the department of the adverse incident, and whom the operator spoke with at DEQ, and any instructions the operator received from DEQ;
- (3) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc);
- (4) A description of the circumstances of the adverse incident including species affected, estimated number of individuals, and approximate size of dead or distressed organisms;
- (5) Magnitude and scope of the ~~effected~~ affected area (e.g., aquatic square area or total stream distance affected);
- (6) Pesticide application rate, intended use site, method of application, and name of pesticide product, description of pesticide ingredients, and EPA registration number;
- (7) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);
- (8) If laboratory tests were performed, indicate what tests were performed, and when, and provide a summary of the test results within five days after they become available;
- (9) If applicable, explain why it is believed the adverse incident could not have been caused by exposure to the pesticide;
- (10) Actions to be taken to prevent recurrence of adverse incidents; and
- (11) Signed and dated in accordance with ~~Part I C 6~~ Part II G.

The operator shall report adverse incidents even for those instances when the pesticide labeling states that adverse effects may occur.

d. Adverse incident to threatened or endangered species or critical habitat.

(1) Notwithstanding any of the other adverse incident notification requirements of this section, if the operator becomes aware of an adverse incident to threatened or endangered species or critical habitat that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the:

- (a) National Marine Fisheries Service (NMFS) and the Virginia Department of Game and Inland Fisheries (DGIF) in the case of an anadromous or marine species;

- (b) U.S. Fish and Wildlife Service (FWS) and the DGIF in the case of an animal or invertebrate species; or
- (c) FWS and the Virginia Department of Agriculture and Consumer Services in the case of plants or insects.
- (2) Threatened or endangered species or critical habitats include the following:
  - (a) Federally listed threatened or endangered species;
  - (b) Federally designated critical habitat;
  - (c) State-listed threatened or endangered species;
  - (d) Tier I (critical conservation need), or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia's Wildlife Action Plan ([www.bewildvirginia.org](http://www.bewildvirginia.org)).
- (3) This notification must be made by telephone immediately upon the operator becoming aware of the adverse incident and must include at least the following information:
  - (a) The caller's name and telephone number;
  - (b) Operator's name and mailing address;
  - (c) The name of the affected species, size of area impacted, and if applicable, the approximate number of animals affected;
  - (d) How and when the operator became aware of the adverse incident;
  - (e) Description of the location of the adverse incident;
  - (f) Description of the adverse incident, including the EPA pesticide registration number for each product the operator applied in the area of the adverse incident;
  - (g) Description of any steps the operator has taken or will take to alleviate the adverse impact to the species; and
  - (h) Date and time of application. Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS ([www.nmfs.noaa.gov](http://www.nmfs.noaa.gov)) for anadromous or marine species or FWS ([www.fws.gov](http://www.fws.gov)) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service ([www.dgif.virginia.gov](http://www.dgif.virginia.gov)). Listing of state threatened or endangered plants and insects can be found in §§ 3.2-1000 through 3.2-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code (both the Code of Virginia and the Virginia Administrative Code must be referenced in order to obtain the complete plant and insect list). (Contact information for these agencies can be found on the contact information form or through the DEQ website.)

3. Reportable spills and leaks.

- a. Spill, leak, or other unauthorized discharge notification. Where a leak, spill, or other release containing a hazardous substance or oil in an amount

equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 117, or 302 occurs in any 24-hour period, the operator shall notify the department (see Part I D 2) as soon as the operator has knowledge of the release. Department contact information must be kept in locations that are readily accessible and available in the area where a spill, leak, or other unpermitted discharge may occur.

b. Five-day spill, leak, or other unauthorized discharge report. Within five days of the operator becoming aware of a spill, leak, or other unauthorized discharge triggering the notification in subdivision 3 of this subsection, the operator shall submit a written report to the appropriate DEQ regional office at the address listed in Part I D 5. The report shall contain the following information:

- (1) A description of the nature and location of the spill, leak, or discharge;
- (2) The cause of the spill, leak, or discharge;
- (3) The date on which the spill, leak, or discharge occurred;
- (4) The length of time that the spill, leak, or discharge continued;
- (5) The volume of the spill, leak, or discharge;
- (6) If the discharge is continuing, how long it is expected to continue and what the expected total volume of the discharge will be;
- (7) A summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and
- (8) Any steps planned or taken to prevent recurrence of such a spill, leak, or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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

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

4. Recordkeeping and annual reporting. The operator shall keep records as required in this permit. These records must be accurate, complete, and sufficient to demonstrate compliance with the conditions of this permit. The operator can rely on records and documents developed for other obligations, such as requirements under FIFRA and state or local pesticide programs, provided all requirements of this permit are satisfied. The board recommends that all operators covered under this permit keep records of acres or linear miles treated for all applicable use patterns covered under this general permit.

- a. All operators must keep the following records:

---

# Regulations

---

(1) A copy of any adverse incident reports (see Part I D 2 c).

(2) The operator's rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part I D 2 a.

~~(3) Any corrective action documentation (see Part I D 1 e).~~

b. Any operator ~~applying pesticides performing the application of a pesticide or who has day-to-day control of the application~~ and exceeding the annual application thresholds established in 9VAC25-800-30 C must also maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

(1) Name, address, and telephone number of customer and address or location, if different, of site of application;

(2) Name and VDACS certification number of the person making the application or certification number of the supervising certified applicator;

(3) Day, month, and year of application;

(4) Type of plants, crop, animals, or sites treated and principal pests to be controlled;

(5) Acreage, area, or number of plants or animals treated;

(6) Brand name or common product name;

(7) EPA registration number;

(8) Amount of pesticide concentrate and amount of diluting used, by weight or volume, in mixture applied; and

(9) Type of application equipment used.

c. All required records must be assembled as soon as possible but no later than 30 days following completion of such activity. The operator shall retain any records required under this permit for at least three years from the date ~~that coverage under this permit expires~~ of the pesticide application. The operator shall make available to the board, including an authorized representative of the board, all records kept under this permit upon request and provide copies of such records, upon request.

d. Annual reporting.

(1) Any operator applying pesticides that reports an adverse incident as described in Part I D 2 must submit an annual report to the department no later than February 10 of the following year (and retain a copy for the operator's records).

(2) The annual report must contain the following information:

(a) Operator's name;

(b) Contact person name, title, email address (where available), and phone number;

(c) A summary report of all adverse incidents that occurred during the previous calendar year; and

(d) A summary of any corrective actions, including spill responses, in response to adverse incidents, and the rationale for such actions.

5. DEQ contact information and mailing addresses.

a. All incident reports under Part I D 2 must be sent to the appropriate DEQ regional office within five days of the operator becoming aware of the adverse incident.

b. All other written correspondence concerning discharges must be sent to the address of the appropriate DEQ regional office listed in Part I D 5 c.

NOTE: The immediate (within 24-hours) reports required in Part I D 2 may be made to the department's regional office. Reports may be made by telephone, fax, or online (~~<http://www.deq.virginia.gov/prep/h2rpt.html>~~) (<http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.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 Management maintains a 24-hour telephone service at 1-800-468-8892.

c. DEQ regional office addresses.

(1) Blue Ridge Regional Office - Lynchburg (BRRO-L)  
7705 Timberlake Road  
Lynchburg, VA 24502  
(434) 582-5120

(2) Blue Ridge Regional Office - Roanoke (BRRO-R)  
3019 Peters Creek Road  
Roanoke, VA 24019  
(540) 562-6700

(3) Northern Virginia Regional Office (NVRO)  
13901 Crown Court  
Woodbridge, VA 22193  
(703) 583-3800

(4) Piedmont Regional Office (PRO)  
4949-A Cox Road  
Glen Allen, VA 23060  
(804) 527-5020

(5) Southwest Regional Office (SWRO)  
355 Deadmore St.  
P.O. Box 1688  
Abingdon, VA 24212  
(276) 676-4800

(6) Tidewater Regional Office (TRO)  
5636 Southern Blvd.  
Virginia Beach, VA 23462  
(757) 518-2000

(7) Valley Regional Office (VRO)  
4411 Early Road  
Mailing address: P.O. Box 3000  
Harrisonburg, VA 22801  
(540) 574-7800

## Part II

## Conditions Applicable to all VPDES Permits

## A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

## B. Records.

1. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements;
  - b. The individual(s) who performed the sampling or measurements;
  - c. The date(s) and time(s) analyses were performed;
  - d. The individual(s) who performed the analyses;
  - e. The analytical techniques or methods used; and
  - f. The results of such analyses.
2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and copies of all reports required by this permit for a period of at least three years from the date that coverage under this permit expires. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the department request that the operator submit monitoring results, the following subdivisions would apply.

1. The operator shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved, or specified by the department.
3. If the operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures

specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

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

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

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, recreation, or other uses.

G. Signature requirements.

1. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in this subsection or by a duly authorized representative of that person described in subdivision 2 of this subsection.

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-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or

---

# Regulations

---

implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

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 federal agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit or the agency.

2. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in subdivision 1 of this subsection;

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

c. The signed and dated written authorization is included in the PDMP. A copy of this authorization must be submitted to the department if requested.

3. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

4. Any person signing documents in accordance with subdivision 1 or 2 of this subsection must include the following certification:

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

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

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

~~H.~~ I. Duty to reapply.

1. If the operator wishes to continue an activity regulated by this permit after the expiration date of this permit, and the operator does not qualify for automatic permit coverage renewal, the operator shall submit a registration statement at least 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

2. An operator qualifies for automatic permit coverage renewal and is not required to submit a registration statement if:

a. The operator information has not changed since this general permit went into effect on October 31, 2011; and

b. The board has no objection to the automatic permit coverage renewal for this operator based on performance issues or enforcement issues. If the board objects to the automatic renewal, the operator will be notified in writing.

Any operator that does not qualify for automatic permit coverage renewal shall submit a new registration statement in accordance with ~~Part II H 1~~ Part II I 1.

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

~~J.~~ K. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Nothing in this permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

~~K.~~ L. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities,

liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

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

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

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

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

1. Enter upon the operator premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

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

~~R.~~ S. Transfer of permits.

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

~~2. As an alternative to transfers under Part II R 1, Coverage under this permit may be automatically transferred to a new operator if:~~

~~a. 1. The current operator notifies the department within at least 30 days in advance of the proposed transfer of the title to the facility or property unless permission for a later date has been granted by the board;~~

~~b. 2. The notice includes a written agreement between the existing and new operator's containing a specific date for transfer of permit responsibility, coverage, and liability between them; and~~

~~c. 3. The board does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II R 2 b subdivision 2 of this subsection.~~

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

VA.R. Doc. No. R12-3168; Filed March 19, 2013, 1:13 p.m.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**BOARD OF DENTISTRY**

**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 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Board of

---

# Regulations

---

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 of the Code of Virginia.

**Effective Date:** May 8, 2013.

**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:**

*The amendments correct a Code of Virginia citation and change the term "dentist" hygienist to correctly read "dental" hygienist.*

**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~~ § 54.1-2722 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~~ dental 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.

VA.R. Doc. No. R13-3532; Filed March 14, 2013, 11:01 a.m.

---

◆ ————— ◆

## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Proposed Regulation

<p><b>REGISTRAR'S NOTICE:</b> 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.</p>
--

**Titles of Regulations:** 20VAC5-10. In General (amending 20VAC5-10-20).

**20VAC5-200. Public Utility Accounting** (amending 20VAC5-200-21, 20VAC5-200-40).

**20VAC5-201. Rules Governing Utility Rate Applications and Annual Informational Filings** (amending 20VAC5-201-10).

**20VAC5-202. Regulations Governing the Functional Separation of Incumbent Electric Utilities under the Virginia Electric Utility Restructuring Act** (amending 20VAC5-202-10, 20VAC5-202-20, 20VAC5-202-30, 20VAC5-202-50; repealing 20VAC5-202-40).

**20VAC5-304. Rules Governing Cost/Benefit Measures Required for Demand-Side Management Programs** (amending 20VAC5-304-40).

**20VAC5-312. Rules Governing Retail Access to Competitive Energy Services** (amending 20VAC5-312-20, 20VAC5-312-50, 20VAC5-312-90).

**20VAC5-314. Regulations Governing Interconnection of Small Electrical Generators** (amending 20VAC5-314-10).

**20VAC5-320. Regulations Governing Transfer of Transmission Assets to Regional Transmission Entities (amending 20VAC5-320-10, 20VAC5-320-20).**

**20VAC5-403. Rules Governing Small Investor-Owned Telephone Utilities (amending 20VAC5-403-50).**

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

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

Public Comment Deadline: April 29, 2013.

Agency Contact: Glenn P. Richardson, Esq., Senior Counsel, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9211, or email glenn.richardson@scc.virginia.gov.

Summary:

*The State Corporation Commission is taking regulatory action to amend its rules and regulations to reflect certain internal, organizational changes within the commission, effective November 16, 2011, including the elimination of the Division of Economics and Finance and the renaming of the Division of Public Utility Accounting, which is now known as the Division of Utility of Accounting and Finance. In addition, regulations are amended to reflect changes in the Code of Virginia enacted by the General Assembly and to repeal obsolete regulations and schedules relating to electric utility restructuring and functional separation that are no longer necessary. Finally, regulations are amended to bring these regulations into compliance with the requirements of the Virginia Register Form, Style and Procedure Manual. The substantive contents of the regulations are not proposed to be changed. Issues contained within these regulations, which were previously addressed in proceedings before the commission, are not being reopened for consideration.*

AT RICHMOND, MARCH 13, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2013-00016

Ex Parte: In the matter of amending regulations

ORDER INITIATING RULEMAKING PROCEEDING

The State Corporation Commission ("Commission") at various times has adopted numerous regulations pursuant to § 12.1-13 of the Code of Virginia ("Code"), as well as various statutes in Title 56 of the Code. These regulations are codified in Title 20 of the Virginia Administrative Code ("VAC").

Effective November 16, 2011, the Commission made certain internal, organizational changes resulting in, among other things, the elimination of the Division of Economics and Finance as a separate division within the Commission and the renaming of the Division of Public Utility Accounting, which is now known as the Division of Utility Accounting and Finance. Regulations contained in Title 20 of the VAC

currently reference the former Division of Economics and Finance and the former name of the Division of Utility Accounting and Finance. Accordingly, these regulations are now in need of revision to reflect the organizational changes within the Commission. The following regulations contain out-dated references to the Commission's divisions: 20 VAC 5-10-20; 20 VAC 5-200-21; 20 VAC 5-200-40; 20 VAC 5-201-10; 20 VAC 5-304-40; 20 VAC 5-312-20; 20 VAC 5-312-50; 20 VAC 5-312-90; 20 VAC 5-403-50; and 20 VAC 5-403, Appendix A. In addition, the regulations also contain other out-dated references to statutes contained in the Code that have been renamed or repealed since the regulations were adopted, as well as certain obsolete rules and schedules related to electric utility restructuring and functional separation that are no longer required. The Virginia Electric Utility Restructuring Act, for example, was renamed the Virginia Electric Utility Regulation Act (§ 56-576 et seq. of the Code)<sup>1</sup> and § 56-581.1 of the Code was repealed by the General Assembly.<sup>2</sup> The following regulations have out-dated references to statutes contained in the Code that have been renamed or repealed, as well as obsolete rules and schedules that are no longer required: 20 VAC 5-200-21; 20 VAC 5-202-10; 20 VAC 5-202-20; 20 VAC 5-202-30; 20 VAC 5-202-40; 20 VAC 5-202-50; 20 VAC 5-312-90; 20 VAC 5-314-10; 20 VAC 5-320-10; and 20 VAC 5-320-20. The regulations also need to be amended to bring them into compliance with the Virginia Register Form, Style and Procedures Manual issued by the Virginia Code Commission.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that a proceeding should be initiated to amend the regulations set forth above. To initiate this proceeding, the Commission Staff has prepared proposed revisions to the regulations in Title 20 of the VAC to reflect the organizational and legislative changes discussed herein and to remove obsolete rules and schedules that are no longer required ("Proposed Regulations"). The Proposed Regulations are appended to this Order as Appendix A. We will direct that notice of the Proposed Regulations be given to the public and that interested persons be provided an opportunity to file written comments on the Proposed Regulations, propose modifications or supplements to the Proposed Regulations, and/or request a hearing on the Proposed Regulations. Individuals should be specific in their comments, proposals, or supplements to the Proposed Regulations and address only those issues discussed in this Order. Issues outside the scope of the limited revisions to the regulations discussed in this Order will not be open for consideration.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2013-00016.
- (2) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Rulemaking Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.



---

# Regulations

---

(3) On or before April 5, 2013, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers having general circulation throughout the Commonwealth of Virginia.

NOTICE TO THE PUBLIC OF A  
PROCEEDING TO AMEND REGULATIONS IN  
TITLE 20 OF THE VIRGINIA ADMINISTRATIVE CODE  
CASE NO. PUE-2013-00016

The State Corporation Commission ("Commission") at various times has adopted regulations pursuant to § 12.1-13 of the Code of Virginia ("Code"), as well as various statutes in Title 56 of the Code. These regulations are codified in Title 20 of the Virginia Administrative Code ("VAC").

Effective November 16, 2011, the Commission made certain internal, organizational changes resulting in, among other things, the elimination of the Division of Economics and Finance as a separate division within the Commission and the renaming of the Division of Public Utility Accounting, which is now known as the Division of Utility Accounting and Finance. Regulations in Title 20 of the VAC currently reference the former Division of Economics and Finance and the former name of the Division of Utility Accounting and Finance. Accordingly, these regulations are now in need of revision to reflect the organizational changes within the Commission. The following regulations contain out-dated references to these divisions: 20 VAC 5-10-20; 20 VAC 5-200-21; 20 VAC 5-200-40; 20 VAC 5-201-10; 20 VAC 5-304-40; 20 VAC 5-312-20; 20 VAC 5-312-50; 20 VAC 5-312-90; 20 VAC 5-403-50; and 20 VAC 5-403, Appendix A. In addition, the regulations also contain other out-dated references to statutes that have been renamed or repealed since the regulations were adopted, as well as certain obsolete rules and schedules related to electric utility restructuring and functional separation that are no longer required. The Virginia Electric Utility Restructuring Act, for example, was renamed the Virginia Electric Utility Regulation Act (§ 56-576 et seq. of the Code) and § 56-581.1 of the Code has been repealed by the General Assembly. The following regulations contain out-dated references to statutes in the Code that have been renamed or repealed, as well as obsolete rules and schedules that are no longer required: 20 VAC 5-200-21; 20 VAC 5-202-10; 20 VAC 5-202-20; 20 VAC 5-202-30; 20 VAC 5-202-40; 20 VAC 5-202-50; 20 VAC 5-312-90; 20 VAC 5-314-10; 20 VAC 5-320-10; and 20 VAC 5-320-20. The regulations also need to be amended to bring them into compliance with the Virginia Register Form, Style and Procedure Manual issued by the Virginia Code Commission.

The Commission has established a proceeding to address the regulations that need to be amended to reflect these recent organizational and legislative changes and to remove obsolete rules and schedules that are no longer required. Proposed revisions to the regulations were prepared by the Commission Staff ("Proposed Regulations"), and are appended to the

Commission's Order Initiating Rulemaking Proceeding as Appendix A. Interested persons are encouraged to obtain copies of this Commission Order and the Proposed Regulations attached thereto. Copies are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m., excluding holidays. Copies may also be downloaded from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before April 29, 2013, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Regulations by filing an original and fifteen (15) copies of such comments or requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Individuals should be specific in their comments, proposals, or supplements to the Proposed Regulations and address only those issues as discussed in the Commission's Order Initiating Rulemaking Proceeding. Issues outside the scope of these limited changes to the regulations will not be open for consideration. Requests for hearing must include: (i) a precise statement of the filing person's interest in the proceeding; (ii) a statement of the specific action sought to the extent known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter. If a sufficient request for hearing is not received, the Commission may consider this matter and enter an order based on the papers filed in the case. Interested persons desiring to submit comments electronically may do so, on or before April 29, 2013, by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. All comments and requests for hearing shall refer to Case No. PUE-2013-00016.

(4) The Order Initiating Rulemaking Proceeding and the Proposed Regulations attached thereto shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(5) On or before April 29, 2013, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Regulations by filing an original and fifteen (15) copies of such comments or requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Individuals should be specific in their comments, proposals, or supplements to the Proposed Regulations and address only those issues as discussed in this Order Initiating Rulemaking Proceeding. Issues outside the scope of these limited changes will not be open for consideration. Any request for hearing shall include: (i) a precise statement of the filing person's interest in the proceeding; (ii) a statement of the specific action sought to the extent known; (iii) a statement on the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter. If a

sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. Interested persons shall refer in their comments or requests to Case No. PUE-2013-00016. Interested persons desiring to submit comments electronically may do so, on or before April 29, 2013, by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(6) This matter is continued generally pending further order of the Commission.

AN ATTESTED COPY hereof, without attachments, shall be sent by the Clerk of the Commission to all of the electric, gas, telephone, water, sewerage, and competitive service provider companies in Virginia as shown on Appendix B; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and a copy shall be sent to the Commission's Office of General Counsel and Divisions of Information Resources, Energy Regulation, and Utility Accounting and Finance.

<sup>1</sup> See 2008 Va. Acts ch. 883 (codified as amended at Va. Code Ann. § 56-576 et seq. (2012)).

<sup>2</sup> See 2007 Va. Acts ch. 888 & 933 (codified as amended at Va. Code Ann. § 56-576 et seq. (2012)).

**20VAC5-10-20. ~~Rule governing utility~~ Utility customer deposit requirements.**

Each utility may require deposits from customers to protect against uncollectible accounts. The maximum amount of any deposit shall not exceed the equivalent of the customer's estimated liability for two months usage. At the request of the commission, any public utility which bills in advance for any part of its services, yet requires a deposit as herein authorized, must justify the requirement as being reasonably necessary to protect against uncollectibles from its customers.

Each utility shall be liable for interest on deposits held longer than 90 days, to accrue from the date the deposit is made until it has been refunded, or until a reasonable effort has been made to effect refund. All investor-owned utilities will pay interest on deposits at a rate established annually. The interest rate for such deposits in a given year will be established in December of the preceding year to equal the average of the one year Constant Maturity Treasury rate for September, October, and November of the preceding year. Nonprofit utilities that are owned by their customers will pay 75% of the above described interest rate. The commission's Director of ~~Economics~~ Utility Accounting and Finance shall notify utilities in December of each year of the rate prevailing for the ensuing year. At the option of each customer making a security deposit, each utility shall annually make either direct payment to the customer of all accrued interest, or shall credit same to the customer's account.

Customer deposits may be refunded by a utility at any time. Residential customers' deposits should not be held longer than one year and all other deposits should not be held longer than two years provided the customer has established satisfactory credit during that period.

Whenever a utility requires a deposit from any residential customer, the customer shall be permitted to pay it in three consecutive equal monthly installments whenever the total amount of the required deposit exceeds the sum of \$40. However, each utility shall have the discretion to allow payment of any deposit (more or less than \$40 total) over a longer period of time to avoid undue hardship.

**20VAC5-200-21. ~~Rules governing streamlined~~ Streamlined rate proceedings and general rate proceedings for electric cooperatives subject to the State Corporation Commission's rate jurisdiction.**

A. Nothing in ~~these rules~~ this section shall be interpreted to apply to applications for temporary reductions of rates pursuant to § 56-242 of the Code of Virginia.

B. All streamlined or general rate applications for jurisdictional electric distribution cooperatives ("cooperatives" or "applicants") shall be subject to the following ~~rules~~ requirements:

1. Pursuant to § 56-235.4 of the Code of Virginia and the exceptions stated therein, the regulated operating revenues of a cooperative shall not be increased more than once within any 12-month period. However, streamlined rate relief may become effective in less than 12 months after a preceding increase provided that regulated base operating revenues are not increased more than once in any calendar year.

2. An applicant may select any test period it wishes to use to support its application.

3. Any increase in revenues under ~~these rules~~ this section shall be allocated in accordance with a properly designed cost of service study.

4. A cooperative which has outstanding wholesale power cost riders which reflect permanent changes in power costs approved by a regulatory agency shall adjust its base rates to reflect such changes at the same time it increases its rates in a rate application.

5. a. Except as otherwise provided herein, all applications for rate relief shall be filed in the original and 15 copies with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

b. Where a filing contains information that the applicant claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall, however,

---

# Regulations

---

be immediately available to the commission staff for internal use at the commission.

Filings containing confidential (or redacted) information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential (or redacted) information, including supporting material, shall be clearly marked within the filing.

6. An electric cooperative intending to file a rate application shall notify the State Corporation Commission ("commission") and all parties of record appearing in the cooperative's last rate case at least 60 days in advance of the filing of the application. Also, public notice of the intent to file a rate application shall be provided 60 days in advance of the filing of said application to all of the cooperative's customers, using any of the methods of publication set out in subdivision C 12 of this section.

7. The commission retains the right to waive any or all parts of ~~these rate case rules~~ this section for good cause shown.

8. An application shall not be deemed filed under § 56-238 of the Code of Virginia unless it is in full compliance with ~~these rules~~ this section.

C. An applicant may file a complete application for streamlined rate relief provided the following limitations are met:

1. The increase in total operating revenues as calculated in column (5) of Schedule 3 of Appendix A, included herein, is not more than the test period increase in the Consumer Price Index ("CPI"), or 5.0%, whichever is less. The CPI shall be defined as the Consumer Price Index for all Urban Consumers (CPI-U) for all items, as estimated by the U.S. Department of Labor, Bureau of Labor Statistics, and published in its Summary Data from the Consumer Price Index News Release, or its successor. As calculated in this publication, the percentage change in the CPI-U for a test year will be the index for the last month of the test year divided by the index for the same month one year prior, minus one, multiplied by 100; and

2. Earnings after the proposed increase must not produce financial ratios which exceed the level approved by the commission in the applicant's most recent general rate case.

Subject to the ~~rules~~ provisions set forth below, a cooperative which files an application for streamlined rate relief may petition the commission requesting that its rates be made permanent no less than 30 days from the date the application is deemed complete and filed with the commission if there are insufficient customer objections to the application or if the commission does not suspend the proposed increase and convene a hearing.

3. A cooperative filing a rate application under the streamlined rate procedure shall not:

a. Increase rates by more than the increase in the test period CPI or 5.0% (whichever is less) of adjusted Virginia jurisdictional operating revenues;

b. Request earnings, after the proposed increase, which produce financial ratios that exceed those approved by the commission in the applicant's most recent general rate case;

c. Propose revisions to its terms and conditions of service; or

d. Propose revisions to its rate structure as part of its application.

4. The commission may, on its own motion, suspend a cooperative's proposed rate increase and tariff revisions pursuant to § 56-238 of the Code of Virginia and may convene a hearing on the cooperative's streamlined application.

5. The commission may suspend a cooperative's proposed tariff revisions and increase in rates and shall schedule a hearing thereon if the lesser of 150 or 5.0% of the customers or other persons within a class and subject to a change in a rate, toll, or charge object to the proposed revision or increase in a rate or if the lesser of 150 or 5.0% of the customers or consumers or other persons subject to such rate, toll or charge of a cooperative object to the proposed rate or tariff revision.

6. The commission may, in its discretion, suspend an electric cooperative's rate increase and proposed tariff revisions in a streamlined rate proceeding on the motion of its own staff, on the motion of the Virginia Attorney General's Division of Consumer Counsel, or on the motion of any person subject to such change who requests a hearing and states a substantive reason why a hearing is necessary.

7. The requested rate increase for streamlined rate relief shall be supported by a fully adjusted financial status statement (Schedule 3 of Appendix A included herein).

8. Adjustments to test year cost of service shall be limited to the amount of increase or decrease that will be in effect during the rate year.

9. A cooperative shall not file more than three consecutive applications for streamlined rate relief; nor shall there lapse more than five years since the later of the date of the final order or the effective date of rates specified in the final order in the applicant's last general rate case when filing an application for streamlined rate relief.

10. An application filed under the streamlined rate procedure shall include:

a. The name and post office address of the applicant and the name and post office address of counsel of record, if any.

b. A brief narrative statement describing the change in rates and tariff revisions and explaining the need for a

change in rates and tariff revisions. This statement shall include a description of the actions taken by the cooperative to advise its membership of the change in rates and contents of its application.

c. A copy of the resolution calling for a change in rates adopted by the Board of Directors of the cooperative.

d. A copy of the completed notice given to the public by the cooperative, including a description of the method of publication used.

e. Schedules 1 through 9 of Appendix A included herein.

11. Public notice of the increase and tariff revisions shall be completed 30 days in advance of the date the cooperative files its application for revised rates with the commission. Actual proof of public notice shall be furnished to the commission as part of the rate application.

12. The public notice of the increase and tariff revisions in an application for streamlined rate relief may be given by:

- a. Direct mailing to each customer;
- b. Publication in Rural Cooperative Living magazine, or the cooperative's member publication;
- c. Newspapers of general circulation in the area served;
- d. Any combination of these methods; or
- e. Any other method of publication authorized by the commission.

13. A copy of the notice shall be served on the Commonwealth's Attorney and Chairman of the Board of Supervisors of each county (or equivalent officials in the counties having alternative forms of government) in the state in which the cooperative offers service, and on the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternative forms of government) in the state in which the cooperative offers service and upon the Division of Consumer Counsel, Office of the Attorney General. Service shall be made by either personal delivery or first class mail, postage prepaid, to the customary place of business of the person served or to his residence.

14. The public notice shall, at a minimum, include the following information:

- a. The amount of the total increase in revenues, both in percentages and dollar amounts;
- b. The percentage increase being applied to each of the cooperative's rate schedules;
- c. The identity of all wholesale power cost riders to be rolled-in to base rates;
- d. The locations where copies of the information required to be filed with the commission can be reviewed;
- e. The date the application will be delivered to the commission;
- f. A notice that any person subject to the change or changes proposed by the cooperative has the right to

request a hearing within 30 days of the application's delivery to the commission;

g. A notification that requests for hearing should be directed to the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218;

h. A statement advising that the commission may convene a hearing, and if a hearing is held, the commission may order rate relief, redesign rates or adopt tariff revisions which differ from those appearing in the cooperative's application;

i. A statement advising the public that if the lesser of 150 or 5.0% of the customers or other persons within a class and subject to a change in a rate, toll, or charge do not request a hearing, and if the lesser of 150 or 5.0% of the customers or consumers or other persons subject to such rate, toll or charge of the cooperative do not object to a rate change or tariff revision, the cooperative may petition the commission to make rates permanent without hearing within 30 days after the application is filed with the commission; and

j. A statement advising the public of the cooperative's proposed effective date for its new rates.

15. If the commission determines that a hearing on the application for streamlined rate relief is required, then the commission shall issue a procedural order which, among other things, shall specify the date by which the cooperative shall file with the Clerk of the Commission an original and 15 copies of any direct testimony the cooperative intends to rely on in support of its application, together with the remaining schedules set forth in Appendix A. That ~~Order~~ order shall specify such additional notice of the hearing to the electric cooperative's members that the commission deems appropriate.

D. 1. A cooperative seeking (i) an increase that produces financial ratios in excess of those allowed in the applicant's most recent general rate case; (ii) an increase in jurisdictional adjusted operating revenues of more than the test period increase in the CPI (as defined in subdivision 1 of subsection C of this section); (iii) revision of its terms and conditions of service; or (iv) to redesign or restructure its rates shall file an original and 15 copies of a general rate application with the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

2. An application seeking a general rate increase shall include:

a. The name and post office address of the applicant and the name and post office address of counsel of record, if any.

b. A brief narrative statement describing the change in rates and tariff revisions and explaining the need for a change in rates and tariff revisions. This statement shall include a description of the actions taken by the

---

# Regulations

---

cooperative to advise its membership of the change in rates and contents of the rate application.

c. A copy of the resolution calling for a change in rates adopted by the cooperative's Board of Directors.

d. All direct testimony which the cooperative intends to rely on in support of its rate application.

e. Exhibits consisting of the Schedules 1 through ~~13~~ 14, found in Appendix A included herein. Such schedules shall be identified with the appropriate schedule number and shall be prepared in accordance with the instructions contained in Appendix A included herein and the following general instructions:

(1) Attach a table of contents to the cooperative's application, including exhibits.

(2) The applicant shall be expected to verify the accuracy of all data and calculations contained in and pertaining to every exhibit submitted, as well as support any adjustments, allocations or rate design upon which it relies.

(3) Each exhibit shall be labeled with the name of the applicant and the initials of the sponsoring witness in the upper right hand corner as shown below:

Exhibit No. (Leave Blank)

Witness: (Initials)

Statement or Schedule Number

The first page of all exhibits shall contain a caption which describes the subject matter of the exhibit.

(4) The required accounting and statistical data shall include three copies of all work papers and other information necessary to ensure that the items, statements and schedules found in the application are not misleading.

f. Exhibits consisting of additional schedules may be submitted with the cooperative's direct testimony. Such schedules shall be identified as Schedule ~~14~~ 15 (this exhibit may include numerous subschedules labeled ~~14A~~ 15A et seq.) and shall conform to the general instructions contained in subdivision 2e of subsection D of this section.

g. The commission shall prescribe the general notice to be given to the public and the date by which such notice shall be completed in its procedural order.

h. The applicant shall serve a copy of the information required in subdivisions 2a through 2c of subsection D of this section upon the Commonwealth's Attorney and Chairman of the Board of Supervisors of each county or (equivalent officials in counties having alternative forms of government) in the state affected by the proposed increase and upon the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternative forms of government) in the state affected by the proposed increase. The applicant

shall also serve each such official with a statement that a copy of the complete application may be obtained by such official at no cost by making a request thereof orally or in writing to a specified company official or location. In addition, the applicant shall serve a copy of its complete application upon the Division of Consumer Counsel of the Office of the Attorney General in Virginia. All such service specified by this ~~rule~~ section shall be made either by (i) personal delivery or (ii) first class mail, to the customary place of business or to the residence of the person served.

~~E. Any cooperative filing a rate application pursuant to § 56-582 of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia) shall include the schedules required for a general rate case, as set forth in subsection D of this section, as well as Schedules 15 through 19.~~

~~F. E.~~ Rate reductions and tariff revisions filed pursuant to § 56-40 of the Code of Virginia shall be filed with the commission's Division of Energy Regulation and shall include the following:

1. A descriptive statement of and justification for the tariff revision;
2. Load data if applicable;
3. A certified excerpt from the minutes of the cooperative's Board of Directors, wherein the Board approved the tariff revision;
4. Identification of all customers that may be eligible for the tariff revision;
5. A revenue impact study; and
6. An affidavit by the cooperative's manager that the proposed tariff revision affects no increase in rates.

~~G. These rules do~~ F. This section does not limit the commission staff or parties other than the applicant from raising new issues not addressed by the applicant for commission consideration.

~~H. G.~~ Requests for temporary increases in rates filed pursuant to § 56-245 of the Code of Virginia shall include Schedules 1, 2 and Columns (1) through (5) of Schedule 3.

~~I. H.~~ Failure to comply with ~~the rules governing streamlined rate applications or general rate applications~~ this section may result in dismissal of the application, or may subject the cooperative to such other actions as the commission deems appropriate, including, but not limited to, prohibiting a cooperative from filing an application for streamlined rate relief for a period of time specified by the commission.

APPENDIX A. SCHEDULES REQUIRED FOR A STREAMLINED OR GENERAL RATE APPLICATION

Schedule Number	Streamlined Rate Proceeding Schedules
1	Comparative Balance Sheets
2	Comparative Income Statements
3	Financial Status Statement
4A and B	Detail of Ratemaking Adjustments
5A and B	Proposed Rates and Tariffs and Revenue Allocation
6	Sample Billing
7	Class Cost of Service Study
8	Capital Structure
9	Affiliate Services

Schedule Number	General Rate Proceeding Schedules
1	Comparative Balance Sheets
2	Comparative Income Statements
3	Financial Status Statement
4A and B	Detail of Ratemaking Adjustments
4A, 5A, and B	Proposed Rates and Tariffs and Revenue Allocation
6	Sample Billing
7	Class Cost of Service Study
8	Capital Structure
9	Affiliate Services
10	Net Original Cost Rate Base
11	Working Papers for Ratemaking Adjustments
12	Revenue and Expense Variance Analysis
13	Jurisdictional Allocation
14A, B, and C	<del>Reserved for Additional Exhibits</del> <u>Functional Unbundling</u>
15	<u>Reserved for Additional Exhibits</u>

Schedule 1 - Comparative Balance Sheets

Instructions: Provide a publicly available comparative balance sheet for the test period and the corresponding 12-month period immediately preceding the test period for the applicant.

Schedule 2 - Comparative Income Statements

Instructions: Provide a publicly available comparative income statement covering the test period and 12-month period immediately preceding the test period for the applicant.

Schedule 3 - Financial Status Statement

Instructions: Use the format of the schedule identified as Schedule 3 in this Appendix.

Adjustments in Column (2) reflect any financial differences between Generally Accepted Accounting Principles (GAAP) and ratemaking accounting as prescribed by the State Corporation Commission. An example of such an adjustment would include, but would not be limited to, the reclassification of capital leases to operating leases. Each Column (2) adjustment shall be separately identified and shown using the format prescribed for Schedule 4A and 4B.

Column (4) shall reflect total nonjurisdictional operations. Jurisdictional allocation factors used to determine nonjurisdictional business in Column (4) amounts shall be fully supported and explained in Schedule 13 for general rate filings.

Each Column (6) adjustment shall be separately identified and shown in Schedule 4A and 4B. In a streamlined rate proceeding, adjustments reflected in Column (6) of Schedule 3 which do not incorporate ratemaking treatment approved by the commission in the utility's last general rate case shall be identified as new proposed adjustments in Schedule 4A and 4B.

Riders reflected on line 4 shall be separately listed to include a line for each rider in effect during the test year or projected for the rate year. The amount of other income and other expense shown in Column (5), lines 20 and 23, shall be the current amount recognized as jurisdictional in the applicant's last general rate case. Amounts reflected on line 33 shall be actual cash receipts.

Lines (29), (30), (31), and (32) shall be based on the following definitions:

Line 29.

$$\text{TIER} = \frac{\text{Total Margins (Line 24) + Interest on Long-Term Debt (Line 21)}}{\text{Interest on Long-Term Debt (Line 21)}}$$

Line 30.

$$\text{DSC} = \frac{\text{Total Margins (Line 24) + Depreciation and Amortization Expense (Line 11) + Interest on Long-Term Debt (Line 21)}}{\text{Total Principal Payments + Total Long-Term Interest Payments}}$$

---

# Regulations

---

Line 31.

$$\begin{array}{r} \text{Rate of Return on Rate} \\ \text{Base} = \end{array} \frac{\begin{array}{c} \text{Operating Margins Adj.} \\ \text{(Line 18)} \end{array}}{\text{Total Rate Base (Line 28)}}$$

Line 32.

$$\begin{array}{r} \text{Rate of Return on} \\ \text{Margins and Equities} \\ = \end{array} \frac{\text{Total Margins (Line 24)}}{\text{Total Margins and Equity} \\ \text{Capitalization (Schedule 8)}}$$

## Schedules 4A and 4B - Detail of Ratemaking Adjustments

Instructions: Use format of the schedule identified as Schedule 4A and 4B to this Appendix.

Each adjustment shall be numbered sequentially and listed under the appropriate description category (Base Rate Revenue, Fuel-WPCA Revenue, Purchased Power, etc.). The impact on cost of service from each adjustment shall be detailed in Columns (1) through (16).

Each ratemaking adjustment shall be fully explained in a supporting subschedule 4B to this schedule.

Detailed workpapers substantiating each adjustment shall be provided in Schedule 11 for general rate filings.

## Schedule 5A and 5B - Proposed Rates and Tariffs, and Revenue Allocation by Class

### Schedule 5A Instructions:

Provide a copy of each tariff sheet with the revisions the cooperative proposes to implement. For general rate applications, provide a copy of all tariffs and Terms and Conditions of Service Sheets proposed for revision containing the revised language.

### Schedule 5B Instructions:

Provide a class revenue allocation analysis showing, by class, the present revenue recovered from each class, the proposed increase in revenue to be recovered from each class, the total proposed revenue to be recovered from each class, and the percentage of increase in total revenue to be recovered from each class.

## Schedule 6 - Sample Billing

Instructions: Provide a sample billing analysis showing the effect on customers of the proposed tariff changes at various levels of consumption, for all classes of service.

## Schedule 7 - Class Cost of Service Study

### Instructions:

A. Each streamlined rate application shall include a copy of the cost of service study used to determine the allocation of revenues to each class. The cost of service study shall be based on per books data which is no more than five years old. Each general filing shall include a copy of the cost of service study used to allocate the increase or to adjust rate

design. The data used in a cost of service study submitted in a general rate case shall use the same test period as used in the cooperative's general rate application.

B. Each cost of service study shall consist of the following schedules:

1. For multi-state cooperatives, provide total system rate base, revenue and operation and maintenance expenses by account number, or major account group showing separation between Virginia and nonjurisdictional operations.

2. Provide a jurisdictional financial status statement in the format of Schedule 3, column (5) of Appendix A for each customer class and the return provided by these classes.

3. For all service schedules, present the unit cost per kilowatt, kilowatt hour, and customer resulting from the cost study. Include the kilowatt hours, demand, and number of customers, as well as the total cost for each component by class and the allocated rate base by class, as support for the unit costs derived.

4. If directed by the commission, the cooperative shall collect and maintain separate expense, rate base, and revenue data on nonjurisdictional consumers within Virginia.

5. For all service classes, provide a schedule of consumers by service class indicating the total number of customers in the class and the number of nonjurisdictional consumers in Virginia in the class.

Nonjurisdictional consumers in Virginia include government agencies: federal, state, local, and regional government authorities. If there are nonjurisdictional consumers in any class, this schedule must be accompanied by a list of all such nonjurisdictional consumers by service class and their usage characteristics.

6. Provide a short narrative describing the cost of service study methodology employed. This narrative shall include the following information:

(a) Identification and description of the classification used to assign rate base as demand, energy, or customer related. Specifically, include the classification methodology used to differentiate between demand and customer components of distribution plant; and the customer classification used in the study, i.e., minimum system, minimum size, zero intercept, etc.

(b) Identification of the allocation methodology used for assigning rate base, revenue, and expenses to customer classes. For demand allocation method, e.g., average and excess, noncoincident peak; customer allocation method, e.g., number of customers, weighted customers, etc.

(c) Provide a table showing the kilowatts, kilowatt hours, number of customers allocated to each class, including the derivation of the demand, energy, and customer allocators for each class.

7. Provide a list of classification and allocation factors used.

8. Provide a copy of the actual study by account or primary account. The primary accounts shall identify the secondary accounts included by account number. Indicate which allocators and classifiers were used to assign each account.

**Schedule 8 - Capital Structure and Cost of Debt Statement and Supporting Schedules**

Instructions: Use the format of the schedule identified as Schedule 8 in this Appendix.

Column (1) shall reflect the per books capital structure at the end of the test year. Data in Column (1) shall be compatible with the applicant's publicly available financial statements. Adjustments in Column (3) reflect any financial differences between Generally Accepted Accounting Principles and ratemaking accounting as prescribed by the commission. Each Column (3) adjustment shall be separately identified in a supporting schedule, if not already identified in Schedule 4A or 4B.

Schedules shall be provided to support the amounts and cost rates of short- and long-term debt in Columns (4) and (6), respectively, and the adjusted amounts and cost rates in Columns (8) and (10), respectively. Each issue of long-term debt shall be listed with its corresponding interest rate, date of issue, maturity, and lending institution(s) or other source(s). Short-term debt shall be listed with a high, low, ending, and average balance for each month, a weighted average interest rate for each month, and the name of the lending institution(s) or other source(s).

**Schedule 9 - Affiliate Services**

Instructions: For purposes of this schedule, affiliate services shall be defined to include those services between regulated and competitive divisions of an incumbent utility. If any portion of the required information has been filed with the commission as part of an applicant's Annual Report of Affiliate Transactions, the applicant may reference such report clearly identifying what portions of the required information are included in the Annual Report of Affiliate Transactions.

Provide a narrative description of each type of affiliated service received or provided during the test period.

Provide a summary of affiliate transactions detailing costs by function for each month of the test period. Show the final Uniform System of Account distribution of all costs billed to or by the regulated entity by month for the test period.

Identify all amounts billed to an affiliate and then billed back to the regulated entity.

Cost records and market analyses supporting all affiliated charges billed to or by the regulated entity/division shall be maintained and made readily available for commission staff review. This shall include supporting detail of costs (including the return component) incurred by the affiliated

interest rendering the service and the allocation methodology. In situations when the pricing is required to be the higher (lower) of cost or market and market is unavailable, note each such transactions and have data supporting such a finding available for commission staff review.

If affiliate charges are booked per a pricing mechanism other than that approved by the commission for ratemaking purposes, the regulated entity shall provide a reconciliation of books to commission-approved pricing, including an explanation of why the commission-approved pricing is not used for booking purposes.

**Schedule 10 - Net Original Cost Rate Base**

Instructions: Use the format of the schedule identified as Schedule 10 in this Appendix.

Adjustments in Column (2) reflect any financial differences between GAAP and ratemaking accounting as prescribed by the State Corporation Commission. Each Column (2) adjustment shall be separately identified and reflected using the format prescribed for Schedule 4A and 4B.

Column (4) shall reflect total nonjurisdictional business. Allocation factors used to determine nonjurisdictional business in Column (4) shall be fully supported in Schedule 13.

Each Column (6) adjustment shall be separately identified and reflected in Schedule 4A and 4B. In a streamlined rate proceeding, adjustments reflected in Column (6) of Schedule 3 which do not incorporate the ratemaking treatment approved by the commission in the utility's last general rate case shall be separately identified as new proposed adjustments in Schedule 4A and 4B.

**Schedule 11 - Working Papers for Ratemaking Adjustments**

Instructions: Provide detailed workpapers and supporting schedules of all proposed adjustments. Each supporting document shall identify the origin of the data shown. Also, indicate whether data is actual or estimated. Working papers shall be numbered, indexed and tabbed for each adjustment. Two copies shall be filed with the Division of ~~Public~~ **Public Utility Accounting and Finance**, and one copy of the working papers shall be filed with the Division of Energy Regulation.

**Schedule 12 - Revenue and Expense Variance Analysis**

Instructions: The cooperative shall quantify jurisdictional operating revenues and system operating and maintenance ("O&M") expenses by primary account during the test period and the preceding 12 months. Also, provide jurisdictional sales volumes by customer class for the test period and the preceding 12 months.

The cooperative shall provide a detailed explanation of all jurisdictional revenue and system expense increases and decreases of more than 10% during the test period compared to the previous 12-month period. The expense



---

# Regulations

---

variance analysis applies to test period expense items greater than two-hundredths of 1.0% (.0002) of total O&M expenses for all cooperatives with total operating expenses exceeding \$50 million, and five hundredths of 1.0% (.0005) of total operating expenses for cooperatives with total operating expenses below \$50 million.

## Schedule 13 - Jurisdictional Allocation

Instructions: Provide summary schedules by primary account reflecting all revenue, expense, and rate base items allocated to the Virginia jurisdiction. If directed by the commission, this schedule shall include allocations relating to nonjurisdictional Virginia consumers as well as out-of-state operations. Provide working papers to support all calculated amounts, including the development of allocation factors.

Provide a narrative explanation and justification of the allocation methodology used. Discuss any changes in the applicant's operations which materially affect any allocation factor.

## Schedule 14 — Reserved for Additional Exhibits

This schedule is reserved for additional exhibits presented by the applicant and shall be labeled 14A et seq.

## Schedule 14A, 14B, and 14C - Functional Unbundling

Instructions: Use the format of the schedule identified as Schedule 14A, 14B, and 14C in this Appendix.

Provide cost of service studies that identify the costs associated with the functional areas of generation (production), transmission, distribution, and other.

Provide cost breakouts for subcomponents of functional areas such as primary and secondary distribution, metering, billing, and maintenance. Report cost functions and subcomponents on summary sheets by both system and class.

## Schedule 15 - Reserved for Additional Exhibits

This schedule is reserved for additional exhibits presented by the applicant and shall be labeled 15A et seq.

## APPENDIX B. ELECTRIC UTILITY RESTRUCTURING ACT ADDENDUM FOR ELECTRIC COOPERATIVES

### Schedule 15 — Balance Sheet — Projected

~~Instructions: Provide projected balance sheets for each calendar year through 2007. Projections should be consistent with amounts for Rural Utility Service (RUS) financing in RUS Form 325A. Other financial forecasts that extend through 2007 may be used if RUS projections cease to remain applicable. Any deviations from the assumption used for RUS Form 325A should be noted and fully explained.~~

### Schedule 16 — Income Statements — Projected

~~Instructions: Provide projected income statements for each calendar year through 2007. Projections should be consistent with amounts for RUS financing in RUS Form~~

~~325A. Other financial forecasts that extend through 2007 may be used if RUS projections cease to remain applicable. Any deviations from the assumption used for RUS Form 325A should be noted and fully explained.~~

### Schedule 17 — Capital Structure — Projected

~~Instructions: Provide Capital Structure and Cost of Debt Statements for each calendar year through 2007. Projections should be consistent with amounts for RUS financing in RUS Form 325A. Other financial forecasts that extend through 2007 may be used if RUS projections cease to remain applicable. Any deviations from the assumption used for RUS Form 325A should be noted and fully explained.~~

### Schedule 18 — Detail of Restructuring Act Adjustments

~~Instructions: This schedule shall be filed in addition to Schedule 4.~~

~~Use format of the schedule identified as Schedule 4A and 4B to this Appendix.~~

~~Each adjustment shall be numbered sequentially and listed under the appropriate description category (operating revenues, interest expense, common equity capital, etc.).~~

~~Restructuring Act adjustments shall reflect an annual going forward year level of revenues, expenses, and rate base consistent with § 56-582 of the Code of Virginia. Schedule 9 shall reflect these adjustments in two additional columns after Column (5). Column (6) shall be titled Restructuring Act Adjustments.~~

~~Provide an explanation why some costs (by function) remain at a test year level. Additionally, describe and detail how increases in productivity have been factored into each cost whether adjusted or remaining at a test year level.~~

~~Detailed workpapers substantiating each adjustment shall be provided in Schedule 19.~~

### Schedule 19 — Workpapers for Restructuring Act Adjustments

~~Instructions: This schedule shall be filed in addition to Schedule 11.~~

~~Provide detailed workpapers and supporting schedules of earnings test as well as ratemaking adjustments. Each supporting document shall identify the origin of the data shown.~~

~~Include 10 years actual and budgeted historical data for each adjustment. For projected adjustment amount, identify budget information as preliminary or final. If preliminary, indicate when final budget is anticipated.~~

~~Include a narrative of budgeting methodology as well as any significant changes that have occurred during the 10 years.~~

~~Working papers shall be indexed and tabbed for each adjustment. Two copies shall be filed with the Division of Public Utility Accounting and one copy to the Division of Energy Regulation.~~

**Schedule 20 — Functional Unbundling**

~~Instructions: Use the format of the schedule identified as Schedule 20 in this Appendix.~~

~~Provide cost of service studies that identify the costs associated with the functional areas of generation (production), transmission, distribution and other.~~

~~Provide cost breakouts for subcomponents of functional areas such as primary and secondary distribution, metering, billing and maintenance. Report cost functions and subcomponents on summary sheets by both system and class.~~

Schedule 3

FINANCIAL STATUS STATEMENT PER BOOKS AND FULLY ADJUSTED  
FOR THE 12-MONTHS ENDING \_\_\_\_\_, \_\_\_\_

		(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)	(Col. 8)	(Col. 9)
Line No.	Description	Total Cooperative Per Books	Adjustments Due to Rate-making Requirements	Total Cooperative As Adjusted	Non-Virginia Jurisdictional Business	Virginia Jurisdictional Business	Rate-making Adjustments	Amounts After Adjustments	Revenue Requirement	Amounts After Revenue Requirement
Operating Revenues										
1.	Base Rates									
2.	Fuel - WPCA									
3.	Roll in of Riders									
4.	Riders (List Separately)									
5.	Margin Stabilization									
6.	Other Electric Revenues									
7.	Total Operating Revenues									
Operating Expenses										
8.	Purchased Power Expense									
9.	Margin Stabilization									
10.	Other Operation and Maintenance Expense									

# Regulations

11.	Depreciation and Amortization									
12.	Tax Expense - Property									
13.	Tax Expense - Other									
14.	Total Operating Expenses									
15.	Operating Margins									
16.	Less: Interest on Customer Deposits									
		(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)	(Col. 8)	(Col. 9)
		Total Cooperative Per Books	Adjustments Due to Rate-making Requirements	Total Cooperative As Adjusted	Non-Virginia Jurisdictional Business	Virginia Jurisdictional Business	Rate-making Adjustments	Amounts After Adjustments	Revenue Requirement	Amounts After Revenue Requirement
17.	Charitable and Educational Donations									
18.	Operating Margins Adjusted									
19.	Plus: Capital Credits Accrued									
20.	Other Income									
21.	Less: Interest on Long-Term Debt									
22.	Other Interest Expense									
23.	Other Expense									
24.	Total Margins									
	Rate Base									
25.	Net Utility Plant									

- 26. Allowance for Working Capital
- 27. Other Rate Base Deductions
- 28. Total Rate Base

---

- 29. TIER
- 30. DSC
- 31. Rate of Return on Rate Base
- 32. Rate of Return on Margins and Equities
- 33. Capital Credits Received

SCHEDULE 4A  
Page \_\_\_ of \_\_\_

DETAIL OF RATEMAKING ADJUSTMENTS

		(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)	(Col. 8)	(Col. 9)
Adj. No.	Description	Operating Revenues	Purchased Power Expenses	Margin Stabil.	Other O&M Expense	Depr. & Amort.	Tax Expense	Other	Operating Margins Adjusted	Accrued Capital Credit
	Base Rate Revenues									
	Fuel - WPCA Revenue									
	Rider Revenue									
	Margin Stabilization									
	Other Electric Revenues									
	Purchased Power Exp.									
	Margin Stabilization									
	Other O&M Expense									
	Depr. & Amort.									
	Tax Expense - Property									

---

# Regulations

---

Tax Expense  
- Other

Other

Operating  
Margins  
Adjusted

---

Capital  
Credits  
Accrued

Other  
Income

Interest on  
Long-Term  
Debt

Other  
Interest  
Expense

Other  
Expense

Total  
Margins

---

Net Utility  
Plant

Allowance  
for Working  
Capital

Other Rate  
Base  
Deductions

Total Rate  
Base

---

	(Col. 10)	(Col. 11)	(Col. 12)	(Col. 13)	(Col. 14)	(Col. 15)	(Col. 16)	(Col. 17)	
Adj. No.	Description	Other Income	Interest on Long- Term Debt	Other Exp. (Incl. Int. Exp.)	Total Margins	Net Utility Plant	Allowance for Working Capital	Other Rate Base Deductions	Total Rate Base
	Base Rate Revenues								
	Fuel - WPCA Revenue								
	Rider Revenue								
	Margin Stabilization								
	Other Electric Revenues								
	Purchased Power Exp.								
	Margin Stabilization								
	Other O&M Expense								

Depr. &  
Amort.

Tax Expense -  
Property

Tax Expense -  
Other

Other

Operating  
Margins  
Adjusted

---

Capital Credits  
Accrued

Other Income

Interest on  
Long-Term  
Debt

Other Interest  
Expense

Other Expense

Total Margins

---

Net Utility  
Plant

Allowance for  
Working  
Capital

Other Rate  
Base  
Deductions

Total Rate  
Base

---

DETAIL OF RATEMAKING ADJUSTMENTS

Adj. No.	Description	Explanation of Adjustment
	Base Rate Revenues	
	Fuel - WPCA Revenue	
	Rider Revenue	
	Margin Stabilization	
	Other Electric Revenues	
	Purchased Power Exp.	
	Margin Stabilization	
	Other O&M Expense	
	Depr. & Amort.	
	Tax Expense - Property	
	Tax Expense - Other	
	Other	

# Regulations

## Operating Margins Adjusted

Capital Credits Accrued

Other Income

Interest on Long-Term Debt

Other Interest Expense

Other Expense

Total Margins

Net Utility Plant

Allowance for Working Capital

Other Rate Base Deductions

Total Rate Base

SCHEDULE 8

### CAPITAL STRUCTURE AND COST OF DEBT STATEMENT PER BOOKS AND FULLY ADJUSTED For the 12-Months Ending \_\_\_\_\_, \_\_\_\_

	(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)	(Col. 8)	(Col. 9)	(Col. 10)
	Total Coopera- tive Per Books	Percent- age of Col. 1 Total	Adjust- ments Due to Rate- making Require- ments	Total Coopera- tive As Adjusted	Percent- age of Col. 4 Total	Cost of Col. 4 Debt	Rate- making Adjust- ments	Amount After Adjust- ments	Per- cent- age of Col. 8 Total	Cost of Col. 8 Debt
1. Short-Term Debt										
2. Long-Term Debt										
3. Total Margins and Equities										
4. Other										
5. Total Capital										
6. Principal Repayments										
7. Accumulated Capital Credits Accrued										
8. Accumulated Capital Credits Received										

# Regulations

Schedule 10

NET ORIGINAL COST RATE BASE  
PER BOOKS AND FULLY ADJUSTED  
For the Period Ending \_\_\_\_\_, \_\_\_\_

		(Col. 1)	(Col. 2)	(Col. 3)	(Col. 4)	(Col. 5)	(Col. 6)	(Col. 7)
Line No.	Description	Total Cooperative Per Books	Adjustments Due to Ratemaking Requirements	Total Cooperative As Adjusted	Non-Virginia Jurisdictional Business	Virginia Jurisdictional Business	Ratemaking Adjustments	Amounts After Adjustments
	Net Utility Plant							
1.	Electric Plant in Service							
2.	Completed Construction Not Classified							
3.	Construction Work in Progress							
4.	Plant Held for Future Use							
5.	Less: Accumulated Provision for Depreciation and Amortization							
6.	Total New Utility Plant							
	Allowance for Working Capital							
7.	Cash Working Capital: Purchased Power							
8.	Other O&M							
9.	Materials and Supplies (13-month average)							
10.	Deferred Fuel							
11.	Other Working Capital (List Separately)							
12.	Total Allowance for Working Capital							
	Other Rate Base Deductions							
13.	Customer Deposits							



# Regulations

- 14. Customer Advances for Construction
- 15. Other Cost Free Capital (List Separately)
- 16. Total Other Rate Base Deductions
- 17. Total Rate Base

COOPERATIVE NAME  
 DETAIL OF RESTRUCTURING ACT ADJUSTMENTS  
 REFLECTED IN COL. ( ) OF SCHEDULES AND

Exhibit No.: \_\_\_\_\_  
 Witness: \_\_\_\_\_  
 Schedule 18

ADJ. NO.	ADJUSTMENT	AMOUNT
	<del>OPERATING REVENUES ADJUSTMENTS</del>	
	<del>OPERATING EXPENSES ADJUSTMENTS</del>	
	<del>INTEREST ON CUSTOMER DEPOSITS ADJUSTMENTS</del>	
	<del>CHARITABLE AND EDUCATIONAL DONATIONS ADJUSTMENTS</del>	
	<del>CAPITAL CREDITS ACCRUED ADJUSTMENTS</del>	
	<del>OTHER INCOME ADJUSTMENTS</del>	
	<del>INTEREST ON LONG TERM DEBT ADJUSTMENTS</del>	
	<del>OTHER INTEREST EXPENSE ADJUSTMENTS</del>	
	<del>OTHER EXPENSE ADJUSTMENTS</del>	
	<del>ALLOWANCE FOR WORKING CAPITAL ADJUSTMENTS</del>	
	<del>UTILITY PLANT ADJUSTMENTS</del>	
	<del>COMPLETED CONSTRUCTION NOT CLASSIFIED ADJUSTMENTS</del>	
	<del>CONSTRUCTION WORK IN PROGRESS ADJUSTMENTS</del>	
	<del>PLANT HELD FOR FUTURE USE ADJUSTMENTS</del>	
	<del>ACCUMULATED DEPRECIATION AND AMORTIZATION ADJUSTMENTS</del>	
	<del>OTHER RATE BASE DEDUCTIONS ADJUSTMENTS</del>	
	<del>COMMON EQUITY CAPITAL ADJUSTMENTS</del>	

COOPERATIVE NAME  
 JURISDICTIONAL CLASS COST OF SERVICE  
 (METHODOLOGY) COST ALLOCATION STUDY

Exhibit No.: \_\_\_\_\_  
 Witness: \_\_\_\_\_  
 Schedule 20A 14A

SYSTEM FUNCTIONAL ANALYSIS  
 CASE NO. PUE-----

Line No.	Description	System	Production	Transmission	Distribution	Other	Allocation Basis
10	Operating Revenues						
20							
30	Operating Expenses						
40	Depreciation Expenses						

50 Amortization  
 60 Income Taxes  
 70 State Income Taxes  
 80 Taxes Other than Income  
 90  
 100 Total Operating Expenses  
 110  
 120 Net Operating Income  
 130  
 140 Adjustments to Operating Income  
 150  
 160 Add: AFUDC  
 170 Less: Charitable Donations  
 180 Interest Expense -  
 Customer Deposits  
 190  
 200 Adjusted Net Operating Income  
 210  
 220 Rate Base  
 230  
 240 ROR Earned on Rate Base

COOPERATIVE NAME  
 JURISDICTIONAL CLASS COST OF SERVICE  
 (METHODOLOGY) COST ALLOCATION STUDY

Exhibit No.: \_\_\_\_\_  
 Witness: \_\_\_\_\_  
 Schedule ~~20B~~ 14B

CLASS SUMMARY  
 CASE NO. PUE-----

Line No.	Description	Virginia Juris	Retail Class 1	Retail Class 2	Retail Class 3	Retail Class 4	Retail Class 5	Allocation Basis
10	Operating Revenues							
20								
30	Operating Expenses							
40	Depreciation Expenses							
50	Amortization							
60	Income Taxes							
70	State Income Taxes							
80	Taxes Other than Income							
90								
100	Total Operating Expenses							
110								
120	Net Operating Income							
130								
140	Adjustments to Operating Income							

# Regulations

150  
 160 Add: AFUDC  
 170 Less: Charitable Donations  
 180 Interest Expense-  
 Customer Deposits  
 190  
 200 Adjusted Net Operating Income  
 210  
 220 Rate Base  
 230  
 240 ROR Earned on Rate Base

COOPERATIVE NAME  
 JURISDICTIONAL CLASS COST OF SERVICE  
 (METHODOLOGY) COST ALLOCATION STUDY

Exhibit No.: \_\_\_\_\_  
 Witness: \_\_\_\_\_  
 Schedule ~~20C~~ 14C

CLASS FUNCTIONAL ANALYSIS  
 CASE NO. PUE-----

Line No.	Description	Retail Class 1	Production	Transmission	Distribution	Other	Allocation Basis
10	Operating Revenues						
20							
30	Operating Expenses						
40	Depreciation Expenses						
50	Amortization						
60	Income Taxes						
70	State Income Taxes						
80	Taxes Other than Income						
90							
100	Total Operating Expenses						
110							
120	Net Operating Income						
130							
140	Adjustments to Operating Income						
150							
160	Add: AFUDC						
170	Less: Charitable Donations						
180	Interest Expense - Customer Deposits						
190							
200	Adjusted Net Operating Income						
210							
220	Rate Base						

**20VAC5-200-40. ~~Rules implementing the~~ The Small Water or Sewer Public Utility Act.**

~~The following rules apply~~ This section applies to public utilities holding a certificate of public convenience and necessity issued by the State Corporation Commission to provide either water or sewer service, or both, and having gross annual operating revenues of less than \$1 million. Such utilities are subject to the Small Water or Sewer Public Utility Act (§ 56-265.13:1 et seq. of the Code of Virginia) and shall be referred to herein as "company." Companies shall perform their own tariff justification analysis in-house prior to changing their rates, tolls, charges, fees, rates or regulations ("tariffs" or "rate changes"). Companies should endeavor to meet with any organized group of customers, e.g., civic associations or property owners' organizations, on a regular basis at least once a year to advise them of company problems, any impending tariff changes and why such changes are necessary. Companies are also encouraged to meet with the staff, following any company meeting with its customers to review and discuss proposed rate changes. However, each company remains responsible for bearing the burden of proof regarding any changes in its tariffs.

**Rules Requirements**

1. Companies shall maintain their books and records in accordance with the Uniform System of Accounts for Class C companies on an accrual basis.
2. A 3.0% composite rate of depreciation is usual and customary and presumed to be reasonable. Any company which desires to use a higher accrual rate shall notify the ~~Commission's~~ commission's Divisions of Energy Regulation and ~~Public~~ Public Utility Accounting and Finance of its intent to change this rate in advance of booking same and shall provide to these ~~Divisions~~ divisions a copy of a study or other documents which the company believes supports its proposed change. The ~~Staff~~ staff shall review this change and advise the company of the results of its review. If the company wishes to contest the staff's conclusions regarding depreciation, it may, by motion, apply to the ~~Commission~~ commission for a hearing. If a company wishes to depreciate contributed property, it must advise the ~~Commission~~ commission, through its Divisions of Energy Regulation and ~~Public~~ Public Utility Accounting and Finance, before booking depreciation on such property, and provide appropriate documentation to support the need for such depreciation under the requested accrual rate. The staff shall review this change and advise the company of the results of its review. If the company wishes to contest the staff's conclusions regarding depreciation of such property or the rate to be accrued thereon, the company, by motion, may apply to the ~~Commission~~ commission for a hearing.

In the event that staff and company agree that depreciation of contributed property is proper and agree on the accrual rate for such depreciation, the amount so depreciated shall be placed in an escrow account and used only for capital improvements, until a ~~Commission~~ commission order is entered to the contrary.

3. Working capital may be accrued at the rate of 1/9th of the total operating and maintenance expenses for the test period.

4. Each company shall file with the ~~Commission's~~ commission's Division of Energy Regulation three copies of the tariff changes, the notice required by subdivision 5 below, and the following information: A narrative statement that sets forth the name of the company, the name, address and telephone number of the person company wishes to have contacted about the tariff change and a brief explanation about why the change is being made. This narrative statement shall also describe whether the company's customers are served on a flat or metered basis; whether billed in advance or in arrears; and shall separately identify the number of connected customers and the number of customers being assessed availability fees, if applicable.

5. Each company shall complete its written notification to all customers 45 days prior to the effective date of any change in tariffs. In cases of hearings resulting from customer requests, only a hearing request made by the individual in whose name the account is maintained shall be deemed a request by a customer. Customer petitions are acceptable.

If a company wishes to contest the number of customers requesting a hearing or whether one submitting a request is a customer, the company may request and those requesting a hearing shall provide to the company a copy of all requests for hearing or a copy of any customer petition filed with this ~~Commission~~ commission. If it is determined that requests for hearing have been received from persons other than customers and that the requisite number of customer requests have not been presented, the company may seek dismissal of the case.

The Company's notice to its customers shall follow the following format to the extent applicable:

**NOTICE OF (INCREASES IN, CHANGES IN) RATES, CHARGES, RULES AND REGULATIONS OF SERVICE OF (INSERT NAME OF COMPANY)**

(Insert name of Company) will change its (tariffs) on file with the State Corporation Commission, effective for service rendered on and after (effective date). (Summarize existing rates, fees, and charges and all new rates, fees, and charges).

# Regulations

[If applicable] (Insert name of Company) also will change the following portions of its rules and regulations of service, effective on the same date: (Summarize changes).

Any interested party may review (insert name of Company)'s proposed changes during regular business hours at the utility's office where customer bills may be paid.

Any interested person may file written comments in support of or objecting to the proposed changes with the Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218.

(NAME OF COMPANY)

6. The company is free to choose any test period it wishes to support its rate changes. However, a company having flat rate structures must annualize the level of revenues derived from their current rates based upon the number of customers served as of the end of its selected test period. A company with a metered rate structure must compute revenues in effect at the end of its selected test period based upon the number of customers and usage by customer block per billing period. In the event that a hearing is held, the company shall provide the foregoing information to the ~~Commission~~ commission on or before a date specified in the order scheduling hearing.

7. A hearing shall be held after at least 30 days notice to the company and its customers if a request or petition therefor is received by the ~~Commission~~ commission from at least 25 percent of all customers affected by any filed tariff change, or from 250 affected customers, whichever is the lesser, or from the company itself, or upon the ~~Commission's~~ commission's own motion. When a hearing is to be held, the ~~Commission~~ commission shall, by order, establish a hearing date and a date by which the company shall file financial data containing the information set forth in subdivision 8 below. A copy of the order shall be sent by first class mail to the company and any customer requesting a hearing from whom the ~~Commission~~ commission has a complete mailing address. This order shall also specify a filing schedule for the company, customers and staff.

8. Financial data regarding a rate increase filed pursuant to subdivision 7 hereof shall include:

Any company electing to use a calendar year as its test period may file a copy of its annual report and a statement prepared in the format of the form rate of return statement following this ~~rule~~ subdivision. The statement shall incorporate the per books data of revenues, expenses and plant stated in the annual report and appropriate adjustments. The ~~Commission~~ commission accepts adjustments which reflect (i) annualized changes occurring during the test year, (ii) known and certain wage agreements, (iii) elimination of test year expenses pertaining to a prior year or elimination or amortization of expenses of a nonrecurring

nature, and (iv) known and certain changes occurring within 12 months after the test year. The utility is not, however, precluded from making other adjustments which it can support and justify. The utility shall also file an explanation of all of its adjustments appearing in the attached rate of return statement.

Any company electing to use a noncalendar test year may, in lieu of an annual report, file a current balance sheet, income statement and tax return statement prepared in the format of the form rate of return statement following this ~~rule~~ subdivision. The statement shall incorporate per books data of revenues, expenses and plant and appropriate adjustments. The ~~Commission~~ commission accepts adjustments which reflect (i) annualized changes occurring during the test year (ii) known and certain wage agreements, (iii) elimination of test year expenses pertaining to a prior year or elimination or amortization of expenses of nonrecurring nature, and (iv) known and certain changes occurring within 12 months after the test year. A utility is not, however, precluded from making other adjustments which it can support and justify. A utility using a noncalendar test shall also file an explanation of all adjustments and workpapers showing the calculation of the adjustments.

## Exhibit - RATE OF RETURN STATEMENT

	Per Books	Adjustments	After Adjustments	Proposed Increase	After Proposed Increase
Operating Revenues					
Water Service Fees					
Availability Fees					
Sewer Service Fees					
Miscellaneous Service Revenues					
Total Operating Revenues					
Operating Expenses					
Operation and Maintenance					
Depreciation and Amortization					
Taxes Other					

Federal Income Taxes	
Total Opera- ting Expenses	_____
Net Operating Income	_____
Utility Plant	
Utility Plant in Service	
Less: Accumu- lated Deprecia- tion and Amortiza- tion	
Less: Acquisition Adjustment - Net	
Less: Contribu- tions in Aid of Construc- tion	
Net Utility Plant	_____
Allowance for Working Capital	
Cash	
Materials and Supplies	
Total Allow- ance for Working Capital	_____
Net Utility Plant and Allowance	_____

1. The name and post office address of the applicant and the name and post office address of its counsel.
2. A full clear statement of the facts that the applicant is prepared to prove by competent evidence.
3. A statement of details of the objective or objectives sought and the legal basis therefore.
4. All direct testimony by which the applicant expects to support the objective or objectives sought.
5. Information or documentation conforming to the following general instructions:

- a. Attach a table of contents of the company's application, including exhibits.
- b. Each exhibit shall be labeled with the name of the applicant and the initials of the sponsoring witness in the upper right hand corner as shown below:  
Exhibit No. (Leave Blank)  
Witness: (Initials)  
Statement or  
Schedule Number
- c. The first page of all exhibits shall contain a caption that describes the subject matter of the exhibit.
- d. If the accounting and statistical data submitted differ from the books of the applicant, then the applicant shall include in its filing a reconciliation schedule for each account or subaccount that differs, together with an explanation describing the nature of the difference.
- e. The required accounting and statistical data shall include all work papers and other information necessary to ensure that the items, statements and schedules are not misleading.

C. ~~These rules do~~ This chapter does not limit the commission staff or parties from raising issues for commission consideration that have not been addressed in the applicant's filing before the commission. Except for good cause shown, issues specifically decided by commission order entered in the applicant's most recent rate case may not be raised by staff or interested parties in Earnings Test Filings made pursuant to 20VAC5-201-10, 20VAC5-201-30 or 20VAC5-201-50.

D. An application filed pursuant to 20VAC5-201-20, 20VAC5-201-30, 20VAC5-201-40, 20VAC5-201-60, 20VAC5-201-70, 20VAC5-201-80 or 20VAC5-201-85 shall not be deemed filed per Chapter 10 (§ 56-232 et seq.) or Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia unless it is in full compliance with ~~these rules~~ this chapter.

E. The commission may waive any or all parts of ~~these rate case rules~~ this chapter for good cause shown.

F. Where a filing contains information that the applicant claims to be confidential, the filing may be made under seal provided it is simultaneously accompanied by both a motion for protective order or other confidential treatment and an

**20VAC5-201-10. General filing instructions.**

A. An applicant shall provide a notice of intent to file an application pursuant to 20VAC5-201-20, 20VAC5-201-40, 20VAC5-201-60 and 20VAC5-201-85 to the commission 60 days prior to the application filing date.

B. Applications pursuant to 20VAC5-201-20 through 20VAC5-201-70 shall include:

---

# Regulations

---

additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall, however, be immediately available to the commission staff for internal use at the commission.

G. Filings containing confidential (or redacted) information shall so state on the cover of the filing, and the precise portions of the filing containing such confidential (or redacted) information, including supporting material, shall be clearly marked within the filing.

H. Applicants shall file electronic media containing an electronic spreadsheet version of Schedules 1 - 5, 8 - 28, 36, 40, and 50, as applicable, with the commission's Division of Public Utility Accounting, the Division of Economics and Finance and the Division of Energy Regulation or the Division of Communications, as appropriate. Such electronic media containing calculations derived from formulas shall be provided in an electronic spreadsheet including all underlying formulas and assumptions. Such electronic spreadsheet shall be commercially available and have common use in the utility industry. Additional versions of such schedules shall be made available to parties upon request.

I. All applications, including direct testimony and Schedules 1 - 28, 30 - 39, and 41 - 50, as applicable, shall be filed in an original and 12 copies with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. One copy of Schedules 29 and 40 shall be filed with the Clerk of the Commission. Applicants may omit filing Schedule 29 with the Clerk of the Commission in Annual Informational Filings. Additional copies of such schedules shall be made available to parties upon request.

Two copies of Schedules 29 and 40 shall be submitted to the Division of Public Utility Accounting and Finance or the Division of Communications, as appropriate. Two copies of Schedule 40 shall be submitted to the Division of Energy Regulation.

J. For any application made pursuant to 20VAC5-201-20 and 20VAC5-201-40 through 20VAC5-201-85, the applicant shall serve a copy of the information required in subsection A and subdivisions B 1 through B 3 of this section, upon the attorney and chairman of the board of supervisors of each county (or equivalent officials in the counties having alternate forms of government) in this Commonwealth affected by the proposed increase and upon the mayor or manager and the attorney of every city and town (or equivalent officials in towns and cities having alternate forms of government) in this Commonwealth affected by the proposed increase. The applicant shall also serve each such official with a statement that a copy of the complete application may be obtained at no cost by making a request therefor orally or in writing to a specified company official or location. In addition, the applicant shall serve a copy of its complete application upon the Division of Consumer Counsel of the Office of the Attorney General of Virginia. All such service specified by

this rule section shall be made either by (i) personal delivery or (ii) first class mail, to the customary place of business or to the residence of the person served.

K. Nothing in these ~~rules~~ this chapter shall be interpreted to apply to applications for temporary reductions of rates pursuant to § 56-242 of the Code of Virginia.

## **20VAC5-202-10. Applicability and scope.**

These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility Restructuring Regulation Act (§ 56-576 et seq. of the Code of Virginia), and they apply only to incumbent electric utilities subject to the provisions thereof. Section 56-590 of the Act declares that all incumbent electric utilities shall functionally separate their generation, transmission and distribution services by January 1, 2002, and that such functional separation may be accomplished through the creation of affiliates or through such other means as may be acceptable to the commission. The utilities ~~are~~ were required to submit proposed functional separation plans to the Virginia State Corporation Commission by January 1, 2001.

Section 56-590 B 3 of the Act authorizes the commission to impose conditions, as the public interest requires, upon its approval of incumbent electric utilities' plan for functional separation, including requirements that (i) incumbent electric utilities' generation assets or their equivalent remain available for electric service during the capped rate period as provided in § 56-582 and, if applicable, during any period incumbent electric utilities serve as default providers pursuant to § 56-585, and (ii) incumbent electric utilities receive commission approval for the sale, transfer or other disposition of generation assets during the capped rate period and, if applicable, during any period incumbent electric utilities serve as default providers.

Pursuant to § 56-590 C, the commission is also directed, to the extent necessary to promote effective competition in the Commonwealth, to promulgate regulations:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;
2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;
3. Prohibiting affiliated entities from engaging in discriminatory behavior toward nonaffiliated units; and
4. Establishing codes of conduct detailing permissible relations between functionally separate units.

Additionally, § 56-590 F provides, in pertinent part, that nothing in the Virginia Electric Utility Restructuring Regulation Act shall be deemed to abrogate or modify the commission's authority under Chapters 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia.

~~These regulations~~ This chapter, therefore, implement the statutory provisions of the Virginia Electric Utility Restructuring Regulation Act described above, ~~and are~~

~~intended to aid incumbent electric utilities required to (i) functionally separate their generation, transmission and distribution services by January 1, 2002, and (ii) submit applications for such purpose to the commission by January 1, 2004. Such regulations shall not, however, be deemed to modify or supercede any regulations adopted by the commission concerning the relationships between local distribution companies and any company licensed by the commission to provide competitive energy services, which regulations shall include the commission's Interim Rules Governing Electric and Natural Gas Retail Access Pilot Programs, 20VAC5-311-10 et seq., and any successor regulations thereto.~~

**20VAC5-202-20. 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 Virginia Electric Utility ~~Restructuring Regulation Act.~~

"Affiliated generation company" means a generation company that controls, is controlled by, or is under common control with a local distribution company. For purposes of this chapter, any unit or division created by a local distribution company for the purpose of acting as a generation company shall be treated as an affiliated generation company and shall be subject to the same provisions and regulations.

"Commission" or "SCC" means the Virginia State Corporation Commission.

"FERC" means the Federal Energy Regulatory Commission.

"Generation company" means a person owning, controlling, or operating a facility that produces electric energy for sale to wholesale customers.

"Incumbent electric utility" shall have the same meaning as set forth in § 56-576 of the Code of Virginia.

"Local distribution company" means an entity regulated by the Virginia State Corporation Commission that owns or controls the distribution facilities required for delivery of electricity to the end user.

"Market price" or "market value" means the value of comparable goods or services determined through such methods as competitive bidding, appraisals, catalog listings, sales to third parties and asset replacement cost determinations.

"Person" shall have the same meaning as set forth in § 56-576 of the Code of Virginia.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission (FERC) that owns or operates, or both, transmission facilities.

**20VAC5-202-30. Relations between affiliated functionally separated entities; SCC oversight.**

A. The following practices are prohibited:

1. Cost shifting or cross subsidies between functionally separate units;
2. Anticompetitive behavior or self-dealing between functionally separate units; and
3. Discriminatory behavior by affiliated entities toward nonaffiliated units.

B. The following provisions apply to (i) the relationships between a local distribution company and any affiliated generation company following the commission's approval of their functional separation and (ii) the commission's oversight of such affiliated companies:

1. The local distribution company shall not give undue preference to an affiliated generation company over the interests of any other generation company. For purposes of this subdivision, "undue preference" means a preference that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.

2. To the extent local distribution companies administer or otherwise furnish fuel supply services, such companies shall provide information related to fuel or fuel supply resources to an affiliated generation company only if it makes such information simultaneously available, through an electronic bulletin board or similar means of public dissemination, to all other generation companies conducting business in Virginia. Nothing in this subdivision shall require any local distribution company to disseminate to all generation companies information requested and deemed competitively sensitive by a generation company and supplied by the local distribution company. This subdivision is not applicable to daily operational data provided by the local distribution company to any generation company in the ordinary course of conducting business.

3. Affiliated local distribution and generation companies shall maintain separate records and accounts for functionally separate units and separate books of account for separate legal entities.

4. Each local distribution company shall operate independently of any affiliated generation company and shall observe the following requirements:

- a. Each local distribution company shall establish and implement internal controls to ensure that such company and its employees who are engaged in (i) merchant operations, transmission, or reliability functions of electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions do not provide information to an affiliated generation company or to entities that provide similar functions for or on behalf of such an affiliated general company that would give any such affiliated generation company an undue advantage over nonaffiliated generation companies. For purposes of this subdivision,



---

# Regulations

---

"undue advantage" means an advantage that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.

b. Each local distribution company shall file with the commission, a listing and description of all internal controls implemented pursuant to this section ~~as provided for in 20VAC5-202-40~~ or within 10 days subsequent to any modification of such controls.

5. Local distribution companies shall be subject to the following requirements concerning affiliate transactions:

a. Local distribution companies shall be compensated at the greater of fully distributed cost or market price for all nontariffed services, facilities, and products provided to an affiliated generation company. An affiliated generation company shall be compensated at the lower of fully distributed cost or market price for all nontariffed services, facilities, and products provided to the local distribution company. If market price data are unavailable for purposes of such calculations, nontariffed services, facilities and products shall be compensated at fully distributed costs. In such event, the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable. Notification of a determination of the unavailability of market price data shall be included with the report required in subdivision 5 b of this subsection.

b. Local distribution companies shall file annually with the commission, a report that shall, at a minimum, include: (i) the amount and description of each type of nontariffed service provided to or by an affiliated generation company; (ii) accounts debited or credited; and (iii) the compensation basis used (i.e., market price or fully distributed cost). The local distribution company shall make available to the commission's staff, upon request, the following documentation for each agreement and arrangement where services are provided to or by an affiliated generation company: (i) component costs (i.e., direct or indirect labor, fringe benefits, travel or housing, materials, supplies, indirect miscellaneous expenses, equipment or facilities charges, and overhead); (ii) profit component; and (iii) comparable market values and documentation.

6. Affiliated generation and local distribution companies shall document each occasion that (i) an employee of one becomes an employee of the other or of any transmission provider that services either, or (ii) an employee of any transmission provider that services any such affiliated distribution company or generation company becomes any employee of either. Upon request of the commission's staff, such information shall be filed with the commission identifying each such employment described in this subdivision. This information shall include a listing of each

employee transferred and a brief description of each associated position and responsibility.

7. The commission may inspect the books, papers, records and documents of, and require special reports and statements from, every generation company affiliated with a local distribution company regarding (i) transactions with its local distribution company affiliate. Upon complaint or on its own initiative, the commission may also (i) investigate alleged violations of this chapter, and (ii) seek to resolve any complaints filed with the commission against any such affiliated generation company.

## **20VAC5-202-40. Application for functional separation. (Repealed.)**

~~A. Each incumbent electric utility required by the Act to functionally separate its generation, transmission and distribution services shall submit a plan to the commission therefor by January 1, 2001, conforming to the requirements set forth below. In addition to information specifically required under this chapter, the incumbent electric utility shall provide any information or documentation it believes will assist the commission in evaluating such utility's functional separation plan.~~

~~B. Each plan submitted by an incumbent electric utility shall, at a minimum, contain the following provisions or information. If such information is not available as of the date of the filing, the application shall contain a detailed explanation as to why such information is not available, the efforts under way to develop such information, and an estimate of the time within which it will be available.~~

~~1. A table of contents detailing the plan's components that shall include, at a minimum, a list of testimonies, schedules, supporting witnesses and issues addressed.~~

~~2. An executive summary of the functional separation plan that shall include the following:~~

~~a. An overview of the present structure of the integrated utility.~~

~~b. An overview of the proposed functional separation plan, including but not limited to, the following issues or matters:~~

~~(1) The specific type of functional separation proposed (e.g., transfer to an affiliate or division, divestiture, etc.) with an assessment of how such method will comply with § 56-590 of the Code of Virginia.~~

~~(2) A timeline for implementing the functional separation plan's major components.~~

~~(3) A description of measures proposed to ensure that the proposed plan of functional separation will not jeopardize or impair the safety or reliability of the incumbent electric utility's generation, transmission, and distribution systems.~~

- (4) The estimated amount of assets and liabilities (including deferred taxes) proposed to be transferred to each functionally separate entity or third party.
- (5) The estimated cost of the proposed plan of functional separation.
- (6) Measures proposed in the plan to enable the incumbent electric utility to (i) meet potential obligations to provide capped rate service and default service, and (ii) assure that generation assets or their equivalent remain available during the capped rate and default service periods established under the Act.
- e. A list of specific approvals sought by the incumbent electric utility in conjunction with its functional separation plan, identifying the sections of the Code of Virginia under which each such approval is sought, and describing the proposed timeframe for each such approval.
- d. A summary of any other information the incumbent electric utility believes will be helpful to the commission in assessing the proposed functional separation plan.
- e. Waivers that the incumbent electric utility is requesting from the requirements of this chapter, and the reasons therefor.
- f. Exemptions that the incumbent electric utility is requesting pursuant to § 56-590 F from the provisions of Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia.
3. An assessment of the financial impact of the proposed functional separation plan, including information concerning the following:
- a. The capital structure and cost of capital, including any transaction or refinancing costs, of the functionally separate entities resulting from the proposed plan used to calculate the unbundled cost of capital supporting the cost of service study required by subdivision 7 of this subsection.
- b. The manner in which any assets are proposed to be transferred in the form of a dividend from any proposed functionally separate entity to any parent entity thereof incident to functional separation.
- c. A description of (i) how the local distribution company will account for a wires charge and (ii) how a wires charge will impact the financial statements of the local distribution company.
- d. Any other financial information relevant to the incumbent electric utility's proposed functional separation plan.
4. Information concerning the proposed structure of each functionally separate entity, as follows:
- a. The legal structure of each functionally separate entity proposed in the functional separation plan (e.g., corporation, limited liability company, limited liability partnership, etc.).
- b. The names and addresses of each proposed functionally separate entity's officers and directors, or their equivalents.
- c. The location and mailing address of each proposed functionally separate entity's headquarters.
- d. A description of how functional separation requirements in any other states have affected, or may affect, the incumbent electric utility, its structure and operations.
- e. A description of all federal agency approvals required in connection with the execution and implementation of the incumbent electric utility's proposed functional separation plan, identifying any state commission findings (i) required in conjunction with such federal agency approvals, or (ii) otherwise required pursuant to federal law.
- f. A timeline for implementing major elements of the functional separation plan.
5. Information concerning separation of functions and operations, as follows:
- a. A description of the products and services to be offered by any proposed functionally separate entity.
- b. A description of functions and services to be transferred from the incumbent electric utility to any proposed functionally separate entity.
- c. A description of competitive services to be offered by each functionally separate entity of the incumbent electric utility.
- d. Information concerning the total number of incumbent electric utility employees proposed to be (i) transferred to any proposed functionally separate entity, or (ii) jointly employed by any proposed functionally separate entities, following functional separation.
- e. A detailed description of measures proposed to ensure the safety and reliability of the incumbent electric utility's generation, transmission and distribution system in conjunction with functional separation.
- f. An estimate of the cost of functional separation, and an explanation of how the costs thereof will be shared among the proposed functionally separate entities.
- g. A list and description of the internal controls established to ensure that the local distribution company and its affiliated generation company operate independently as required by 20VAC5-202-30 B-4.
6. Information concerning asset and liability transfers or sales, as follows:
- a. A list of assets or liabilities that the incumbent electric utility proposes to transfer to a functionally separate entity or proposes to sell to a third party. The list shall

---

# Regulations

---

include the FERC account number, book value, proposed transfer date and the recipient of the assets or liabilities.

b. ~~The method used to value the transfer of assets to a functionally separate entity or to a third party, and justification for the chosen methodology. Information furnished shall include documentation supporting the valuation and transfer thereof.~~

e. ~~If the Legislative Transition Task Force adopts a resolution requesting the commission's assistance with monitoring the recovery of net stranded costs pursuant to § 56-595-C of the Act, then the following information shall be provided to the commission: (i) fair market value of each generation and transmission asset functionally unbundled, transferred or sold to a third party or affiliate and (ii) a list of all long term power contracts functionally unbundled, transferred or sold to a third party or affiliate. Information furnished shall include the length and anticipated expiration date of each contract, annual cash payments for power, and the market value of each power contract for each year of its remaining life.~~

d. ~~Detailed documentation supporting (i) the accounting for the proposed transfer or divestiture of generation assets, and (ii) projected impacts of such transfers or divestiture on current and deferred income taxes. The information furnished shall include the income statement and balance sheet effects of income taxes, both before and after the proposed transfer or divestiture.~~

e. ~~A copy of the proposed system of accounts, if other than the FERC uniform system of accounts, that any affected affiliated generation company will use for booking purposes.~~

f. ~~A list of new investments (including amounts and time period) necessitated by the incumbent electric utility's proposed functional separation plan.~~

g. ~~In furtherance of the commission's responsibility under § 56-590 B-3 of the Code of Virginia, each incumbent utility shall provide an assessment of how its proposed functional separation plan advances or satisfies such utility's obligation to make electric service available at the capped rates established under § 56-582 D.~~

h. ~~In furtherance of the commission's responsibility under § 56-590 B-3 of the Code of Virginia, each incumbent utility shall provide an assessment of how its proposed functional separation plan advances or satisfies such utility's potential obligation to provide electric service as a default supplier pursuant to § 56-585. Such assessment shall include a detailed description of pricing and capacity if the incumbent electric utility proposes to utilize equivalent generation in satisfaction of such obligation.~~

i. ~~An analysis comparing the cost of obtaining equivalent generation to the cost of retaining generation assets if the incumbent electric utility proposes to divest all or part of~~

~~its generation assets supporting its Virginia load. The information furnished shall explain how such equivalent generation will produce rates, reliability and capacity that are at least comparable to that provided by the generation assets currently held by the incumbent electric utility. Additionally, the information shall include the incumbent electric utility's assessment of how obtaining equivalent generation is in the public interest.~~

7. ~~Information concerning a cost of service study as follows:~~

a. ~~A cost of service study, based on a test year beginning no earlier than January 1, 1999, reflecting total company and total Virginia operations.~~

b. ~~A cost of service study that separates total Virginia operations identified in a of this subdivision into Virginia jurisdictional and Virginia nonjurisdictional operations.~~

e. ~~A cost of service study that separates Virginia jurisdictional operations established under subdivision 7 b of this subsection, by class and function utilizing the rate of return approved by the commission in the incumbent electric utility's most recent rate case or alternative regulatory plan. Class costs shall be subdivided by generation, transmission, distribution, metering, billing, and other customer services as may be warranted or required by the commission. Such divisions shall be further subdivided as demand, energy and customer. The class study shall include computations of the average price per unit for these various subdivisions.~~

8. ~~The incumbent electric utility's proposed unbundled tariffs, rates, terms and conditions.~~

9. ~~A description of how the incumbent electric utility's proposed functional separation will comply with 20VAC5-202-30.~~

## **20VAC5-202-50. Waiver or exemption requests; confidential information; other filings.**

A. Any request for a waiver of any provision in this chapter shall be considered by the commission on a case-by-case basis and may be granted upon such terms and conditions as the commission may impose.

B. Where a filing made pursuant to this chapter contains information that the applicant claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless and until the commission rules otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission.

Filings containing confidential (or redacted) information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential (or

redacted) information, including supporting material, shall be clearly marked within the filing.

~~C. Each incumbent electric utility shall file simultaneously with its functional separation plan its application for transfer of assets pursuant to the Utility Transfers Act, Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia, if any, except for good cause shown.~~

~~D. Any incumbent electric utility requesting an exemption pursuant to § 56-590 G from the provisions of Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia, to the extent that any such incumbent electric utility's proposed functional separation plan includes a covered transaction otherwise subject to the provisions of § 56-590, shall clearly identify such request in its functional separation plan filed with the commission.~~

**20VAC5-304-40. Pilot or experimental programs.**

Utilities must seek ~~Commission~~ commission approval of pilot or experimental programs that involve rates or promotional allowances, but other limited pilot or experimental programs may be conducted without prior ~~Commission~~ commission approval. Utilities shall file reports with the ~~Commission's~~ commission's Division of ~~Economics and Finance~~ Energy Regulation that identify any pilot or experimental program at least 30 days prior to its implementation. Periodic reports shall also be filed at least semi-annually with the ~~Commission's~~ commission's Division of ~~Economics and Finance~~ Energy Regulation identifying all DSM pilot or experimental programs and the status of such programs.

**20VAC5-312-20. General provisions.**

A. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under applicable law or regulation. Enforcement actions may include, without limitation, the refusal to issue any license for which application has been made, and the revocation or suspension of any license previously granted. The provisions of this chapter shall not be deemed to preclude a person aggrieved by a violation of these regulations from pursuing any civil relief that may be available under state or federal law, including, without limitation, private actions for damages or other equitable relief.

C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own

motion, may investigate and take such corrective actions as may be appropriate.

D. The State Corporation Commission maintains the right to inspect the books, papers, records and documents, and to require reports and statements, of a competitive service provider as required to verify qualifications to conduct business within the Commonwealth, to support affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider. Every competitive service provider licensed pursuant to this chapter shall establish and maintain records identifying persons or entities performing promotional or marketing activities on behalf of or in conjunction with such competitive service provider.

E. The local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a competitive service provider but whose service is terminated for any reason.

F. A competitive service provider selling electricity supply service or natural gas supply service, or both, at retail shall:

1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.
2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Corporation, and the Federal Energy Regulatory Commission, or any successor agencies thereto.
3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.

G. The local distribution company and a competitive service provider shall not:

1. Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or
2. Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.

H. The local distribution company shall conduct its forecasting, scheduling, balancing, and settlement activities in a nondiscriminatory and reasonably transparent manner.

I. The local distribution company shall bear the responsibility for metering as provided by legislation and implemented by the State Corporation Commission.

---

# Regulations

---

J. The local distribution company and a competitive service provider shall adhere to standard practices for exchanging data and information in an electronic medium as specified by the VAEDT and filed with the State Corporation Commission or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission. In the event the parties agree to initially use a means other than those specified by VAEDT or the local distribution company's tariff, then the competitive service provider shall file a plan with the State Corporation Commission's Division of ~~Economics and Finance~~ Energy Regulation to implement VAEDT or tariff approved standards within 180 days of the initial retail offering.

K. The local distribution company and a competitive service provider that is responsible for exchanging customer information electronically with such local distribution company shall, except as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, successfully complete EDI testing and receive certification for all EDI transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection K of this section.

L. A competitive service provider offering billing service that requires the direct delivery of a bill to a customer and that requires the electronic exchange of data with the local distribution company shall furnish, prior to enrolling the customer, a sample bill produced from the data exchanged in the EDI certification process, or comparable electronic data exchange process, as described in subsection L of this section, or a sample bill produced similarly elsewhere, to the State Corporation Commission's Division of Energy Regulation ~~and Division of Economics and Finance~~.

M. Upon enrollment of a customer to receive competitive supply service, the local distribution company shall file with the State Corporation Commission's Division of Energy Regulation ~~and Division of Economics and Finance~~ a monthly report which shall, at a minimum, include all cancellation requests alleging a customer was enrolled without authorization. Such reports shall include: (i) the approximate date of the enrollment; (ii) the identity of the competitive service provider involved; (iii) the name and address of the customer that cancelled such enrollment; and (iv) if readily available, a brief statement regarding the customer's explanation for the cancellation. Such reports shall be reviewed by commission staff and regarded as confidential unless and until the State Corporation Commission orders otherwise.

N. Upon enrollment of a customer to receive competitive supply service, the local distribution company shall file with the State Corporation Commission's Division of ~~Economics and Finance~~ Energy Regulation a quarterly report providing a detailed breakdown of residential and nonresidential customer switching activity. Such reports shall include, for the local

distribution company, the total number of customers and corresponding amount of load eligible to switch; and, for each competitive service provider, the total number of customers and corresponding amount of load served. The amount of load shall be measured in MW, Mcf, or dekatherm capacity of peak load contribution and in kWh, Mcf, or therms of associated energy. Such reports shall be reviewed by commission staff and information specific to individual competitive service providers shall be regarded as confidential unless and until the State Corporation Commission orders otherwise.

O. By March 31 of each year, the provider of electricity supply service shall report to its customers and file a report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the provider of electricity supply service shall file a report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.

P. A competitive service provider shall file a report with the State Corporation Commission by March 31 of each year to update all information required in the original application for licensure. A \$100 administrative fee payable to the State Corporation Commission shall accompany this report.

Q. A competitive service provider shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any change in information regarding its affiliate status with the local distribution company; (iii) any changes to information provided pursuant to 20VAC5-312-40 A 13; and (iv) any changes to information provided pursuant to 20VAC5-312-40 A 15.

R. If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company or a competitive service provider claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.

## **20VAC5-312-50. Competitive service provider registration with the local distribution company.**

A. A competitive service provider shall submit to the local distribution company the full name of the competitive service

provider, the type of entity (e.g., partnership, corporation, etc.), physical street and mailing addresses.

B. A competitive service provider shall furnish the local distribution company and the transmission provider proof of licensure from the State Corporation Commission to provide competitive energy services in the Commonwealth. A competitive service provider shall provide notice of any suspension or revocation of its license to the local distribution company and the transmission provider upon issuance of the suspension or revocation by the State Corporation Commission.

C. A competitive service provider and the local distribution company shall exchange the names, telephone numbers, and e-mail addresses of appropriate internal points of contact to address operational, business coordination and customer account issues, and the names and addresses of their registered agents in Virginia.

D. The local distribution company may require reasonable financial security from the competitive service provider to safeguard the local distribution company and its customers from the reasonably expected net financial impact due to the nonperformance of the competitive service provider. The amount of such financial security shall be commensurate with the level of risk assumed by the local distribution company, as determined by the local distribution company's applicable tariff approved by the State Corporation Commission. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, a surety bond, or other arrangements that may be mutually agreed upon by the local distribution company and the competitive service provider. Disagreements with respect to financial security shall be subject to the dispute resolution procedures established pursuant to 20VAC5-312-110 G.

E. Prior to imposing a non-emergency related restriction or disqualification on a competitive service provider, as provided by its tariff approved by the State Corporation Commission, the local distribution company shall notify the competitive service provider of the impending restriction or disqualification and its effective date, the alleged action or inaction that merits such restriction or disqualification, and the actions, if any, that the competitive service provider may take to avoid the restriction or disqualification. Such notice shall be in writing and sent to the competitive service provider via fax or overnight delivery. A copy of the notice shall be forwarded contemporaneously to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance via fax or overnight delivery.

**20VAC5-312-90. Billing and payment.**

A. A competitive service provider may offer separate billing service or consolidated billing service, where either the local distribution company or the competitive service provider would be the billing party, to prospective customers pursuant to the local distribution company's tariff approved by the

State Corporation Commission. Where a competitive service provider would be the billing party, prior to an initial offering of consolidated billing service to customers within the service territory of each local distribution company, and after certification as required by 20VAC5-312-20 K, the competitive service provider shall abide by the following requirements:

1. The competitive service provider shall provide written notice, at least 30 days in advance, to the local distribution company and to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance. The written notification to the Division of Energy Regulation and the Division of Economics and Finance shall include:

- a. The anticipated date of the initial consolidated billing service offering in each local distribution company service territory in which the service will be offered.
- b. Any changes in information provided by the competitive service provider in its original license application pursuant to 20VAC5-312-40 A that have not been reported to the State Corporation Commission pursuant to 20VAC5-312-20 P and 20VAC5-312-20 Q.
- c. The expected maximum market penetration for the provision of consolidated billing service to electricity customers during the following 12 months, including the estimated number of customers and associated annual consumption by customer type or load profile classification.
- d. A representation that the electric competitive service provider has undertaken the necessary preliminary coordination efforts with tax officials of each potentially affected locality regarding the competitive service provider's obligation to collect and remit local consumption taxes and local utility consumer taxes.

2. The competitive service provider shall establish such financial security as the State Corporation Commission may require for such competitive service provider's estimated liability associated with the collection and remittance of state, local, and special regulatory consumption taxes and local utility consumer taxes.

B. Subject to the exemptions applicable to municipal electric utilities and utility consumer service cooperatives set forth in ~~§ 56-581.1~~ 56-581 C of the Code of Virginia, a competitive service provider shall coordinate the provision of the customer-selected billing service with the local distribution company by any means specified by VAEDT or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission.

C. Consolidated billing, except as otherwise arranged through contractual agreement between the local distribution company and a competitive service provider or as otherwise provided by the local distribution company's tariff approved by the State Corporation Commission, shall:

---

# Regulations

---

1. Be performed under a "bill-ready" protocol.
2. Not require the billing party to purchase the accounts receivable of the nonbilling party.
3. Not require the electric local distribution company to include natural gas competitive energy service charges on a consolidated bill or the natural gas local distribution company to include electric competitive energy service charges on a consolidated bill.
4. Not require the local distribution company to exchange billing information for any customer account with more than one competitive service provider for the same billing period.
5. Comply with the local distribution company's normal billing and credit cycle requirements for distribution service.

D. In the event a competitive service provider collects security deposits or prepayments, such funds shall be held in escrow by a third party in Virginia, and the competitive service provider shall provide to the State Corporation Commission the name and address of the entity holding such deposits or prepayments.

E. A competitive service provider requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer's estimated liability for no more than three months' usage of services from the competitive service provider by that customer.

F. Customer deposits held or collected by a local distribution company shall be for only those services provided by the local distribution company. Any deposit held in excess of this amount shall be promptly credited or refunded to the customer. The local distribution company may, upon a customer's return to regulated electricity supply service or natural gas supply service, collect that portion of a customer deposit as permitted by the local distribution company's tariffs and 20VAC5-10-20.

G. Terms and conditions concerning customer disconnection for nonpayment of regulated service charges shall be set forth in each local distribution company's tariff approved by the State Corporation Commission. A customer may not be disconnected for nonpayment of unregulated service charges. If a customer receives consolidated billing service and a competitive service provider is the billing party, the local distribution company shall advise the customer directly of any pending disconnection action for nonpayment through 10 days' notice by mail, separate from the consolidated bill. Such notice shall clearly identify the amount that must be paid and the date by which such amount must be received by, and also provide instructions for direct payment to, the local distribution company to avoid disconnection.

H. The provision of consolidated billing service shall conform to the following requirements:

1. The billing party shall apply a customer's partial payment of a consolidated bill as designated by the customer, or, in the absence of a customer's designation, to charges in the following order: (i) to regulated service arrearages owed the local distribution company; (ii) to competitive energy service arrearages owed the competitive service provider; (iii) to regulated service current charges of the local distribution company; (iv) to competitive energy service current charges of the competitive service provider; and (v) to other charges.

2. Collections of state and local consumption taxes and local utility consumer taxes shall be remitted as required by law. The person responsible for collecting and remitting such taxes shall:

- a. Submit simultaneously, on or before the last day of the succeeding month of collection to the State Corporation Commission's Division of Public Service Taxation, the payment of the preceding month's state and special regulatory consumption taxes and associated Electric Utility or Natural Gas Consumption Tax Monthly Report.
- b. Submit simultaneously, in accordance with the Code of Virginia and local ordinance, to each local government in whose jurisdiction the taxes have been collected, the payment of local consumption taxes and local utility consumer taxes and associated tax remittance reports.

1. The local distribution company and a competitive service provider shall comply with the following minimum billing information standards applicable to all customer bills:

1. Sufficient information shall be provided or referenced on the bill so that a customer can understand and calculate the billing charges.
2. Charges for regulated services and unregulated services shall be clearly distinguished.
3. Standard terminology shall be employed and charges shall be categorized for the following key bill components, as applicable: (i) distribution service; (ii) electricity supply service or natural gas supply service; (iii) state and local consumption tax; and (iv) local (or locality name) utility tax. The bill may provide further detail of each of these key components as appropriate.
4. Nonroutine charges and fees shall be itemized including late payment charges and deposit collections.
5. The total bill amount due and date by which payment must be received to avoid late payment charges shall be clearly identified.
6. The 24-hour toll-free telephone number of the local distribution company for service emergencies shall be clearly identified.
7. In the event a disconnection notice for nonpayment is included on a customer bill issued by the local distribution company, the notice shall appear on the first page of the bill and be emphasized in a manner that draws immediate attention to such notice. The notice shall clearly identify

the amount that must be paid and the date by which such amount must be paid to avoid disconnection.

8. The following additional information shall be provided on customer bills to the extent applicable:

- a. Customer name, service address, billing address, account number, rate schedule identifier, and meter identification number.
- b. Billing party name, payment address, and toll-free telephone number for customer inquiries and complaints.
- c. For consolidated bills, nonbilling party name and toll-free telephone number for customer inquiries and complaints and the customer's local distribution company account number.
- d. Bill issue date and notice of change in rates.
- e. Previous and current meter readings and dates of such meter readings or metering period days, current period energy consumption, meter reading unit conversion factor, billing-demand information, and "estimated" indicator for non-actual meter reads.
- f. Previous bill amount or account balance, payments received since previous billing, balance forward, current charges, total amount due or current account balance, and payment plan information.
- g. For consolidated bills, billing party and nonbilling party elements as specified in subdivision 8 f of this subsection.

J. The local distribution company shall comply with the following additional billing information standards applicable to the bills of customers that are not subject to demand-based billing charges and that purchase regulated electricity supply service or regulated natural gas supply service from the local distribution company:

1. The local distribution company shall employ standard terminology and categorize charges for the following key billing components: (i) distribution service; (ii) electricity supply service or natural gas supply service; (iii) state and local consumption tax; and (iv) local (or locality name) utility tax. Brief explanations of distribution service and electricity supply service or natural gas supply service shall be presented on the bill. Such explanations shall convey that distribution service is a regulated service that must be purchased from the local distribution company and that electricity supply service or natural gas supply service may be purchased from the competitive market;
2. The local distribution company shall provide on customer bills a customer's monthly energy consumption, numerically or graphically, for the previous 12 months; and
3. The investor-owned electric local distribution company shall provide on each bill a "price-to-compare" value, stated in cents per kilowatt-hour, representing the cost of regulated electricity supply service that would be

applicable if such service were purchased from a competitive service provider. The appropriate use and limitations of such "price-to-compare" value shall be stated on the bill.

K. The local distribution company shall develop and implement a program to provide "price-to-compare" information and assistance to customers. Such a program shall ensure that customers will be provided meaningful information for evaluating competitive offers of electricity supply service or natural gas supply service. At a minimum, the program shall include a mechanism for providing, or making readily accessible, customer-specific "price-to-compare" information, including explanations of its appropriate use and limitations.

L. The billing party shall, except as otherwise arranged through contractual agreement with the nonbilling party, provide sufficient space on a consolidated bill to accommodate the local distribution company's customer account number and the nonbilling party's name and toll-free telephone number, previous bill amount or account balance, payments applied since the previous billing, balance forward, total current charges, total amount due or current account balance, six additional numeric fields to detail current charges, and 240 additional text characters.

M. If the local distribution company, as the billing party, provides consolidated billing service to a customer and continues to be the customer's billing party after the customer's service with a competitive service provider terminates, the local distribution company shall, except as otherwise arranged through contractual agreement with such competitive service provider, continue to track and bill customer account arrearages owed to such competitive service provider for two billing cycles after service has terminated. The bill shall list, at a minimum, the name, toll-free telephone number, and balance due for each former competitive service provider.

N. If the current charges of the nonbilling party are not included on the consolidated bill issued by the billing party, the bill shall note that such charges are not included.

O. If the current charges of the nonbilling party are not included on the consolidated bill issued by the billing party due to causes attributable to the nonbilling party, the charges shall be billed in the following month unless the two parties mutually agree to other arrangements.

P. If the current charges of the nonbilling party are not included on the consolidated bill issued by the billing party due to causes attributable to the billing party, the bill shall be cancelled and reissued to include such charges unless the two parties mutually agree to other arrangements.

Q. The local distribution company or a competitive service provider shall report any significant deficiency regarding the timely issuance, accuracy, or completeness of customer bills to the State Corporation Commission's Division of Energy Regulation as soon as practicable. Such reports shall detail



---

# Regulations

---

the circumstances surrounding the deficiency and the planned corrective actions.

R. If the local distribution company has an approved tariff for electric energy provided 100% from renewable energy pursuant to § 56-577 A 5 of the Code of Virginia, the provisions of subsections A through Q of this section shall not be applicable. Instead, an electric distribution company and an electric competitive service provider shall only offer separate billing service where both would be the billing party for the respective services to prospective customers pursuant to the local distribution company's tariff approved by the State Corporation Commission.

## **20VAC5-314-10. Applicability and scope; waiver.**

A. These regulations are promulgated pursuant to § 56-578 of the Virginia Electric Utility ~~Restructuring~~ Regulation Act (§ 56-576 et seq. of the Code of Virginia). They establish standardized interconnection and operating requirements for the safe operation of electric generating facilities with a rated capacity of 20 megawatts (MW) or less connected to electric utility distribution (and in certain cases transmission) systems in Virginia. These regulations apply to utilities providing interconnections to retail electric customers, independently owned generators and any other parties operating, or intending to operate, a distributed generation facility in parallel with utility systems. These regulations do not apply to customer generators operating pursuant to the Virginia State Corporation Commission's Regulations Governing Net Energy Metering (20VAC5-315) or those that fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC).

If the utility has turned over control of its transmission system to a Regional Transmission Entity (RTE), and if the small generator interconnection process identifies upgrades to the transmission system as necessary to interconnect the small generating facility, then the utility will coordinate with the RTE, and the procedures herein will be adjusted as necessary to satisfy the RTE's requirements with respect to such upgrades.

There are three review paths for the interconnection of generation in Virginia having an output of not more than 20 MW:

Level 1 - A request to interconnect a small generating facility (SGF) no larger than 500 kilowatts (kW) shall be evaluated under the Level 1 process.

Level 2 - A request to interconnect a certified SGF no larger than 2 MW and not qualifying for the Level 1 process shall be evaluated under the Level 2 process.

Level 3 - A request to interconnect an SGF no larger than 20 MW and not qualifying for the Level 1 process or Level 2 process, shall be evaluated under the Level 3 process.

The utility may limit the interconnection of an SGF to a distribution feeder to a capacity substantially less than 20 MW, depending upon the characteristics of that feeder and

the potential for upgrading it, as well as the nature of the loads and other generation on the feeder relative to the proposed point of interconnection. If the SGF cannot be safely and reliably interconnected to the utility's distribution feeder, the utility shall work with the IC to interconnect the SGF to the utility's transmission system. In such cases, the interconnection of the SGF may be governed by the regulations promulgated by FERC rather than the regulation of the State Corporation Commission.

The utility shall designate an employee or office from which the interconnection customer (IC) may informally request information concerning the application process. The name, telephone number, and email address of such contact employee or office shall be made available on the utility's Internet website. Electric system information relevant to the location of the proposed SGF shall be provided to the IC upon request and may include interconnection studies and any other relevant materials, to the extent such provision does not violate confidentiality provisions of prior agreements or release critical infrastructure information. The utility shall comply with reasonable requests for such information unless the information is proprietary or confidential and cannot be provided pursuant to a confidentiality agreement.

The utility shall make reasonable efforts to meet all time frames provided in these regulations unless the utility and the IC agree to a different schedule. If the utility cannot meet a deadline provided herein, it shall notify the IC, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

Each utility shall have on file with the commission terms and conditions applicable to the interconnection of SGFs. Such terms and conditions shall, at a minimum, incorporate this chapter by reference, shall set forth terms and conditions applicable to SGFs for which no Small Generator Interconnection Agreement (SGIA) is executed, and shall not conflict with the provisions of this chapter. The terms and conditions applicable to SGFs for which no SGIA is executed shall be reasonably consistent with the terms and conditions of the SGIA.

B. The commission may waive any or all parts of the provisions of this chapter for good cause shown.

## **20VAC5-320-10. Applicability and scope.**

These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility ~~Restructuring~~ Regulation Act (§ 56-576 et seq. of the Code of Virginia), and they apply to any incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth. Sections 56-577 and 56-579 of the Act require Virginia's incumbent electric utilities to (i) join or establish regional transmission entities (RTEs) by January 1, 2001, and (ii) seek the commission's authorization to transfer their transmission assets to such RTEs.

Specifically, § 56-577 of the Code of Virginia requires that on or before January 1, 2001, incumbent electric utilities owning, operating, controlling, or having entitlement to transmission capacity join or establish RTEs. The utilities are required to transfer the management and control of their transmission systems to the RTEs, subject to the provisions of § 56-579 of the Code of Virginia.

Additionally, § 56-579 provides that no incumbent electric utility shall transfer to any person any ownership, control, or operation of any portion of any transmission system within the Commonwealth without obtaining the commission's prior approval.

Finally, certain transfers of utility assets are subject to the Utilities Transfers Act (§ 56-88 et seq. of the Code of Virginia).

In short, incumbent electric utilities that own, operate, control or have entitlement to transmission capacity are subject to three provisions: (i) the obligation to join or establish an RTE, (ii) the obligation to obtain commission approval before transferring ownership, control or operation to an RTE, and (iii) obligations imposed by the Utilities Transfers Act. Although these provisions are distinct, they overlap.

In the interest of administrative efficiency, the commission will utilize a single proceeding in which the utility seeks approval for a proposed transfer under § 56-579 of the Code of Virginia and under the Utilities Transfers Act. In that proceeding, the commission will determine whether (i) the RTE to which the applicant proposes to transfer any ownership or control of, or any responsibility to operate, any portion of its transmission system satisfies the legislative criteria set forth in § 56-579 of the Code of Virginia, and (ii) the transfer otherwise satisfies the provisions of § 56-579 and the Utilities Transfers Act.

Accordingly, these regulations establish:

1. The elements of regional transmission entity structures essential to the public interest, to be applied by the commission in determining whether to authorize transfer of ownership or control from an incumbent electric utility to a regional transmission entity, all as required by § 56-579 of the Code of Virginia;
2. Filing requirements for entities that (i) are required to comply with the mandate of § 56-577 of the Code of Virginia that certain entities join or establish regional transmission entities, and (ii) seek the commission's permission to transfer control, ownership, or responsibility of or for transmission to a regional transmission entity pursuant to § 56-579 of the Code of Virginia and the Utilities Transfers Act; and
3. A schedule for such filings by the entities having obligations under § 56-577 of the Code of Virginia.

**20VAC5-320-20. 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 Virginia Electric Utility ~~Restructuring~~ Regulation Act.

"Commission" or "SCC" means the State Corporation Commission.

"FERC" means the Federal Energy Regulatory Commission.

"Incumbent electric utility" shall have the same meaning as set forth in § 56-576 of the Code of Virginia.

"Rate pancaking" means the practice of (i) requiring a transmission customer to pay a separate access charge each time the contract path associated with the customer's transaction crosses the boundary of another transmission owner, so as to count more than once the quantity transmitted or (ii) otherwise counting the quantity transmitted more than once in the calculation of the transmission customer's charges for transmission services, ancillary services, or both.

"Regional transmission entities" or "RTEs" means any individual, corporation, cooperative, municipality, partnership, association, company, business, trust, joint venture, or other private legal entity that may receive or has received, by transfer pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Transmission assets" means the facilities and equipment owned, operated, or controlled by incumbent electric utilities, and required for the transmission of electric energy. The term also includes facilities and equipment for the transmission of electric energy when incumbent electric utilities have entitlement to the transmission capacity thereof.

**20VAC5-403-50. Contents of application for a rate increase by a company having more than \$3 million in gross annual operating revenue or that is a subsidiary of a telecommunications company.**

A. An application for a rate increase filed pursuant to this chapter by a small telephone company having more than \$3 million in gross annual operating revenue or that is a subsidiary of a telecommunications company, which means a corporation that owns, manages, or controls any plant or equipment for the conveyance of voice or data messages, either directly or indirectly to or for the public, shall include:

1. The name and post office address of the applicant and the name and post office address of its counsel (if any);
2. A clear description of the proposed tariff changes, and a narrative explaining why an increase in rates is needed, as well as the overall percentage increase in rates proposed;
3. All direct testimony by which the applicant expects to support the rate increase. In lieu of prefiling direct testimony, the applicant may submit an affidavit which certifies that the information in the application is correct

---

# Regulations

---

and that the applicant adopts the information contained in the schedules as its evidence in support of the application.

4. Exhibits consisting of Schedules 1 through 16 shown in the Appendix to this chapter shall be submitted with the applicant's direct testimony or affidavit adopting the information contained in the schedules.

5. Exhibits consisting of additional schedules may be submitted with the applicant's direct testimony. Such schedules shall be identified as Schedule 17 et seq.

B. All applications shall be filed in an original and 15 copies with the exception of Schedule 12. Two copies of Schedule 12 shall be filed directly with the commission's Division of ~~Public~~ **Public Utility Accounting and Finance**. Additional copies of Schedule 12 shall be made available to parties upon request. An application shall not be deemed filed with the commission for the purposes of §§ 56-238 and 56-240 of the Code of Virginia unless all information required is filed in conformity with this chapter and accompanying schedules.

C. The selection of a test period is up to the applicant. However, the use of overlapping test periods shall not be permitted.

D. 1. The applicant shall serve a copy of the information required in subdivisions A 1 and A 2 of this section upon the Commonwealth's Attorney and Chairman of the Board of Supervisors of each county (or equivalent officials in counties having alternate forms of government) in this Commonwealth affected by the proposed rate increase and upon the mayor or manager and the attorney of every city and town (or on equivalent officials in towns and cities having alternate forms of government) in this Commonwealth affected by the proposed rate increase.

2. The applicant shall also serve each such official with a statement that a copy of the complete application may be obtained at no cost by making a request either orally or in writing to a specified officer of the applicant.

3. The applicant shall serve a copy of its complete application upon the Division of Consumer Counsel, Office of the Attorney General.

4. All service specified by this section shall be made either by (i) personal delivery, or (ii) by first-class mail, postage prepaid, to the customary place of business or the residence of the person served.

## APPENDIX A

### Schedule 1

#### Capital Structure and Cost of Capital Statement

Instructions: This schedule shall state the amount of each capital component per balance sheet, the amount for ratemaking purposes, the percentage weight in the capital structure, the component cost, and the weighted capital cost, using the format of the attached schedule. This information shall be provided for the test period. In Part A, the test period information should be compatible with the State Corporation Commission Annual Operating Report. The methodology

used in constructing the capital structure should be consistent with that approved in the applicant's last rate case. If the applicant wishes to use a different methodology (including a change in cost of equity) in constructing its capital structure in a rate application, it may prepare an additional schedule labelled as Schedule 1(a) explaining the methodology used and justifying any departure from applicant's last rate case.

The amounts and costs for short-term debt, revolving credit agreements, and similar arrangements shall be based on a 13-month average over the test year, or, preferably, a daily average during the test year, if available. All other test period amounts are end-of-year. The component weighted cost rates equal the product of each component's capital structure weight for ratemaking purposes times its cost rate. The weighted cost of capital is equal to the sum of the component weighted cost rates.

### Schedule 1

#### Capital Structure and Cost of Capital Statement Test Period

##### A. Capital Structure Per Balance Sheet (\$)

- Short-Term Debt
- Customer Deposits
- Other Current Liabilities
- Long-Term Debt
- Common Equity
- Investment Tax Credits
- Other Tax Deferrals
- Other Liabilities
- Total Capitalization

##### B. Capital Structure Approved for Ratemaking Purposes (\$)

- Short-Term Debt
- Long-Term Debt
- Job Development Credits
- Cost-Free Capital
- Common Equity
- Total Capitalization

##### C. Capital Structure Weights for Ratemaking Purposes (%)

- Short-Term Debt
- Long-Term Debt
- Job Development Credits
- Cost-Free Capital
- Common Equity
- Total Capitalization (100%)

##### D. Component Capital Cost Rates (%)

- Short-Term Debt
- Long-Term Debt
- Job Development Credits
- Cost-Free Capital

Common Equity (Authorized)  
 E. Component Weighted Cost Rates (%)  
 Short-Term Debt  
 Long-Term Debt  
 Job Development Credits  
 Cost-Free Capital  
 Common Equity (Authorized)  
 Weighted Cost of Capital

=  $\frac{\text{The Average of Year-End Equity for the Current \& Previous Year}}{\text{Earnings Available for Common Shareholders}}$

Earnings Per Share (EPS) =  $\frac{\text{Earnings Available for Common Shareholders}}{\text{Average No. Common Shares Outstanding}}$

Schedule 2  
 Schedule of Bonds, Mortgages, Other Long-Term Debt, and Cost-Free Capital

Dividends Per Share (DPS) = Common Dividends Paid Per Share During the Year

Payout Ratio = DPS/EPS

Average Market Price\*\* = (Yearly High + Yearly Low Price)/2 (if known)

Instructions: Provide a description of each issue, amount outstanding, percentage of total capitalization, and annualized cost based on the embedded cost rate. These data shall support the debt cost contained in Schedule 1. Provide a detailed breakdown of all cost-free capital items contained in Schedule 1.

\*Job Development Credits shall not be included as part of equity capital nor shall a deduction be made from earnings for a capital charge on these Job Development Credits.

\*\*An average based on monthly highs and lows is also acceptable. If this alternative is chosen, provide monthly market prices and sufficient data to show how the calculation was made.

Schedule 3  
 Schedule of All Short-Term Debt, Revolving Credit Agreements, and Similar Arrangements

Instructions: Provide data and explain the methodology used to calculate the cost and balance contained in Schedule 1 for short-term debt, revolving credit agreements, and similar arrangements.

Schedule 5

Company Profitability and Capital Market Data Test Period

A. Ratios

Return on Year-End Equity

Return on Average Equity

Earnings Per Share

Dividends Per Share

Payout Ratio

Market Price of Common Stock:

Year's High

Year's Low

Average Price

B. External Funds Raised

External Funds Raised -- All Sources (itemized)

Dollar Amount Raised

Coupon Rate (if applicable)

Rating Service (if applicable)

Average Offering Price (for Stock)

Schedule 4  
 Stockholders' Annual Report

Instructions: Provide a copy of the most recent stockholders' annual report and SEC Form 10K (if SEC Form 10K is available).

Schedule 6

Coverage Ratios and Cash Flow Profile Data

Instructions: This schedule shall be prepared using the definitions and instructions given below and using the format of the attached schedule for the past two calendar years plus the test period.

- Interest (lines 3, 4, 5) shall include amortization of discount expense and premium on debt without deducting an allowance for borrowed funds used during construction.

Schedule 5  
 Company Profitability and Capital Markets Data

Instructions: This schedule shall be prepared by companies having more than \$3 million in gross annual operating revenue which are not a subsidiary of a telecommunications company, using the definitions provided below and the format of the attached schedule. These companies shall provide data for the two most recent calendar years plus the test period. This information shall be compatible with the latest Stockholders' Annual Reports (including any restatements).

Definitions

Return on Year-End Equity\* =  $\frac{\text{Earnings Available for Common Stockholders}}{\text{Year-End Common Equity}}$

Return on Average Equity\* =  $\frac{\text{Earnings Available for Common Stockholders}}{\text{Average Common Equity}}$

# Regulations

- Income taxes (line 2) shall include federal and state income taxes (in Virginia gross receipts tax should be considered State income tax).

- Earnings before interest and taxes (line 6) equals net income plus income taxes plus total interest = (line 1) + (line 2) + (line 5).

- IDC (line 8), where applicable, is total IDC - allowance for borrowed and other funds.

- Cash flow generated (line 14) = (line 1) + (line 9) + (line 10) + (line 11) + (line 12) - (line 8) - (line 13).

- Construction expenditures (line 15) is net of IDC.

## Coverage definitions for Schedule 6

$$\begin{array}{r} \text{Pre-Tax Interest} \\ \text{Coverage} = \end{array} \frac{\begin{array}{r} \text{Earnings before} \\ \text{Interest \& Taxes} \\ \text{Interest} \end{array}}{\text{Interest}} = \frac{\begin{array}{r} \text{line 6} \\ \text{line 5} \end{array}}$$

$$\begin{array}{r} \text{Common Dividend} \\ \text{Coverage} = \end{array} \frac{\begin{array}{r} \text{Cash Flow} \\ \text{Generated} \\ \text{Common} \\ \text{Dividends} \end{array}}{\text{Common} \\ \text{Dividends}} = \frac{\begin{array}{r} \text{line} \\ 14 \\ \text{line} \\ 16 \end{array}}$$

$$\begin{array}{r} \text{Cash Coverage of} \\ \text{Construction} \\ \text{Expenditures} = \end{array} \frac{\begin{array}{r} \text{Cash Flow} \\ \text{Generated} \\ \text{Construction} \end{array}}{\text{Construction}} = \frac{\begin{array}{r} \text{line} \\ 14 \\ \text{line} \\ 15 \end{array}}$$

## Schedule 6

### Coverage Ratios and Cash Flow Data Test Period

#### Interest Coverage Ratios

##### a. Pre-Tax Method

#### Cash Flow Coverage Ratios

#### a. Common Dividend Coverage

#### b. Cash Flow Coverage of Construction Expenditures

#### Data for Interest Coverage

Line 1. Net Income

Line 2. Income Taxes

Line 3. Interest on Mortgages

Line 4. Other Interest

Line 5. Total Interest

Line 6. Earnings Before Interest and Taxes

Line 7. Estimated Rental Interest Factor (SEC)

#### Data for Cash Flow Coverage

Line 1. Net Income

Line 8. Interest During Construction (IDC)

Line 9. Amortization

Line 10. Depreciation

Line 11. Change in Deferred Taxes

Line 12. Change in Investment Tax Credits

Line 13. Preferred Dividends Paid

Line 14. Cash Flow Generated

Line 15. Construction Expenditures

Line 16. Common Dividends Paid

## Schedule 7

### Comparative Balance Sheets

Instructions: Provide a comparative balance sheet for the test period and the corresponding 12-month period immediately preceding the test period.

## Schedule 8

### Comparative Income Statement

Instructions: Provide a comparative income statement for the test period and the 12-month period immediately preceding the test period.

## Schedule 9

### Rate of Return Statement

Instructions: Use the format of the attached schedule. Column 1 should state the Applicant's total Company per books results for the test period. Non-jurisdictional amounts will be shown in Column 2, and Column 3 will reflect Virginia jurisdictional amounts. Adjustments to test period per books results shall be shown in Column 4. These adjustments shall be explained in Schedule 11. If a calendar year test period is used, Column 1 can be prepared from information filed by Applicant in its annual report to the commission. If a calendar year test period is used, operating revenue line items can be found in Schedule 34 at page 58 of the Annual Report. "Depreciation and Amortization" is set forth on Line 23 of Schedule 35 at page 60 of the Annual Report. "Operating and Maintenance Expense" can be derived by subtracting the amount of depreciation and amortization expense from total operating expenses (Schedule 35, line 68). Interest on customer deposits must be calculated from Applicant's books. Column 6 should show the increase requested by Applicant.

Schedule 9  
Rate of Return Statement Test Period

Total Company Per Books  Col. (1)	Virginia Non- Jurisdic. Amounts  Col. (2)	Jurisdic. Amounts  Col. (3)	Amounts Adjustments  Col. (4)	Effect of After Adjustments  Col. (5)	After Proposed Increase  Col. (6)	Proposed Increase  Col. (7)
<b>Operating Revenues</b>						
Local Service						
Toll Service						
Access Charges						
Miscellaneous						
Less: Uncollectible						
<b>Total Revenues</b>						
 <b>Operating Expenses</b>						
Operating and Maintenance Expense						
Depreciation and Amortization						
Income Taxes						
Taxes Other than Income Taxes						
Gain/Loss on Property Disposition						
<b>Total Expenses</b>						
Operating Income						
Less: Charitable Donations						
Interest Expense on Customer Deposits						
Net Operating Income -- Adjusted						
Plus: Other Income (Expense)						
Less: Interest Expense						
Preferred Dividend Expense						
JDC Capital Expense						
Income Available for Common Equity						
Allowance for working capital						
Net Utility Plant						

---

# Regulations

---

Total Rate Base

Total Capital for  
Ratemaking

Common Equity Capital

Rate of Return Earned  
on Rate Base

Rate of Return Earned  
on Common Equity

## Schedule 10

### Statement of Net Original Cost of Utility Plant and Allowances for Working Capital for the Test Year

Instructions: This schedule should be constructed using the ratemaking policies, procedures, and guidelines last prescribed for Applicant by the commission. The schedule should indicate all property held for future use by account number and the date of the planned use should be shown. In a footnote, applicant should identify the amount of plant and working capital devoted to non-regulated business activities, if any. Such plant shall not be included in the rate base. Applicants should use the format described below. The unamortized balance of investment tax credits shall be deducted from the rate base if the telephone company is subject to Option 1 treatment under I.R.S. Code § 46(f). Column (4) adjustments should be explained and detailed in Schedule 11. Columns (2) and (3) only apply to companies with over \$3,000,000 in gross annual operating revenues which are subsidiaries of telecommunications companies.

## Schedule 10

### Net Original Cost of Utility Plant and Allowances

Total Company Per Books Col. (1)	Non-Jurisdic. Amounts Col. (2)	Jurisdic. Amounts Col. (3)	Adjustments Col. (4)	Amounts After Adjustments Col. (5)
--	--------------------------------------	----------------------------------	-------------------------	--

---

Telephone Plant in Service

Telephone Plant under construction

Property held for future use

#### **Gross Plant**

Less: Reserve for Depreciation

#### **Net Telephone Plant**

#### **Allowance for Working Capital**

Materials and supplies (13-month average)

Cash (20 days of O&M expenses)

#### **Total Allowance for Working Capital**

#### **Other Rate Base Deductions:**

Customer Deposits

Deferred Federal Income Taxes

Customer Advances for Construction

Option 1 Investment Tax Credits

**Total Other Rate Base Deductions**

**Rate Base**

Schedule 11

Explanation of Adjustments to Book Amounts

Instructions: All ratemaking adjustments to test period operations (test period and proforma) are to be fully explained in a supporting schedule to the applicant's Schedules 9 and 10. Such adjustments shall be numbered sequentially beginning with operating revenues. Supporting data for each adjustment, including the details of its calculation, should be provided. Examples of adjustments include:

1. Adjustments to annualize changes occurring during the test period.
2. Adjustments to reflect known and certain changes in wage agreements and payroll taxes occurring in the test period and proforma period (the 12-month period following the test period).
3. Adjustments to reflect depreciation and property taxes based on end-of-period plant balances.
4. Adjustments relating to other known changes occurring during the test period or proforma period.
5. Amounts relating to known and certain changes in company operations that take place in the proforma period can be adjusted through the end of the rate year. The rate year shall be defined as the 12 months following the effective date of new rates. The proforma period shall be defined as the 12 months immediately following the test year.

Schedule 12

Working Papers

Instructions: Provide detailed work papers and supporting schedules of all proposed adjustments. Two copies of this exhibit shall be filed with the commission's ~~Divisions~~ Division of Public Utility Accounting and Economics and Finance. Copies shall be provided to other parties on request. Each schedule shall identify sources of all data. Data shall be clearly identified as actual or estimated.

Schedule 13

Revenue and Expense Schedule

Instructions: The applicant shall provide information about revenues by primary account (consumer classification) and operating and maintenance expenses by primary account during the test period.

The applicant shall also provide a detailed explanation of all revenue and expense item increases and decreases of more than 10% during the test period as compared to the 12-month period immediately preceding the test period. Worksheets

used to compute the percentage change should be available for review upon request.

Schedule 14

Explanation of Proposed Revenue Requirement Calculation

Instructions: Provide a schedule describing the methodology used to determine the revenue requirement shown on Schedule 9, Column 6.

Schedule 15

Additional Revenues

Instructions: Show the calculations of the additional gross revenues and percentage increases by customer classes that would be produced by the new rates during the test period.

Schedule 16

Statement of Compliance

Instructions: Include the following statement signed by the person(s) sponsoring the application:

I, (Name of Sponsoring Party), (Title), affirm that this application complies with the commission's rules for small investor-owned telephone utilities' applications for increases in rates, and I further affirm that the schedules filed to support the application comply with the instructions for the schedules set forth in the Appendix to those rules.

---

(Signature of Sponsoring Party)

---

(Date)

VA.R. Doc. No. R13-3583; Filed March 13, 2013, 7:10 p.m.



---

# GOVERNOR

---

## EXECUTIVE ORDER NUMBER 62 (2013)

### **Implementation of Senate Bill 1256 Relating to Identification Requirements for Voters at the Polling Place on Election Day**

#### Importance of the Initiative

The Commonwealth of Virginia and its people have a strong interest in ensuring that their elections have integrity and reliability. For the citizens of Virginia to have faith in their government, they must have faith and confidence in the conduct and outcome of their elections. This means that government must provide open, honest, and secure elections. As such, Virginia has an abiding interest in deterring and detecting any potential voter fraud. Documented cases of voter fraud have occurred both in Virginia and in other parts of the United States. Virginia's history of some very close elections demonstrates that any voter fraud could negatively affect an election decided by a very small number of votes.

While conducting safe elections, we must absolutely ensure that our voting laws have no discriminatory effect and that eligible voters are able to vote without any unnecessary or burdensome hurdles. All eligible voters regardless of income, race, age, and other factors should be able to have equal access to the electoral process. The great principle of one man, one vote is essential to American democracy, and must be protected. Embracing a vibrant democracy through encouraging young and new voters to participate, and in restoring rights rapidly to qualifying felons has been an important part of this Administration. Now, all voters must be fully informed of any changes in the law that may impact their ability to vote.

#### Enactment of Senate Bill 1256

Virginia has long required voters to bring valid identification to the polling place on Election Day in order to cast a vote. Likewise, federal law has required identification for certain first-time voters in federal elections since the implementation of the Help America Vote Act (HAVA) almost a decade ago. These efforts have made our electoral system less subject to fraud, but we must continue to look for ways to further address any vulnerabilities in our system. Senate Bill 1256 continues that mission, providing a process for individuals to obtain free photo identification cards and requiring that acceptable identification with a photo of the voter be provided on Election Day in order to vote. We must maintain the provisional ballot safeguard for individuals who fail to present proper documentation at the polling place. Maintaining the provisional ballot provides an opportunity to present identification to local electoral boards by multiple means of transmission after the election. While this new act is not effective until election conducted after July 1, 2014, the time for preparation and education is now.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-103 and 2.2-104 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the State Board of Elections, and request that local election officials, take several steps described in this Executive Order.

Specifically, this Executive Order directs the State Board of Elections to take necessary steps to ensure that all eligible Virginia voters are made aware of the provisions of this new law and are given the necessary information in order to provide an appropriate form of identification when voting in the 2014 elections, and provide details on how to attain a free photo identification, if needed. This Executive Order requests that local election officials cooperate in these efforts. I also direct the State Board of Elections, using the funds appropriated in the Fiscal Year 2014 budget, to expeditiously acquire and distribute to local registrars the necessary equipment and materials to allow for creation and distribution of photo voter registration cards.

#### Voter Outreach Campaign

I direct the State Board of Elections to engage in a robust voter outreach campaign to educate voters about the changes to Virginia's voter identification requirements. This outreach campaign will educate the Commonwealth's voters on the following:

1. That photo identification is required at the polling place requiring in elections after July 1, 2014, and that voters who do not bring identification to the polling place or who refuse to provide identification at the polling place will be required to vote a provisional ballot;
2. The list of photo identification documents that will be accepted at the polling place;
3. That a voter may obtain a free form of valid photo identification if the voter does not have an acceptable form of identification; and
4. Provide contact information of the State Board of Elections and local registrar offices for voters to receive answers to any additional questions.

I direct the State Board of Elections to utilize newspaper advertisements, the internet, social media, television and radio (including Public Service Announcements), public town hall meetings, direct mail, public notices in state and local buildings, voter registration offices, and polling places and other means to communicate the information described above to Virginia voters, to the maximum extent that sufficient funds exist for such purposes.

I direct the State Board of Elections to coordinate with local election officials, interested third-party groups including, but

not limited to, the League of Woman Voters, the NAACP, Virginia's political parties, media entities, and other organizations to help educate voters about Virginia's voter identification requirements.

I direct the State Board of Elections to ensure that its voter outreach efforts are directed at all regions of the Commonwealth and in all of its localities.

I encourage local general registrars and electoral board members to conduct their own outreach efforts in coordination with the State Board of Elections. General registrar and electoral board outreach at the local level should target local voters through local media, including radio and television, and print, making efforts to educate voters through outreach to various local community groups.

I direct other state agencies to assist and cooperate with the State Board of Elections and local general registrars in their outreach efforts, including the Department of Social Services, Department of Motor Vehicles, Department of Education, and agencies within the Health and Human Resources Secretariat.

I direct the State Board of Elections to adopt any rules, regulations or guidelines necessary to implement any particulars of this legislation, including the procedures for a voter to apply for and obtain a free photo identification card, or for the implementation of voter outreach efforts.

I direct the State Board of Elections to regularly report to me on the status of the outreach efforts from the date of implementation, July, 1, 2014, through the 2014 General Election.

Effective Date of this Executive Order

This Executive Order shall become effective upon its signing and shall remain in full force and effect until December 1, 2014, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this the 26th day of March, 2013.

/s/ Robert F. McDonnell  
Governor

---

# GENERAL NOTICES/ERRATA

---

## STATE AIR POLLUTION CONTROL BOARD State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a revision to the Commonwealth's state implementation plan (SIP) to attain and maintain the national ambient air quality standard for ozone in the Northern Virginia Ozone Nonattainment Area. The Commonwealth intends to submit the plan revision in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comments on the overall plan revision.

Public comment period: April 8, 2013, to May 8, 2013.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice and another 30-day comment period will be conducted.

Description of proposal: The proposed revision consists of the removal from Virginia's SIP of reference to two permits and a consent agreement for the GenOn (formerly PEPCO) Potomac River Generating Station, Alexandria, Virginia. On December 12, 2012, the department and the company entered into a mutual determination of permanent shutdown of the entire facility. All permits and consent agreements, including the two permits and consent agreement that had been previously approved by EPA into SIP, were rescinded as part of the shutdown agreement. There is, therefore, no longer a need for reference to these documents in the SIP.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia's SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia's SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All materials received are part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website: <http://www.deq.state.va.us/Programs/Air/PublicNotices/airplansandprograms.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. DEQ 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: James B. LaFratta, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3928, FAX (703) 583-3821, TDD (804) 698-4021, or email [james.lafratta@deq.virginia.gov](mailto:james.lafratta@deq.virginia.gov).

## DEPARTMENT OF CONSERVATION AND RECREATION

### Notice of Public Meeting - Elk Creek

The Department of Conservation and Recreation will host a public meeting to discuss the development of a water quality improvement plan for reducing fecal bacteria contamination in Elk Creek within Grayson County, Virginia. The purpose of the meeting is to provide an overview of the process for developing the plan and solicit feedback from local stakeholders regarding the residential and agricultural practices that are needed in order to improve water quality.

The public meeting will be held at the Elk Creek Rescue Squad Building located at 9109 Elk Creek Parkway, Elk Creek, VA, on April 11, 2013, from 6:30 p.m. to 8:30 p.m.

Fecal bacteria levels in Elk Creek do not meet state water quality standards designed to protect the recreational use (e.g., swimming, wading, kayaking, etc.) of this water body. Due to this water quality impairment, a total maximum daily load (TMDL) for fecal bacteria has been developed by the Virginia Department of Environmental Quality (DEQ). A TMDL describes the amount of pollution that a water body can receive and still meet water quality standards. The bacteria TMDL study for Elk Creek was completed in September 2009. The Bacteria TMDL Development for Elk Creek study report can be found on DEQ's website at: <http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/newrvr/elkec.pdf>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of a plan for water bodies that have approved TMDLs, that when implemented, will result in the achievement of TMDLs and attainment of water quality standards. The Virginia Department of Conservation and Recreation has been authorized to develop water quality

improvement plans to implement TMDLs (called a TMDL Implementation Plan or an IP). An IP must provide measurable goals and the date of expected achievement of water quality objectives. An IP must also contain the corrective actions needed and their associated costs, benefits, and environmental impacts.

Questions or information requests should be addressed to Patrick Lizon, TMDL/Watershed Field Coordinator, Virginia Department of Conservation and Recreation, 355 Deadmore Street, Abingdon, VA 24210, email [patrick.lizon@dcr.virginia.gov](mailto:patrick.lizon@dcr.virginia.gov), or telephone (276) 676-5529.

## STATE CORPORATION COMMISSION

### Bureau of Insurance

March 8, 2013

Administrative Letter 2013-03

TO: All Insurers Licensed to Write Accident and Sickness Insurance in Virginia, and All Health Services Plans and Health Maintenance Organizations Licensed in Virginia

RE: 14VAC5-190-10 et seq.: Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers - 2012 Reporting Period

The purpose of this Administrative Letter is to assist carriers in the preparation of the Annual Report of Cost and Utilization Data relating to Mandated Benefits and Providers required pursuant to 14VAC5-190-10 et seq. and § 38.2-3419.1 of the Code of Virginia, and to remind all affected carriers of the reporting requirements applicable to mandated benefits and providers for the 2012 reporting year.

The Virginia total annual written premiums for all accident and sickness policies or contracts referenced in the regulation is the amount reported to the Commission on the company's Annual Statement for the year ending December 31, 2012. This is the amount used to determine if a report is required. If the total annual written premium reported to Virginia for all accident and sickness lines is less than \$500,000 or the company is licensed to issue only credit accident and sickness insurance, the company is exempt from filing any information and a report is not required.

A company may be required to file a complete report or an abbreviated report if the total annual written premium reported to Virginia for all accident and sickness lines is at least \$500,000 (excluding credit only accident and sickness). Carriers should refer to 14VAC5-190-40 for an explanation of the circumstances under which a complete or an abbreviated report must be filed.

Each affected carrier must submit a completed Form MB-1 to furnish the required information. It is not acceptable to submit more than one Form MB-1 for a single carrier or to consolidate information from different carriers on one form.

The completed Form MB-1 (cover sheet and sections) is due on or before May 1, 2013 and may be submitted electronically. The due date may not be extended for any reason, including the inability to file the reports electronically. The instructions, representative CPT and ICD-9-CM codes, and forms for the 2012 reporting period are available on the Bureau of Insurance's website at: <http://www.scc.virginia.gov/boi/co/health/mandben.aspx>.

The instructions explain the type of information necessary to complete Form MB-1. All sources of information, including 14VAC5-190-10 et seq., §§ 38.2-3408 through 38.2-3418.17, as applicable, § 38.2-4221, and CPT and ICD-9-CM codes, should be consulted in the preparation of this report. Please note that the CPT and ICD-9-CM codes are not intended to exhaust all medical codes that may be used in collecting data for Form MB-1, but are representative of some of the more common codes associated with the mandated benefits.

Carriers are reminded that failure to submit a substantially complete and accurate report pursuant to the provisions of 14VAC5-190-10 et seq., by May 1, 2013, may be considered a violation subject to a penalty as set forth in § 38.2-218 of the Code of Virginia. Lack of notice, lack of information, lack of means of producing the required data, or other such reasons will not be accepted for not submitting a complete and accurate report in a timely manner.

Correspondence regarding reporting requirements should be directed to Mary Ann Mason, Principal Insurance Market Examiner, Forms and Rates Section, Bureau of Insurance, Life and Health Division, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9348, FAX (804) 371-9944, or email [maryann.mason@scc.virginia.gov](mailto:maryann.mason@scc.virginia.gov). System related questions or problems should be directed to Andrew Iverson, Insurance Analyst, Bureau of Insurance, Automated Systems, P. O. Box 1157, Richmond, VA 23218, telephone (804) 371-9851, FAX (804) 371-9516, or email [andrew.iverson@scc.virginia.gov](mailto:andrew.iverson@scc.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF CONSERVATION AND RECREATION

### Total Maximum Daily Load Study for North Fork Holston River and Tributaries

Announcement of a public meeting to present a draft TMDL implementation plan for the North Fork Holston River and the following tributaries: Lick Creek, Beaver Creek, Laurel Creek, Locust Cove Creek, Robertson Branch, Turkey Run Creek, Logan Creek, Toole Creek, Tumbling Creek, Wolf Creek, Burmley Creek, Cove Creek, Abrams Creek, Little Moccasin Creek, Nordyke Creek, Smith Creek, Blue Springs Branch, Dowell Branch, Hilton Creek, Possum Creek, and Big Moccasin Creek in Bland, Smyth, Tazewell, Washington, and Scott Counties, Virginia.

---

## General Notices/Errata

---

Public meeting location: Virginia Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA, on April 18, 2013, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation are announcing the final implementation plan to restore water quality, a public comment opportunity, and a public meeting.

Meeting description: Final public meeting on an implementation plan to restore water quality.

Description of plan: This plan follows a total maximum daily load (TMDL) study developed for the North Fork Holston River and tributaries that identified bacteria contamination as the cause for the streams failure to meet the recreational use water quality standard.

The plan outlines the corrective actions needed to reduce the sources of bacteria and their associated costs and benefits, along with measurable goals, and an implementation timeline. The plan focuses on addressing the agricultural, residential, and urban sources of bacteria identified in the TMDL study.

How a decision is made: The development of a TMDL and a TMDL implementation plan includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the implementation plan to the State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, April 18, 2013, to May 20, 2013. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available for the impaired waters from the contacts below or on the DEQ website at <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs.aspx>.

Contact for additional information: Martha Chapman, TMDL Coordinator, Virginia Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, FAX (276) 676-4899, or email [martha.chapman@deq.virginia.gov](mailto:martha.chapman@deq.virginia.gov).

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### **Notice of Public Meeting and Public Comment for a Total Maximum Daily Load Study for James River, Stonewall Creek, Walkers Ford Creek, Wreck Island Creek, Phelps Branch, North Creek, and Bent Creek in Appomattox County and Buffalo River, Long Branch, Mill Creek, Buffalo River, Rutledge Creek, and Turner Creek in Amherst County**

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for the Appomattox County streams on Tuesday, April 23, 2013. The meeting will start at 6 p.m. in the Appomattox County Administration Building located at 153-A Morton Lane, Appomattox, VA 24522. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for the Amherst County streams on Thursday, April 25, 2013. The meeting will start at 6 p.m. in the Central Virginia Community College Amherst Center located at 200 Richmond Highway, Suite 103, Amherst, VA 24521. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

James River (VAC-H05R\_JMS01A00 and VAC-H08R\_JMS01A00) 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.

Stonewall Creek (VAC-H05R\_STW01A08) 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.

Walkers Ford Creek (VAC-H-5R\_WKF01A10) 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.

Wreck Island Creek (VAC-H06R\_WIC01A00) 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.

Phelps Branch (VAC-H06R\_PLP01A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the Aquatic Life Use. The

impairment is based on Benthic Macroinvertebrate Bioassessments.

North Creek (VAC-H06R\_NOT01A10) 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.

Bent Creek (VAC-H07R\_BTC01A00) 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.

Buffalo River (VAC-H11R\_BUF01A00, VAC-H11R\_BUF02A00, and VAC-H11R\_BUF03A00) 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.

Long Branch (VAC-H11R\_LOB02A04) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the Aquatic Life Use. The impairment is based on Benthic Macroinvertebrate Bioassessments.

Mill Creek (VAC-H11R\_MIN01A08) 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.

Buffalo River (VAC-H11R\_BUF04A08) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the Aquatic Life Use. The impairment is based on Benthic Macroinvertebrate Bioassessments.

Rutledge Creek (VAC-H12R\_RTD01A00) 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.

Rutledge Creek (VAC-H12R\_RTD01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the Aquatic Life Use. The impairment is based on Benthic Macroinvertebrate Bioassessments.

Turner Creek (VAC-H12R\_THR01A08) 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.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL priority list and report 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 Appomattox County meeting will extend from April 23, 2013, to May 23, 2013.

The public comment period on materials presented at the Amherst County meeting will extend from April 25, 2013, to May 25, 2013.

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).

### STATE BOARD OF HEALTH

#### Notice of Periodic and Small Business Impact 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 conducting a periodic review of 12VAC5-230, State Medical Facilities Plan.

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 April 22, 2013, and ends on May 14, 2013.

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 Peter Boswell, Director, Division of Certificate of Public Need, 9960 Mayland Drive,

---

## General Notices/Errata

---

Suite 401, Richmond, VA 23233, telephone (804) 367-2102, FAX (804) 367-2149, or email peter.boswell@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 Virginia Regulatory 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 March 11, 2013. 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 Nine (13)

Virginia Lottery's "2nd Chance Jeep® Vehicle Scratcher Sweepstakes" Final Requirements for Operation (effective March 8, 2013)

#### Director's Order Number Eleven (13)

Virginia's Instant Game Lottery 1389 "Power 9S" Final Rules for Game Operation (effective March 5, 2013)

#### Director's Order Number Twelve (13)

Virginia's Instant Game Lottery 1368 "Joker's Jackpot" Final Rules for Game Operation (effective March 5, 2013)

### SAFETY AND HEALTH CODES BOARD

#### Notice of Periodic and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Safety and Health Codes Board is conducting periodic reviews of:

- 1) 16VAC25-30, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes-Incorporation By Reference, 40 CFR 61.140 through 40 CFR 61.156
- 2) 16VAC25-70, Virginia Confined Space Standard for the Telecommunications Industry
- 3) 16VAC25-97, Reverse Signal Procedures - General Industry - Vehicles/Equipment Not Covered by Existing Standards
- 4) 16VAC25-140, Virginia Confined Space Standard for the Construction Industry

5) 16VAC25-150, Underground Construction, Construction Industry

6) 16VAC25-170, Virginia Excavation Standard, Construction Industry

The review of these regulations will be guided by the principles in Executive Order 14 (2010) and § 2.2-4007.1 of the Code of Virginia. The purpose of this review is to determine whether each of the regulations listed should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 April 22, 2013, and ends on June 6, 2013.

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, 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) 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 Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Periodic and Small Business Impact Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Social Services is conducting a periodic review of 22VAC40-35, Virginia Independence Program.

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 April 8, 2013, and ends on April 29, 2013.

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 Mark Golden, TANF Program Manager, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7357, or email [mark.golden@dss.virginia.gov](mailto:mark.golden@dss.virginia.gov).

Comments must include the commenter's name and address (physical or email) in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

### STATE WATER CONTROL BOARD

#### Proposed Consent Special Order for Bank of America, National Association

An enforcement action has been proposed for Bank of America, National Association for alleged violations at Bank of America VA Greenfield, at White Oak Technology Park, Henrico VA. The State Water Control Board proposes to issue a consent special order to Bank of America, National Association 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 April 8, 2013, to May 10, 2013.

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 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/>.

**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.



