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REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 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.

PUBLICATION SCHEDULE AND DEADLINES

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

October 2013 through December 2014

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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 **(Tuesday)**	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 **(Monday)**	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
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014
30:23	June 25, 2014	July 14, 2014
30:24	July 9, 2014	July 28, 2014
30:25	July 23, 2014	August 11, 2014
30:26	August 6, 2014	August 25, 2014
31:1	August 20, 2014	September 8, 2014
31:2	September 3, 2014	September 22, 2014
31:3	September 17, 2014	October 6, 2014
31:4	October 1, 2014	October 20, 2014
31:5	October 15, 2014	November 3, 2014
31:6	October 29, 2014	November 17, 2014
31:7	November 12, 2014	December 1, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF LONG-TERM CARE ADMINISTRATORS

Agency Decision

Title of Regulation: **18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.**

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Name of Petitioner: Ivy Sharpe.

Nature of Petitioner's Request: Changes to 18VAC95-30-180. Preceptors. The preceptor must attend annual training related to the ALF AIT program after the application for new preceptors has been approved or prior to the renewal date of the preceptor's license. Training will be administered by the board or by an approved trainer. The preceptor shall not allow the trainee to assume administrator's duties or responsibilities without the presence of the preceptor only if the trainee has not been approved as an acting administrator. The preceptor shall enter into an ALF AIT contract agreement with the trainee. The preceptor and the trainee must agree to the starting and ending dates of the ALF AIT program. The contract agreement must be signed by the preceptor and the trainee. The contract agreement form will be prescribed by the board.

Changes to 18VAC95-30-190. Reporting requirements. The trainee shall submit an evaluation of the preceptor within 10 days following the completion of the ALF AIT program or if the program is interrupted because the registered preceptor is unable to serve. The evaluation form will be prescribed by the board.

Agency Decision: Request denied.

Statement of Reason for Decision: On Tuesday, September 24, 2013, the board considered the petition and decided to retain the current requirements for the time being. While the board agreed that annual training for preceptors may be desirable, it does not have the personnel or resources to develop and conduct such training. The board will continue to monitor the availability of training from other providers that could be included in the future as part of continuing education requirements for administrators. Current regulations require the preceptor to be "routinely present" in the same facility, and the board does hold preceptors accountable for the services provided to residents in a training program. Finally, the board does not prescribe a contract agreement but will begin including a space for the signature of the preceptor on the ALF-AIT application to help ensure that person understands his/her responsibilities for training. The board has requested that more information be obtained about training and preceptorships and be referred to a committee for further consideration.

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

VA.R. Doc. No. R13-34; Filed September 26, 2013, 3:59 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Board for Asbestos, Lead, and Home Inspectors intends to consider amending **18VAC15-30, Virginia Lead-Based Paint Activities Regulations.** The purpose of the proposed action is to provide for the establishment of examination fees by a third-party vendor through the competitive negotiation process pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Examination candidates will be required to pay for the actual cost of the examination, which has been competitively negotiated and bargained for by the department and is subject to contracted charges.

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

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public Comment Deadline: November 20, 2013.

Agency Contact: Trisha Henshaw, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email alhi@dpor.virginia.gov.

VA.R. Doc. No. R14-3849; Filed September 20, 2013, 9:02 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-10, 4VAC20-260-40, 4VAC20-260-50, 4VAC20-260-60).**

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: October 1, 2013, to October 31, 2013.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Preamble:

This emergency chapter establishes clean cull and seed areas, size limits, culling requirements, and inspection procedures for oysters taken from public oyster beds, rocks, and shoals in the Chesapeake Bay and its tributaries and on all oyster grounds on the seaside of the Eastern Shore.

4VAC20-260-10. Purpose.

The purpose of this emergency chapter is to establish clean cull and seed areas, culling requirements, minimum cull size, and inspection procedures that will provide protection for the public oyster beds, rocks, and shoals in Virginia's tidal waters.

4VAC20-260-40. Culling tolerances or standards.

A. In the clean cull areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel inspected by a police officer, it shall constitute a violation of this emergency chapter, except as described in ~~subsection E of~~ 4VAC20-260-30 E.

B. In the James River seed areas, if more than a six-quart measure of shells is found in any bushel of seed oysters inspected by a police officer, it shall constitute a violation of this emergency chapter.

C. In the James River seed areas, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found in any bushel of clean cull oysters inspected by a police officer, it shall constitute a violation of this emergency chapter.

D. From the seaside of the Eastern Shore, if more than a four-quart measure of any combined quantity of oysters less than three inches and shells of any size are found per bushel of clean cull oysters inspected by a police officer, it shall constitute a violation of this emergency chapter.

E. Any oysters less than the minimum cull size or any amount of shell that exceeds the culling standard shall be returned immediately to the natural beds, rocks, or shoals from where they were taken.

F. Oysters less than the minimum cull size that are ~~attached~~ adhering so closely ~~on~~ to the shell of ~~a~~ any marketable oyster as to render removal impossible without destroying the oysters less than the minimum cull size need not be removed~~,~~ but shall be considered part of the culling tolerance during inspection.

4VAC20-260-50. Culling and inspection procedures.

A. All oysters taken from natural public beds, rocks, or shoals shall be placed on the culling board, or in only one basket upon the culling board, and culled by hand at the location of harvest.

1. Culled oysters shall be transferred immediately from the culling board to either the inside open part of the boat, a loose pile, or baskets, but only one transfer method may be used on any boat or vessel in any one day.

a. Oysters shall not be stored in both a loose pile and in baskets.

b. A single basket may be on board any boat during transfer of culled oysters from the culling board to the inside open part of the boat in a loose pile.

2. The entire harvest shall be subject to inspection, as provided in subsection F of this section.

B. Any oysters taken lawfully by hand from natural public beds, rocks, or shoals from the seaside of the Eastern Shore, and held in sacks, bags, or containers, shall be culled when taken and placed in those sacks, bags, or containers for inspection by any police officer as described in subsection G of this section.

C. If oysters from leased grounds and oysters from public grounds are mixed in the same cargo on a boat or motor vehicle, the entire cargo shall be subject to inspection under this emergency chapter.

D. All oysters taken from public grounds shall be sold or purchased in the regular oyster one-half bushel or one bushel measure as described in § 28.2-526 of the Code of Virginia,

or the alternate container described in subsection E of this section; except that on the seaside of the Eastern Shore oysters may be sold without being measured if both the buyer and the seller agree to the number of bushels of oysters in the transaction.

E. An alternate container produced by North Machine Shop in Mathews, Virginia, may be used for measuring oysters to be sold or purchased. The dimensions of this metallic cylindrical container shall be 18.5 inches inside diameter and 11 inches inside height.

F. Oysters may be inspected by any police officer according to any one of the following provisions:

1. For any oysters transferred from the culling board to the inside open part of the boat, vehicle, or trailer~~, or~~ in a loose pile, any police officer may use a shovel to take at least one bushel of oysters to inspect, at random, provided that the entire bushel shall be taken from one place in the open pile of oysters~~.~~;

2. For any oysters transferred from the culling board to one or more baskets, any police officer may select one or more baskets of oysters~~,~~ and empty the contents of those baskets ~~in a loose pile and use a shovel to take, at random, at least one bushel of oysters for inspection~~ into a bushel container, as described in § 28.2-526 of the Code of Virginia, for inspection.

G. In the inspection of oysters harvested by hand from waters of the seaside of the Eastern Shore, the police officer may select any sacks, bags, or containers at random to establish a full metallic measuring bushel for purposes of inspection.

4VAC20-260-60. Penalty.

A. As set forth in §§ 28.2-510 and 28.2-511 of the Code of Virginia, any person, firm, or corporation violating any provision of this emergency chapter except 4VAC20-260-50 D shall be guilty of a Class 3 misdemeanor.

B. As set forth in § 28.2-526 of the Code of Virginia, any person violating any provision of 4VAC20-260-50 D of ~~the~~ this emergency chapter shall be guilty of a Class 1 misdemeanor.

C. In addition to the penalty prescribed by law, any person violating any provision of this emergency chapter shall place the entire load of shellfish overboard on the nearest oyster sanctuary or closed shellfish area, at the direction of the police officer, and shall cease harvesting on that day. In cases where shellfish associated with a violation, by any person, cannot be returned overboard, that person shall destroy, in the presence of a police officer, all shellfish in his possession. All harvesting apparatus may be subject to seizure and, pursuant to § 28.2-232 of the Code of Virginia, all licenses and permits may be subject to revocation following a hearing before the Marine Resources Commission.

VA.R. Doc. No. R14-3886; Filed September 30, 2013, 2:00 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40, 4VAC20-720-60, 4VAC20-720-70, 4VAC20-720-75, 4VAC20-720-80).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: November 1, 2013.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments establish the 2013 public oyster harvest season, by hand scrape, for Pocomoke Sound Public Ground Numbers 9 and 10.

4VAC20-720-20. Definitions.

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

"Aid to navigation" means any public or private day beacon, lighted channel marker, channel buoy, lighted channel buoy, or lighthouse that may be at, or adjacent to, any latitude and longitude used in area descriptions.

"Coan River Area" means that area of the Coan River inside of Public Grounds 77 and 78 of Northumberland County.

Public Ground 77 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 2,300 feet northeast of Honest Point and 1,300 feet southwest of Travis Point, said point being Corner 1, located at Latitude 37° 59.5257207' N., Longitude 76° 27.8810639' W.; thence southwesterly to Corner 2, Latitude 37° 59.3710259' N., Longitude 76° 27.9962148' W.; thence southwesterly to Corner 3, Latitude 37° 59.2953830' N., Longitude 76° 28.0468953' W.; thence northwesterly to Corner 4, Latitude 37° 59.3350863' N., Longitude 76° 28.0968837' W.; thence northeasterly to Corner 5, Latitude 37° 59.3965161' N., Longitude 76° 28.0287342' W.; thence northwesterly to Corner 6, Latitude 37° 59.4758507' N., Longitude 76° 28.1112280' W.; thence north-northwesterly to Corner 7, Latitude 37° 59.5079401' N., Longitude 76° 28.1230058' W.; thence northeasterly to Corner 8, Latitude 37° 59.5579153' N., Longitude 76° 27.9889429' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

Public Ground 78 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 3,420 feet southeast of Travis Point and 3,260 feet northwest of Great Point, said point being Corner 1, located at Latitude 37° 59.4822275' N., Longitude 76° 27.1878637' W.; thence southeasterly to Corner 2, Latitude 37° 59.3824046' N., Longitude 76° 27.1088650' W.; thence southwesterly to Corner 3, Latitude 37°59.2283287' N., Longitude 76° 27.8632901' W.; thence northeasterly to Corner 4, Latitude 37° 59.4368502' N., Longitude 76° 27.6868001' W.; thence continuing northeasterly to Corner 5, Latitude 37° 59.5949216' N., Longitude 76°27.5399436' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Deep Rock Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay near Gwynn Island, beginning at Cherry Point at the western-most point of the eastern headland of Kibble Pond located at Latitude 37° 30.9802148' N., Longitude 76° 17.6764393' W.; thence northeasterly to the Piankatank River, Flashing Green Channel Light "3", Latitude 37° 32.3671325' N., Longitude 76° 16.7038334' W.; thence east-southeasterly to the Rappahannock River Entrance Lighted Buoy G"1R", Latitude 37° 32.2712833' N., Longitude 76° 11.4813666' W.; thence southwesterly to the southern-most point of Sandy Point, the northern headland of "The Hole in the Wall", Latitude 37° 28.1475258' N., Longitude 76° 15.8185670' W.; thence northwesterly along the Chesapeake Bay mean low water line of the barrier islands of Milford Haven, connecting headland to headland at their eastern-most points, and of Gwynn Island to the western-most point of the eastern headland of Kibble Pond on Cherry Point, said point being the point of beginning.

"Deep Water Shoal State Replenishment Seed Area" or "DWS" means that area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287' N., Longitude 76° 38.3213007' W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380' N., Longitude 76° 37.8300582' W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524' N., Longitude 76° 37.0574269' W.; thence westerly to Corner 4, Latitude 37° 08.4466039 N., Longitude 76° 37.4523346' W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489' N., Longitude 76° 38.0215553' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Great Wicomico River Area" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W.; thence easterly to the southern-most point of Cockrell Point, Latitude 37° 49.2664838' N., Longitude 76° 17.3454434' W.; thence easterly following the mean low water line of Cockrell Point to a point on the boundary of Public Ground 115 at Cash Point, Latitude 37° 49.2695619' N., Longitude 76° 17.2804046' W.; thence southeasterly to the gazebo on the pierhead at Fleets Point, Latitude 37° 48.7855824' N., Longitude 76° 16.9609311' W.; thence southeasterly to the Great Wicomico Lighthouse; thence due south to a point due east of the southern-most point of Dameron Marsh, Latitude 37° 46.6610003' N., Longitude 76° 16.0570007' W.; thence due east to the southern-most point of Dameron Marsh, Latitude 37° 46.6609070' N., Longitude 76° 17.2670707' W.; thence along the mean low water line of Dameron Marsh, north and west to Garden Point, Latitude 37° 47.2519872' N., Longitude 76° 18.4028142' W.; thence northwesterly to Windmill Point, Latitude 37° 47.5194547' N., Longitude 76° 18.7132194' W.; thence northerly along the mean low water to the western headland of Harveys Creek, Latitude 37° 47.7923573' N., Longitude 76° 18.6881450' W.; thence east-southeasterly to the eastern headland of Harveys Creek, Latitude 37° 47.7826936' N., Longitude 76° 18.5469879' W.; thence northerly along the mean low water line, crossing the entrance to Towels Creek at the offshore ends of the jetties and continuing to Bussel Point, Latitude 37° 48.6879208' N., Longitude 76° 18.4670860' W.; thence northwesterly to the northern headland of Cranes Creek, Latitude 37° 48.8329168' N., Longitude 76° 18.7308073' W.; thence following the mean low water line northerly to a point on Sandy Point, said point being the point of beginning.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"Hand tong" or "ordinary tong" means any pincers, nippers, tongs, or similar device used in catching oysters, which consist of two shafts or handles attached to opposable and complementary pincers, baskets, or containers operated entirely by hand, from the surface of the water and has no external or internal power source.

"James River Area" means those public grounds of the James River and Nansemond River west of the Monitor Merrimac Memorial Bridge Tunnel (Route I-664), northeast of the Mills E. Godwin, Jr. Bridge (U.S. Route 17) on the Nansemond River, and south of the James River Bridge (U.S. Route 17).

"Latitude and longitude" means values that are based upon a geodetic reference system of the North American Datum of 1983 (NAD83). When latitude and longitude are used in any area description, in conjunction with any physical landmark, to include aids to navigation, the latitude and longitude value is the legal point defining the boundary.

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43 of Northumberland County, located in the Little Wicomico River near Bridge Creek, beginning at a point approximately

150 feet north of Peachtree Point, said point being Corner 1, located at Latitude 37° 53.2910650' N., Longitude 76° 16.7312926' W.; thence southwesterly to Corner 2, Latitude 37° 53.2601877' N., Longitude 76° 16.8662408' W.; thence northwesterly to Corner 3, Latitude 37° 53.2678470' N., Longitude 76°16.8902408' W.; thence northeasterly to Corner 4, Latitude 37° 53.3113148' N., Longitude 76° 16.8211543' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Milford Haven" means that area of Milford Haven inside of Public Ground 7 of Mathews County, beginning at a point approximately 1,380 feet east of Point Breeze, said point being Corner 1, located at Latitude 37° 28.3500000' N., Longitude 76° 16.5000000' W.; thence northeasterly to Corner 2, Latitude 37° 28.3700000' N., Longitude 76° 16.4700000' W.; thence southeasterly to Corner 3, Latitude 37° 28.3500000' N., Longitude 76° 16.4200000' W.; thence southwesterly to Corner 4, Latitude 37° 28.3200000' N., Longitude 76° 16.4500000' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

"Mobjack Bay Area" means those areas of Mobjack Bay consisting of Public Ground 25 of Gloucester County (Tow Stake) and that portion of Public Ground 2 of Mathews County known as Pultz Bar described as:

Public Ground 25 of Gloucester County, known as Tow Stake, is located in Mobjack Bay, near the mouth of the Severn River, beginning at a point approximately 2,880 feet east-northeast of Tow Stake Point, said point being Corner 1, located at Latitude 37° 20.3883888' N., Longitude 76° 23.5883836' W.; thence northeasterly to Corner 2, Latitude 37° 30.5910482' N., Longitude 76° 23.2372184' W.; thence southeasterly to Corner 3, Latitude 37° 20.3786971' N., Longitude 76° 22.7241180' W.; thence southwesterly to Corner 4, Latitude 37° 19.8616759' N., Longitude 76° 23.5914937' W.; thence northwesterly to Corner 5, Latitude 37° 20.0284019' N., Longitude 76° 23.7717423' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

Public Ground 2 of Mathews County, known as Pultz Bar, is located in Mobjack Bay, beginning at a point approximately 5,420 feet south of Minter Point, said point being Corner 1, located at Latitude 37° 21.2500000' N., Longitude 76° 21.3700000' W.; thence easterly to Corner 2, Latitude 37° 21.2700000' N., Longitude 76° 20.9600000' W.; thence southerly to Corner 3, Latitude 37° 21.0200000' N., Longitude 76° 20.9400000' W.; thence westerly to Corner 4, Latitude 37° 21.0500000' N., Longitude 76° 21.3300000' W.; thence northerly to Corner 1, said corner being the point of beginning.

"Nomini Creek Area" means that area of Nomini Creek inside of Public Grounds 26 and 28 of Westmoreland County.

Public Ground 26 of Westmoreland County is located in Nomini Creek, north of Beales Wharf and east of Barnes Point, beginning at a point approximately 1,400 feet north of Barnes Point, said point being Corner 1, located at Latitude 38° 07.2690219' N., Longitude 76° 42.6784210' W.; thence southeasterly to Corner 2, Latitude 38° 07.0924060' N., Longitude 76° 42.4745767' W.; thence southwesterly to Corner 3, Latitude 38° 06.8394053' N., Longitude 76° 42.6704025, W.; thence northwesterly to Corner 4, Latitude 38° 06.8743004' N., Longitude 76° 42.7552151' W.; thence northeasterly to Corner 5, Latitude 38° 07.0569717' N., Longitude 76° 42.5603535' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 28 of Westmoreland County is located at the mouth of Nomini Creek, beginning at a point approximately 50 feet west of White Oak Point, said point being Corner 1, located at Latitude 38° 07.6429987' N., Longitude 76° 43.0337082' W.; thence south-southeasterly to Corner 2, Latitude 38° 07.2987193' N., Longitude 76° 43.1101420' W.; thence northwesterly to Corner 3, Latitude 38° 07.7029267' N., Longitude 76° 43.3337762' W.; thence west to the mean low water line, Latitude 38° 07.7031535' N., Longitude 76° 43.3378345' W.; thence northerly and westerly along the mean low water line of Nomini Creek to a point southwest of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence northeasterly to a point on the mean low water line at the southern-most point of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence following the mean low water line of the southern and eastern sides of Cedar Island to a point, Latitude 38° 08.0164430' N., Longitude 76° 43.4773169' W.; thence northeasterly to Corner 4, Latitude 38° 08.0712849' N., Longitude 76° 43.4416606' W.; thence northeasterly to a point on the northern headland of Nomini Creek at the mean low water line, said point being Corner 5, Latitude 38° 08.2729626' N., Longitude 76° 43.3105315' W.; thence following the mean low water line of White Point to a point northwest of Snake Island, Corner 6, Latitude 38° 08.4066960' N., Longitude 76° 42.9105565' W.; thence southeast, crossing the mouth of Buckner Creek, to a point on the mean low water line of Snake Island, Corner 7, Latitude 38° 08.3698254' N., Longitude 76° 42.8939656' W.; thence southeasterly following the mean low water line of Snake Island to Corner 8, Latitude 38° 08.2333798' N., Longitude 76° 42.7778877' W.; thence south-southwesterly, crossing the mouth of Buckner Creek, to Corner 9, Latitude 38° 08.2134371' N., Longitude 76° 42.7886409' W.; thence southeasterly to a point on the mean low water line of the southern headland of Buckner Creek, Corner 10, Latitude 38° 08.1956281' N., Longitude 76° 42.7679625' W.; thence southwesterly following the mean low water line of Nomini Creek, crossing the mouth of an un-named cove at the narrowest point between the headlands and continuing to follow the mean low water line to a point on White Oak Point, Latitude 38°

07.6428228' N., Longitude 76° 43.0233530' W.; thence west to Corner 1, said point being the point of beginning.

"Oyster dredge" means any device having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, and maximum tooth length of four inches.

"Oyster patent tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Oyster resource user fee" means a fee that must be paid each calendar year by anyone who grows, harvests, shucks, packs, or ships oysters for commercial purposes.

"Pocomoke Sound Area" means that area of Pocomoke Sound inside of Public Grounds 9 and 10 of Accomack County.

Public Ground 9 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 1.06 nautical miles north-northeast of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 57.2711566' N., Longitude 75° 42.2870790' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 57.2896577' N., Longitude 75° 41.9790727' W.; thence southerly to Corner 3, Latitude 37° 57.2574850' N., Longitude 75° 41.9790730' W.; thence southwesterly to Corner 4, Latitude 37° 57.2288700' N., Longitude 75° 42.0077287' W.; thence west-southwesterly to Corner 5, Latitude 37° 57.2034533' N., Longitude 75° 42.1511250' W.; thence south-southwesterly to Corner 6, Latitude 37° 57.0940590' N., Longitude 75° 42.1935214' W.; thence south-southeasterly to Corner 7, Latitude 37° 57.0551726' N., Longitude 75° 42.1814457' W.; thence southwesterly to Corner 8, Latitude 37° 56.9408327' N., Longitude 75° 42.2957912' W.; thence south-southwesterly to Corner 9, Latitude 37° 56.6574947' N., Longitude 75° 42.3790819' W.; thence southwesterly to Corner 10, Latitude 37° 56.5790952' N., Longitude 75° 42.5228752' W.; thence west-southwesterly to Corner 11, Latitude 37° 56.5712564' N., Longitude 75° 42.5915437' W.; thence south-southeasterly to Corner 12, Latitude 37° 56.5441067' N., Longitude 75° 42.5869894' W.; thence southwesterly to Corner 13, Latitude 37° 56.4575045' N., Longitude 75° 42.7458050' W.; thence west-southwesterly to Corner 14, Latitude 37° 56.2575123' N., Longitude 75° 43.3791097' W.; thence southwesterly to Corner 15, Latitude 37° 55.7408688' N., Longitude 75° 43.7957804' W.; thence westerly to Corner 16, Latitude 37° 55.7575327' N., Longitude 75° 43.9458298' W.; thence northwesterly to Corner 17, Latitude 37° 55.8908661' N., Longitude 75° 44.1291309' W.; thence north-northeasterly to Corner 18, Latitude 37° 55.9908639' N., Longitude 75° 44.0791266' W.; thence northeasterly to Corner 19, Latitude 37° 56.1241858' N., Longitude 75° 43.8791328' W.; thence north-northeasterly to Corner 20, Latitude 37° 56.4075136' N., Longitude 75° 43.7291361' W.; thence northeasterly to Corner 21, Latitude 37° 56.8241664' N., Longitude 75° 43.2624601' W.; thence north-northeasterly to Corner 22, Latitude 37° 57.0706006' N., Longitude 75° 43.1480402' W.; thence east-northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

Public Ground 10 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 2.3 nautical miles westerly of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 56.4741881' N., Longitude 75° 45.7051676' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 56.9261140' N., Longitude 75° 43.7679786' W.; thence south-southwesterly to Corner 3, Latitude 37° 56.1241948' N., Longitude 75° 44.3624962' W. ; thence west-southwesterly to Corner 4, Latitude 37° 56.0820561' N., Longitude 75° 44.5826292' W.; thence northerly to Corner 5, Latitude 37° 56.1377309' N., Longitude 75° 44.5817745' W.; thence west-southwesterly to Corner 6, Latitude 37° 56.1259751' N., Longitude 75° 44.6226859' W.; thence southwesterly to Corner 7, Latitude 37° 56.1039335' N., Longitude 75° 44.6692334' W.; thence southerly to Corner 8, Latitude 37° 56.0643616' N., Longitude 75° 44.6750106' W.; thence west-southwesterly to Corner 9, Latitude 37° 55.9742005' N., Longitude 75° 45.1458109' W.; thence west-northwesterly to Corner 10, Latitude 37° 56.0741973' N., Longitude 75° 45.8958329' W.; thence north-northwesterly to Corner 11, Latitude 37° 56.2565760' N., Longitude 75° 46.0000557' W.; thence northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

"Pocomoke and Tangier Sounds Management Area" or "PTSMA" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke and Tangier Sounds Rotation Area 1" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at a point on the Maryland-Virginia state line, located at Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence south to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence westerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence south to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence easterly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence northerly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southeasterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence southeasterly to

Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence southeast to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence southerly to a point on a line from Guilford Flats Junction Light to the northern-most point of Russell Island, where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence clockwise following the PTSMA boundary to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Pocomoke and Tangier Sounds Rotation Area 2" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at the house on Great Fox Island, located at Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southerly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence westerly to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence northerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence easterly to the house on Great Fox Island, said house being the point of beginning. Also, Pocomoke and Tangier Sounds Rotation Area 2 shall include all public grounds and unassigned grounds in the PTSMA in Pocomoke Sound bounded by a line beginning at a point on the Maryland-Virginia state line, Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence following the PTSMA boundary clockwise to a point on the line from the northern-most point of Russell Island to Guilford Flats Junction Light Flashing 2+1 Red "GF", where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence northerly to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence northwesterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence northwesterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence northwesterly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence northerly to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia or by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Rappahannock River Area 7" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Rogue Point, located at Latitude 37° 40.0400000' N., Longitude 76° 32.2530000' W.; thence west-northwesterly to Flashing Red Buoy "8", Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.; and bounded upstream by a line from Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; thence southeasterly to Monaskon Point, Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.

"Rappahannock River Area 8" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Monaskon Point, located at Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.; thence northwesterly to Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; and bounded upstream by a line from Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; thence north-northwesterly to Sharps Point, Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.

"Rappahannock River Area 9" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Sharps Point, located at Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.; thence south-southeasterly to Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; and bounded upstream by the Thomas J. Downing Bridge (U.S. Route 360).

"Rappahannock River Rotation Area 1" means all public grounds, in that area of the Rappahannock River and Chesapeake Bay, bounded by a line offshore and across the mouth of the Rappahannock River from a point on the mean low water line of Windmill Point, located at Latitude 37° 35.7930000' N., Longitude 76° 14.1800000' W.; thence southeast to Windmill Point Light, Latitude 37° 35.7930000' N., Longitude 76° 14.1800000' W.; thence southwesterly to Stingray Point Light, Latitude 37° 33.6730000' N., Longitude 76° 16.3620000' W.; thence westerly to a point on the mean low water line of Stingray Point, Latitude 37° 33.6920000' N., Longitude 76° 17.9860000' W.; and bounded upstream by a line from the mean low water line west of Broad Creek, Latitude 37° 33.9520000' N., Longitude 76° 19.3090000' W.; thence northeasterly to a VMRC Buoy on the Baylor line, Latitude 37° 34.5390000' N., Longitude 76° 19.0220000' W.; thence northeasterly to a VMRC Buoy, Latitude 37° 34.6830000' N., Longitude 76° 19.1000000' W.; thence northwesterly to a VMRC Buoy, Latitude 37° 35.0170000' N., Longitude 76° 19.4500000' W.; thence northwesterly to Sturgeon Bar Light "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence continuing northwesterly to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence northwesterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 2" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from the southern-most corner of the house on Mosquito Point, located at Latitude 37° 36.5230000'

N., Longitude 76° 21.5950000' W.; thence southeast to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence continuing southeasterly to Sturgeon Bar Beacon "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence west-southwesterly to a VMRC Buoy, Latitude 37° 34.9330000' N., Longitude 76° 21.0500000' W.; thence southwesterly to a VMRC Buoy, Latitude 37° 34.8830000' N., Longitude 76° 21.1000000' W.; thence southwesterly to a pier west of Hunting Creek at Grinels, Latitude 37° 34.4360000' N., Longitude 76° 26.2880000' W.; and bounded on the upstream by a line from Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 26.9500000' W.; thence northeasterly to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence northeasterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000'0 W.

"Rappahannock River Rotation Area 3" means all public grounds, in that area of the Rappahannock River, beginning from the north channel fender at the Robert O. Norris, Jr. Bridge, located at Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence southeast to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southwest to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence southwesterly to Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 24.9500000' W.; thence northeasterly to Parrotts Creek Channel Marker "1", Latitude 37° 36.0330000' N., Longitude 76° 25.4170000' W.; thence northerly to VMRC Buoy, Latitude 37° 36.3330000' N., Longitude 76° 25.2000000' W.; thence northerly to the north channel fender of the Robert O. Norris, Jr. Bridge, said point being the point of beginning.

"Rappahannock River Rotation Area 4" means all public grounds, in that area of the Rappahannock River, Corrotoman River and Carter Creek, beginning at the White Stone end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 38.1290000' N., Longitude 76° 24.7220000' W.; thence along said bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence westerly to the VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence northerly to Old House Point, Latitude 37° 39.1390000' N., Longitude 76° 29.6850000' W.; thence northeasterly to Ball Point, Latitude 37° 41.6600000' N., Longitude 76° 28.6320000' W.; thence southeasterly to VMRC reef marker "Ferry Bar – North", Latitude 37° 40.3000000' N., Longitude 76° 28.5000000' W.; thence southwesterly to VMRC reef marker "Ferry Bar – South", Latitude 37° 40.1670000' N., Longitude 76° 28.5830000' W.; thence southeasterly to a duck blind west of Corrotoman Point, Latitude 37° 39.8760000' N., Longitude 76° 28.4200000' W.; thence southerly to VMRC Buoy "543", Latitude 37° 39.2670000' N., Longitude 76° 27.8500000' W.; thence southerly to VMRC Buoy "Drumming-West", Latitude 37° 38.8830000' N., Longitude 76° 27.6830000' W.; thence southerly to VMRC Buoy "Drumming-East", Latitude 37° 38.8330000' N., Longitude 76° 27.5670000' W.; thence northeasterly to Orchard Point, Latitude 37° 38.9240000' N., Longitude 76° 27.1260000' W.

"Rappahannock River Rotation Area 5" means all public grounds, in that area of the Rappahannock River, beginning at the Greys Point end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 36.8330000' N., Longitude 76° 25.9990000' W.; thence northeasterly along the bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence west-northwesterly to VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence westerly to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence south to the eastern headland of Whiting Creek, Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.

"Rappahannock River Rotation Area 6" means all public grounds, in that area of the Rappahannock River, beginning on the eastern headland of Whiting Creek, located at Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.; thence north to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence northwesterly to VMRC White House Sanctuary Buoy, Latitude 37° 38.1500000' N., Longitude 76° 30.5330000' W.; thence northwesterly to VMRC Towles Point Area Buoy, Latitude 37° 38.8330000' N., Longitude 76° 31.5360000' W.; thence northwesterly to Flashing Red Buoy "8" off Rogue Point, Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.

"Thomas Rock Area" means all public grounds and unassigned grounds, in that area of the James River, with an eastern boundary being the upstream side of the James River Bridge (U.S. Route 17), and a western boundary being a line drawn from the south side of the river at Rainbow Farm Point, a point on the shore, in line with VMRC Markers "STH" and "SMT", located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH", Latitude 37° 00.9815328 N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT", at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3449949' N., Longitude 76° 32.7689936' W.; thence northeasterly to a VMRC Marker "NMT", Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, said point being in line with VMRC Markers "NMT" and "NTH" and located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.

"Unassigned ground" means all those grounds defined by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Upper Chesapeake Bay - Blackberry Hangs Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay, bounded by a line, beginning at a point approximately 300 feet east of the mean low water line of the Chesapeake Bay and approximately 1,230 feet southwest of the end of the southern-most stone jetty at the mouth of the Little Wicomico River, said point being Corner 1, Latitude 37° 53.1811193' N., Longitude 76° 14.1740146' W.; thence east-southeasterly to Corner 2, Latitude 37° 52.9050025' N., Longitude 76° 11.9357257' W.; thence easterly to Corner 3, Latitude 37° 52.9076552' N., Longitude 76° 11.6098145' W.; thence southwesterly to Corner 4, Latitude 37° 52.8684955' N., Longitude 76° 11.6402444' W.; thence east-southeasterly to Corner 5, Latitude 37° 52.7924853' N., Longitude 76° 11.0253352' W.; thence southwesterly to Corner 6, Latitude 37° 49.4327736' N., Longitude 76° 13.2409959' W.; thence northwesterly to Corner 7, Latitude 37° 50.0560555' N., Longitude 76° 15.0023234' W.; thence north-northeasterly to Corner 8, Latitude 37° 50.5581183' N., Longitude 76° 14.8772805' W.; thence north-northeasterly to Corner 9, Latitude 37° 52.0260950' N., Longitude 76° 14.5768550' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Yeocomico River Area" means that area of the North West Yeocomico River, inside Public Ground 8 of Westmoreland County and those areas of the South Yeocomico River inside Public Grounds 102, 104, and 107 of Northumberland County.

Public Ground 8 of Westmoreland County is located in the North West Yeocomico River, beginning at a point approximately 1,455 feet northeast of Crow Bar and 1,850 feet northwest of White Point, said point being Corner 1, located at Latitude 38° 02.7468214' N., Longitude 76° 33.0775726' W.; thence southeasterly to Corner 2, Latitude 38° 02.7397202' N., Longitude 76° 33.0186286' W.; thence southerly to Corner 3, Latitude 38° 02.6021644' N., Longitude 76° 33.0234175' W.; thence westerly to Corner 4, Latitude 38° 02.6006669' N., Longitude 76° 33.0824799' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 102 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 630 feet south of Mundy Point and 1,745 feet southwest of Tom Jones Point, said point being Corner 1, located at Latitude 38° 01.2138059' N., Longitude 76° 32.5577201' W.; thence east-northeasterly to Corner 2, Latitude 38° 01.2268644' N., Longitude 76° 32.4497849' W.; thence southwesterly to Corner 3, Latitude 38° 01.1091209' N., Longitude 76° 32.5591101' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 104 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 670 feet north of Walker Point and 1,900 feet northwest of Palmer Point, said point being Corner 1, located at Latitude 38° 00.8841841' N., Longitude 76° 32.6106215' W.; thence southeasterly to Corner 2, Latitude 38° 00.8609163' N., Longitude 76° 32.5296302' W.; thence southeasterly to Corner 3, Latitude 38° 00.6693092' N., Longitude 76° 32.4161866' W.; thence southwesterly to Corner 4, Latitude 38° 00.6418466' N., Longitude 76° 32.5394849' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 107 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 1,000 feet southwest of Barn Point and 1,300 feet northwest of Tom Jones Point, said point being Corner 1, located at Longitude 38° 01.1389367' N., Latitude 76° 32.3425617' W.; thence east-southeasterly to Corner 2, Latitude 38° 01.4106421' N., Longitude 76° 32.1077962' W.; thence southwesterly to Corner 3, Latitude 38° 01.2717197' N., Longitude 76° 32.2917989' W.; thence north-northwesterly to Corner 1, said corner being the point of beginning.

"York River Rotation Area 1" means all public grounds in the York River, within Gloucester County, between a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.; upstream to a line from the Flashing Yellow VIMS Data Buoy "CB", Latitude 37° 20.4670000' N., Longitude 76° 37.4830000' W.; thence northeasterly to the inshore end of the wharf at Clay Bank.

"York River Rotation Area 2" means all public grounds in the York River, within Gloucester County, from the George P. Coleman Memorial Bridge (U.S. Route 17), upstream to a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as described in the following subdivisions of this subsection:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2013, through April 30, 2014.

2. James River Area and the Thomas Rock Area (James River): November 1, 2013, through January 31, 2014.

3. York River Rotation Area 2: January 1, 2014, through February 28, 2014.

4. Milford Haven: December 1, 2013, through February 28, 2014.

5. Deep Rock Area: December 1, 2013, through February 28, 2014.

6. Rappahannock River Rotation Area 2: November 1, 2013, through December 31, 2013.

7. Rappahannock River Rotation Area 4: October 1, 2013, through November 30, 2013.

8. Rappahannock River Area 7: January 1, 2014, through February 28, 2014.

9. Rappahannock River Area 8: December 1, 2013, through January 31, 2014.

10. Rappahannock River Area 9: November 1, 2013, through December 31, 2013.

11. Great Wicomico River Area: December 1, 2013, through January 31, 2014.

12. Upper Chesapeake Bay - Blackberry Hangs Area: December 1, 2013, through January 31, 2014.

13. Little Wicomico River: October 1, 2013, through December 31, 2013.

14. Coan River: October 1, 2013, through December 31, 2013.

15. Yeocomico River: October 1, 2013, through December 31, 2013.

16. Nomini Creek: October 1, 2013, through December 31, 2013.

17. Pocomoke and Tangier Sounds Rotation Area 1: December 1, 2013, through February 28, 2014.

18. Seaside of the Eastern Shore (for clean cull oysters only): November 1, 2013, through February 28, 2014.

19. Pocomoke Sound, Public Ground Number 9: November 1, 2013, through November 30, 2013.

20. Pocomoke Sound, Public Ground Number 10: December 1, 2013, through December 31, 2013.

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, for commercial purposes, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B 1 through 17, ~~except as described in 4VAC20-1230~~ and 4VAC20-720-40 B 19 and 20. In addition, it shall be unlawful for any boat with an oyster dredge aboard to leave the dock until one hour before sunrise or return to the dock after sunset, and it shall be unlawful for any boat with a hand scrape aboard to leave the dock until one-half hour before sunrise or return to the dock after sunset.

4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Areas, including the Deep Water Shoal State Replenishment Seed Area; the Rappahannock River Area 9; Milford Haven and Little Wicomico, Coan, Nomini and Yeocomico Rivers, except by hand tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters from the area as described in 4VAC20-720-40 B 18, except by hand.

C. It shall be unlawful to harvest oysters in the Rappahannock River Rotation Areas 2 and 4, the Rappahannock River Areas 7 and 8, James River Area, Thomas Rock Area, Upper Chesapeake Bay Blackberry Hangs Area, York River Rotation Area 2, Pocomoke Sound Public Ground Numbers 9 and 10, and Great Wicomico River Area, except by hand scrape.

D. It shall be unlawful for any person to have more than one hand scrape on board any boat that is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand scrape.

E. It shall be unlawful to harvest oysters from the area as described in 4VAC20-720-40 B 17, except by an oyster dredge.

F. It shall be unlawful to harvest oysters from the Deep Rock Area, except by an oyster patent tong.

4VAC20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish, from the hand scrape areas in the Rappahannock River, James River, Upper Chesapeake Bay, York River, Pocomoke Sound, and Great Wicomico River, unless that person has first obtained a valid hand scrape license.

B. It shall be unlawful for any person to harvest shellfish, with an oyster dredge from the public oyster grounds in the area as described in 4VAC20-720-40 B 17, unless that person has first obtained a valid oyster dredge license.

C. It shall be unlawful for any person to harvest shellfish, with a patent tong from the public oyster grounds in the Deep Rock Area, unless that person has first obtained a valid oyster patent tong license.

D. It shall be unlawful for any person to harvest shellfish, with a hand tong from the public oyster grounds, as described in ~~subsection A of~~ 4VAC20-720-70 A, unless that person has first obtained a valid hand tong license.

4VAC20-720-80. Quotas and harvest limits.

A. The lawful daily harvest and possession limit of clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through 16 and 4VAC20-720-40 B 19 and 20 shall be eight bushels per registered commercial fisherman licensee who has paid the oyster resource user fee. It shall be unlawful for any registered commercial fisherman licensee to harvest or possess more than eight bushels per day. The lawful daily vessel limit of clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through 16 and 4VAC20-720-40 B 19 and 20 shall be determined as the number of registered commercial fisherman licensees who have paid the oyster resource user fee on board the vessel multiplied by eight bushels with a maximum daily landing and possession limit of 24 bushels of clean cull oysters per vessel. It shall be unlawful to possess on board any vessel or to land more than the lawful daily vessel limit of clean cull oysters described in this subsection.

B. In the area described in 4VAC20-720-40 B 17, where harvesting is allowed by oyster dredge, there shall be a daily harvest and possession limit of eight bushels of clean cull oysters per registered commercial fisherman licensee who has paid the oyster resource user fee. It shall be unlawful for any registered commercial fisherman licensee to harvest or possess more than eight bushels per day. The lawful daily vessel limit of clean cull oysters harvested by oyster dredge shall be determined as the number of registered commercial fisherman licensees who have paid the oyster resource user fee on board the vessel multiplied by eight bushels with a maximum daily landing and possession limit of 24 bushels of clean cull oysters per vessel. It shall be unlawful to possess on board any vessel or to land more than the lawful daily vessel limit of clean cull oysters harvested by oyster dredge, as described in this subsection. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

VA.R. Doc. No. R14-3887; Filed October 1, 2013, 8:28 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-10, 4VAC20-950-30, 4VAC20-950-46; adding 4VAC20-950-60, 4VAC20-950-70, 4VAC20-950-80; repealing 4VAC20-950-50).**

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: October 1, 2013.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments (i) allow for the culture of black sea bass by permitted aquaculture facilities, (ii) adjust provisions for minimum size limit, and (iii) establish sale and recordkeeping requirements.

4VAC20-950-10. Purpose.

The purposes of this chapter are to (i) reduce fishing mortality in the black sea bass fishery to ensure that overfishing does not occur, (ii) increase the spawning stock biomass, (iii) improve the yield from the fishery, ~~and~~ (iv) distribute shares of the black sea bass quota to those fishermen who demonstrate a previous history of participation in the fishery, and (v) encourage safe black sea bass aquaculture practices.

4VAC20-950-30. Minimum size limit.

A. The minimum size for black sea bass harvested by commercial fishing gear shall be 11 inches, total length.

B. The minimum size of black sea bass harvested by recreational gear, including but not limited to hook and line, rod and reel, spear and gig, shall be 12-1/2 inches, total length.

C. It shall be unlawful for any person to possess any black sea bass smaller than the minimum size limit, as designated respectively, in subsections A and B of this section, except as described in 4VAC20-950-70.

D. It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any black sea bass less than 11 inches, total length, except as described in 4VAC20-950-70.

E. Total length shall be measured along the lateral midline from tip of nose to tip of tail excluding the caudal fin filament.

4VAC20-950-46. Directed fishery and bycatch fishery permits.

A. It shall be unlawful for any person to participate in the commercial black sea bass fishery~~,~~ or to possess, harvest, or sell black sea bass, except as described in 4VAC20-950-60 and 4VAC20-950-70, without first qualifying for and obtaining either a directed fishery permit or a bycatch fishery permit from the commission, as described, respectively, in subsections B and C of this section, unless that person meets the requirements described in 4VAC20-950-48.2.

B. A person shall be considered eligible for a directed commercial black sea bass fishery permit by satisfying all of the following eligibility criteria:

1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License in

addition to a federal Black Sea Bass Moratorium Permit; and

2. That person shall have landed and sold in Virginia at least 10,000 pounds of black sea bass from July 1, 1997, through December 31, 2001.

C. A person shall be considered eligible for a bycatch commercial black sea bass fishery permit by satisfying all of the following eligibility criteria:

1. That person shall hold either a Commercial Fisherman Registration License or a Seafood Landing License, in addition to a federal Black Sea Bass Moratorium Permit; and

2. That person shall have landed and sold in Virginia at least one pound of black sea bass from July 1, 1997, through December 31, 2001.

4VAC20-950-50. ~~Penalty.~~ (Repealed.)

~~As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.~~

4VAC20-950-60. Black sea bass aquaculture facility permit.

A. Any person operating an aquaculture facility in which any black sea bass will be cultured, possessed, offered for sale, or sold shall possess a black sea bass aquaculture facility permit for that facility that was obtained from the commissioner.

1. The black sea bass aquaculture facility permit shall allow the facility to import black sea bass eggs, fry, and brood-stock from captive brood-stock facilities.

2. A black sea bass aquaculture facility permit is not transferable.

B. The application for a black sea bass aquaculture facility permit shall list the name and address of the applicant, the type and location of that facility, and an estimate of production capacity. A black sea bass aquaculture facility permit shall be valid for 10 years, from the date of issue, and may be renewed by the commissioner. The issuance and continuation of any person's black sea bass aquaculture facility permit are contingent on that designated facility being open for inspection by the Marine Resources Commission for the purposes of determining compliance with this chapter.

C. The original of the black sea bass facility aquaculture permit shall be maintained by the permittee and prominently displayed at the location of the permitted aquaculture facility. A copy of such permit shall be used as evidence of authorization to transport black sea bass to and from the permitted aquaculture facility.

4VAC20-950-70. Sale, records, importation, and release of black sea bass.

A. All black sea bass produced by an aquaculture facility and permitted by 4VAC20-950-60 shall be packaged, prior to sale, with a printed label indicating the product is of aquaculture origin. When packaged and labeled according to these requirements, such fish may be transported and sold at retail, at wholesale, or commercially until reaching the consumer.

B. Any black sea bass that measures less than the lawful minimum size described in 4VAC20-950-30, but are the product of a permitted aquaculture facility in another state, may be imported into Virginia for the consumer market. Any fish shall be packaged and labeled in accordance with the provisions contained in subsection A of this section.

C. Under no circumstance shall any black sea bass produced by an aquaculture facility be placed into Virginia waters without written permission from the commissioner.

4VAC20-950-80. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

VA.R. Doc. No. R14-3885; Filed September 30, 2013, 2:47 p.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC5-10. General Definitions (rev. G12) (amending 9VAC5-10-20).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 20, 2013.

Effective Date: December 5, 2013.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email karen.sabasteanski@deq.virginia.gov.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Federal Requirements. Section 109(a) of the federal Clean Air Act requires the U.S. Environmental Protection Agency (EPA) to prescribe national ambient air quality standards (NAAQS) to protect public health. Section 110 mandates that each state adopt and submit to EPA a state implementation plan (SIP) that provides for the implementation, maintenance, and enforcement of the NAAQS. Ozone, one of the pollutants for which there is an NAAQS, is in part created by emissions of volatile organic compounds (VOCs). Therefore, in order to control ozone, VOCs must be addressed in Virginia's SIP.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. Subpart F of Part 51, Procedural Requirements, includes 40 CFR 51.100, which consists of a list of definitions. 40 CFR 51.100 contains a definition of VOC. This definition is revised by EPA in order to add or remove VOCs as necessary. If, for example, it can be demonstrated that a particular VOC is "negligibly reactive"--that is, if it can be shown that a VOC is not as reactive and therefore does not have a significant effect on ground-level or upper atmospheric ozone--then EPA may remove that substance from the definition of VOC.

On June 22, 2012 (77 FR 37610), EPA revised the definition of VOC in 40 CFR 51.100 to exclude trans-1,3,3,3-tetrafluoropropene (HFO-1234ze) from the definition of VOC. This exclusion is accomplished by adding the substance to a list of substances not considered to be VOCs. This change to the exemption list became effective on July 23, 2012.

State Requirements. These specific amendments are not required by state mandate. Rather, § 10.1-1308 A of Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth." Section 10.1-1300 of the Code of Virginia defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property."

Purpose: The purpose of 9VAC5-10 (General Definitions) is not to impose any regulatory requirements, but to provide a basis for and support to other provisions of the Regulations for the Control and Abatement of Air Pollution, which are in place in order to protect public health and welfare. The proposed amendments are being made to ensure that the definition of volatile organic compound, which is crucial to most of the regulations, is up-to-date and scientifically accurate, as well as consistent with the overall federal requirements under which the regulations operate.

Rationale for Using Fast-Track Process: The definition is being revised to add a less-reactive substance to the list of compounds not considered to be VOCs. This revision is neither expected to affect a significant number of sources nor have any significant impact, other than a positive one, on air quality overall. Additionally, removal of the substance at the federal level was accompanied by detailed scientific review and public comment, and only positive comments were received during the federal public comment period. Therefore, no additional information on the reactivity of this substance or the appropriateness of its removal is anticipated.

Substance: The general definitions section (9VAC5-10-20) imposes no regulatory requirements but provides support to other provisions of the Regulations for the Control and Abatement of Air Pollution. The list of substances not considered to be VOCs in Virginia is amended to include trans-1,3,3,3-tetrafluoropropene (HFO-1234ze).

Issues: The general public health and welfare will benefit because the revision may encourage the use of trans-1,3,3,3-tetrafluoropropene (HFO-1234ze) in place of products containing more reactive and thereby more polluting substances. Due to its low photochemical reactivity, this compound is considered to be negligibly reactive in the formation of tropospheric (ground level) ozone and is not expected to contribute to violations of the NAAQS. This compound is not a hazardous air pollutant and will not deplete stratospheric (upper atmosphere) ozone. Therefore, this compound does not have a negative effect on human health or the environment.

Excluding this compound as a VOC will make it easier and less expensive for industry to use it. A manufacturer of products containing the compound has stated that in order for this product to be marketed in all parts of the United States, it is essential that it be classified as a non-VOC. Companies that use trans-1,3,3,3-tetrafluoropropene in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements.

The amendment will allow the department to focus VOC reduction strategies on substances that have a negative impact on human health and the environment.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to revise the definition of volatile organic compound (VOC) to include trans-1,3,3,3-tetrafluoropropene (HFO-1234ze) on the list of substances not considered to be VOC.

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

Estimated Economic Impact. The general definitions of 9VAC5-10 impose no regulatory requirements in and of themselves, but provide support to other Board regulations. The U.S. Environmental Protection Agency has revised the definition of VOC to add a substance that has been demonstrated to be less reactive to the list of substances that

are not considered to be VOCs: trans-1,3,3,3-tetrafluoropropene (also known as HFO-1234ze). Consequently, the Board proposed to add HFO-1234ze to the list of substances not considered to be VOC.

HFO-1234ze may be used in a variety of applications including as a refrigerant, an aerosol propellant, and a blowing agent for insulating foam (polyurethanes, polystyrene and other polymers). There are no known sources located in Virginia that currently use this substance. There are sources that may someday eventually wish to use this substance; however, the Department of Environmental Quality has not identified any specific sources that plan to do so.

The general public health and welfare may benefit because the revision may encourage the use of HFO-1234ze in place of products containing more reactive and thereby more polluting substances. Due to its low photochemical reactivity, this compound is considered to be negligibly reactive in the formation of tropospheric (ground level) ozone and is not expected to contribute to violations of the federal national ambient air quality standards. This compound is not a hazardous air pollutant, and will not deplete stratospheric (upper atmosphere) ozone. Therefore, this compound does not have a negative effect on human health or the environment.

Excluding this compound as a VOC will make it easier and less expensive for industry to use. A manufacturer of products containing the compound has stated that in order for this product to be marketed in all parts of the United States, it is essential that it be classified as a non-VOC. Companies that use HFO-1234ze in place of more reactive substances may also benefit by reducing their VOC emissions and concomitant reductions in permitting and other regulatory requirements. Thus, the proposal to add HFO-1234ze to the list of substances not considered to be VOC will create a net benefit.

Businesses and Entities Affected. HFO-1234ze may be used in a variety of applications including as a refrigerant, an aerosol propellant, and a blowing agent for insulating foam (polyurethanes, polystyrene and other polymers). Consequently, the proposal to add HFO-1234ze to the list of substances not considered to be VOC will potentially affect firms which manufacture or use refrigerants, aerosol propellants, or blowing agents.

Localities Particularly Affected. The proposal to add HFO-1234ze to the list of substances not considered to be VOC does not have a disproportionate effect on any particular localities.

Projected Impact on Employment. The proposed amendment will not likely have a large impact on employment.

Effects on the Use and Value of Private Property. The proposal to add HFO-1234ze to the list of substances not considered to be VOCs will have no immediate impact since currently there are no known firms located in Virginia that currently use this compound. Adding HFO-1234ze to the list of substances not considered to be VOCs will make it less costly to use, which may encourage firms to start using the compound in production. Thus, the proposed amendment may eventually affect some firms' production methods, lower their costs, and consequently moderately increase firm value.

Small Businesses: Costs and Other Effects. The proposal to add HFO-1234ze to the list of substances not considered to be VOCs will have no immediate impact since currently there are no known firms located in Virginia that currently use this compound. Adding HFO-1234ze to the list of substances not considered to be VOCs will make it less costly to use. Thus, some small firms may eventually use the compound to lower costs.

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

Real Estate Development Costs. The proposed amendment will not likely have a large impact on real estate development costs.

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

Agency's Response to Economic Impact Analysis: The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendment revises the definition of volatile organic compound (VOC) to add trans-1,3,3,3-tetrafluoropropene (also known as HFO-1234ze) to the list of substances not considered to be VOCs. The amendment comports to the

U.S. Environmental Protection Agency's revised definition of VOC published in 77 FR 37610-37614.

9VAC5-10-20. Terms defined.

"Actual emissions rate" means the actual rate of emissions of a pollutant from an emissions unit. In general actual emissions shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during the most recent two-year period or some other two-year period which is representative of normal source operation. If the board determines that no two-year period is representative of normal source operation, the board shall allow the use of an alternative period of time upon a determination by the board that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or his authorized representative.

"Affected facility" means, with reference to a stationary source, any part, equipment, facility, installation, apparatus, process or operation to which an emission standard is applicable or any other facility so designated. The term "affected facility" includes any affected source as defined in 40 CFR 63.2.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air quality" means the specific measurement in the ambient air of a particular air pollutant at any given time.

"Air quality control region" means any area designated as such in 9VAC5-20-200.

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

"Ambient air quality standard" means any primary or secondary standard designated as such in 9VAC5-30 (Ambient Air Quality Standards).

"Board" means the State Air Pollution Control Board or its designated representative.

"Certified mail" means electronically certified or postal certified mail, except that this definition shall only apply to the mailing of plan approvals, permits, or certificates issued under the provisions of these regulations and only where the recipient has notified the department of the recipient's consent to receive plan approvals, permits, or certificates by electronic mail. Any provision of these regulations requiring the use of certified mail to transmit special orders or administrative orders pursuant to enforcement proceedings shall mean postal certified mail.

"Class I area" means any prevention of significant deterioration area (i) in which virtually any deterioration of existing air quality is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class II area" means any prevention of significant deterioration area (i) in which any deterioration of existing air quality beyond that normally accompanying well-controlled growth is considered significant and (ii) designated as such in 9VAC5-20-205.

"Class III area" means any prevention of significant deterioration area (i) in which deterioration of existing air quality to the levels of the ambient air quality standards is permitted and (ii) designated as such in 9VAC5-20-205.

"Continuous monitoring system" means the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent continuous record of emissions or process parameters.

"Control program" means a plan formulated by the owner of a stationary source to establish pollution abatement goals, including a compliance schedule to achieve such goals. The plan may be submitted voluntarily, or upon request or by order of the board, to ensure compliance by the owner with standards, policies and regulations adopted by the board. The plan shall include system and equipment information and operating performance projections as required by the board for evaluating the probability of achievement. A control program shall contain the following increments of progress:

1. The date by which contracts for emission control system or process modifications are to be awarded, or the date by which orders are to be issued for the purchase of component parts to accomplish emission control or process modification.

2. The date by which the on-site construction or installation of emission control equipment or process change is to be initiated.

3. The date by which the on-site construction or installation of emission control equipment or process modification is to be completed.

4. The date by which final compliance is to be achieved.

"Criteria pollutant" means any pollutant for which an ambient air quality standard is established under 9VAC5-30 (Ambient Air Quality Standards).

"Day" means a 24-hour period beginning at midnight.

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to

comply with any requirement contained in the applicable implementation plan.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" or "executive director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dispersion technique"

1. Means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

a. Using that portion of a stack which exceeds good engineering practice stack height;

b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

2. The preceding sentence does not include:

a. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

b. The merging of exhaust gas streams where:

(1) The owner demonstrates that the facility was originally designed and constructed with such merged gas streams;

(2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emissions limitation for the pollutant affected by such change in operation; or

(3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emissions limitation or, in the event that no emissions limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the board shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the owner that merging was not significantly motivated by such intent, the board shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

c. Smoke management in agricultural or silvicultural prescribed burning programs;

d. Episodic restrictions on residential woodburning and open burning; or

e. Techniques under subdivision 1 c of this definition which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

"Emergency" means a situation that immediately and unreasonably affects, or has the potential to immediately and unreasonably affect, public health, safety or welfare; the health of animal or plant life; or property, whether used for recreational, commercial, industrial, agricultural or other reasonable use.

"Emissions limitation" means any requirement established by the board which limits the quantity, rate, or concentration of continuous emissions of air pollutants, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission reduction.

"Emission standard" means any provision of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources) that prescribes an emissions limitation, or other requirements that control air pollution emissions.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any air pollutant.

"Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the satisfaction of the board to have a consistent and quantitative relationship to the reference method under specified conditions.

"EPA" means the U.S. Environmental Protection Agency or an authorized representative.

"Excess emissions" means emissions of air pollutant in excess of an emission standard.

"Excessive concentration" is defined for the purpose of determining good engineering practice (GEP) stack height under subdivision 3 of the GEP definition and means:

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from

all sources that is greater than an ambient air quality standard. For sources subject to the provisions of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

2. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subdivision 2 of the GEP definition, either (i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in subdivision 1 of this definition, except that the emission rate specified by any applicable implementation plan (or, in the absence of such a limit, the actual emission rate) shall be used, or (ii) the actual presence of a local nuisance caused by the existing stack, as determined by the board; and

3. For sources seeking credit after January 12, 1979, for a stack height determined under subdivision 2 of the GEP definition where the board requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subdivision 2 of the GEP definition, a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

"Existing source" means any stationary source other than a new source or modified source.

"Facility" means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, heating and power plants, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

1. Emission standards, alternative emission standards, alternative emissions limitations, and equivalent emissions limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

2. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

3. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

4. Limitations and conditions that are part of an implementation plan.

5. Limitations and conditions that are part of a section 111(d) or section 111(d)/129 plan.

6. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

7. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

8. Limitations and conditions in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

9. Individual consent agreements issued pursuant to the legal authority of EPA.

"Good engineering practice" or "GEP," with reference to the height of the stack, means the greater of:

1. 65 meters, measured from the ground-level elevation at the base of the stack;

2. a. For stacks in existence on January 12, 1979, and for which the owner had obtained all applicable permits or approvals required under 9VAC5-80 (Permits for Stationary Sources),

$$Hg = 2.5H,$$

provided the owner produces evidence that this equation was actually relied on in establishing an emissions limitation;

b. For all other stacks,

Hg = H + 1.5L,

where:

Hg = good engineering practice stack height, measured from the ground-level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground-level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s) provided that the board may require the use of a field study or fluid model to verify GEP stack height for the source; or

3. The height demonstrated by a fluid model or a field study approved by the board, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Initial emission test" means the test required by any regulation, permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources), control program, compliance schedule or other enforceable mechanism for determining compliance with new or more stringent emission standards or permit limitations or other emissions limitations requiring the installation or modification of air pollution control equipment or implementation of a control method. Initial emission tests shall be conducted in accordance with 9VAC5-40-30.

"Initial performance test" means the test required by (i) 40 CFR Part 60 for determining compliance with standards of performance, or (ii) a permit issued pursuant to 9VAC5-80 (Permits for Stationary Sources) for determining initial compliance with permit limitations. Initial performance tests shall be conducted in accordance with 9VAC5-50-30 and 9VAC5-60-30.

"Isokinetic sampling" means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

"Locality" means a city, town, county or other public body created by or pursuant to state law.

"Mail" means electronic or postal delivery.

"Maintenance area" means any geographic region of the United States previously designated as a nonattainment area and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan and designated as such in 9VAC5-20-203.

"Malfunction" means any sudden failure of air pollution control equipment, of process equipment, or of a process to operate in a normal or usual manner, which failure is not due to intentional misconduct or negligent conduct on the part of the owner or other person. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Monitoring device" means the total equipment used to measure and record (if applicable) process parameters.

"Nearby" as used in the definition of good engineering practice (GEP) is defined for a specific structure or terrain feature and:

1. For purposes of applying the formulae provided in subdivision 2 of the GEP definition means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 km (1/2 mile); and

2. For conducting demonstrations under subdivision 3 of the GEP definition means not greater than 0.8 km (1/2 mile), except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed two miles if such feature achieves a height (Ht) 0.8 km from the stack that is at least 40% of the GEP stack height determined by the formulae provided in subdivision 2 b of the GEP definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in 40 CFR Part 60.

"Nonattainment area" means any area which is shown by air quality monitoring data or, where such data are not available, which is calculated by air quality modeling (or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant including, but not limited to, areas designated as such in 9VAC5-20-204.

"One hour" means any period of 60 consecutive minutes.

"One-hour period" means any period of 60 consecutive minutes commencing on the hour.

"Organic compound" means any chemical compound of carbon excluding carbon monoxide, carbon dioxide, carbonic disulfide, carbonic acid, metallic carbides, metallic carbonates and ammonium carbonate.

"Owner" means any person, including bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals, who owns, leases, operates, controls or supervises a source.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

"Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by the applicable reference method or an equivalent method.

"PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by the applicable reference method, or an equivalent or alternative method.

"Performance test" means a test for determining emissions from new or modified sources.

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

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable.

"Prevention of significant deterioration area" means any area not designated as a nonattainment area in 9VAC5-20-204 for a particular pollutant and designated as such in 9VAC5-20-205.

"Proportional sampling" means sampling at a rate that produces a constant ratio of sampling rate to stack gas flow rate.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007.02 of the Administrative Process Act, held to afford persons an opportunity to submit views and data relative to a matter on which a decision of the board is pending.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in the following EPA regulations:

1. For ambient air quality standards in 9VAC5-30 (Ambient Air Quality Standards): The applicable appendix of 40 CFR Part 50 or any method that has been designated as a reference method in accordance with 40 CFR Part 53, except that it does not include a method for which a reference designation has been canceled in accordance with 40 CFR 53.11 or 40 CFR 53.16.

2. For emission standards in 9VAC5-40 (Existing Stationary Sources) and 9VAC5-50 (New and Modified Stationary Sources): Appendix M of 40 CFR Part 51 or Appendix A of 40 CFR Part 60.

3. For emission standards in 9VAC5-60 (Hazardous Air Pollutant Sources): Appendix B of 40 CFR Part 61 or Appendix A of 40 CFR Part 63.

"Regional director" means the regional director of an administrative region of the Department of Environmental Quality or a designated representative.

"Regulation of the board" means any regulation adopted by the State Air Pollution Control Board under any provision of the Code of Virginia.

"Regulations for the Control and Abatement of Air Pollution" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile nonviscous petroleum liquids except liquefied petroleum gases as determined by American Society for Testing and Materials publication, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)" (see 9VAC5-20-21).

"Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"Section 111(d) plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with § 111(d)(1) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with § 111(d)(2) of the federal Clean Air Act, and which implements the relevant requirements of the federal Clean Air Act.

"Section 111(d)/129 plan" means the portion or portions of the plan, or the most recent revision thereof, which has been approved under 40 CFR 60.27(b) in accordance with §§ 111(d)(1) and 129(b)(2) of the federal Clean Air Act, or promulgated under 40 CFR 60.27(d) in accordance with §§ 111(d)(2) and 129(b)(3) of the federal Clean Air Act, and

which implements the relevant requirements of the federal Clean Air Act.

"Shutdown" means the cessation of operation of an affected facility for any purpose.

"Source" means any one or combination of the following: buildings, structures, facilities, installations, articles, machines, equipment, landcraft, watercraft, aircraft or other contrivances which contribute, or may contribute, either directly or indirectly to air pollution. Any activity by any person that contributes, or may contribute, either directly or indirectly to air pollution, including, but not limited to, open burning, generation of fugitive dust or emissions, and cleaning with abrasives or chemicals.

"Stack" means any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct, but not including flares.

"Stack in existence" means that the owner had:

1. Begun, or caused to begin, a continuous program of physical on site construction of the stack; or

2. Entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner, to undertake a program of construction of the stack to be completed in a reasonable time.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of Hg (29.92 inches of Hg).

"Standard of performance" means any provision of 9VAC5-50 (New and Modified Stationary Sources) which prescribes an emissions limitation or other requirements that control air pollution emissions.

"Startup" means the setting in operation of an affected facility for any purpose.

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9VAC5-20-110; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to 9VAC5-80 (Permits for Stationary Sources).

"State Implementation Plan" means the plan, including the most recent revision thereof, which has been approved or promulgated by the administrator, U.S. Environmental Protection Agency, under § 110 of the federal Clean Air Act, and which implements the requirements of § 110.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"These regulations" means 9VAC5-10 (General Definitions) through 9VAC5-80 (Permits for Stationary Sources).

"Total suspended particulate ~~(TSP)"~~ or "TSP" means particulate matter as measured by the reference method described in Appendix B of 40 CFR Part 50.

"True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute (API) publication, "Evaporative Loss from External Floating-Roof Tanks" (see 9VAC5-20-21). The API procedure may not be applicable to some high viscosity or high pour crudes. Available estimates of true vapor pressure may be used in special cases such as these.

"Urban area" means any area consisting of a core city with a population of 50,000 or more plus any surrounding localities with a population density of 80 persons per square mile and designated as such in 9VAC5-20-201.

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in American Petroleum Institute publication, "Evaporative Loss from Floating-Roof Tanks" (see 9VAC5-20-21).

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

"Volatile organic compound" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

1. This includes any such organic compounds which have been determined to have negligible photochemical reactivity other than the following:

a. Methane;

b. Ethane;

c. Methylene chloride (dichloromethane);

d. 1,1,1-trichloroethane (methyl chloroform);

e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);

f. Trichlorofluoromethane (CFC-11);

g. Dichlorodifluoromethane (CFC-12);

h. Chlorodifluoromethane (H CFC-22);

i. Trifluoromethane (H FC-23);

j. 1,2-dichloro 1,1,2,2,-tetrafluoroethane (CFC-114);

k. Chloropentafluoroethane (CFC-115);

l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);

m. 1,1,1,2-tetrafluoroethane (HFC-134a);

n. 1,1-dichloro 1-fluoroethane (HCFC-141b);

o. 1-chloro 1,1-difluoroethane (HCFC-142b);

p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);

q. Pentafluoroethane (HFC-125);

r. 1,1,2,2-tetrafluoroethane (HFC-134);

s. 1,1,1-trifluoroethane (HFC-143a);

t. 1,1-difluoroethane (HFC-152a);

u. Parachlorobenzotrifluoride (PCBTF);

v. Cyclic, branched, or linear completely methylated siloxanes;

w. Acetone;

x. Perchloroethylene (tetrachloroethylene);

y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);

z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);

aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);

bb. Difluoromethane (HFC-32);

cc. Ethylfluoride (HFC-161);

dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);

ee. 1,1,2,2,3-pentafluoropropane (HFC-245ca);

ff. 1,1,2,3,3-pentafluoropropane (HFC-245ea);

gg. 1,1,1,2,3-pentafluoropropane (HFC-245eb);

hh. 1,1,1,3,3-pentafluoropropane (HFC-245fa);

ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);

jj. 1,1,1,3,3-pentafluorobutane (HFC-365mfc);

kk. Chlorofluoromethane (HCFC-31);

ll. 1 chloro-1-fluoroethane (HCFC-151a);

mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);

nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);

oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OCH_3$);

pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200);

qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-hepta-fluoropropane ($(CF_3)_2CFCF_2OC_2H_5$);

rr. Methyl acetate;

ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$) (HFE-7000);

tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);

uu. 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);

vv. methyl formate ($HCOOCH_3$);

ww. (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);

xx. propylene carbonate;

yy. dimethyl carbonate; ~~and~~

zz. trans-1,3,3,3-tetrafluoropropene; and

aaa. Perfluorocarbon compounds which fall into these classes:

(1) Cyclic, branched, or linear, completely fluorinated alkanes;

(2) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

2. For purposes of determining compliance with emissions standards, volatile organic compounds shall be measured by the appropriate reference method in accordance with the provisions of 9VAC5-40-30 or 9VAC5-50-30, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as a volatile organic compound if the amount of such compounds is accurately quantified, and such exclusion is approved by the board.

3. As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the board may require an owner to provide monitoring or testing methods and results demonstrating, to the satisfaction of the board, the amount of negligibly reactive compounds in the emissions of the source.

4. Exclusion of the above compounds in this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

5. The following compound is a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements that apply to VOCs and shall be uniquely identified in emission reports, but is not a VOC for purposes of VOC emission standards, VOC emissions limitations, or VOC content requirements: t-butyl acetate.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife,

weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

VA.R. Doc. No. R14-3282; Filed September 29, 2013, 9:04 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Fast-Track Regulation

Title of Regulation: **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-95).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC 6941 et seq.; 40 CFR Part 258.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 20, 2013.

Effective Date: December 5, 2013.

Agency Contact: Debra A. Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia and federal law.

Purpose: This regulatory amendment is necessary due to the proposed changes to State Air Pollution Control Board's Open Burning Regulations (9VAC5-130). The rationale for this regulatory amendment is to retain the conditional exemptions for open burning for statewide applicability. The amendment lists out the open burning exemptions under 9VAC20-81-95 in lieu of referencing the permissible open burning activities of 9VAC5-130-40. As the State Air Pollution Control Board has proposed to amend 9VAC5-130-40 and limit the applicability of 9VAC5-130-40 to volatile organic compounds emissions control areas (see 9VAC5-20-206), subdivision D 15 of 9VAC20-81-95 of the Solid Waste Management Regulations is being amended to clarify that, for the purposes of solid waste management, the open burning of certain solid wastes continues to be conditionally exempt from 9VAC20-81 for the listed activities statewide.

Rationale for Using Fast-Track Process: The proposed amendment is expected to be noncontroversial and, therefore, using the fast-track process is justified.

Substance: The amendment removes the reference to 9VAC5-130-40 and lists the conditional exemptions for open burning of certain solid wastes for specific activities (e.g., firefighting training, confidential document destruction, forest management, etc.).

Issues: There are no disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to list the permissible open burning activities within this regulation in lieu of incorporating them by reference.

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

Estimated Economic Impact. The Board's proposal improves clarity and increases convenience for those seeking the list of permissible open burning activities, while not producing any cost. Thus, it creates a net benefit.

Businesses and Entities Affected. The proposed amendments do not change requirements and thus do not significantly affect any businesses or other entities. The regulations affect all individuals, businesses or other entities that conduct any conditional exempt open burning activities.

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

Projected Impact on Employment. The proposed amendments will not affect employment.

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

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

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

Real Estate Development Costs. The proposed amendments will not affect real estate development.

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

regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendment lists the open burning of certain solid waste by activities that are exempt from 9VAC20-81 (Solid Waste Management Regulations). Previously, these exemptions were incorporated into the regulation by a reference to the State Air Pollution Control Board's Open Burning Regulations (9VAC5-130).

9VAC20-81-95. Identification of solid waste.

A. Wastes identified in this section are solid wastes that are subject to this chapter unless regulated pursuant to other applicable regulations issued by the department.

B. Except as otherwise provided, the definition of solid waste per 40 CFR 261.2 as incorporated by 9VAC20-60-261, as amended, is also hereby incorporated as part of this chapter. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 9VAC20-60-261, as amended, are also hereby incorporated as part of this chapter as well.

C. Except as otherwise modified or excepted by 9VAC20-60, the materials listed in the regulations of the United States Environmental Protection Agency set forth in 40 CFR 261.4 (a) are considered a solid waste for the purposes of this chapter. However, these materials are not regulated under the provisions of this chapter if all conditions specified therein are met. This list and all material definitions, reference materials and other ancillaries that are part of 40 CFR Part 261.4 (a), as incorporated, modified and/or accepted by 9VAC20-60 are incorporated as part of this chapter. In addition, the following materials are not solid wastes for the purpose of this chapter:

1. Materials generated by any of the following, which are returned to the soil as fertilizers:

a. The growing and harvesting of agricultural crops.

b. The raising and husbanding of animals, including animal manures and used animal bedding.

2. Mining overburden returned to the mine site.

3. Recyclable materials used in manner constituting disposal per 9VAC20-60-266.

4. Wood wastes burned for energy recovery.

5. Materials that are:

a. Used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as effective substitutes for commercial products or natural resources provided the materials are not being reclaimed or accumulated speculatively; or

b. Returned to the original process from which they are generated.

6. Materials that are beneficially used as determined by the department under this subsection. The department may consider other waste materials and uses to be beneficial in accordance with the provisions of 9VAC20-81-97.

7. The following materials and uses listed in this part are exempt from this chapter as long as they are managed so they do not create an open dump, hazard, or public nuisance. These materials and the designated use are considered a beneficial use of waste materials:

a. Clean wood, wood chips, or bark from land clearing, logging operations, utility line clearing and maintenance operations, pulp and paper production, and wood products manufacturing, when these materials are placed in commerce for service as mulch, landscaping, animal bedding, erosion control, habitat mitigation, wetlands restoration, or bulking agent at a compost facility operated in compliance with Part IV (9VAC20-81-300 et seq.) of this chapter;

b. Clean wood combustion residues when used for pH adjustment in compost, liquid absorbent in compost, or as a soil amendment or fertilizer, provided the application rate of the wood ash is limited to the nutrient need of the crop grown on the land on which the wood combustion residues will be applied and provided that such application meets the requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

c. Compost that satisfies the applicable requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

d. Nonhazardous, contaminated soil that has been excavated as part of a construction project and that is used as backfill for the same excavation or excavations containing similar contaminants at the same site, at concentrations at the same level or higher. Excess contaminated soil from these projects is subject to the requirements of this chapter;

e. Nonhazardous petroleum contaminated soil that has been treated to the satisfaction of the department in accordance with 9VAC20-81-660;

f. Nonhazardous petroleum contaminated soil when incorporated into asphalt pavement products;

g. Solid wastes that are approved in advance of the placement, in writing, by the department or that are specifically mentioned in the facility permit for use as alternate daily cover material or other protective materials for landfill liner or final cover system components;

h. Fossil fuel combustion products when used as a material in the manufacturing of another product (e.g., concrete, concrete products, lightweight aggregate, roofing materials, plastics, paint, flowable fill) or as a substitute for a product or material resource (e.g., blasting grit, roofing granules, filter cloth pre-coat for sludge dewatering, pipe bedding);

i. Tire chips and tire shred when used as a sub base fill for road base materials or asphalt pavements when approved by the Virginia Department of Transportation or by a local governing body;

j. Tire chips, tire shred, and ground rubber used in the production of commercial products such as mats, pavement sealers, playground surfaces, brake pads, blasting mats, and other rubberized commercial products;

k. Tire chips and tire shred when used as backfill in landfill gas or leachate collection pipes, recirculation lines, and drainage material in landfill liner and cover systems, and gas interception or remediation applications;

l. Waste tires, tire chips or tire shred when burned for energy recovery or when used in pyrolysis, gasification, or similar treatment process to produce fuel;

m. Waste-derived fuel product, as defined in 9VAC20-81-10, derived from nonhazardous solid waste;

n. Uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock placed in commerce for service as a substitute for conventional aggregate; and

o. Clean, ground gypsum wallboard when used as a soil amendment or fertilizer, provided the following conditions are met:

(1) No components of the gypsum wallboard have been glued, painted, or otherwise contaminated from manufacture or use (e.g., waterproof or fireproof drywall) unless otherwise processed to remove contaminants.

(2) The gypsum wallboard shall be processed so that 95% of the gypsum wallboard is less than 1/4 inch by 1/4 inch in size, unless an alternate size is approved by the department.

(3) The gypsum wallboard shall be applied only to agricultural, silvicultural, landscaped, or mined lands or roadway construction sites that need fertilization.

(4) The application rate for the ground gypsum wallboard shall not exceed the following rates.

Region	Rate
Piedmont, Mountains, and Ridge and Valley	250 lbs/1,000 ft^2
Coastal Plain	50 lbs/1,000 ft^2

Note: These weights are for dry ground gypsum wallboard.

D. The following activities are conditionally exempt from this chapter provided no open dump, hazard, or public nuisance is created:

1. Composting of sewage sludge at the sewage treatment plant of generation without addition of other types of solid wastes.

2. Composting of household waste generated at a residence and composted at the site of generation.

3. Composting activities performed for educational purposes as long as no more than 100 cubic yards of materials are on site at any time. Greater quantities will be allowed with suitable justification presented to the department. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

4. Composting of animal carcasses onsite at the farm of generation.

5. Composting of vegetative waste and/or yard waste generated onsite by owners or operators of agricultural operations or owners of the real property or those authorized by the owners of the real property provided:

a. All decomposed vegetative waste and compost produced is utilized on said property;

b. No vegetative waste or other waste material generated from other sources other than said property is received;

c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied; and

d. They pose no nuisance or present no potential threat to human health or the environment.

6. Composting of yard waste by owners or operators who accept yard waste generated offsite shall be exempt from all other provisions of this chapter as applied to the composting activities provided the requirements of 9VAC20-81-397 B are met.

7. Composting of preconsumer food waste and kitchen culls generated onsite and composted in containers designed to prohibit vector attraction and prevent nuisance odor generation.

8. Vermicomposting, when used to process Category I, Category II, or Category III feedstocks in containers designed to prohibit vector attraction and prevent nuisance odor generation. If offsite feedstocks are received no more than 100 cubic yards of materials may be onsite at any one time. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

9. Composting of sewage sludge or combinations of sewage sludge with nonhazardous solid waste provided the composting facility is permitted under the requirements of a Virginia Pollution Abatement (VPA) or VPDES permit.

10. Management of solid waste in appropriate containers at the site of its generation, provided that:

a. Putrescible waste is not stored more than seven days between time of collection and time of removal for disposal;

b. Nonputrescible wastes are not stored more than 90 days between time of collection and time of removal for proper management; and

c. Treatment of waste is conducted in accordance with the following:

(1) In accordance with a waste analysis plan that:

(a) Contains a detailed chemical and physical analysis of a representative sample of the waste being treated, and contains all records necessary to treat the waste in accordance with the requirements of this part, including the selected testing frequency; and

(b) Is kept in the facility's onsite file and made available to the department upon request.

(2) Notification is made to the receiving waste management facility that the waste has been treated.

11. Using rocks, brick, block, dirt, broken concrete, crushed glass, porcelain, and road pavement as clean fill.

12. Storage of less than 100 waste tires at the site of generation provided that no waste tires are accepted from offsite and that the storage will not present a hazard or a nuisance.

13. Storage in piles of land-clearing debris including stumps and brush, clean wood wastes, log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose, are exempt from this chapter if they meet the following conditions at a minimum:

a. The wastes are managed in the following manner:

(1) They do not cause discharges of leachate, or attract vectors.

(2) They cannot be dispersed by wind and rain.

(3) Fire is prevented.

(4) They do not become putrescent.

b. Any facility storing waste materials under the provisions of this subsection shall obtain a storm water discharge permit if they are considered a significant source under the provisions of 9VAC25-31-120 A 1 c.

c. No more than a total of 1/3 acre of waste material is stored onsite and the waste pile does not exceed 15 feet in height above base grade.

d. Siting provisions.

(1) All log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose are stored at the site of the industrial activity that produces them;

(2) A 50-foot fire break is maintained between the waste pile and any structure or tree line;

(3) The slope of the ground within the area of the pile and within 50 feet of the pile does not exceed 4:1;

(4) No waste material may be stored closer than 50 feet to any regularly flowing surface water body or river, floodplain, or wetland; and

(5) No stored waste materials shall extend closer than 50 feet to any property line.

e. If activities at the site cease, any waste stored at the site must be properly managed in accordance with these regulations within 90 days. The director can approve longer time frames with appropriate justification. Justification must be provided in writing no more than 30 days after ceasing activity at the site.

f. Waste piles that do not meet these provisions are required to obtain a permit in accordance with the permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter and meet all of the applicable waste pile requirements in Part IV (9VAC20-81-300 et seq.) of this chapter. Facilities that do not comply with the provisions of this subsection and fail to obtain a permit are subject to the provisions of 9VAC20-81-40.

14. Storage of nonhazardous solid wastes and hazardous wastes, or hazardous wastes from conditionally exempt small quantity generators as defined in Virginia Hazardous Waste Management Regulations (9VAC20-60) at a transportation terminal or transfer station in closed containers meeting the U.S. Department of Transportation specifications is exempt from this section and the permitting provisions of Part V (9VAC20-81-400 et seq.) of this chapter provided such wastes are removed to a permitted storage or disposal facility within 10 days from the initial receipt from the waste generator. To be eligible for this exemption, each shipment must be properly documented to show the name of the generator, the date of receipt by the transporter, and the date and location of the final destination of the shipment. The documentation shall be kept at the terminal or transfer station for at least three years after the shipment has been completed and shall be made available to the department upon request. All such activities shall comply with any local ordinances.

15. Open burning ~~in accordance with the requirements of 9VAC5-130-40~~ of solid wastes as provided in the following:

a. For forest management, agriculture practices, and highway construction and maintenance programs approved by the State Air Pollution Control Board.

b. For training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. Buildings that have not been demolished may be burned under the provisions of this subdivision only. Additionally, burning rubber tires, asphaltic materials,

crankcase oil, impregnated wood, or other rubber-based or petroleum-based wastes is permitted when conducting bona fide firefighting instruction.

c. For the destruction of classified military documents under the supervision of the designated official.

d. For campfires or other fires using clean wood or vegetative waste that are used solely for recreational purposes, for ceremonial occasions, for outdoor preparation of food, and for warming of outdoor workers.

e. For the onsite destruction of vegetative waste located on the premises of private property, provided that no regularly scheduled collection service for such vegetative waste is available at the adjacent street or public road.

f. For the onsite destruction of household waste by homeowners or tenants, provided that no regularly scheduled collection service for such household waste is available at the adjacent street or public road.

g. For the onsite destruction of clean wood waste and debris waste resulting from property maintenance; from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills; or from any other clearing operations.

16. Open burning of vegetative waste is allowed at a closed landfill that has not been released from postclosure care. The activity shall be included in the text of the postclosure plan and conducted in accordance with § 10.1-1410.3 of the Code of Virginia.

17. Placement of trees, brush, or other vegetation from land used for agricultural or silvicultural purposes on the same property or other property of the same landowner.

18. Using fossil fuel combustion products in one or more of the following applications or when handled, processed, transported, or stockpiled for the following uses:

a. As a base, sub-base or fill material under a paved road, the footprint of a structure, a paved parking lot, sidewalk, walkway or similar structure, or in the embankment of a road. In the case of roadway embankments, materials will be placed in accordance with VDOT specifications, and exposed slopes not directly under the surface of the pavement must have a minimum of 18 inches of soil cover over the fossil fuel combustion products, the top six inches of which must be capable of sustaining the growth of indigenous plant species or plant species adapted to the area. The use, reuse, or reclamation of unamended coal combustion byproduct shall not be placed in an area designated as a 100-year flood plain;

b. Processed with a cementitious binder to produce a stabilized structural fill product that is spread and compacted with proper equipment for the construction of a project with a specified end use; or

c. For the extraction or recovery of materials and compounds contained within the fossil fuel combustion products.

E. The following solid wastes are exempt from this chapter provided that they are managed in accordance with the requirements promulgated by other applicable state or federal agencies:

1. Management of wastes regulated by the State Board of Health, the State Water Control Board, the Air Pollution Control Board, the Department of Mines, Minerals and Energy, Department of Agriculture and Consumer Services, or any other state or federal agency with such authority.

2. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal.

4. Fossil fuel combustion products used for mine reclamation, mine subsidence, or mine refuse disposal on a mine site permitted by the Virginia Department of Mines, Minerals and Energy (DMME) when used in accordance with the standards.

5. Solid waste management practices that involve only the onsite placing of solid waste from mineral mining activities at the site of those activities and in compliance with a permit issued by the DMME, that do not include any municipal solid waste, are accomplished in an environmentally sound manner, and do not create an open dump, hazard or public nuisance are exempt from all requirements of this chapter.

6. Waste or byproduct derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner, or horticultural growing medium as defined in § 3.2-3600 of the Code of Virginia, or whose intended purpose is to neutralize soil acidity (see § 3.2-3700 of the Code of Virginia), and that is regulated under the authority of the Virginia Department of Agriculture and Consumer Services.

7. Fossil fuel combustion products bottom ash or boiler slag used as a traction control material or road surface material if the use is consistent with Virginia Department of Transportation practices.

8. Waste tires generated by and stored at salvage yards licensed by the Department of Motor Vehicles provided that such storage complies with requirements set forth in § 10.1-1418.2 of the Code of Virginia and such storage does not pose a hazard or nuisance.

9. Tire chips used as the drainage material in construction of septage drain fields regulated under the authority of the Virginia Department of Health.

F. The following solid wastes are exempt from this chapter provided that they are reclaimed or temporarily stored

incidentally to reclamation, are not accumulated speculatively, and are managed without creating an open dump, hazard, or a public nuisance:

1. Paper and paper products;

2. Clean wood waste that is to undergo size reduction in order to produce a saleable product, such as mulch;

3. Cloth;

4. Glass;

5. Plastics;

6. Tire chips, tire shred, ground rubber; and

7. Mixtures of above materials only. Such mixtures may include scrap metals excluded from regulation in accordance with the provisions of subsection C of this section.

VA.R. Doc. No. R14-3450; Filed September 29, 2013, 9:12 p.m.

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-100, 9VAC25-31-130, 9VAC25-31-170, 9VAC25-31-200, 9VAC25-31-400).**

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

Effective Date: November 20, 2013.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, TTY (804) 698-4021, or email gary.graham@deq.virginia.gov.

Background: The Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) governs the authorization to manage pollutants from various sources, including concentrated animal feeding operations (CAFO). The State Water Control Board has the authority to administer the federal National Pollutant Discharge Elimination System (NPDES) program within the Commonwealth, and as such, the program is called the Virginia Pollutant Discharge Elimination System (VPDES). Operations that meet the federal definition of CAFO found in 40 CFR 122.23(b) must seek coverage under a NPDES permit if the operation discharges or proposes to discharge. Concentrated animal feeding operations currently covered under these regulations are required to be covered under the VPDES permit regulation (9VAC25-31) or VPDES general permit regulation (9VAC25-191) if they discharge or propose to discharge.

Summary:

The existing regulation has been amended, where applicable, to reflect changes to 40 CFR 122.23 published in the Federal Register in 77 FR 44494 dated July 30, 2012. This amendment removes the requirement to apply for and obtain a VPDES permit if the concentrated animal feeding operation "proposes to discharge," clarifies the responsibility to apply for and get a permit prior to discharging, and removes separate permit deadlines and permit coverage requirements applicable to CAFO operations.

Part II
Permit Applications and Special VPDES Permit Programs

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

A. Duty to apply. The following shall submit a complete application to the department in accordance with this section. The requirements for concentrated animal feeding operations are described in subdivisions C 1 and ~~3~~ 2 of 9VAC25-31-130.

1. Any person who discharges or proposes to discharge pollutants; and

2. Any person who owns or operates a sludge-only facility whose biosolids use or sewage sludge disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit.

B. Exceptions. The following are not required to submit a complete application to the department in accordance with this section unless the board requires otherwise:

1. Persons covered by general permits;

2. Persons excluded from the requirement for a permit by this chapter; or

3. A user of a privately owned treatment works.

C. Who applies.

1. The owner of the facility or operation.

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

3. Notwithstanding the requirements of subdivision 2 of this subsection, biosolids land application by the operator may be authorized by the owner's permit.

D. Time to apply.

1. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial

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

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

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

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

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

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

(3) A description of the biosolids use or sewage sludge disposal practices. Unless the biosolids meets the requirements of subdivision Q 9 d of this section, the description must include the name and address of any facility where biosolids or sewage sludge is sent for treatment or disposal and the location of any land application sites;

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

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

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

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

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

F. Completeness.

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

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

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

4. A permit application shall not be considered complete if the board has waived application requirements under subsection J or P of this section and the EPA has disapproved the waiver application. If a waiver request has been submitted to the EPA more than 210 days prior to permit expiration and the EPA has not disapproved the waiver application 181 days prior to permit expiration, the

permit application lacking the information subject to the waiver application shall be considered complete.

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

6. No application for a permit to land apply biosolids in accordance with Part VI (9VAC25-31-420 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

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

1. The activities conducted by the applicant which require it to obtain a VPDES permit;

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

3. Up to four SIC codes which best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under RCRA (42 USC § 6921);

b. UIC program under SDWA (42 USC § 300h);

c. VPDES program under the CWA and the law;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

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

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

i. Other relevant environmental permits, including state permits.

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

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

H. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of subsection I of this section, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge

occurrence (except for storm water run-off, spillage or leaks).

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

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

7. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9VAC25-31-120).

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

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

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

(1) Biochemical oxygen demand (BOD_5);

(2) Chemical oxygen demand;

(3) Total organic carbon;

(4) Total suspended solids;

(5) Ammonia (as N);

(6) Temperature (both winter and summer); and

(7) pH.

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

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater, except as indicated in subdivisions 7 c (3), (4), and (5) of this subsection:

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

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

(3) Subdivision H 7 e (1) of this section and the corresponding portions of the VPDES ~~application~~ Application Form 2C are suspended as they apply to coal mines.

(4) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES ~~application~~ Application Form 2C are suspended as they apply to:

(a) Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(b) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.

(c) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES ~~application~~ Application Form 2C are suspended as they apply to:

(a) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

(b) Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

(c) Testing and reporting for the acid, base/neutral, and pesticide fractions in the petroleum refining industrial category.

(d) Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral, and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

(e) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process waste streams of the Steam Electric Power Plant industrial category.

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

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this

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

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

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

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

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

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

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

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

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

10. Reserved.

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

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

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

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

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. Grab samples must be used for pH,

temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand (BOD_5).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

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

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

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

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

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

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

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

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

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

1. For concentrated animal feeding operations:

a. The name of the owner or operator;

b. The facility location and mailing address;

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

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

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

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

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

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

i. For CAFOs required to seek coverage under a permit after December 31, 2009, a nutrient management plan that at a minimum satisfies the requirements specified in subsection E of 9VAC25-31-200 and subdivision C ~~9~~ 5 of 9VAC25-31-130, including, for all CAFOs subject to 40 CFR Part 412 Subpart C or Subpart D, the requirements of 40 CFR 412.4(c), as applicable.

2. For concentrated aquatic animal production facilities:

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

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

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

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

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

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

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

1. All applicants must provide the following information:

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

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

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

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

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

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

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

(5) Nonattainment program under the Clean Air Act;

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

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

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

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

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

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

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

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

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

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

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

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

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

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

(d) Whether land application is continuous or intermittent;

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

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

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

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

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

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

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

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

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

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

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

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

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic:

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

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements;

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

a. The following information about each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

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

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

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

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand (BOD_5 or $CBOD_5$) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable;

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

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

4. Effluent monitoring for specific parameters.

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

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

(1) Biochemical oxygen demand (BOD_5 or $CBOD_5$);

(2) Fecal coliform;

(3) Design flow rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids.

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

(1) Ammonia (as N);

(2) Chlorine (total residual, TRC);

(3) Dissolved oxygen;

(4) Nitrate/Nitrite;

(5) Kjeldahl nitrogen;

(6) Oil and grease;

(7) Phosphorus; and

(8) Total dissolved solids.

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

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

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

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

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

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

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

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

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

5. Effluent monitoring for whole effluent toxicity.

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

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Name and mailing address;

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

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

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

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

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

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

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

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

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

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

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

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

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261, if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

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

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

a. The following information regarding the combined sewer system:

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

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

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

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

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

(1) The following information on each outfall:

(a) Outfall number;

(b) State, county, and city or town in which outfall is located;

(c) Latitude and longitude, to the nearest second;

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and

(f) The number of storm events monitored in the past year;

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

(a) The number of events in the past year;

(b) The average duration per event, if available;

(c) The average volume per CSO event, if available; and

(d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

(a) Name of receiving water;

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

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

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

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors

responsible for any operational or maintenance aspects of the facility.

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

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

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

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

2. The expected date of commencement of discharge;

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

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

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

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

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

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

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

(3) Total organic carbon (TOC).

(4) Total suspended solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

(8) pH.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

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

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

M. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the ~~Administrator~~ administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §§ 301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

N. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G.

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

O. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections M and N of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions M 2 a (2) or M 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

P. Recordkeeping. Except for information required by subdivision D 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

Q. Sewage sludge management. All TWTDS subject to subdivision D 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as federal, state, private, public, or other entity;

f. The name, mailing address, and telephone number of the applicant; and

g. Indication whether the applicant is the owner, operator, or both.

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

b. UIC program under the Safe Drinking Water Act (SDWA);

c. NPDES program under the Clean Water Act (CWA);

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

e. Nonattainment program under the Clean Air Act;

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

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

h. Other relevant environmental permits, including state or local permits.

3. All applicants must identify any generation, treatment, storage, land application of biosolids, or disposal of sewage sludge that occurs in Indian country.

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and

b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all

liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. All applicants must submit an odor control plan that contains at minimum:

a. Methods used to minimize odor in producing biosolids;

b. Methods used to identify malodorous biosolids before land application (at the generating facility);

c. Methods used to identify and abate malodorous biosolids that have been delivered to the field, prior to land application; and

d. Methods used to abate malodor from biosolids if land applied.

7. The applicant must submit biosolids monitoring data for the pollutants for which limits in biosolids have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

a. When applying for authorization to land apply a biosolids source not previously included in a VPDES or Virginia Pollution Abatement Permit, the biosolids shall be sampled and analyzed for PCBs. The sample results shall be submitted with the permit application or request to add the source.

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

c. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the biosolids and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

d. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490, 40 CFR Part 503 (March 26, 2007) and 40 CFR Part 136 (March 26, 2007).

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

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(2) The analytical method used; and

(3) The method detection level.

8. If the applicant is a person who prepares biosolids or sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates biosolids or sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives biosolids or sewage sludge from another facility, the following information for each facility from which biosolids or sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of biosolids or sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If biosolids from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B Table 1, the pollutant concentrations in 9VAC25-31-540 B Table 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the biosolids is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If biosolids from the applicant's facility is sold or given away in a bag or other container for application to the land, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of biosolids subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the biosolids being sold or given away.

f. If biosolids or sewage sludge from the applicant's facility is provided to another person who prepares biosolids, as defined in 9VAC25-31-500, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information for each facility receiving the biosolids or sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of biosolids or sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places biosolids in bags or containers for sale or give-away for application to the land, a copy of any labels or notices that accompany the biosolids.

9. If biosolids from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 8 d, e, or f of this subsection, the applicant must provide the following information:

a. Written permission of landowners on the most current form approved by the board.

b. The total dry metric tons per 365-day period of biosolids subject to this subsection that is applied to the land.

c. If any land application sites are located in states other than the state where the biosolids is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

d. The following information for each land application site that has been identified at the time of permit application:

(1) The DEQ control number, if previously assigned, identifying the land application field or site. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location;

(2) The site's latitude and longitude in decimal degrees to three decimal places and method of determination;

(3) A legible topographic map and aerial photograph, including legend, of proposed application areas to scale as needed to depict the following features:

(a) Property boundaries;

(b) Surface water courses;

(c) Water supply wells and springs;

(d) Roadways;

(e) Rock outcrops;

(f) Slopes;

(g) Frequently flooded areas (National Resources Conservation Service (NRCS) designation);

(h) Occupied dwellings within 400 feet of the property boundaries and all existing extended dwelling and property line setback distances;

(i) Publicly accessible properties and occupied buildings within 400 feet of the property boundaries and the associated extended setback distances; and

(j) The gross acreage of the fields where biosolids will be applied;

(4) County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant;

(5) County tax maps labeled with Tax Parcel ID or IDs for each farm to be included in the permit, which may include multiple fields, to depict properties within 400 feet of the field boundaries;

(6) A USDA soil survey map, if available, of proposed sites for land application of biosolids;

(7) The name, mailing address, and telephone number of each site owner, if different from the applicant;

(8) The name, mailing address, and telephone number of the person who applies biosolids to the site, if different from the applicant;

(9) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(10) Description of agricultural practices including a list of proposed crops to be grown;

(11) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in biosolids;

(12) Pertinent calculations justifying storage and land area requirements for biosolids application including an annual biosolids balance incorporating such factors as precipitation, evapotranspiration, soil percolation rates, wastewater loading, and monthly storage (input and drawdown); and

(13) Other information that describes how the site will be managed, as specified by the board.

e. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk biosolids subject to 9VAC25-31-540 B Table 2 will be applied, to ascertain whether bulk biosolids subject to 9VAC25-31-540 B Table 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and

the name and phone number of a contact person at the permitting authority; and

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 9 e (1) of this subsection, bulk biosolids subject to cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 has been applied to the site since July 20, 1993.

10. Biosolids storage facilities not located at the site of the wastewater treatment plant. Plans and specifications for biosolids storage facilities not located at the site of the wastewater treatment plant generating the biosolids, including routine and on-site storage, shall be submitted for issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and shall depict the following information:

a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map;

b. Location of any required soil, geologic, and hydrologic test holes or borings;

c. Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distances from the site boundary:

(1) Water wells (operating or abandoned);

(2) Surface waters;

(3) Springs;

(4) Public water supplies;

(5) Sinkholes;

(6) Underground and surface mines;

(7) Mine pool (or other) surface water discharge points;

(8) Mining spoil piles and mine dumps;

(9) Quarries;

(10) Sand and gravel pits;

(11) Gas and oil wells;

(12) Diversion ditches;

(13) Occupied dwellings, including industrial and commercial establishments;

(14) Landfills and dumps;

(15) Other unlined impoundments;

(16) Septic tanks and drainfields; and

(17) Injection wells;

d. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:

(1) Maximum and minimum percent slopes;

(2) Depressions on the site that may collect water;

(3) Drainage ways that may attribute to rainfall run-on to or run-off from this site; and

(4) Portions of the site, if any, that are located within the 100-year floodplain;

e. Data and specifications for the liner proposed for seepage control;

f. Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances;

g. Calculations justifying impoundment capacity; and

h. Groundwater monitoring plans for the facilities if required by the department. The groundwater monitoring plan shall include pertinent geohydrological data to justify upgradient and downgradient well location and depth.

11. Staging. Generic plans are required for staging of biosolids.

12. A biosolids management plan shall be provided that includes the following minimum site specific information at the time of permit application:

a. A comprehensive, general description of the operation shall be provided, including biosolids source or sources, quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided.

b. A nutrient management plan approved by the Department of Conservation and Recreation as required for application sites prior to board authorization under the following conditions:

(1) Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

(2) Sites where land application is proposed more frequently than once every three years at greater than 50% of the annual agronomic rate;

(3) Mined or disturbed land sites where land application is proposed at greater than agronomic rates; or

(4) Other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

13. Biosolids transport.

a. General description of transport vehicles to be used;

b. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup (including vehicle cleaning), field

reclamation, and emergency spill notification and cleanup measures; and

c. Voucher system used for documentation and recordkeeping.

14. Field operations.

a. Storage.

(1) Routine storage at facilities not located at the site of the wastewater treatment plant – supernatant handling and disposal, biosolids handling, and loading of transport vehicles, equipment cleaning, freeboard maintenance, and inspections for structural integrity;

(2) On-site storage – procedures for department/board approval and implementation;

(3) Staging – procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use; and

(4) Field reestablishment of offloading (staging) areas.

b. Application methodology.

(1) Description and specifications on spreader vehicles;

(2) Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis; and

(3) Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturated or ice-covered or snow-covered ground; establishment of setback distances, slopes, prohibited access for beef and dairy animals, and soil pH requirements; and proper site specific biosolids loading rates on a field-by-field basis.

15. An applicant for a permit authorizing the land application of biosolids shall provide to the department, and to each locality in which the applicant proposes to land apply biosolids, written evidence of financial responsibility. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation.

16. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

17. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

18. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Solid Waste Management Regulations, 9VAC20-81.

19. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to biosolids or sewage sludge generation, treatment, use, or disposal.

20. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the biosolids use and sewage sludge disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

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

R. Applications for facilities with cooling water intake structures.

1. Application requirements. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.

2. Source water physical data. These include:

a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. Location maps.

3. Cooling water intake structure data. These include:

a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;

b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;

c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and

e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling

water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;

b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in this subdivision 4 ~~of this subsection~~ is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

9VAC25-31-130. Concentrated animal feeding operations.

A. Permit requirement for CAFOs.

1. Concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with subsection B of this section are point sources that require VPDES permits for discharges ~~or proposed discharges~~. Once an operation is defined as a CAFO, the VPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

2. Two or more animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designations. The board may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the board shall consider the following factors:

a. The size of the animal feeding operation and the amount of wastes reaching surface waters;

b. The location of the animal feeding operation relative to surface waters;

c. The means of conveyance of animal wastes and process wastewaters into surface waters;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into surface waters; and

e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in the definition of Medium CAFO in this regulation shall be designated as a concentrated animal feeding operation unless:

a. Pollutants are discharged into surface waters through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into surface waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the board has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the VPDES permit program.

C. ~~Who must seek coverage under a~~ VPDES ~~permit?~~ permit authorization.

1. Permit requirement. The owners or operators of a CAFO shall ~~seek coverage under~~ not discharge unless the discharge is authorized by a VPDES permit ~~if the CAFO~~

~~discharges or proposes to discharge. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. Specifically,~~ In order to obtain authorization under a VPDES permit, the CAFO owner or operator shall either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. ~~If there is no VPDES general permit available to the CAFO, the CAFO owner or operator shall submit an application for an individual permit to the board.~~ The owners or operators of a CAFO must have obtained authorization under the VPDES permit at the time that the CAFO discharges.

~~2. Exception. An owner or operator of a Large CAFO does not need to seek coverage under a VPDES permit if the owner or operator certifies to the board that the CAFO does not discharge or propose to discharge manure, litter or process wastewater.~~

~~3.~~ 2. Information to submit with permit application. A permit application for an individual permit must include the information specified in 9VAC25-31-100 ~~I~~ J. A notice of intent for a general permit must include the information specified in 9VAC25-31-100 ~~I~~ J and 9VAC25-31-170.

~~4.~~ 3. Land application discharges from a CAFO are subject to VPDES requirements. The discharge of manure, litter or process wastewater to surface waters from a CAFO as the result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to VPDES requirements, except where it is an agricultural storm water discharge as provided in 33 USC § 1362(14). For purposes of this subdivision, where the manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

a. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200.

b. Unpermitted Large CAFOs shall maintain documentation specified in subdivision E 1 i of 9VAC25-31-200 either on site or at a nearby office, or otherwise make such documentation readily available to department staff upon request.

~~5. No discharge certification option.~~

~~a. The owner or operator of a CAFO that meets the eligibility criteria in subdivision 5 b of this subsection may certify to the board that the CAFO does not discharge or propose to discharge. A CAFO owner or operator who certifies that the CAFO does not discharge or propose to discharge is not required to seek coverage under a VPDES permit pursuant to subdivision 1 of this subsection, provided that the CAFO is designed, constructed, operated, and maintained in accordance with the requirements of subdivisions 5 b and c of this subsection, and subject to the limitations in subdivision 5 d of this subsection.~~

~~b. Eligibility criteria. In order to certify that a CAFO does not discharge or propose to discharge, the owner or operator of a CAFO shall document, based on an objective assessment of the conditions at the CAFO, that the CAFO is designed, constructed, operated, and maintained in a manner such that the CAFO will not discharge, as follows:~~

~~(1) The CAFO's production area is designed, constructed, operated, and maintained so as not to discharge. The CAFO shall maintain documentation that demonstrates that:~~

~~(a) Any open manure storage structures are designed, constructed, operated, and maintained to achieve no discharge based on a technical evaluation in accordance with the elements of the technical evaluation set forth in 40 CFR 412.46(a)(1)(i) through (viii);~~

~~(b) Any part of the CAFO's production area that is not addressed by subdivision 5 b (1) (a) of this subsection is designed, constructed, operated, and maintained such that there will be no discharge of manure, litter, or process wastewater; and~~

~~(c) The CAFO implements the additional measures set forth in 40 CFR 412.37(a) and (b);~~

~~(2) The CAFO has developed and is implementing an up-to-date nutrient management plan to ensure no discharge from the CAFO, including from all land application areas under the control of the CAFO, that addresses, at a minimum, the following:~~

~~(a) The elements of subdivisions E 1 a through i of 9VAC25-31-200 and 40 CFR 412.37(c); and~~

~~(b) All site-specific operation and maintenance practices necessary to ensure no discharge, including any practices or conditions established by a technical evaluation pursuant to subdivision 5 b (1) (a) of this subsection; and~~

~~(3) The CAFO shall maintain documentation required by subdivision 5 b of this subsection either on site or at a nearby office, or otherwise make such documentation readily available to the department staff upon request.~~

c. Submission to the board. In order to certify that a CAFO does not discharge or propose to discharge, the CAFO owner or operator shall complete and submit to the board, by certified mail or equivalent method of documentation, a certification that includes, at a minimum, the following information:

(1) The legal name, address, and phone number of the CAFO owner or operator (see 9VAC25-31-100 B);

(2) The CAFO name and address, the county name, and the latitude and longitude where the CAFO is located;

(3) A statement that describes the basis for the CAFO's certification that it satisfies the eligibility requirements identified in subdivision 5 b of this subsection;

(4) The following certification statement: "I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], and that said CAFO meets the requirements of subdivision 5 of this subsection. I have read and understand the eligibility requirements of subdivision 5 b of this subsection for certifying that a CAFO does not discharge or propose to discharge and further certify that this CAFO satisfies the eligibility requirements. As part of this certification, I am including the information required by subdivision 5 c of this subsection. I also understand the conditions set forth in subdivisions 5 d, e and f of this subsection regarding loss and withdrawal of certification. I certify under penalty of law that this document and all other documents required for this certification were prepared under my direction or supervision and that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons directly involved in gathering and evaluating the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."; and

(5) The certification shall be signed in accordance with the signatory requirements of 9VAC25-31-110.

d. Term of certification. A certification that meets the requirements of subdivisions 5 b and c of this subsection shall become effective on the date it is submitted, unless the board establishes an effective date of up to 30 days after the date of submission. Certification will remain in effect for five years or until the certification is no longer valid or is withdrawn, whichever occurs first. A certification is no longer valid when a discharge has occurred or when the CAFO ceases to meet the eligibility criteria in subdivision 5 b of this subsection.

e. Withdrawal of certification.

(1) At any time, a CAFO may withdraw its certification by notifying the board by certified mail or equivalent method of documentation. A certification is withdrawn on the date the notification is submitted to the board. The CAFO does not need to specify any reason for the withdrawal in its notification to the board.

(2) If a certification becomes invalid in accordance with subdivision 5 d of this subsection, the CAFO shall withdraw its certification within three days of the date on which the CAFO becomes aware that the certification is invalid. Once a CAFO's certification is no longer valid, the CAFO is subject to the requirement in subdivision 1 of this subsection to seek permit coverage if it discharges or proposes to discharge.

f. Recertification. A previously certified CAFO that does not discharge or propose to discharge may recertify in accordance with subdivision 5 of this subsection, except that where the CAFO has discharged, the CAFO may only recertify if the following additional conditions are met:

(1) The CAFO had a valid certification at the time of the discharge;

(2) The owner or operator satisfies the eligibility criteria of subdivision 5 b of this subsection, including any necessary modifications to the CAFO's design, construction, operation, and/or maintenance to permanently address the cause of the discharge and ensure that no discharge from this cause occurs in the future;

(3) The CAFO has not previously recertified after a discharge from the same cause;

(4) The owner or operator submits to the board for review the following documentation: a description of the discharge, including the date, time, cause, duration, and approximate volume of the discharge, and a detailed explanation of the steps taken by the CAFO to permanently address the cause of the discharge in addition to submitting a certification in accordance with subdivision 5 c of this subsection; and

(5) Notwithstanding subdivision 5 d of this subsection, a recertification that meets the requirements of subdivisions 5 f (3) and (4) of this subsection shall only become effective 30 days from the date of submission of the recertification documentation.

g. Effect of certification.

(1) An unpermitted CAFO certified in accordance with subdivision 5 of this subsection is presumed not to propose to discharge. If such a CAFO does discharge, it is not in violation of the requirement that CAFOs that propose to discharge seek permit coverage pursuant to subdivisions 1 and 6 of this subsection, with respect to that discharge. In all instances, the discharge of a pollutant without a permit is a violation of the Clean Water Act § 301(a) prohibition against unauthorized discharges from point sources.

~~(2) In any enforcement proceeding for failure to seek permit coverage under subdivisions 1 and 6 of this subsection that is related to a discharge from an unpermitted CAFO, the burden is on the CAFO to establish that it did not propose to discharge prior to the discharge when the CAFO either did not submit certification documentation as provided in subdivision 5 c or 5 f (4) of this subsection within at least five years prior to the discharge, or withdrew its certification in accordance with subdivision 5 e of this subsection. Design, construction, operation, and maintenance in accordance with the criteria of subdivision 5 b of this subsection satisfies this burden.~~

~~6. When a CAFO must seek coverage under a VPDES permit.~~

~~a. Operations defined as CAFOs prior to April 14, 2003. For operations that are defined as CAFOs under regulations that are in effect prior to April 14, 2003, the owner or operator must have or seek to obtain coverage under a VPDES permit as of April 14, 2003, and comply with all applicable VPDES requirements, including the duty to maintain permit coverage in accordance with subdivision 7 of this subsection.~~

~~b. Operations defined as CAFOs as of April 14, 2003, that were not defined as CAFOs prior to that date. For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under a VPDES permit by February 27, 2009.~~

~~c. Operations that become defined as CAFOs after April 14, 2003, but that are not new sources. For newly constructed AFOs and CAFOs that make changes to their operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under a VPDES permit, as follows:~~

~~(1) For newly constructed operations not subject to effluent limitation guidelines, 180 days prior to the time the CAFO commences operation;~~

~~(2) For other operations (e.g., resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; or~~

~~(3) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has at least until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later.~~

~~d. New sources. New sources must seek to obtain coverage under a permit at least 180 days prior to the time the CAFO commences operation.~~

~~e. Operations that are designated CAFOs. For operations designated as a CAFO in accordance with subsection B of this section, the owner or operator must seek to obtain coverage under a VPDES permit no later than 90 days after receiving notice of the designation.~~

~~7. Duty to maintain permit coverage. No later than 180 days before the expiration of the permit, the permittee shall submit an application to renew its permit, in accordance with 9VAC25-31-100. However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:~~

~~a. The facility has ceased operation or is no longer a CAFO; and~~

~~b. The permittee has demonstrated to the satisfaction of the board that the CAFO will not discharge or propose to discharge upon expiration of the permit.~~

~~8.~~ 4. Procedures for CAFOs seeking coverage under a general permit. CAFO owners or operators shall submit a registration statement when seeking authorization to discharge under a general permit in accordance with subsection B of 9VAC25-31-170. The board will review registration statements submitted by CAFO owners or operators to ensure that the registration statement includes the information required by subsection ~~I~~ J of 9VAC25-31-100, including a nutrient management plan that meets the requirements of subsection E of 9VAC25-31-200 and applicable effluent limitations and standards, including those specified in 40 CFR Part 412. When additional information is necessary to complete the registration statement or clarify, modify, or supplement previously submitted material, the board may request such information from the owner or operator. If the board makes a preliminary determination that the registration statement meets the requirements of subsection ~~I~~ J of 9VAC25-31-100 and subsection E of 9VAC25-31-200, the board will notify the public of the board's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the registration statement submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit. The process for submitting public comments and public hearing requests, and the public hearing process if a request for a public hearing is granted, shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310 and 40 CFR 124.13. The board may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and request a public hearing that differs from the time period specified in 9VAC25-31-290. The board's response to significant comments received during the comment period is governed by 9VAC25-31-320, and, if necessary, the board will require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage. When the board authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become

incorporated as terms and conditions of the permit for the CAFO. The board will notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

~~9.~~ 5. Changes to a nutrient management plan. Any permit issued to a CAFO shall require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the board:

a. The CAFO owner or operator shall provide the board with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of subdivisions E 5 a (2) and E 5 b (4) of 9VAC25-31-200 are not subject to the requirements of this subdivision ~~9~~ 5 ~~of this subsection~~.

b. The board will review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 CFR Part 412, and will determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the board will notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the board will determine whether such changes are substantial changes as described in subdivision ~~9~~ 5 c of this subsection.

(1) If the board determines that the changes to the terms of the nutrient management plan are not substantial, the board will make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

(2) If the board determines that the changes to the terms of the nutrient management plan are substantial, the board will notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, public hearing requests, and the public hearing process if a public hearing is held shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310 and 40 CFR 124.13. The board may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a public hearing on the proposed changes that differs from the time period specified in 9VAC25-31-290. The board will respond to all significant comments received during the comment period as provided in 9VAC25-31-320, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the board incorporates the revised terms of the nutrient management plan into the permit, the board will notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

(1) Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing VPDES permit in accordance with the requirements of subdivision E 5 of 9VAC25-31-200, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;

(2) Any changes to the field-specific maximum annual rates for land application, as set forth in subdivision E 5 a of 9VAC25-31-200, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in subdivision E 5 b of 9VAC25-31-200;

(3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with subdivision E 5 of 9VAC25-31-200; and

(4) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to state waters.

~~10.~~ 6. Causes for modification of nutrient management plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with subdivision C ~~8~~ 4 of 9VAC25-31-130 and 9VAC25-31-170 is not a cause for

modification pursuant to the requirements of 9VAC25-31-370.

9VAC25-31-170. General permits.

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under subdivision 2 b of this subsection, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§ 208 and 303 of CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are either:

a. Storm water point sources; or

b. One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(4) Require the same or similar monitoring; and

(5) In the opinion of the board, are more appropriately controlled under a general permit than under individual permits.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-31-220, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams. General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in 9VAC25-31-100 ~~I~~ J 1, including a topographic map. All notices of intent shall be signed in accordance with 9VAC25-31-110.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or

dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The board shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under subdivision 3 c of this subsection.

g. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in subdivision C ~~8~~ 4 of 9VAC25-31-130.

3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual VPDES permit. Any interested person may request the board to take action under this subdivision. Cases where an individual VPDES permit may be required include the following:

(1) The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general VPDES permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general VPDES permit;

(4) A water quality management plan containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general VPDES permit; or

(7) The discharge(s) is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors;

b. Permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, storm water discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this subsection, the board may require the discharger to submit a permit application or other information regarding the discharge under the law and § 308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send

an application form with the notice. The discharger must apply for a permit under 9VAC25-31-120 A 1 within 60 days of notice or under 9VAC25-31-120 A 7 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-31-100 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VPDES permit is issued to an owner or operator otherwise subject to a general VPDES permit, the applicability of the general permit to the individual VPDES permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

9VAC25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

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

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

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

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger which would be subject to § 301 or § 306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. Nothing herein shall in any way impair the authority of the board to take enforcement action under §§ 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

C. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators (18VAC160-20). Not withstanding the foregoing requirement, unless the discharge is determined by the board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical/chemical treatment.

2. In making this case-by-case determination, the board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated Animal Feeding Operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges as defined in subdivision C **4** 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

1. Requirements to develop, implement and comply with a nutrient management plan. At a minimum, a nutrient management plan shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented and be in compliance with the nutrient management plan as a requirement of the permit. The nutrient management plan must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with surface waters of the state;

e. Ensure that chemicals and other contaminants handled onsite are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;

g. Identify protocols for appropriate testing of manure, litter, process wastewater and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

a. All applicable records identified pursuant to subdivision 1 i of this subsection;

b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure,

litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. The annual report must include:

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

b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

f. Summary of all manure, litter and process wastewater discharges from the production area that occurred in the previous 12 months including date, time and approximate volume;

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and

h. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the board to be necessary to meet the requirements of subdivision 1 of this subsection. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by subdivision 4 h of this subsection and, as applicable, 40 CFR 412.4(c), shall include the fields available for land application; field-specific rates of application properly developed, as specified in subdivisions 5 a and b of this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms shall address rates of application using one of the following two approaches, unless the board specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen

and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with subdivision 5 b (2) of this subsection); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by subdivision 1 g of this subsection; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the board for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in subdivision 5 b (1) of this subsection.

(3) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the board, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in subdivision 5 b (1) of this subsection before land applying manure, litter, and process wastewater and shall rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subdivision 5 b (1) of this subsection, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the board; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

9VAC25-31-400. Minor modifications of permits.

Upon the consent of the permittee, the board may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part IV of this chapter. Any permit modification not processed as a minor modification under this section must be made for cause and with draft permit and public notice. Minor modifications may only:

A. Correct typographical errors;

B. Require more frequent monitoring or reporting by the permittee;

C. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

D. Allow for a change in ownership or operational control of a facility where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the department;

E. 1. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge.

2. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

F. Incorporate conditions of an approved POTW pretreatment program (or a modification thereto that has been approved in accordance with the procedures in this chapter) as enforceable conditions of the POTW's permits.

G. Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of subdivision C ~~9~~ 5 of 9VAC25-31-130.

VA.R. Doc. No. R14-3869; Filed October 2, 2013, 11:20 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), 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.

Effective Date: January 1, 2014.

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 reissues 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.

The following pesticide uses are covered under the general permit as they are most likely to reach surface waters:

1. Mosquito and other flying insect pest control;

2. Weed and algae pest control;

3. Animal pest control;

4. Forest canopy pest control; and

5. Intrusive vegetation pest control.

Changes include updates to narrative technology and water quality based permit requirements, monitoring requirements, pesticide discharge management plans, and special conditions (corrective actions, adverse incidents, and recordkeeping and reporting). 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 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 Archaebacteria; or

c. Is a parasitically replicating microscopic element, including but not limited to viruses.

2. "Biochemical pesticide" means a pesticide that:

a. Is a naturally occurring substance or structurally similar and functionally identical to a naturally occurring substance;

b. Has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically derived biochemical pesticide, is equivalent to a naturally occurring substance that has such a history; and

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

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

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

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

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

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

1. Significant risk to human health;

2. Significant economic loss; or

3. Significant risk to:

a. Endangered species;

b. Threatened species;

c. Beneficial organisms; or

d. The environment.

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

"Discharge of a pollutant" means~~, for purposes of this chapter, any~~ 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)(1)~~ 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 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 or] 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, 2011~~ 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.~~

5. Intrusive vegetation pest control – to control vegetation along roads, ditches, canals, waterways, and utility rights of way where to target the intrusive pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface water.]

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

Table 1. Annual Treatment Area Thresholds

Pesticide Use	Annual Threshold
~~Mosquitoes~~ Mosquito and Other Flying Insect ~~Pests~~ Pest Control	6400 acres of treatment [~~area~~ area[1]]
Weed~~,~~ and Algae~~, and Pathogen~~ Pest Control~~:~~ [~~In Water~~] [~~At Water's Edge~~]	80 acres of treatment area[1] 20 linear miles of treatment [~~area at water's edge[2]~~ area[2]]
Animal Pest Control~~:~~ [~~In Water~~] [~~At Water's Edge~~]	80 acres of treatment area[1] 20 linear miles of treatment [~~area at water's edge[2]~~ area[2]]
Forest [Canopy] Pest Control	6400 acres of treatment [~~area~~ area[1]]
[Intrusive Vegetation Pest Control]	[6400 acres of treatment area[1] 20 linear miles of treatment area[2]]

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

[2]Calculations include the [~~linear~~] extent of the application made [to linear features (e.g., roads, ditches, canals, waterways, and utility rights of way) or] 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, 2011~~ 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, 2011~~ 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~~

(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~~ conditions] 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 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.

[(5) Intrusive vegetation pest control. This subpart applies to discharges resulting from the application of pesticides along roads, ditches, canals, waterways, and utility rights of way where, to target the intrusive pests effectively, a portion of the pesticide will unavoidably be applied over and deposited to 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 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 measures;

(iii) Identify current distribution of the target pest and assess potential distribution in the absence of 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 conditions in subdivision A 1 (b) (5) (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 pest management measures that minimize discharges resulting from application of pesticides to intrusive vegetation pests. In developing these pest management 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 intrusive vegetation 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.~~

~~c. Pesticide application activities shall also be monitored to ensure that the application equipment is in proper operating condition by adhering to any manufacturer's conditions and industry practices and by calibrating, cleaning, and repairing equipment on a regular basis.~~

~~2. Visual monitoring assessment requirements for all operators.~~ All operators covered under this permit must conduct a visual monitoring assessment (i.e., spot checks in the area to and around where pesticides are applied) for possible and observable adverse incidents caused by application of pesticides, including but not limited to the unanticipated death or distress of nontarget organisms and disruption of wildlife habitat, recreational, or municipal water use.

A visual monitoring assessment is only required during the pesticide application when feasibility and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances. Visual monitoring assessments of the application site must be performed:

~~a.~~ 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) [and I A 1 b (5).]

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 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.~~

~~c.~~ 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.

~~c. Corrective action documentation. For situations identified in Part I D 1 a, other than for adverse incidents (see Part I D 2), or reportable spills or leaks (see Part I D 3), the operator shall document the situation triggering corrective action and the planned corrective action within five days of becoming aware of that situation, and retain a copy of this documentation. This documentation must include the following information:~~

~~(1) Identification of the condition triggering the need for corrective action review, including any ambient water quality monitoring that assisted in determining that discharges did not meet water quality standards;~~

~~(2) Brief description of the situation;~~

~~(3) Date the problem was identified;~~

~~(4) Brief description of how the problem was identified, how the operator learned of the situation, and the date the operator learned of the situation;~~

~~(5) Summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and~~

~~(6) Any measures to prevent reoccurrence of such an incident, including notice of whether PDMP modifications are required as a result of the incident.~~

2. Adverse incident documentation and reporting.

a. Twenty-four hour adverse incident notification. If the operator observes or is otherwise made aware of an adverse incident that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the department (see Part I D 5).

This notification must be made [~~by telephone~~] within 24 hours of when the operator becomes aware of the adverse incident and must include at least the following information:

(1) The caller's name and telephone number;

(2) Operator's name and mailing address;

(3) The name and telephone number of a contact person if different than the person providing the 24-hour notice;

(4) How and when the operator became aware of the adverse incident;

(5) Description of the location of the adverse incident;

(6) Description of the adverse incident identified and the EPA pesticide registration number for each product that was applied in the area of the adverse incident; and

(7) Description of any steps the operator has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If the operator is unable to notify the department within 24 hours, notification shall be made as soon as possible and the rationale for why the notification was not possible within 24 hours shall be provided.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA § 6(a)(2) and its implementing regulations at 40 CFR Part 159.

b. Reporting of adverse incidents is not required under this permit in the following situations:

(1) The operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application.

(2) The operator has been notified in writing by the board that the reporting requirement has been waived for this incident or category of incidents.

(3) The operator receives notification of ~~an~~ 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).

(3) This notification must be made by telephone immediately upon the operator becoming aware of the adverse incident and must include at least the following information:

(a) The caller's name and telephone number;

(b) Operator's name and mailing address;

(c) The name of the affected species, size of area impacted, and if applicable, the approximate number of animals affected;

(d) How and when the operator became aware of the adverse incident;

(e) Description of the location of the adverse incident;

(f) Description of the adverse incident, including the EPA pesticide registration number for each product the operator applied in the area of the adverse incident;

(g) Description of any steps the operator has taken or will take to alleviate the adverse impact to the species; and

(h) Date and time of application. Additional information on federally listed threatened or endangered species and federally designated critical habitat is available from NMFS (www.nmfs.noaa.gov) for anadromous or marine species or FWS (www.fws.gov) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service (www.dgif.virginia.gov). Listing of state threatened or endangered plants and insects can be found in §§ 3.2-1000 through 3.2-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code (both the Code of Virginia and the Virginia Administrative Code must be referenced in order to obtain the complete plant and insect list). (Contact information for these agencies can be found on the contact information form or through the DEQ website.)

3. Reportable spills and leaks.

a. Spill, leak, or other unauthorized discharge notification. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 117, or 302 occurs in any 24-hour period, the operator shall notify the department (see Part I D 2) as soon as the operator has knowledge of the release. Department contact information must be kept in locations that are readily accessible and available in the area where a spill, leak, or other unpermitted discharge may occur.

b. Five-day spill, leak, or other unauthorized discharge report. Within five days of the operator becoming aware of a spill, leak, or other unauthorized discharge triggering the notification in subdivision 3 of this subsection, the operator shall submit a written report to the appropriate DEQ regional office at the address listed in Part I D 5. The report shall contain the following information:

(1) A description of the nature and location of the spill, leak, or discharge;

(2) The cause of the spill, leak, or discharge;

(3) The date on which the spill, leak, or discharge occurred;

(4) The length of time that the spill, leak, or discharge continued;

(5) The volume of the spill, leak, or discharge;

(6) If the discharge is continuing, how long it is expected to continue and what the expected total volume of the discharge will be;

(7) A summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and

(8) Any steps planned or taken to prevent recurrence of such a spill, leak, or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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

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

4. Recordkeeping and annual reporting. The operator shall keep records as required in this permit. These records must be accurate, complete, and sufficient to demonstrate compliance with the conditions of this permit. The operator can rely on records and documents developed for other obligations, such as requirements under FIFRA and state or local pesticide programs, provided all requirements of this permit are satisfied. The board recommends that all operators covered under this permit keep records of acres or linear miles treated for all applicable use patterns covered under this general permit.

a. All operators must keep the following records:

(1) A copy of any adverse incident reports (see Part I D 2 c).

(2) The operator's rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part I D 2 [~~a~~ b].

~~(3) Any corrective action documentation (see Part I D 1 c).~~

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

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 October 2, 2013, 11:16 a.m.

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TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A

2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10VAC5-40. Credit Unions (adding 10VAC5-40-80, 10VAC5-40-90).**

Statutory Authority: §§ 6.2-1303 and 12.1-13 of the Code of Virginia.

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

Public Comment Deadline: November 8, 2013.

Agency Contact: Werner Paul, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9698, FAX (804) 371-9416, or email werner.paul@scc.virginia.gov.

Summary:

The State Corporation Commission is proposing regulations that would give state-chartered credit unions the authority to (i) purchase loan participation interests to the same extent, and subject to the same terms and conditions, as is authorized for federal credit unions under 12 CFR 701.22 and (ii) offer employee benefit plans and defined benefit plans on terms and conditions comparable to federal credit unions under 12 CFR 701.19. The proposed regulation also provides state-chartered credit unions the authority to purchase an investment to fund an obligation under an employee benefit plan or defined benefit plan provided that the investment is directly related to the credit union's obligation or potential obligation and the credit union holds the investment only for as long as it has an actual or potential obligation under such plan.

AT RICHMOND, SEPTEMBER 27, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2013-00097

Ex Parte: In re: parity regulations
for state-chartered credit unions

ORDER TO TAKE NOTICE

Section 6.2-1303 of the Code of Virginia authorizes the State Corporation Commission ("Commission") to adopt such regulations as may be necessary to permit state-chartered credit unions to have powers at least comparable with those of federal credit unions, regardless of any existing statute, regulation, or court decision limiting or denying such powers to state-chartered credit unions. The Commission's regulations governing state-chartered credit unions are set forth in Chapter 40 of Title 10 of the Virginia Administrative Code.

Based on requests that the Bureau of Financial Institutions ("Bureau") has received from various state-chartered credit unions, the Bureau has submitted to the Commission proposed parity regulations that would give state-chartered credit unions the authority to (i) purchase loan participation interests on terms and conditions comparable to federal credit unions under 12 C.F.R. § 701.22; and (ii) offer employee benefit plans as well as defined benefit plans and purchase investments to fund such plans on terms and conditions comparable to federal credit unions under 12 C.F.R. § 701.19.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of December 1, 2013.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations are appended hereto and made a part of the record herein.

(2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before November 8, 2013. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2013-00097. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) This Order and the attached proposed regulations shall be posted on the Commission's website at http://www.scc.virginia.gov/case.

(4) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached proposed regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send a copy of this Order, together with a copy of the proposed regulations, to all state-chartered credit unions and such other interested parties as he may designate.

10VAC5-40-80. Loan participations.

Notwithstanding any provision of Chapter 13 (§ 6.2-1300 et seq.) of Title 6.2 of the Code of Virginia relating to loan participations or cooperative loans, a state-chartered credit union may purchase a participation interest in a loan to the same extent, and subject to the same terms and conditions, as is authorized for federal credit unions under 12 CFR 701.22.

10VAC5-40-90. Benefits for employees of state-chartered credit unions.

A. A state-chartered credit union may provide employee benefits, including retirement benefits, to its employees and

officers. The kind and amount of these benefits shall be reasonable given the credit union's size, financial condition, and the duties of the employees.

B. When a state-chartered credit union is the benefit plan trustee or custodian, the plan shall be authorized and maintained to the same extent, and subject to the same terms and conditions, as is authorized for federal credit unions under 12 CFR Part 724. When the benefit plan trustee or custodian is a party other than a state-chartered credit union, the benefit plan shall be maintained in accordance with applicable laws, including any applicable regulations adopted by the U.S. Department of Labor, the U.S. Department of the Treasury, or any other federal or state authority exercising jurisdiction over the plan.

C. Notwithstanding the investment limitations set forth in § 6.2-1376 of the Code of Virginia, a state-chartered credit union investing to fund an obligation under an employee benefit plan, as defined in 29 USC § 1002(3), may purchase an investment if (i) the investment is directly related to the credit union's obligation or potential obligation under the employee benefit plan and (ii) the credit union holds the investment only for as long as it has an actual or potential obligation under the employee benefit plan.

D. A state-chartered credit union may invest to fund a defined benefit plan, as defined in 29 USC § 1002(35), provided that the investment complies with subsection C of this section. If a credit union invests to fund a defined benefit plan that is not subject to the fiduciary responsibility provisions of Part 4 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC § 1001 et seq., it shall diversify its investment portfolio to minimize the risk of large losses unless it is clearly prudent not to do so under the circumstances.

E. A state-chartered credit union shall not occupy the position of a fiduciary, as defined in ERISA and the regulations adopted by the U.S. Department of Labor.

VA.R. Doc. No. R14-3872; Filed September 30, 2013, 11:34 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption from the Administrative Process Act pursuant to § 32.1-248 of the Code of Virginia, which provides that the modification or revocation of a regulation that lessens the restrictions placed upon fishing, boating, swimming, or other usage shall not be subject to the requirements of the Administrative Process Act.

Title of Regulation: **12VAC5-170. Prohibiting the Taking of Fish for Human Consumption from the North Fork of the Holston River (repealing 12VAC5-170-10 through 12VAC5-170-40).**

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

Effective Date: November 22, 2013.

Agency Contact: Dwight Flammia, State Public Health Toxicologist, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8127, or email dwight.flammia@vdh.virginia.gov.

Background: The existing regulation prohibits consumption of fish caught from the North Fork of the Holston River due to historically elevated mercury levels in fish caught from this area. The regulation does not prohibit catch and release.

In 2013, the Department of Health (VDH) solicited public comment on and reviewed this regulation, which resulted in a recommendation to the State Board of Health that the regulation be repealed. Based on its review, VDH determined that:

1. The current process VDH uses to inform the public of health risks associated with fish consumption is through a fish consumption advisory.

2. VDH already has a "Do Not Eat" fish consumption advisory for fish caught in the North Fork of the Holston River from Saltville, Virginia, to the Virginia-Tennessee state line.

3. Public signs with "Do Not Eat" will still remain in effect if the current regulation is repealed.

4. No public comments were received that suggested the regulation should remain in effect.

5. VDH has the authority to repeal this regulation pursuant to § 32.1-248 of the Code of Virginia.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Summary:

The State Board of Health is repealing this regulation because it has determined that the public is informed of health risks associated with fish consumption through health advisories.

VA.R. Doc. No. R14-3785; Filed September 26, 2013, 3:30 p.m.

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TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Proposed Regulation

Title of Regulation: **13VAC5-21. Virginia Certification Standards (amending 13VAC5-21-10, 13VAC5-21-31 through 13VAC5-21-61).**

Statutory Authority: § 36-137 of the Code of Virginia.

Public Hearing Information:

December 16, 2013 - 10 a.m. - Virginia Housing Center, 4224 Cox Road, Glen Allen, VA

Public Comment Deadline: December 20, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Basis: Section 36-137 of the Code of Virginia authorizes the Board of Housing and Community Development to promulgate and amend regulations as may be necessary to carry out its responsibilities. Section 36-137 also authorizes the board to issue a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the board to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia or Chapter 9 (§ 27-94 et seq.) of Title 27 of the Code of Virginia, and any regulations adopted thereunder, who have completed training programs or topic examinations, or in other ways demonstrate adequate knowledge.

Purpose: As recognized in § 36-99 of the Code of Virginia, the purpose of the Uniform Statewide Building Code is to protect the health, safety, and welfare of the citizens of the Commonwealth, while permitting buildings to be constructed in the most economical manner consistent with such pertinent recognized standards relative to construction, health, and safety. Therefore, the certification, associated training, and education of the local and nongovernment code enforcement personnel are inherent in and critical to the achievement of this purpose and ensure the technical and professional level of those personnel, including the knowledge and skill gained from the initial training, mandated periodic training, and continuing education, as well as familiarity with and understanding of recent developments within the building codes and construction industry.

Substance: This regulatory action (i) clarifies the existing mandatory requirements for all certificate holders in code enforcement to separately obtain both periodic training to maintain a level of technical knowledge required of the certificate holder and continuing education to progress to the level of professional skill commensurate with building code cycles and construction industry developments; (ii) correlates the proposed regulatory amendments with the Virginia Uniform Statewide Building Code, which encompass the relevant sections of the Virginia Construction Code (Section 105.2.3), Virginia Residential Code (Section 105.2.3), and Virginia Maintenance Code (Section 104.4.4), regarding compliance with the requirement for periodic maintenance training and the requirement for continuing education credits; (iii) applies the mandated training and education requirements to further define active, inactive, and lapsed certificate statuses relative to the ongoing training and education of certificate holders; (iv) clarifies references to training and examination requirements for initial certification by citing the required list maintained by the agency for purposes of certification application; and (v) establishes criteria for age of training and examination in the application process.

Issues: The advantage to the public is that this action promotes the uniform interpretation and application of the existing regulation and ensures the technical knowledge and professional skill levels of local code enforcement personnel necessary to protect the health, safety, and welfare of the public. This regulatory action poses no foreseeable disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Housing and Community Development (Board) proposes to amend the Virginia Certification Standards to: 1) require applicants for certification to have completed qualifying examinations and education not more than six years before submitting their applications, 2) remove a partial list of training modules from these regulations, 3) specify that the Board will consider allowing alternates to training requirements listed in these regulations and 4) require nongovernmental certificate holders to meet the same continuing education requirements as are laid out in the Uniform Statewide Building Code (USBC) for governmental certificate holders.

Result of Analysis. There is insufficient information to ascertain if benefits will outweigh costs for several of these proposed changes. For other proposed changes, benefits will likely outweigh costs.

Estimated Economic Impact. Current regulations require applicants for USBC certifications to provide proof of successful completion of an approved examination for each certificate sought but they do not place limitations on when exams can be completed in order to count toward meeting certification requirements. Board staff reports that certifying someone who has completed a qualifying exam too far in the past can be problematic because that individual will not have shown mastery of current USBC requirements. The Board

proposes to add a time limit and require that applicants pass their qualifying exam within six years (or two code cycles) of applying for certification unless they also hold a current International Code Council (ICC) certification. To the extent that major changes are made fairly frequently to the USBC, this proposed change is one way to try and ensure that individuals seeking certification are knowledgeable about the current rules in the USBC. The Board might also, however, require that applicants read and understand USBC changes before certification or require that they take a code class offered by the Department of Housing and Community Development (DHCD) before certification rather than disallowing older certification exams altogether. Both of these options would present challenges (the USBC is proprietary and can be read online but may not be printed for reading offline, for instance). These options would, however, eliminate the need for applicants to pay $150-$180 and spend the time needed to retake a qualifying exam. Without knowing how many individuals would be affected by this change, and how many of those individuals have kept up on USBC changes by means other than studying for a qualifying exam, there is insufficient information to measure the magnitude of costs and benefits for this proposal.

Current regulations include a partial list of certifications offered by DHCD but the full list is maintained by the DHCD outside of these regulations. The Board proposes to eliminate the partial list in these regulations and, instead, include language that informs interested parties that a list of certifications is maintained by the department[1]. No entity is likely to incur costs on account of this change. Interested parties are likely to benefit from this change as it is likely to forestall confusion as to what certifications are available.

Currently, these regulations specify that alternatives to the training requirements in these regulations (13VAC5-21-45) shall be permitted. The Board proposes to amend this language so that alternatives shall be considered. This new language, on its face at least, appears to be more restrictive for applicants who have completed training other than what is in section 45 of these regulations. Without knowing what education would be disallowed by DHCD under proposed regulations that they would allow under current regulations, and whether the potentially disallowed education actually would make applicants able to competently work under the certification sought, there is insufficient information to know whether costs will outweigh benefits for this proposed change.

Currently, the USBC requires that governmental certificate holders complete 16 hours of continuing education every biennium and these regulations state that certificates will be in inactive status if continuing education is not completed. This means that nongovernmental certificate holders are not currently required to complete continuing education by the USBC but, in these regulations, they cannot hold an active certificate that allows them to work at the tasks certified if they don't. As this has the potential to cause confusion, the Board now proposes to amend the certification standards to make it clear that all certificate holders are required to complete 16 hours of training every biennium. No entity is likely to incur costs on account of this change. To the extent that current regulatory requirements are somewhat disjointed and opaque, certificate holders are likely to benefit from the additional clarity that this change offers.

Businesses and Entities Affected. DHCD reports that there are up to approximately 3,500 Board certificate holders in the Commonwealth and that it is likely that no more than 15% (or 525 individuals) of these certificate holders are nongovernmental entities. All of these entities will be affected by these proposed regulations.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulations.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. DHCD does not know how many small businesses will be affected by these proposed regulations but the probable upper bound for the possible number of affected small businesses would be the estimated number of nongovernmental certificate holders (approximately 525 individuals). To the extent that they are not already completing the continuing education hours that will be required, these entities will likely incur some implicit costs for their time spent completing 16 hours of training every biennium. These entities may also incur explicit costs for fees for continuing education if they cannot or do not complete all required hours using no-cost options approved by the Board. Other private small business entities who are not currently certified might also incur costs for retaking a qualifying exam if their exam scores are more than six years old.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods that will both meet the goals of the Board and be less costly.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs

to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] The list is accessible online at DHCD's website under The Training and Certification Matrix.

Agency's Response to Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The Board of Housing and Community Development proposes to amend the Virginia Certification Standards to (i) require applicants for certification to have completed qualifying examinations and education not more than six years before submitting their applications; (ii) remove specified building code academy training modules for initial certification and, instead, refer to a required list of training modules maintained by the Department of Housing and Community Development; (iii) specify that the board will consider allowing training alternatives to training requirements listed in these regulations; and (iv) require nongovernmental certificate holders to meet the same continuing education requirements as those set forth in the Uniform Statewide Building Code for governmental certificate holders.

13VAC5-21-10. Definitions.

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

"Applicant" means a person seeking a certificate.

"BCAAC" means the Building Code Academy Advisory Committee appointed pursuant to subdivision 7 of § 36-137 of the Code of Virginia.

"BHCD" means the Virginia Board of Housing and Community Development.

"Certificate" means a certificate of competence issued pursuant to subdivision 6 of § 36-137 of the Code of Virginia concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the BHCD and issued to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia, Chapter 9 (§ 27-94 et seq.) of Title 27 of the Code of Virginia, and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.

"Certificate holder" means a person to whom a certificate has been issued.

"Code academy" means the Virginia Building Code Academy established under subdivision 14 of § 36-139 of the Code of Virginia or individual or regional training academies accredited by the department pursuant to subdivision 7 of § 36-137 of the Code of Virginia.

~~"DFP" means the Virginia Department of Fire Programs.~~

"Department" means the Virginia Department of Housing and Community Development.

"Nongovernmental employee" means any person not employed by a locality collecting and transmitting the fee levy to the department in accordance with subdivision 7 of § 36-137 of the Code of Virginia.

"SFPC" means the Virginia Statewide Fire Prevention Code (13VAC5-51).

"State Review Board" means the Virginia State Building Code Technical Review Board established under § 36-108 of the Code of Virginia.

"USBC" means the Virginia Uniform Statewide Building Code (13VAC5-63).

"VADR" means the Virginia Amusement Device Regulations (13VAC5-31).

B. Words and terms used in this chapter that are defined in the USBC, VADR, or SFPC and that are not defined in this chapter shall have the meaning ascribed to them in those regulations unless the context clearly indicates otherwise.

13VAC5-21-31. Qualification and examination requirements.

A. An applicant for a certificate in categories associated with the USBC or the SFPC shall provide a written or electronic endorsement from the code official or the code official's supervisor in the locality in which they are employed certifying that the applicant complies with the qualification section in the USBC or the SFPC for each type of certificate sought. When the applicant for a certificate in categories associated with the USBC or the SFPC is a ~~nongovernment~~ nongovernmental employee, the applicant shall provide written or electronic documentation that the applicant complies with the qualification section in the USBC or the SFPC as it would relate to the applicant's job responsibilities for each type of certificate sought.

B. An applicant for a certificate in categories associated with the VADR shall provide a written endorsement from the

applicant's supervisor or a person having a similar relationship to the applicant certifying that the applicant is generally qualified to conduct activities related to the VADR.

C. Applicants for all certificates shall provide proof of successful completion of approved examinations for each certificate sought~~, except as provided for in 13VAC5-21-45~~ based on current certification examination requirements. Applications submitted with passing grades on approved examinations older than six years from the date of passing will be denied except where the applicant can demonstrate the maintenance of a current certification issued by the approved testing agency. The department may consider related certifications maintained by the certifying entity. The department shall maintain a list of approved testing agencies and examinations that meet nationally accepted standards for each certificate offered. For information on approved testing agencies and examinations contact the department's ~~Technical Assistance Services Office, 501 N. 2nd St.~~ Training and Certification Office, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7180.

13VAC5-21-41. Certification categories and training requirements.

A. The department maintains a list of all certificates offered and the list sets out the required training necessary to attend and complete to obtain a certificate. ~~This section also contains specific training requirements for some certificates offered that may be duplicated on the list or that may be in addition to those on the list.~~ Alternatives to the training requirements set out in 13VAC5-21-45 shall be ~~permitted~~ considered for all certificates offered except that no alternative shall be accepted for the code academy core module.

B. Applicants for certificates shall attend and complete the code academy core module. ~~In addition to~~ After the completion of the core module, applicants ~~for the following certificates~~ are required to attend and complete the ~~following~~ code academy training as set out in a list maintained by the department, except as provided for in 13VAC5-21-45~~:~~. All required training must be completed within no more than six years prior to the date the application is submitted and the requirements for training are based on those in effect at the time of application.

~~Certificate~~	~~Code Academy Training~~
~~Building official~~	~~Advanced official module~~
~~Fire official~~	~~Advanced official module and the 1031 school as administered by DFP~~
~~Building maintenance official~~	~~Advanced official module and the property maintenance module~~
~~Fire prevention inspector~~	~~The 1031 school as administered by DFP~~
~~Amusement device inspector~~	~~Amusement device inspection module~~

13VAC5-21-45. Alternatives to ~~examination and~~ training requirements.

~~A. An applicant for a certificate with the written endorsement or documentation required by 13VAC5-21-31 may submit a written request to the department to approve an equivalent examination by a testing agency not on the list of approved testing agencies to satisfy the examination requirements of 13VAC5-21-31. BCAAC may be consulted with in any such consideration.~~

~~B.~~ Upon written request, alternative training or a combination of training, education or experience to satisfy the training requirements of 13VAC5-21-41 may be approved, provided that such alternatives or combinations are determined to be equivalent to that required. However, as provided in 13VAC5-21-41, no substitutions shall be approved for the code academy core module. The types of combinations of education and experience may include military training, college classes, technical schools or long-term work experiences, except that long-term work experiences shall not be approved as the sole substitute to satisfy the training requirements. BCAAC may be consulted with in any such consideration.

13VAC5-21-51. Issuance and maintenance of certificates.

A. Certificates will be issued when an applicant has complied with the current applicable requirements of this chapter. Certificate holders will be classified as active ~~or,~~ inactive, or lapsed. An active certificate holder is a person who is certified and who has attended all periodic training courses designated by the department and complied with all continuing education requirements subsequent to becoming certified. An inactive certificate holder is a person who is certified ~~but~~ and has ~~not~~ either attended ~~all such~~ the periodic training courses designated by the department or met the continuing education requirements, but not both. An inactive certificate holder may request reinstatement as an active certificate holder after completing ~~make-up~~ makeup training courses authorized by the department. A lapsed certificate holder is a person who is certified but has not attended all periodic training courses designated by the department and who has not complied with all continuing education requirements. A lapsed certificate holder may request reinstatement as an active certificate holder after completing makeup training courses or examinations, or both, as authorized by the department. Provisional certificates may also be issued in accordance with subsection C of this section. Requirements for periodic training courses and continuing education requirements are set out in subsection D of this section.

B. All certificates issued since June 1978 are considered to be valid unless revoked or suspended, except that provisional certificates shall remain valid as set out under subsection C of this section.

C. A provisional certificate may be issued to (i) a person who has been directed by the department to obtain a

certificate; (ii) an applicant requesting a certificate under the alternative ~~examination or~~ training provisions of 13VAC5-21-45; ~~or~~ (iii) an applicant when the required training has not been provided or offered; (iv) an inactive or lapsed certificate holder when the issuance of a provisional certificate is determined to be warranted by the department; or (v) a person who, due to extenuating and warranting circumstances either on behalf of the code academy or beyond the person's control, has not fully complied with the eligibility requirements of training and competency established herein.

Such a provisional certificate may be issued when the applicant or person has (i) provided the written endorsement or documentation required by 13VAC5-21-31, (ii) satisfactorily completed the code academy core module, and (iii) completed any training through the code academy or through other providers determined to warrant the issuance of the provisional certificate.

The provisional certificate is valid for a period of one year after the date of issuance and shall only be issued once to any individual, except that a provisional certificate shall remain valid when the required training has not been provided or offered.

D. All certificate holders shall attend periodic maintenance training as designated by the department and shall attend 16 hours of continuing education every two years as approved by the department. If a certificate holder possesses more than one certificate, the 16 hours shall satisfy the continuing education requirement for all certificates.

13VAC5-21-61. Sanctions.

When the BHCD determines a certificate holder has failed to (i) comply with an order issued by the State Review Board ~~or failed to~~, (ii) meet the required training or testing requirements, or (iii) attend periodic maintenance training or continuing education, or both, a warning letter may be issued to the certificate holder or a certificate may be revoked or suspended by the BHCD. In such cases, a noncompliance notice shall be issued to the certificate holder and notification shall be provided to the locality or company employing the certificate holder. Exceptions to the issuance of a noncompliance notice for failing to comply with the continuing education requirements may be considered where there is a separation from employment by medical or military leave for 12 consecutive months or more during the continuing education period. A record of any action taken pursuant to this section shall be permanently retained in the training record of the certificate holder.

VA.R. Doc. No. R13-3407; Filed September 19, 2013, 11:31 a.m.

Proposed Regulation

Title of Regulation: **13VAC5-80. Virginia Standards for Individual and Regional Code Academies (amending 13VAC5-80-10, 13VAC5-80-60, 13VAC5-80-80, 13VAC5-80-90, 13VAC5-80-120, 13VAC5-80-140).**

Statutory Authority: § 36-137 of the Code of Virginia.

Public Hearing Information:

December 16, 2013 - 10 a.m. - Virginia Housing Center, 4224 Cox Road, Glen Allen, VA 23060

Public Comment Deadline: December 20, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Basis: Section 36-137 of the Code of Virginia authorizes the Board of Housing and Community Development to promulgate and amend regulations as may be necessary to carry out its responsibilities. Section 36-137 also authorizes the board to issue a certificate of accreditation to a local or regional building code training academy that retains the building permit levy.

Purpose: Section 36-99 of the Code of Virginia recognizes that the purpose of the Uniform Statewide Building Code is to protect the health, safety, and welfare of the citizens of the Commonwealth while permitting buildings to be constructed in the most economical manner consistent with such pertinent recognized standards relative to construction, health, and safety. Therefore, the accreditation and operation of the individual and regional code academies supports the achievement of this purpose and ensures the technical and professional level of those personnel attending individual and regional code academies, including the knowledge and skill gained from initial training and continuing education approved by the Department of Housing and Community Development offered by individual and regional code academies.

Substance: Not being substantive in nature, this regulatory action primarily serves to clarify and update the existing regulatory requirements. The proposed amendments clarify requirements for applications and renewals of Certificates of Accreditation for code academies.

Issues: The primary advantage of this regulatory action is that it promotes the uniform interpretation and application of the existing regulation and requirements and ensures consistent and current application in the accreditation process. This regulatory action poses no foreseeable disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Housing and Community Development (Board) proposes to amend the Virginia Standards for Individual and Regional Academies to clarify requirements for Certificate of Accreditation applications and for renewal of Certificates of Accreditation.

Result of Analysis. Benefits will likely outweigh costs for these proposed changes.

Estimated Economic Impact. Current regulations contain some, but not all, of the requirements that local and regional code academies[1] must meet to get their initial Certificates of Accreditation and renew them each year. The Board proposes to add all current requirements to these regulations so that it is very apparent to localities what is required of them if they wish to maintain their own code academies. No entity is likely to incur additional costs on account of these proposed regulations. To the extent that the Board's proposed changes clarify requirements that might be unclear in current regulations, affected entities are likely to benefit.

Businesses and Entities Affected. Board staff reports that there are two local code academies (run by Fairfax County and Prince William County) in the Commonwealth in addition to the regional code academies run by the Department of Housing and Community Development (DHCD). Board staff further reports that Prince William's code academy has one full time staff person and also has 21 individuals who are approved to provide training. Fairfax's code academy has two full time staff members and 20 individuals who are approved to provide training. It is likely that not all individuals who are approved to provide training will provide training in any given training cycle.

Localities Particularly Affected. Prince William County and Fairfax County will likely be particularly affected by these regulations.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. These proposed regulations will not affect any small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. These proposed regulations will not affect any small businesses in the Commonwealth.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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

[1] These regulations define a code academy as an educational institution established in accordance with § 36-137 of the Code of Virginia that is accredited by DHCD to conduct classes to prepare an individual to pursue an occupation in the inspection profession relating to enforcement of Virginia's building, fire safety, and amusement devise regulations.

Agency's Response to Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) clarify the existing mandatory requirements for local and regional code academies formed to provide training to enforcement personnel of the state building and fire regulations and (ii) define the requirements for conducting classes for initial accreditation to prepare an individual to pursue an occupation in the inspection profession relating to the enforcement of the Uniform Statewide Building Code, the Statewide Fire Prevention Code, and the Virginia Amusement Device Regulations and for renewal of accreditation to upgrade an individual in the technical phases of these codes.

13VAC5-80-10. Definitions.

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

"BHCD" means the Virginia Board of Housing and Community Development.

"Certificate of Accreditation" means the certificate issued to an individual or regional code academy that accredits that code academy to conduct educational programs for persons seeking to become BHCD-certified for enforcement of Virginia's building-related and fire-related regulations.

"Code Academy" means an educational institution established in accordance with § 36-137 of the Code of Virginia that is accredited by DHCD to conduct classes to prepare an individual to pursue an occupation in the inspection profession relating to enforcement of the USBC,

VADR, and SFPC, or to upgrade an individual in technical phases of the USBC, VADR, and SFPC.

"DHCD" means the Virginia Department of Housing and Community Development.

"Operator" means the person designated as the executive official in charge of the ~~code academy~~ Code Academy.

"SFPC" means the Virginia Statewide Fire Prevention Code (13VAC5-51).

"Train the Trainer" means the DHCD training provided for ~~code academy~~ Code Academy instructors.

~~"TRB" means the Virginia State Building Code Technical Review Board established under § 36-108 of the Code of Virginia.~~

"USBC" means the Virginia Uniform Statewide Building Code ~~(13VAC5-62)~~ (13VAC5-63).

"VADR" means the Virginia Amusement Device Regulations (13VAC5-31).

13VAC5-80-60. Application for accreditation.

A. Any Code Academy seeking a Certificate of Accreditation shall submit the information required by these standards, on forms provided by DHCD, 120 calendar days prior to the date for which approval is requested.

B. The operator shall reimburse DHCD for the cost of processing and monitoring the accreditation.

C. The following information shall be submitted as part of the application:

1. A budget documenting the financial resources available to equip, maintain, and operate the ~~code academy~~ Code Academy and proposed expenditures;

2. The educational and teaching qualifications of the operator and instructors;

3. The individual courses of instruction ~~which~~ that will be offered, ~~and~~ the purpose of such instructions, and an instruction schedule including proposed dates, times, and instructors. The course listing shall include state Code Academy courses required for certification and continuing education programs;

4. A listing of any equipment available to aid instruction in each field;

5. The maximum anticipated enrollment to be accommodated with the equipment available in each specified field, and the ratio of students to instructors, which shall not exceed 50 to 1 for lecture format courses, and 20 to 1 for interactive courses;

6. The locations where such instruction will take place; and

7. Any additional information that DHCD may deem necessary to carry out the provisions of this chapter.

D. Each application for a Certificate of Accreditation shall also include the following commitments:

1. Conduct the Code Academy in accordance with all standards and regulations promulgated by DHCD and BHCD;

2. Permit DHCD to inspect the Code Academy at any time, and ~~to~~ provide all information pertaining to the activities of the Code Academy or its financial condition as requested by DHCD;

3. ~~The~~ Use the levy retained under § 36-137 of the Code of Virginia ~~shall not be used~~ only for purposes ~~other than~~ directly relating to the operation of the Code Academy;

4. Conduct all state certification courses in accordance with DHCD content and delivery requirements;

5. In the event that the Code Academy should close, a list of enrolled students who have not completed their program of study, and the amount of the course ~~which~~ that they have completed, shall be submitted to DHCD;

~~5.~~ 6. Maintain current, complete and accurate student records, including a record of all hours of work completed by each student.;

7. Submit quarterly activity reports on forms provided by DHCD. The reports shall include:

a. Training activities conducted during a quarter;

b. Expenditures for conducted training activities;

c. Expenditures for related activities; and

d. Anticipated adjustments to approved activities at the time of accreditation; and

8. Submit final activity and budget reports on forms provided by DHCD within 90 days prior to the end of the accreditation period. The reports shall include:

a. A training and activity report, including courses, programs, instructors, and student statistics;

b. A report detailing related activities;

c. A report on expenditures on all activities and purchases including revenue collected and any carryover balance; and

d. Summary of the accreditation year.

13VAC5-80-80. Renewal of certificate.

A. Every Code Academy shall apply for renewal of its Certificate of Accreditation no later than April 15 of each year, on forms provided by DHCD. The ~~application for renewal~~ following information shall ~~include a current training schedule.~~ be submitted as part of the renewal application:

1. Proposed state certification course and continuing education training schedule for accreditation for the renewal period, including a delivery schedule, instructors, target participants, site logistics, and proposed budget;

2. Proposed related activities such as, but not limited to, equipment and related training purchases, conferences, and outside training events;

3. Anticipated revenue for the operation of the academy; budget for all training activities, academy staffing, and related purchases; and anticipated carryover funds;

4. Any changes to the initially approved instructor list; and

5. The following commitments:

a. Conduct the Code Academy in accordance with all standards and regulations promulgated by DHCD and BHCD;

b. Permit DHCD to inspect the Code Academy at any time and provide all information pertaining to the activities of the Code Academy or its financial condition as requested by DHCD;

c. Use the levy retained under § 36-137 of the Code of Virginia only for purposes directly relating to the operation of the Code Academy;

d. Conduct all state certification courses in accordance with DHCD content and delivery requirements;

e. In the event that the Code Academy should close, submit to DHCD a list of enrolled students who have not completed their program of study and the amount of the course that they have completed; and

f. Maintain current, complete, and accurate student records, including a record of all hours of work completed by each student.

B. Every Certificate of Accreditation shall expire upon failure to obtain renewal by June 30 of each year.

13VAC5-80-90. Personnel qualifications.

A. Any director of the Code Academy shall demonstrate a working knowledge of USBC, VADR, and SFPC training-related technology and shall possess a minimum of two years of supervisory experience. Managerial experience and a college degree from an accredited college or university are preferred.

B. All instructors shall have knowledge and experience in the trade or profession in which the instructor teaches. Instructors teaching the state-required certification courses shall have DHCD-approved experience as an instructor or shall have successfully completed a "Train the Trainer" or DHCD-approved equivalent course and hold active DHCD instructor certification and active certifications in the discipline in which they are teaching.

C. DHCD shall be notified of any staff or instructor changes within the ~~code academy~~ Code Academy subsequent to receiving accreditation. Staff changes forwarded to DHCD shall include qualifications of the instructors.

13VAC5-80-120. ~~Withdrawal~~ Approval of initial application, withdrawal of course approval, and revocation, suspension, or refusal to renew a certificate of accreditation.

A. DHCD may deny an initial application; withdraw course approval~~,~~; or revoke, suspend, or refuse to renew~~,~~ any ~~code academy's~~ Code Academy's Certificate of Accreditation for any of the following:

1. ~~Violation of~~ Violating any provision of this chapter;

2. Furnishing false, misleading, or incomplete information to DHCD, or failure to furnish information requested by DHCD within a reasonable time;

3. Presenting to a student any information that is false, misleading, or fraudulent;

4. ~~Failure~~ Failing to maintain the premises in a safe and sanitary condition as required by law, state regulation, or local ordinance;

5. Failing to maintain adequate financial resources to satisfactorily conduct the courses of instruction offered, or to retain an adequate, qualified staff.

B. DHCD shall notify the operator by certified mail 30 calendar days prior to the effective date of any withdrawal of course approval, or revocation of, suspension of, or refusal to renew a Certificate of Accreditation.

13VAC5-80-140. Records.

DHCD shall maintain records on all actions, findings, and recommendations concerning the initial application approval or denial, or approval of, revocation of, suspension of, or refusal to renew any Certificate of Accreditation. All records shall be available to the public, upon request.

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

FORMS (13VAC5-80)

DHCD Regional and Local Code Academy Accreditation Application Budget Detail (eff. 9/13)

DHCD Regional and Local Code Academy Accreditation Application Course/Conference Detail (eff. 9/13)

DHCD Regional and Local Code Academy Expense Summary Report (eff. 9/13)

DHCD Regional and Local Code Academy Annual Report Cover Sheet (undated)

DHCD Regional and Local Code Academy Annual Report (undated)

DHCD Regional and Local Code Academy Administrative Expense Report (eff. 9/13)

DHCD Regional and Local Code Academy Course Report (eff. 9/13)

DHCD Regional and Local Code Academy Monthly Expense Report (eff. 9/13)

DHCD Regional and Local Code Academy Revenue Report (eff. 9/13)

DHCD Regional and Local Code Academy Accreditation Projected Expense Summary (eff. 9/13)

VA.R. Doc. No. R13-3470; Filed September 19, 2013, 11:33 a.m.

Proposed Regulation

Title of Regulation: **13VAC5-95. Virginia Manufactured Home Safety Regulations (amending 13VAC5-95-10, 13VAC5-95-20, 13VAC5-95-30, 13VAC5-95-50, 13VAC5-95-60, 13VAC5-95-80, 13VAC5-95-90, 13VAC5-95-100; repealing 13VAC5-95-40, 13VAC5-95-70).**

Statutory Authority: § 36-85.7 of the Code of Virginia.

Public Hearing Information:

December 16, 2013 - 10 a.m. - Virginia Housing Center, 4224 Cox Road, Glen Allen, VA 23060

Public Comment Deadline: December 20, 2013.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Basis: Section 36-85.7 of the Code of Virginia requires the board, from time to time, to adopt, amend, or repeal such rules and regulations as are necessary to implement state law in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 USC § 5401 et seq.) and the federal standards and regulations enacted by the U.S. Department of Housing and Urban Development (HUD).

Purpose: The proposed regulatory action is essential to protect the health, safety, and welfare of citizens of the Commonwealth by providing the most current and up-to-date installation standards available and mandated. Also, HUD's new Manufactured Home Installation Standards are enforced as a mandatory installation standard under federal regulation. The proposed regulation will delineate the mandatory installation standard per HUD, which is fundamental to the protection of the health, safety, and welfare of citizens by (i) more thoroughly clarifying the enforcement role of the local building officials and (ii) more thoroughly clarifying the civil penalty and fines resulting from violations of the laws, rules, and regulations.

Substance: The regulation will be updated to include all references to the Federal Installation Standards (24 CFR Part 3285). The proposed regulation contains minor changes to the provisions of the regulation that have been vetted through the affected client groups and have met no opposition. A more up-to-date standard is required to provide assistance to building officials and local building inspections departments, installers, and home owners regarding installation and inspection procedures and all processes related to the installation of manufactured homes within the Commonwealth. The building official is responsible for enforcement of the installation standards in the set-up of a new manufactured home for footings, foundation systems, anchoring systems, exterior and interior close-up, additions and alterations, and all system connections done during initial installation. Such aspects are subject to and must comply with the installation instructions provided by the manufacturer of the home. When the manufacturer's installation instructions are not available, such aspects are subject to and must comply with the Federal Installation Standards (24 CFR Part 3285). Where the installation or erection of a manufactured home utilizes components that are to be concealed, the installer must notify the building official and schedule all required inspections to be performed and approved prior to concealment of such components, unless the building official has agreed to an alternative method of verification.

Issues: The advantage the amendments provide for the public, building officials, installers, and private citizens is the specification of the new mandated HUD installation regulations. The HUD installation standards provide minimum requirements for the initial installation of new manufactured homes, and for each new home installation, designs and instructions have been approved by the Secretary of HUD or the Design Approval Primary Inspection Agency. The Federal Construction Standards are enforcement provisions for the design, construction, distribution, and installation of manufactured homes.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Housing and Community Development (Board) proposes to amend its Manufactured Housing Safety Regulations to 1) reword some sections with currently preferred terms, 2) move the regulations that define the role of local building inspectors in inspecting new manufactured housing, 3) eliminate obsolete language that currently requires local building inspectors to report to the Department of Housing and Community Development (DHCD) whenever a manufactured home with noted violations is moved from their locality and 4) note the statutory punishment for violation of these regulations in the regulatory text.

Result of Analysis. Benefits likely outweigh costs for these proposed regulations.

Estimated Economic Impact. Current regulations use the term "local code official" throughout the regulatory text; the Board proposes to replace this term with "local building official" and to add a definition for "installer" and "installation" so that the text conforms to federal regulations. No regulated entity is likely to incur costs on account of these proposed changes. To the extent that the revised or added language helps clarify understanding of these regulations, affected entities will benefit.

Currently, the regulations that specify the code enforcement role of local building officials are in 13VAC5-95-30 (Effect of Label). The Board proposes to move these regulations into 13VAC5-95-20 (Application and Enforcement). Nothing new will be required of local building inspectors under the proposed regulations so no entity is likely to incur an costs on account of these changes. Local building inspectors and other interested parties will, however, be able to more easily locate these requirements as the section title for section 20 makes it a much more intuitively obvious place to look for enforcement rules.

Current regulations contain language that requires local building inspectors to report to the DHCD whenever a manufactured home with noted violations is moved from their locality. DHCD reports that this language does not reflect actual current practice, and, so, the Board now proposes to repeal it. No regulated entity is likely to incur costs on account of this proposed change. To the extent that repealing this language helps clarify local building inspectors role, affected entities will benefit.

Currently, these regulations delineate procedures for handling violations of manufactured housing safety rules. The Board proposes to add notice of the statutory language that governs punishment of any violations. Because affected entities must already adhere to both the relevant statutes and regulations, and so would already be subject to any listed fines and other punishments, no regulated entity is likely to incur any additional costs on account of this proposed change. To the extent that the addition of the statutory language makes the rules less opaque, this change will provide the benefit of clarity.

Businesses and Entities Affected. DHCD reports that up to 23 manufacturers, 138 dealers, 9 brokers, 362 salespeople and 280 installers are governed by these regulations. All of these entities will be affected by these proposed changes.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulations.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any additional expense on account of these regulatory changes.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any additional expense on account of these regulatory changes.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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

Agency's Response to Economic Impact Analysis: The Department of Housing and Community Development concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) incorporate by reference the recent changes and additions to the Federal Constructions Standards of the federal Department of Housing and Urban Development (HUD) and specify the new mandated HUD installation standards for manufactured housing; (ii) more thoroughly define installation of manufactured homes; (iii) clarify the role of local building officials by providing more detail regarding enforcement responsibilities; (iv) provide clarification concerning alterations in new and existing manufactured homes; and (v) clarify the civil penalty and fines resulting from violations of the laws and regulations.

13VAC5-95-10. Definitions.

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

~~"Act" or "the Act" means the National Manufactured Housing Construction and Safety Standards Act of 1974, Title VI of the Housing and Community Development Act of 1974 (42 USC § 5401 et seq.).~~

"Administrator" means the Director of DHCD or his designee.

"DHCD" means the Virginia Department of Housing and Community Development.

"Dealer" means any person engaged in the sale, lease, or distribution of manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

"Defect" means a failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part of the home unfit for the ordinary use of which it was intended, but does not result in an imminent risk of death or severe personal injury to occupants of the affected home.

"Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.

"Federal Act" means the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 USC § 5401 et seq.).

"Federal installation standards" means the federal Model Manufactured Home Installation Standards (24 CFR Part 3285).

"Federal ~~regulation~~ regulations" means the federal Manufactured Home Procedural and Enforcement Regulations~~, enacted May 13, 1976, under authority granted by § 625 of the Act, and designated as Part 3282, Chapter XX, Title 24 of HUD's regulations~~ (24 CFR Part 3282). ~~(Part 3282 consists of subparts A through L, with sections numbered 3282.1 through 3282.554, and has an effective date of June 15, 1976.)~~

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent and unreasonable risk of death or severe personal injury that may or may not be related to failure to comply with an applicable federal manufactured home construction or safety standard.

"Installation" means completion of work to include, but not be limited to, stabilizing, supporting, anchoring, and closing-up a manufactured home and joining sections of a multi-section manufactured home, when any such work is governed by the federal installation standards.

"Installer" means the person or entity who is retained to engage in or who engages in the business of directing, supervising, controlling, or correcting the initial installation of a manufactured home.

"Label," ~~or~~ "certification label," or "HUD label" means the ~~approved form of~~ certification label prescribed by the ~~manufacturer that, under 24 CFR 3282.362(c)(2)(i) of the Manufactured Home Procedural and Enforcement Regulations, is permanently affixed to each transportable section of each manufactured home manufactured for sale to a purchaser in the United States~~ federal standards.

"Local ~~code~~ building official" means the officer or other designated authority charged with the administration and enforcement of USBC, or duly authorized representative.

"Manufactured home" means a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

"Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes.

"Noncompliance" means a failure of a manufactured home to comply with a federal manufactured home construction or safety standard that does not constitute a defect, serious defect, or imminent safety hazard.

"Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

"Secretary" means the Secretary of HUD.

"Serious defect" means any failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to occupants of the affected manufactured home.

"Standards" or "federal standards" means the federal Manufactured Home Construction and Safety Standards (24 CFR Part 3280) adopted by HUD, in accordance with authority in the Federal Act. The standards were enacted December 18, 1975, and amended May 11, 1976, to become effective June 15, 1976.

"State administrative agency" or "SAA" means DHCD which is responsible for the administration and enforcement of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 of the Code of Virginia throughout Virginia and of the plan authorized by § 36-85.5 of the Code of Virginia.

"USBC" means the Virginia Uniform Statewide Building Code (13VAC5-63).

B. Terms defined within the federal regulations and federal standards shall have the same meanings in this chapter.

13VAC5-95-20. Application and enforcement.

A. This chapter shall apply to manufactured homes as defined in 13VAC5-95-10 and ~~13VAC5-95-20~~ as set out in this section.

B. Enforcement of this chapter shall be in accordance with the federal ~~regulation~~ regulations.

C. Manufactured homes produced on or after June 15, 1976, shall conform to all the requirements of the federal standards, as amended.

D. DHCD is delegated all lawful authority for the enforcement of the federal standards pertaining to manufactured homes by the administrator according to § 36-85.5 of the Code of Virginia. The Division of Building and Fire Regulation of DHCD is designated as a state administrative agency in the HUD enforcement program, and shall act as an agent of HUD. The administrator is authorized to perform the activities required of an SAA by the HUD enforcement plan including, but not limited to, investigation, citation of violations, handling of complaints, conducting hearings, supervising remedial actions, monitoring, ~~and~~ making such reports as may be required, and seeking enforcement of the civil and criminal penalties established by § 36-85.12 of the Code of Virginia.

E. ~~All~~ In accordance with § 36-85.11 of the Code of Virginia, all local ~~code~~ building officials are authorized ~~by § 36-85.11 of the Code of Virginia~~ to and shall enforce the provisions of this chapter within the limits of their jurisdiction~~. Such local code officials shall enforce this chapter, subject to the general oversight of the Division of Building and Fire Regulation and shall not permit the use of any manufactured home containing a serious defect or imminent safety hazard within their jurisdiction.~~ and shall be responsible for the following:

1. Verify through inspection that a manufactured home displays the required HUD label and data plate;

2. Determine whether the manufactured home has been damaged during transit. If the manufactured home has been damaged, then the local building official is authorized to require tests, in accordance with the federal standards, for tightness of plumbing systems and gas piping and an operational test to ensure that all luminaries and receptacles are operable. If a manufactured home has sustained damage to the structural components, the local building official shall require the appropriate design approval primary inspection agency approval on any repairs or designs;

3. Prevent the use of a manufactured home that in the opinion of the local building official contains a serious defect or imminent safety hazard, and notify the administrator immediately;

4. Notify the administrator of any apparent violations of this chapter, to include defects and noncompliance that occurred during the manufacturing process and any alterations that occurred during installation; and

5. Verify through inspection that the installation is in accordance with the federal installation standards. Where the local building official finds that the installation of the manufactured home is not in accordance with the federal installation standards, the local building official shall order the home to be brought into compliance within a reasonable time. If the order is not complied with, then the local building official shall notify the administrator.

F. ~~Mounting and anchoring of~~ In accordance with § 36-85.11 of the Code of Virginia, site preparation, utility connection, and skirting installation for manufactured homes shall be in accordance with the applicable requirements of the USBC.

13VAC5-95-30. Effect of label.

~~A.~~ In accordance with § 36-85.11 of the Code of Virginia, manufactured homes displaying the certification label as prescribed in the federal standards shall be accepted in all localities as meeting the requirements of the Manufactured Housing Construction and Safety Standards Law (Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 of the Code of Virginia), which shall supersede the building codes of the counties, municipalities, and state agencies. ~~In addition, as a requirement of this chapter, local code officials shall carry out the following functions with respect to manufactured homes displaying the HUD label, provided such functions do not involve disassembly of the homes or parts of the homes, change of design, or result in the imposition of more stringent conditions than those required by the federal regulations.~~

~~1. Verify through inspection that the manufactured home has not been damaged in transit to a degree that would render it unsafe. If the manufactured home has been damaged, then the local code official is authorized to require tests for tightness of plumbing systems and gas piping, and electrical short circuits at meter connections.~~

~~2. Verify through inspection that (i) supplemental components required by the manufacturer's installation instructions or this chapter are properly provided, (ii) manufacturer's installation or erection instructions are followed, and (iii) any special conditions or limitations of use stipulated by the manufacturer's installation instructions or the label in accordance with the standards or this chapter are followed.~~

~~B. Local code officials are required by the USBC to enforce applicable requirements of the USBC for utility connections, site preparation, foundations, stoops, decks, porches, alterations and additions to existing manufactured homes, building permits, skirting, certificates of use and occupancy, and all other applicable requirements, except those governing the design and construction of the labeled units. In addition, local code officials shall verify that a manufactured home displays the required HUD label.~~

13VAC5-95-40. ~~Report to DHCD.~~ (Repealed.)

~~Whenever any manufactured home is moved from a local jurisdiction before a noted violation has been corrected, the local code official shall make a prompt report of the circumstances to the administrator. The report shall include a list of uncorrected violations, all information pertinent to identification and manufacture of the home contained on the~~

~~label and the data plate, the destination of the home if known, and the name of the party responsible for moving it.~~

13VAC5-95-50. Alterations.

A. No distributor, installer, or dealer shall perform or cause to be performed any alteration affecting one or more requirements set forth in the federal standards~~, except those alterations approved by the administrator~~ unless the alteration is included in the manufacturer's design approval primary inspection agency's approved design and installation instructions.

B. ~~In handling and approving dealer requests for alterations, the administrator may be assisted by local code officials. The local code official shall report violations of subsection A of this section and failures to conform to the terms of their approval to the administrator.~~ In accordance with § 36-99 of the Code of Virginia and the USBC, alterations, additions, and repairs associated with existing manufactured homes are subject to applicable provisions of the USBC and not this chapter.

13VAC5-95-60. Installations.

Distributors, installers, or dealers ~~installing or~~ setting up a manufactured home shall perform such installation in accordance with the manufacturer's installation instructions ~~or other support and anchoring system approved by the local code official in accordance with the USBC~~.

13VAC5-95-70. ~~Prohibited resale.~~ (Repealed.)

~~No distributor or dealer shall offer for resale any manufactured home possessing a serious defect or imminent safety hazard.~~

13VAC5-95-80. Lot inspections.

At any time during regular business hours when a manufactured home is located on a dealer's or distributor's lot and offered for sale, the administrator shall have authority to inspect such home for transit damages, seal tampering, violations of the federal regulations and federal standards, and the dealer's or distributor's compliance with applicable state and federal ~~laws~~ law and ~~regulations~~ regulation. The administrator shall give written notice to the dealer or distributor when any home inspected does not comply with the federal regulations and federal standards or this chapter.

13VAC5-95-90. Consumer complaints~~; on-site inspections~~.

A. The administrator shall receive all consumer complaints on manufactured homes reported to DHCD by owners, dealers, distributors, ~~code~~ local building officials, and other state or federal agencies. The administrator may request ~~such reports~~ all consumer complaints to be submitted by letter or on a ~~report~~ form supplied by DHCD or in another format acceptable by the administrator.

B. The administrator may conduct, or cause to be conducted, an on-site inspection of a manufactured home at the request of the owner reporting a complaint with the home or under the following conditions with the permission of the owner of the home:

1. The dealer, distributor, or manufacturer requests an on-site inspection;

2. The reported complaint indicates extensive and serious noncompliances;

3. Consumer complaints lead the administrator to suspect that a class of homes may be similarly affected; or

4. Review of manufacturer's records, corrective action, and consumer complaint records leads the administrator to suspect secondary or associated noncompliances may also exist in a class of homes.

C. When conducting an on-site inspection of a home involving a consumer complaint, the administrator may request the dealer, distributor, and manufacturer of the home to have a representative present to coordinate the inspection and investigation of the consumer complaint.

D. After reviewing the complaint report or the on-site inspection of the home involved, the administrator shall, where possible, indicate the cause of any nonconformance and, where possible, indicate the responsibility of the manufacturer, dealer, distributor, or owner for the noncompliance and any corrective action necessary.

E. The administrator shall ~~refer to~~ notify the manufacturer of the home~~,~~ in writing~~,~~ of any consumer complaint concerning that home reported to the administrator. The administrator ~~may~~ shall refer any such reported complaint to HUD, to the SAA in the state where the manufacturer is located, and, as necessary, to the inspection agency involved with certifying the home.

F. The administrator shall assist the owner, dealer, distributor, installer, and manufacturer in resolving consumer complaints. ~~The administrator shall monitor the manufacturer's performance to assure compliance with Subpart I of the federal regulations for consumer complaint handling and shall take such actions as are necessary to assure compliance of all involved parties with applicable state and federal regulations.~~

G. The administrator shall monitor the manufacturer's performance to assure compliance with Subpart I (24 CFR 3282.401 et seq.) of the federal regulations for consumer complaint handling and shall take such actions as are necessary to ensure compliance of all involved parties with applicable state and federal regulation.

13VAC5-95-100. Violation; ~~appeal;~~ penalty.

~~A. Where the administrator finds any violation of the provisions of this chapter, a notice of violation shall be issued. This notice of violation shall order the party responsible to bring the unit into compliance, within a reasonable time.~~

~~B. Parties aggrieved by the findings of the notice of violation may appeal to the State Building Code Technical~~

~~Review Board, which shall act on the appeal in accordance with the provisions of the USBC. The aggrieved party shall file the appeal within 10 days of the receipt of the notice of violation. Unless the notice of violation is revoked by the review board, the aggrieved party must comply with the stipulations of the notice of violation.~~

~~C. Any person, firm or corporation violating any provisions of this chapter shall, upon conviction, be considered guilty of a misdemeanor in accordance with § 36-85.12 of the Code of Virginia.~~ In accordance with § 36-85.12 of the Code of Virginia, it shall be unlawful for any person, firm, or corporation to violate any provisions of Chapter 4.1 (§ 36-85.2 et seq.) of Title 36 of the Code of Virginia, this chapter, or the Federal Act and regulations. Any person, firm, or corporation violating any provision of said laws, rules, and regulations, or any final order issued thereunder, shall be liable for a civil penalty not to exceed $1,000 for each violation. Each violation shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or to perform an act required by the legislation or regulations. The maximum civil penalty may not exceed $1 million for any related series of violations occurring within one year from the date of the first violation.

An individual or a director, officer, or agent of a corporation who knowingly and willfully violates Section 610 (42 USC § 5409) of the Federal Act in a manner that threatens the health or safety of any purchaser shall be deemed guilty of a Class 1 misdemeanor and upon conviction fined not more than $1,000 or imprisoned not more than one year, or both.

FORMS (13VAC5-95)

DHCD Manufactured Home Consumer Complaint Form (eff. 6/123)

VA.R. Doc. No. R13-3405; Filed September 19, 2013, 11:35 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Final Regulation

REGISTRAR'S NOTICE: The Board of Nursing is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Board of Nursing will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-10).**

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

Effective Date: November 20, 2013.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The National League for Nursing Accrediting Commission informed the Board of Nursing that, effective May 6, 2013, the name was changed to the Accreditation Commission for Education in Nursing. Therefore, the board amended the definition of accreditation to correct the name of the accrediting body referenced in the regulation.

Part I
General Provisions

18VAC90-20-10. Definitions.

In addition to words and terms defined in § 54.1-3030 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Accreditation" means having been accredited by the ~~National League for Nursing Accrediting Commission (NLNAC)~~ Accreditation Commission for Education in Nursing (ACEN) or by the Commission on Collegiate Nursing Education (CCNE).

"Active practice" means activities performed, whether or not for compensation, for which an active license to practice nursing is required.

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education.

"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Council of Higher Education.

"Board" means the Board of Nursing.

"CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

"Clinical setting" means any location in which the clinical practice of nursing occurs as specified in an agreement between the cooperating agency and the school of nursing.

"Conditional approval" means a time-limited status which results when an approved nursing education program has

failed to maintain requirements as set forth in Article 2 (18VAC90-20-70 et seq.) of Part II of this chapter.

"Contact hour" means 50 minutes of continuing education coursework or activity.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"NCLEX" means the National Council ~~Licensing~~ Licensure Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Nursing faculty" means registered nurses who teach the practice of nursing in nursing education programs.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure that leads to a diploma or certificate in practical nursing, provided the school is authorized by the Virginia State Board of Education or the appropriate governmental credentialing agency.

"Preceptor" means a licensed health care provider who is employed in the clinical setting, serves as a resource person and role model, and is present with the nursing student in that setting.

"Primary state of residence" means the state of a person's declared fixed permanent and principal home or domicile for legal purposes.

"Program director" means a registered nurse who holds a current, unrestricted license in Virginia or a multistate licensure privilege and who has been designated by the controlling authority to administer the nursing education program.

"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved.

VA.R. Doc. No. R14-3823; Filed September 26, 2013, 10:30 a.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department for Aging and Rehabilitative Services is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Department for Aging and Rehabilitative Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **22VAC30-40. Protection of Participants in Human Research (amending 22VAC30-40-100).**

Statutory Authority: §§ 51.5-131 and 51.5-132 of the Code of Virginia.

Effective Date: November 21, 2013.

Agency Contact: Vanessa S. Rakestraw, Ph.D., Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TTY (800) 464-9950, or email vanessa.rakestraw@dars.virginia.gov.

Summary:

The amendments modify the chapter title of the regulation and correct a grammatical error.

CHAPTER 40
~~PROTECTION~~ PROTECTIONS OF PARTICIPANTS IN HUMAN RESEARCH

22VAC30-40-100. Informed consent.

A. Except as provided elsewhere in this chapter, no investigator may involve a human being as a subject in research covered by this chapter unless the investigator has obtained the legally effective informed consent of the prospective subject or the prospective subject's legally authorized representative in accordance with this chapter. The investigator shall seek such consent only under circumstances that provide the prospective human participant or the prospective human participant's legally authorized representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the prospective human participant or the prospective human participant's legally authorized representative shall be in language understandable to the prospective human participant or the prospective human participant's legally authorized representative. No informed consent, whether oral or written,

may include any exculpatory language through which the subject or the legally authorized representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the covered entity, or its agents from liability for negligence.

B. In seeking informed consent, the following basic elements shall be provided to each prospective subject or legally authorized representative:

1. A statement that the project involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental;

2. A description of any reasonably foreseeable risks or discomforts to the subject;

3. A description of any benefits to the subject or to others that may reasonably be expected from the research;

4. A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

5. A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

6. For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

7. An explanation of who to contact for answers to pertinent questions about the research and research subject's rights, and who to contact in the event of a research-related injury to the subject; and

8. A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

C. When the HRRC determines that it is appropriate, one or more of the following additional elements of informed consent shall also be provided to each subject:

1. A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable;

2. Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

3. Any additional costs to the subject that may result from participation in the research;

4. The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

5. A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject; and

6. The approximate number of subjects involved in the project.

D. The HRRC may approve a consent procedure that does not include or which alters some or all of the elements of informed consent set forth in this section, or waive the requirement to obtain informed consent provided the HRRC finds and documents that:

1. The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:

a. Public benefit or service programs;

b. Procedures for obtaining benefits or services under those programs;

c. Possible changes in or alternatives to those programs or procedures; or

d. Possible changes in methods or levels of payment for benefits or services under those programs; and

2. The research could not practicably be carried out without the waiver or alteration.

E. The HRRC may approve a consent procedure that does not include or that alters some or all of the elements of informed consent set forth in subsection B of this section, or waive the requirements to obtain informed consent provided the HRRC finds and documents that:

1. The research involves no more than minimal risk to the subject;

2. The waiver or alteration will not adversely affect the rights and welfare of the subjects;

3. The research could not practicably be carried out without the waiver or alteration; and

4. Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

F. The informed consent requirements in this chapter are not intended to preempt any applicable federal, state, or local laws that require additional information to be disclosed in order for informed consent to be legally effective.

G. Nothing in this chapter is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal or state law, or local ordinance.

H. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any human ~~subjects~~ subject research. Each human subject shall be given a copy of the signed consent form required by this section, except as provided for in subsection J of this section.

I. No legally authorized representative may consent to nontherapeutic research unless the HRRC determines that such nontherapeutic research will present no more than a minor increase over minimal risk to the prospective subject. No nontherapeutic research shall be performed without the consent of the human subject.

J. Documentation of informed consent.

1. Except as provided in subdivision 3 of this subsection, informed consent shall be documented by the use of a written consent form approved by the HRRC and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

2. Except as provided in subdivision 3 of this subsection, the consent form may be either of the following:

a. A written consent document that embodies the elements of informed consent required in subsection B of this section. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the subject's legally authorized representative adequate opportunity to read it before it is signed; or

b. A short form written consent document stating that the elements of informed consent required in subsection B of this section have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the HRRC shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the legally authorized representative, in addition to a copy of the short form.

3. The HRRC may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

a. That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

b. That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context. In cases in which the documentation requirement is waived, the HRRC may require the investigator to provide subjects with a written statement regarding the research.

VA.R. Doc. No. R14-3851; Filed September 26, 2013, 4:02 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

VIRGINIA AVIATION BOARD

Final Regulation

Title of Regulation: **24VAC5-20. Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia (amending 24VAC5-20-10, 24VAC5-20-120 through 24VAC5-20-280, 24VAC5-20-300, 24VAC5-20-330).**

Statutory Authority: §§ 5.1-2.2, 5.1-2.15, and 5.1-7 of the Code of Virginia.

Effective Date: November 20, 2013.

Agency Contact: Susan H. Simmers, Senior Airport Planner, Department of Aviation, 5702 Gulfstream Road, Richmond, VA 23250, telephone (804) 236-3632 ext. 105, FAX (804) 236-3635, or email susan.simmers@doav.virginia.gov.

Summary:

The amendments (i) align the state airport licensing requirements more closely with Federal Aviation Administration standards; (ii) provide a new process to address noncompliant conditions, including issuance of a new "Day/Visual Flight Rule Use Only" conditional airport license; (iii) update procedural information and citations; (iv) reduce redundancy; and (v) provide consistency throughout the chapter.

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

Part I
Definitions

24VAC5-20-10. Definitions.

~~Whenever used in this chapter, unless the context or subject matter requires otherwise, the following words or terms have the meaning herein ascribed to them, respectively:~~ Words or terms defined in § 5.1-1 of the Code of Virginia are incorporated by reference. The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:

"Aircraft" means any contrivance now known or hereafter invented~~, which~~ that is controlled, used, and usually occupied by a person for the purpose of navigation and transportation through the air, excepting "hang glider" as defined in § 5.1-1 of the Code of Virginia. Commonly recognized names for aircraft include, but are not limited to, planes, helicopters, seaplanes, ultralights, and hot air balloons.

"Airline" means an air carrier operation under Federal Aviation Regulations ~~found in~~ 14 CFR Part 119, 14 CFR Part 121, 14 CFR Part 129, or 14 CFR Part 135 providing scheduled passenger service.

~~"Airman" means any individual, including the person in command, and any pilot, mechanic, or member of the crew, who engages in the navigation of aircraft while under way within Virginia airspace; any individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft, aircraft engines, propellers or accessories; and any individual who serves in the capacity of aircraft dispatcher.~~

~~"Airport" means any area of land or water which is used or intended for use for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities including rights-of-way, easements and all airport buildings and facilities located thereon.~~

~~"Airspace" means all that space above the land and waters within the boundary of this state.~~

"Airport sponsor" means an entity that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other obligations required for an airport.

"Antique aircraft" means any aircraft constructed by the original manufacturer, or his licensee, on or before December 31, 1945.

"Approach surface" means a surface longitudinally centered on the extended runway centerline and extending outward and upward. ~~For non-Federal Aid Airports, the surface extends at a slope of 15:1 from each end of the primary surface.~~ An approach surface is applied to each end of each runway ~~based upon the type of approach available or planned for that runway end~~. ~~The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:~~

~~1. 1,200 feet at a distance of 5,000 feet for that end of a runway with only visual approaches.~~

~~2. 2,000 feet at a distance of 5,000 feet for that end of a runway having or proposing to have a nonprecision instrument approach procedure.~~

~~See also 14 CFR 77.25, 77.28, and 77.29 for design standards as they apply to federal aid airports.~~

"Aviation" means activities and infrastructure related to transportation by air~~;~~, including but not limited to (i) the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories~~;~~ (ii) the ~~design,~~ establishment, design, construction, extension, operation, improvement, repair, or maintenance of airports or landing areas~~, including but not limited to~~; and (iii) navigable airspace, ~~or~~ other air navigation facilities, and air instruction.

~~"Board" means the Virginia Aviation Board.~~

~~"Civil aircraft" means any aircraft other than a public aircraft.~~

"Commercial operator" means a person, except an airline, who operates any aircraft for the purpose of rental or charter or for ~~any~~ other ~~purpose~~ purposes from which revenue is derived.

~~"Conical surface" for a nonfederal aid airport means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 15:1 for a horizontal distance of 4,000 feet. See also 14 CFR 77.25, 77.28 and 77.29 for standards as they apply to federal aid airports.~~

"Contract carrier permit" means a permit issued by the department to contract carriers operating under Federal Aviation Regulations 14 CFR Part 61, 14 CFR Part 135, or 14 CFR Part 141 for transport of passengers or freight on demand by air. Owners of aircraft who contract to provide flight instruction in their aircraft for profit are required to have a contract carrier permit.

"Day/VFR Use Only License" means a conditional airport license issued with the restriction that operations at the airport can only occur between sunrise and sunset and only under Visual Flight Rules (VFR) for the purpose of allowing continuing operations at an airport that is not in compliance with the minimum requirement for approach surfaces.

~~"Department" means the Department of Aviation.~~

"Effective runway length" means the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway and the far end thereof.

~~"Hazards" for airports~~ "Hazard" means ~~any~~ a fixed or mobile structure~~,~~ or object, ~~or~~ natural growth, or use of land ~~which~~ that obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to ~~such~~ the landing or taking off of aircraft.

"Helipad" means a ~~rectangular or square specially prepared surface that may be turf or paved, which is designated specifically for the purpose of landing and takeoff of helicopter aircraft~~ small designated area, usually with a prepared surface, on an airport, heliport, landing/takeoff area, apron/ramp, or movement area used for the takeoff, landing, or parking of helicopters.

"Heliport" means ~~any~~ (i) an identifiable area on land, water, or structure, including ~~any~~ a building or facilities thereon, used or intended to be used for the landing and takeoff of helicopters~~,~~ or other rotorcraft~~,~~ or (ii) appurtenant areas ~~which~~ that are used, or intended for use, for heliport buildings or other heliport facilities including rights-of-way, easements, and all heliport buildings and facilities located thereon.

~~"Heliport approach surface" means a surface beginning at each end of the heliport primary surface with the same width as the primary surface, and extending outward and upward. Reference 14 CFR 77.25, 77.28, and 77.29 for design standards.~~

~~"Heliport primary surface" means the area of the primary surface coinciding in size and shape with the designated takeoff and landing area of a heliport. This surface is a horizontal plane at the elevation of the established heliport elevation.~~

~~"Heliport transitional surface" means a surface extending outward and upward from the lateral boundaries of the heliport primary surface and from the approach surfaces. Reference 14 CFR 77.25, 77.28, and 77.29 for design standards.~~

~~"Horizontal surface" means a horizontal plane 150 feet above the established airport elevation. Reference 14 CFR 77.25, 77.28, and 77.29 for design standards.~~

~~"Imaginary surfaces" are those surfaces as defined herein for nonfederal aid airports and in 14 CFR 77.25. Reference 14 CFR 77.25, 77.28, and 77.29 for the definitions and design standards.~~

~~"Intrastate air transportation" means air transportation between two or more airports within Virginia, or air transportation to and from the same airport in Virginia without an intermediate stop outside Virginia.~~

~~"Landing area" means any local specific site, whether over land or water, including airports and intermediate landing fields, which is used or intended to be used for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing or repair of aircraft, or for receiving or discharging passengers or cargo.~~

"Noncommercial dealer" means a person who owns and offers for sale a minimum of three aircraft during any consecutive 12-month period, which aircraft are not used for personal use, rental, charter, or for ~~any~~ a purpose from which revenue is derived.

"Obstacle" means ~~any~~ a fixed or mobile object that ~~is located on an area intended for the surface movement of aircraft, or that extends above a defined imaginary surface intended to protect aircraft in flight, that~~ interferes with the situating or operation of navigational aids~~,~~ or that may control the establishment of instrument procedures. An obstacle could be located on an area intended for the ground movement of aircraft or would extend above the approach surfaces intended to protect aircraft in flight or the runway object free area.

"Obstruction" means ~~any~~ an object, obstacle, or structure~~, man-made or otherwise, which~~ that penetrates ~~any of~~ the ~~imaginary surfaces~~ approach surfaces or runway object free area at an aircraft landing area. The obstruction may be man-made or of natural growth, including trees.

"Obstruction clearance plane" means a plane sloping upward from the runway at a slope ~~of 15:1 to the horizontal and tangent to or clearing~~ meeting the appropriate requirements to clear all obstructions within a specified area ~~surrounding the runway~~ as shown in a profile view of that area. ~~For federal aid airports the slope of the plane is 20:1.~~

~~"Person" means any individual, corporation, government, political subdivision of the Commonwealth, or governmental subdivision or agency, business trust, estate, trust, partnership, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.~~

~~"Primary surface" means a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 100 feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The minimum width of a primary surface is 200 feet. See also 14 CFR 77.25, 77.28, and 77.29 for standards as they apply to federal aid airports.~~

~~"Public aircraft" means an aircraft used exclusively for the service of any state or political subdivision thereof, or the federal government.~~

"Private-use Landing Area License" means a license issued for a facility not open for public use, including airports, heliports, helipads, and seaplane bases, that is within five nautical miles of a licensed public-use airport, in accordance with § 5.1-7 of the Code of Virginia.

"Runway" means a rectangular surface area that may be turf, paved, or water course~~, which~~ that is designed specifically for the purpose of approaching and landing and taking-off and departing of aircraft.

"Runway object free area" means an imaginary area centered on the runway centerline that is clear of aboveground objects protruding above the runway centerline, except for allowable objects necessary for air navigation or aircraft ground maneuvering purposes.

"Runway safety area" means a rectangular area~~,~~ symmetrical about the runway centerline, which includes the runway, runway shoulders, and ~~stopways~~ safety overruns, if present. The portion abutting the edge of the runway shoulders, runway ends, and ~~stopways~~ safety overruns is cleared, drained, graded, and usually turfed. Under normal conditions, the runway safety area is capable of supporting snow removal, firefighting, and rescue equipment and of accommodating the occasional passage of aircraft without causing major damage to the aircraft.

~~"Stopway" or "overrun"~~ "Safety overrun" or "stopway" means ~~any~~ an area beyond the takeoff runway, no less wide than the runway and centered upon the extended centerline of the runway, able to support ~~the airplane~~ an aircraft during an aborted takeoff without causing structural damage to the ~~airplane~~ aircraft~~,~~ and designated by the airport authorities for use in decelerating the ~~airplane~~ aircraft during an aborted takeoff.

"Seaplane base" means an area of water used or intended to be used for the landing and takeoff of aircraft, together with appurtenant shoreside buildings and facilities.

"Structure" means ~~any~~ (i) a man-made object, including a mobile object, constructed or erected by man, including but not limited to buildings, towers, cranes, smokestacks, earth formations, overhead transmission lines, flag poles, and ship masts or (ii) natural objects, including but not limited to trees.

"Threshold" means the beginning of that portion of the runway identified for the landing of aircraft. A threshold may be displaced, or moved down the runway, to provide for adequate safety provisions.

~~"Transitional surface" for nonfederal aid airports means a surface extending outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 5 to 1 from the sides of the primary surface and from the sides of the approach surfaces until they intersect the horizontal surface. See also 14 CFR 77.25, 77.28, and 77.29 for standards as they apply to federal aid airports.~~

"Ultralight" means ~~any~~ an aircraft that (i) is used or intended to be used for manned operation in the air by a single occupant [~~,~~ ;] (ii) is used or intended to be used for recreation and sport purposes only [~~,~~ ;] ~~and~~ (iii) does not have ~~any U.S.~~ a United States or foreign air worthiness certificate [~~,~~ ;] ~~and~~ (iv) weighs less than 254 pounds empty weight, excluding floats and safety devices ~~which~~ that are intended for deployment in a potentially catastrophic situation; ~~and~~ (v) ~~that~~ has a fuel capacity not exceeding ~~5 U.S.~~ five United States gallons; and (vi) is not capable of more than 55 knots calibrated airspeed at full power in level flight and has a power-off stall speed ~~which~~ that does not exceed 24 knots calibrated airspeed.

Part III
Airports and Landing Areas

24VAC5-20-120. Licenses.

A. Airports and landing areas, except private landing areas as ~~defined~~ set forth in § 5.1-7.2 of the Code of Virginia, shall be licensed by the department pursuant to § 5.1-7 of the Code of Virginia and 24VAC5-20-140. ~~Such airports and landing areas or persons operating any airport or landing area proposing to add or extend the runways of such airport or landing area shall apply for an amended license pursuant to § 5.1-7 of the Code of Virginia. An initial license or renewal thereof will be issued following review and determination of the department for compliance with § 5.1-7 of the Code of Virginia and 24VAC5-20-140.~~ Private landing areas as defined in § 5.1-7.2 of the Code of Virginia shall only be registered as provided for in 24VAC5-20-170. ~~An application for a license shall be executed by the applicant or a duly authorized agent, under oath, on forms prescribed by the department, and shall be filed with the department.~~

B. Airports and landing areas ~~which~~ that are issued licenses pursuant to § 5.1-7 of the Code of Virginia shall be open to the general public on a nondiscriminatory basis. An application for ~~such~~ a license shall be signed by the airport sponsor, under oath, on a form prescribed by the department and submitted to the department ~~by the applicant or his duly authorized agent under oath on forms prescribed by the department~~ accompanied by the required supporting documents as specified on the form. ~~Such~~ An initial license, or renewal thereof, will be issued following department review and determination of compliance with § 5.1-7 of the Code of Virginia and 24VAC5-20-140. A license shall remain in effect for the period specified until modified, suspended, ~~amended~~ or revoked by the department.

C. Airport sponsors proposing to add or extend runways of an airport or landing area shall apply for a modified license pursuant to § 5.1-7 of the Code of Virginia.

D. If an airport or landing area should continually cease to be open to the public for one year and the airport sponsor wants to reopen the facility to the public, the airport sponsor must reapply for a license in accordance with § 5.1-7 of the Code of Virginia and [~~24VAC5-20-120~~ this section] and must be in compliance with 24VAC5-20-140.

E. Licenses must be renewed every seven years or at the discretion of the department based on demonstrated need. ~~Starting October 1995, the department will stagger license renewals by regions of the Commonwealth according to Virginia Aviation Board areas of responsibility as follows: Southwest region - September 30, 1996; West Central region - September 30, 1997; Blue Ridge region - September 30, 1998; Northern Virginia region - September 30, 1999; Central region - September 30, 2000; Richmond/Northern Neck region - September 30, 2001; and Hampton Road/Eastern Shore region - September 30, 2002.~~ License expirations shall be staggered in accordance with criteria set by the department, which include, but are not limited to, changes in legislation, standards, policy, processes, and procedures.

24VAC5-20-140. Minimum requirements for licensing.

A. The minimum ~~standards which~~ requirements that are required for initial and continued licensing under § 5.1-7 of the Code of Virginia ~~will~~ shall provide for:

~~1. An effective runway length of 2,000 feet, with 100 feet of overrun on each end, and unobstructed approach surfaces of 15:1 horizontal to vertical slope at each end of the runway.~~

~~2. An unobstructed primary surface(s) which is 2,200 feet in length and 200 feet in width.~~

~~3. An unobstructed transition surface(s) of 5:1 slope on either side of the primary and approach surfaces.~~

~~4. A minimum runway width of 50 feet, and minimum runway safety area width of 120 feet.~~

~~5. Aerial ingress and egress shall be available from both ends of the rectangular dimension of a runway.~~

1. An effective runway length of at least 2,000 feet for each direction of operation;

2. A minimum runway width of 50 feet;

3. A minimum runway safety area length equal to the length of the runway plus 100 feet at each end of the runway;

4. A minimum runway safety area width of 120 feet centered on the runway centerline;

5. A minimum unobstructed approach surface of 15:1 horizontal to vertical slope at each end of the runway;

6. An approach surface that is centered along the runway centerline and that begins at the threshold at a width of 250 feet, expands uniformly for a distance of 2,250 feet to a width of 700 feet, and continues at the width of 700 feet for a distance of 2,750 feet;

7. A minimum unobstructed runway object free area length equal to the length of the runway;

8. A minimum unobstructed runway object free area width of 250 feet centered on the runway centerline; and

~~6.~~ 9. A displaced threshold, if an approach surface to either physical end of the runway is obstructed and the obstacle cannot be removed, that shall be located down the runway at the point where the obstruction clearance plane intersects the runway centerline.

~~7. An airport runway licensed specifically and solely for the purpose of accommodating short-takeoff-and-landing aircraft may, at the discretion of the department, be less than 2,000 feet in length; however, all other dimensional standards will apply.~~

~~8. A heliport used for commercial public use purposes will provide for minimum dimensions of 75 feet by 75 feet. The heliport will have unobstructed primary, approach, and transition surfaces in accordance with their definitions in this chapter.~~

B. The minimum requirements for the initial and continued licensing of an airport under the conditional Day/VFR Use Only License in accordance with 24VAC5-20-275 shall provide for:

1. An effective runway length of 2,000 feet in each direction of operation;

2. A minimum runway width of 50 feet;

3. A minimum runway safety area length equal to the length of the runway plus 100 feet at each end of the runway;

4. A minimum runway safety area width of 120 feet centered on the runway centerline;

5. A minimum unobstructed approach surface of 15:1 horizontal to vertical slope at each end of the runway; and

6. An approach surface that is centered along the runway centerline and that begins at the threshold at a width of 120 feet, expands uniformly for a distance of 500 feet to a width of 300 feet, and continues at the width of 300 feet for a distance of 2,500 feet.

C. The minimum requirements for the initial and continued licensing of a heliport open for public use under § 5.1-7 of the Code of Virginia shall provide for minimum standard dimensions as provided in the Federal Aviation Administration Advisory Circular 150/5390-2B Heliport Design, effective September 30, 2004.

D. The minimum requirements for the initial and continued licensing of a seaplane base open for public use under § 5.1-7 of the Code of Virginia shall provide for minimum standard dimensions as provided in the Federal Aviation Administration Advisory Circular 150/5395 Seaplane Bases, effective June 29, 1994.

~~9.~~ E. In addition to the investigation required for safety provisions as outlined in § 5.1-7 of the Code of Virginia, a detailed consideration of the economic, social, and environmental effects of the airport location shall be conducted for applications for new and modified licenses. These considerations shall include one or more public hearings as required to assure consistency with the goals and objectives of ~~such~~ planning as has been carried out by the community.

~~10.~~ F. Proof of financial responsibility prescribed in Chapter 8.2 (§ 5.1-88.7 et seq.) of Title 5.1 of the Code of Virginia must be furnished at the time of application of license, and ~~such~~ this financial responsibility thereafter must be maintained.

24VAC5-20-145. Waiver of minimum requirements.

~~Subdivisions 1, 2, 3, 4, and 5 of 24VAC5-20-140 may be waived upon application to the board setting forth the reasons that these standard(s) sought to be waived cannot be met.~~ A. Upon application by an airport sponsor, setting forth the reason or reasons that one or more requirements sought to be waived cannot be met, the board may waive compliance of requirements of 24VAC5-20-140. In the waiver, the board shall specify the minimum requirement or requirements covered by the waiver and set terms for the waiver, including the time period for the waiver.

B. Considerations for granting the waiver shall be limited to ~~topographical impossibility, possible financial expense to the Virginia Aviation Fund, volume and type of traffic and safety experience at the airport~~ (i) a determination of no hazard based on a Federal Aviation Administration airspace evaluation and implementation of mitigation recommendations if applicable, (ii) a determination of impracticality due to topography, or (iii) a benefit cost analysis proving improvements as financially unfeasible.

~~Any~~ C. An airport having a license issued prior to October 1, 1995, and not meeting one or more minimum ~~standards~~ requirements for licensure in effect ~~for that period~~ on October 1, 1995, shall be exempt from having to comply with those noncomplying ~~standards~~ requirements for as long as the airport remains an active public-use facility unless those noncomplying requirements are caused by natural growth. ~~Should such airport cease to be open to the public for one~~

~~year, and subsequently reopen, it shall be required to comply with all applicable minimum standards for licensure.~~

~~All airports or landing areas that hold licenses as of September 30, 1995, that do not meet the minimum standards in effect on September 30, 1995, do not need to apply for a waiver in order to be relicensed. In compliance with § 5.1-7 of the Code of Virginia, the department shall issue a conditional license to all airports which were licensed as public use airports on October 1, 1995, which did not meet the minimum standards for licensure in effect on that date.~~

24VAC5-20-150. Transfer of licenses.

A. No license issued by the department for the operation of an airport or landing area may be transferred by the licensee without first obtaining the approval of the department.

B. Application for approval of a transfer of a license shall be made on ~~forms~~ the form prescribed by the department and accompanied by the required supporting documents as specified on the form. Approval may be granted only after satisfactory evidence has been submitted ~~which~~ that shows ~~that~~ the proposed transferee (i) is capable of operating the airport or landing area in accordance with the laws of this Commonwealth and these regulations~~;~~ and (ii) is financially responsible per Chapter 8.2 (§ 5.1-88.7 et seq.) of Title 5.1 of the Code of Virginia~~,~~ and has paid or guaranteed payment of all financial commitments due the Commonwealth under Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 of the Code of Virginia or this chapter.

C. Before ~~such~~ a transfer shall be made, the transferee by written agreement shall assume the unfulfilled obligation to the Commonwealth to operate the airport or landing area under any and all agreements executed by any prior licensee or licensees of such airport or landing area to procure state funds for ~~such~~ the airport or landing area.

D. Upon conveyance, death, dissolution, or bankruptcy of a licensee, the ~~airport license may be transferred~~ department should be notified of the occurrence within 60 days, and the airport license may be transferred upon approval of the department. ~~Transfer shall be effected within 180 days after death or dissolution of the licensee or the airport license shall become null and void.~~

24VAC5-20-160. ~~Public waters landing rights~~ Seaplane bases.

~~Counties, cities, and towns shall have the power to establish, maintain, and operate airports and landing areas and other navigation facilities in, over, and upon any public waters of this Commonwealth, or any submerged land under such public waters, within the limits or jurisdiction of or bordering on such counties, cities or towns. Any such areas established shall follow all the applicable permitting and licensing requirements of Part III of this chapter (24VAC5-20-120 et seq.).~~ Seaplane bases may be established in, over, and upon any waters of this Commonwealth or any submerged land under such waters. Seaplane bases used or intended for public use need to be licensed in accordance with 24VAC5-20-120 and 24VAC5-20-140. Seaplane bases not used or intended for public use need to be registered or licensed in accordance with 24VAC5-20-170.

24VAC5-20-170. Private ~~or personal~~ airports or landing areas.

~~Any~~ A. A person establishing or owning ~~property utilized for landing aircraft that is solely for private or personal use, and which is not open to the general public,~~ a private landing area, including airports, heliports, helipads, and seaplane bases, shall be required only to register the ~~landing area~~ facility if it is ~~not within~~ more than five nautical miles ~~of~~ from a licensed public-use airport. ~~Registration shall be accomplished on forms provided by the department.~~

~~Any~~ B. A person establishing ~~private or personal airports~~ or owning a private landing area, including airports, heliports, helipads, and seaplane bases, within five nautical miles of a licensed public-use airport shall be ~~licensed~~ required to secure a Private-use Landing Area License for the facility if the applicant airport does not pose a hazard to the airspace and utilization by aircraft of the licensed public-use airport in question. ~~Licenses for private-use airports that are within five nautical miles of a licensed public-use airport~~ These licenses shall be issued once~~,~~ and do not have to be renewed.

~~Prior to final registration or licensing of a private or personal airport, the applicant airport shall provide to the department written information from the local government having jurisdiction over such airport that such airport has received approval from the locality~~ C. Application for the registration or licensing of a private landing area, including airports, heliports, helipads, and seaplane bases, shall be made on the form prescribed by the department and accompanied by the required supporting documents as specified on the form, including written documentation with respect to zoning, special use permit, or ~~any~~ other land use requirements.

D. Aircraft landing at ~~these landing areas and nonpublic-use airports~~ private landing areas, including airports, heliports, helipads, and seaplane bases, shall have prior approval of the landowners or controlling agency when reasonably practical. Aircraft landing at other than licensed public-use airports without ~~such~~ prior approval shall not be removed therefrom without the consent of the owner or lessee of ~~such~~ the property.

E. Privately-owned or publicly-owned hospitals may establish and maintain airports, heliports, helipads, or landing areas and may restrict the public use of these facilities to the takeoff and landing of aircraft for hospital related uses only.

24VAC5-20-180. Fees.

A. The fee for issuing a license ~~of a public use airport or landing area~~ for an airport, heliport, seaplane base, or landing area open for public use in accordance with 24VAC5-20-120 shall be $25. The fee for ~~each~~ a license renewal ~~or amendment~~, modification, or transfer shall be $25.

B. No fee is charged for licensing a ~~private-use airport~~ private-use landing area under 24VAC5-20-120 or registering a ~~private-use airport~~ private-use landing area under 24VAC5-20-170.

Part IV
Obstructions to Airspace

24VAC5-20-190. Determination of hazard.

The ~~Department of Aviation~~ airport sponsor shall ~~conduct~~ be responsible for insuring that an aeronautical study is conducted~~,~~ when needed to satisfy the ~~requisites~~ requirements of this regulation~~, and~~ to determine the effect of ~~any~~ a structure, either man-made or natural, that penetrates ~~any imaginary surface~~ the approach surfaces or runway object free area upon the safe and efficient operation of ~~any~~ a licensed, military, or government air navigation facility or airport. This determination shall be made based on criteria as defined by 24VAC5-20-200. If a structure constitutes an ~~"~~obstruction~~"~~ in accordance with these ~~standards~~ criteria, it shall be presumed to be a ~~"~~hazard~~"~~ until determined otherwise ~~the~~ by ~~Virginia Aviation Board~~ the board.

24VAC5-20-200. Obstruction criteria.

~~In conducting any~~ A study required by this chapter ~~the department may~~ shall consider, but not be limited to, at least the following factors: (i) Federal Aviation Regulations 14 CFR 77.25, 14 CFR 77.28, and 14 CFR 77.29; ~~Airport Traffic Patterns~~ (ii) airport traffic patterns; ~~IFR Airways and Routes~~ (iii) Instrument Flight Rules (IFR) airways and routes; ~~VFR~~ (iv) Visual Flight Rules (VFR) routes and designated practice areas; ~~and~~ (v) terminal airspace; and (vi) instrument approach procedures.

24VAC5-20-210. Obstruction permit procedure.

A. This process shall not be applicable in those counties, cities, and towns ~~which~~ that have satisfied the local ordinance provisions of § ~~15.1-491.02~~ 15.2-2294 of the Code of Virginia. ~~See 24VAC5-20-220.~~

~~Any~~ B. A person seeking an obstruction permit from the board, as required by § 5.1-25.1 of the Code of Virginia, pertaining to structures hazardous to air navigation shall ~~submit to the department a permit request on such forms as prescribed by the department, including any ancillary data required by the department~~ provide to the department a copy of Federal Aviation Administration Form 7460-1 Notice of Proposed Construction or Alternation submitted to the Federal Aviation Administration and a copy of the response from the Federal Aviation Administration when available.

C. Upon receipt of ~~such~~ a request, the department shall (i) ~~notify the applicant of said receipt and supply available information pertaining to the obstruction analysis, with the date and location of the applicable board meeting; (ii)~~ conduct an analysis of the request using the criteria in 24VAC5-20-190 and 24VAC5-20-200 within ~~90~~ 120 days from the date of receipt, unless it advises the applicant that ~~such~~ the analysis will ~~take longer~~ require additional time; (ii) supply the applicant with available information pertaining to the obstruction analysis and the date and location of the board meeting at which the request will be presented to the board; and (iii) ~~shall~~ forward to the board its analysis in the form of a staff report with the ~~concurrent~~ recommendations regarding the permit request.

D. The board shall consider ~~each~~ a permit request at the next regularly scheduled meeting~~,~~ following the completion of the department staff report. Its consideration may include, but is not limited to, the department's staff report, ~~any~~ verbal and written testimony of the applicant, ~~any~~ analysis ~~of~~ by the Federal Aviation Administration, and ~~any~~ comments from the local jurisdiction or jurisdictions where the structure is to be located. All decisions issued by the board shall be issued in writing stating the reasons for same. ~~Any~~ An affirmative decision may be accompanied by conditions deemed appropriate by the board including, but not limited to, obstruction marking, lighting, and similar safety features.

E. The applicant, if given an affirmative decision by the board, shall not be relieved by that decision of ~~any~~ local, state, or federal requirements as to zoning, building, variance, or other permits as may be required.

24VAC5-20-220. Model airport safety zoning ordinance.

~~Any~~ A county, city, or town in the Commonwealth seeking to comply with the mandate of § ~~15.1-491.02~~ 15.2-2294 of the Code of Virginia to enact local obstruction ordinances shall abide by the following:

1. The Model Airport Safety Zoning Ordinance developed by the ~~Department of Aviation~~ department shall be used as a guide by localities. A copy of ~~such~~ the model ordinance is found in Appendix A (24VAC5-20-400) of this chapter.

2. The provisions of ~~any~~ a locally adopted ordinance shall be in substantial conformity with the Model Airport Safety Zoning Ordinance. Substantial conformity shall include, but not be limited to, protection of airspace from intrusions as described in Articles 3, 4, and 7 of the ~~Model~~ model.

3. The department may, at the request of a local governing body, review ~~any~~ an ordinance submitted prior to adoption by ~~such~~ a locality. In conducting its review, the department shall make an evaluation regarding the integrity of ~~such~~ an ordinance with respect to the requisites of the Model Airport Safety Zoning Ordinance. The review of the department may include, but not be limited to, the evaluation with respect to the ~~Model Ordinance~~ model ordinance, ~~any~~ comments of the locality, and its opinion concerning the expected effectiveness of the ordinance as it relates to the general intent of § ~~15.1-491.02~~ 15.2-2294 of the Code of Virginia.

Part VI
Modification, Suspension, ~~Amendment~~ or Revocation of Licenses

24VAC5-20-275. Conditional licenses.

A. If at any time an airport ~~or landing area cannot~~ does not meet all of the minimum requirements for ~~licensure that have been adopted by the department, or having met those requirements cannot maintain compliance, the department may issue conditional licenses to allow time for the airport or landing areas to take steps to meet those requirements~~ licensing as set forth in 24VAC5-20-140, a conditional use license shall be issued for a period of 180 days. ~~Such conditional~~ Conditional licenses shall specify the ~~nonstandard~~ requirements ~~and dictate the time allowable for the standards to be brought into compliance, that time being the same as the duration of the conditional license~~ with which the airport is not in compliance. Upon receipt of notification of nonconformance, the airport sponsor shall issue the appropriate Notice to Airmen for the noncompliant conditions in accordance with 24VAC5-20-140. The Notice to Airmen shall remain in place until the noncompliant condition is resolved.

B. Within 60 days of notification of nonconformance, the airport sponsor must submit a written mitigation plan to the department that includes, but is not limited to, means of resolving noncompliant conditions, a schedule for the performance of the mitigation, and, if applicable, the cost to the Commonwealth. The airport sponsor or designee must present the mitigation plan to the board at the meeting specified in the notification of nonconformance. In response to the presentation, the board will recommend at least one of the following to the department:

1. Extend the conditional use license for a specified time period;

2. Issue a "Day/VFR Use Only License";

3. Issue a waiver in accordance with 24VAC5-20-145;

4. Revoke the public-use license in accordance with 24VAC5-20-280.

Failure by the airport sponsor or designee to submit a written mitigation plan or failure to present the plan to the board will result in at least one of the actions above being implemented.

C. At any time an airport sponsor may request the department to reclassify its license. Upon reclassification of a license, the airport sponsor shall issue an appropriate Notice to Airmen for a minimum period of 180 days.

24VAC5-20-280. Sanctions, ~~notice~~ notices, and appeals.

A. The department may immediately temporarily ~~suspend or~~ modify ~~any~~ or suspend a license or permit issued pursuant to Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 of the Code of Virginia and this chapter for violation of any of the provisions of the aviation laws of Virginia or of this chapter, at the instance of any person, upon duly sworn affidavit of ~~such~~ the person, or upon its own motion. ~~Such~~ A sanction shall be effective upon receipt of written notice of the sanction by the licensee at his last known address as disclosed by the records of the department. ~~Such~~ A temporary sanction shall be effective for a period not to exceed 90 days.

B. The department may ~~permanently suspend or~~ revoke ~~any~~ a license or permit issued pursuant to Chapter 1 (§ 5.1-1 et seq.) of Title 5.1 of the Code of Virginia and this chapter for violation of any of the provisions of the aviation laws of Virginia or of this chapter, at the instance of ~~any~~ a person, by duly sworn affidavit of ~~such~~ the person, or ~~on~~ upon its own motion. ~~Such~~ An action shall be effective 10 days after receipt of written notice of the action by the licensee at his last known address as disclosed by the records of the department, unless the licensee shall, before that time, show cause why ~~such~~ the sanction should not be imposed.

~~Temporary or permanent suspensions~~ C. Suspensions or revocations by the department may be appealed by filing a written notice of appeal with the director of the department within 10 days of receipt of the notice of sanction, requesting an opportunity to be heard and to present evidence in an informal fact finding as defined in the Administrative Process Act [~~,~~] (§ ~~9-6.14:1 et seq.~~ [~~2.2-4019~~ 2.2-4000 et seq.] of the Code of Virginia). ~~Such an~~ An opportunity will be afforded by the director ~~not later than~~ within 21 days ~~after~~ of receipt by him of the written notice of appeal. The director will give written notice to the licensee of his decision to affirm, modify, or rescind the sanction within 10 days after this hearing.

D. The sanctions enumerated in this regulation shall be cumulative with other enforcement powers conferred upon the department by these regulations or by statute, and no action taken hereunder shall limit the jurisdiction of the department to impose other penalties authorized by these regulations or by statute. From the case decision of the director of the department, an appeal lies as set out in the Administrative Process Act [~~,~~] (§ ~~9-6.14:1 et seq.~~ [~~2.2-4020~~ 2.2-4000 et seq.] of the Code of Virginia).

24VAC5-20-300. ~~Airport hazards~~ Hazard notification.

~~Commercial, public use~~ Public-use airport and landing area owners, operators, and managers shall maintain vigilance as to airport conditions and shall notify the nearest Federal Aviation Administration Flight Service Station and the ~~Department of Aviation~~ department whenever ~~any~~ known hazards to aircraft exist at ~~such~~ an airport or landing area. Known hazards are ~~any~~ conditions ~~which~~ that create an unsafe situation ~~and include uncut grass on any runway in excess of eight inches in height~~.

24VAC5-20-330. Aviation facilities constructed in whole or in part with state funds.

Before ~~any~~ funds appropriated by the General Assembly of Virginia for the promotion of aviation~~,~~ or the construction or improvement of aviation facilities at ~~any county, municipal or privately-owned, commercial,~~ a public-use airport, ~~or~~

heliport, or seaplane base owned by a county, city, town, individual, corporation, authority, or commission may be allocated, the [~~owner~~ airport sponsor] thereof shall enter into a written agreement with the department, acting through the director, ~~which~~ that shall provide for operation of ~~such~~ the airport, ~~or~~ heliport, or seaplane base as a public-use facility for a minimum period of 20 years or as specified within a written agreement. The ~~owner~~ airport sponsor of ~~any such~~ an aviation facility and ~~his or~~ its transferees, successors, and assignees who [~~fails~~ fail] to fulfill the period of operation specified in any such agreement shall be liable for the return of ~~any such~~ these state funds on a pro rata basis.

~~Privately owned or publicly owned hospitals may establish and maintain airports and may restrict the public use of such airports to takeoff and landing of any aircraft for medical emergencies only; such airports may be funded in accordance with this chapter.~~

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

FORMS (24VAC5-20)

[~~Application for Public-use Airport License or License Modification, 200 DOAVAS 20101201 Airport License Application (12/10).~~

~~Application for Public-use Airport License Renewal, 200 DOAVAS 20101201 Airport License Renewal Application (12/10).~~

~~Application for Private-use Airport Registration or License, 200 DOAVAS 20101201 Private Airport Registration Application (12/10).~~

~~Notice of Proposed Construction or Alteration, FAA Form 7460-1 (5/07).~~

Application for Public-Use Airport License or License Modification (12/2010)

Application for Public-Use Airport License Renewal (12/2010)

Application for Private-Use Airport Registration or License (12/2010)

Notice of Proposed Construction or Alteration, FAA Form 7460-1 (2/2012)

Airport License Reclassification Application, 200 DOAVS (10/13)]

DOCUMENTS INCORPORATED BY REFERENCE (24VAC5-20)

Advisory Circular, AC No. 150/5390-2B, Subject: Helicopter Design, September 30, 2004, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW, Washington, DC 20591 [~~(www.faa.gov/regulations_policies/advisory_circulars).~~]

Advisory Circular, AC No.: 150/5395-1, Subject: Seaplane Bases, June 29, 1994, Federal Aviation Administration, U.S. Department of Transportation, 800 Independence Avenue, SW, Washington, DC 20591 [~~(www.faa.gov/regulations_policies/advisory_circulars).150/5395-1 (6/29/94)~~]

VA.R. Doc. No. R11-2811; Filed September 24, 2013, 11:37 a.m.

COMMONWEALTH TRANSPORTATION BOARD

Fast-Track Regulation

Titles of Regulations: **24VAC30-72. Access Management Regulations: Principal Arterials (repealing 24VAC30-72-10 through 24VAC30-72-160).**

24VAC30-73. Access Management Regulations: Minor Arterials, Collectors, and Local Streets (amending 24VAC30-73-10, 24VAC30-73-20, 24VAC30-73-30, 24VAC30-73-60, 24VAC30-73-70, 24VAC30-73-80, 24VAC30-73-90, 24VAC30-73-110, 24VAC30-73-120, 24VAC30-73-130).

Statutory Authority: § 33.1-198.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 20, 2013.

Effective Date: December 5, 2013.

Agency Contact: Paul Grasewicz, AICP, Access Management Program Administrator, Department of Transportation, Transportation and Mobility Management Division, Virginia Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-0778, FAX (804) 662-9405, or email paul.grasewicz@vdot.virginia.gov.

Basis: Section 33.1-198.1 of the Code of Virginia provides the Department of Transportation (VDOT) the authority to promulgate regulations. Subsection C of § 33.1-198.1 directs the Commissioner of Highways to "develop and implement comprehensive highway access management standards for managing access to and preserving and improving the efficient operation of the state systems of highways. The comprehensive highway access management standards shall include but not be limited to standards and guidelines for the location, number, spacing, and design of entrances, median openings, turn lanes, street intersections, traffic signals, and interchanges."

Pursuant to § 33.1-13 of the Code of Virginia, the Commissioner "shall have the power to do all acts necessary or convenient for constructing, improving, maintaining, and preserving the efficient operation of the roads embraced in the systems of state highways and to further the interests of the Commonwealth in the areas of public transportation, railways, seaports, and airports."

Purpose: Subsection B of § 33.1-198.1 of the Code of Virginia states, "The General Assembly declares it to be in the public interest that comprehensive highway access management standards be developed and implemented to enhance the operation and safety of the systems of state highways in order to protect the public health, safety, and general welfare while ensuring that private property is entitled to reasonable access to the systems of state highways." VDOT's amendments to the access management regulations and standards (i) reduce traffic congestion and impact to the level of service of highways, leading to reduced fuel consumption and air pollution; (ii) enhance public safety by decreasing traffic crash rates; (iii) support economic development in the Commonwealth by promoting the efficient movement of people and goods; (iv) reduce the need for new highways and road widening by improving the performance of existing state highways; and (v) preserve public investment in new highways by maximizing their performance.

Chapters 863 and 928 of the 2007 Acts of Assembly added § 33.1-198.1 to the Code of Virginia. The legislation required the Commissioner of the Department of Transportation to develop comprehensive highway access management regulations and standards. The regulations and design standards manage the location, spacing, and design of entrances and intersections, including median openings, traffic signals, and interchanges on the systems of state highways.

VDOT's original plan was to promulgate a single regulation for highway access management, but legislative action by the General Assembly bifurcated the process. Chapters 274 and 454 of the 2008 Acts of Assembly required the access management regulations be promulgated in phases: 24VAC30-72, applying to principal arterial highways, took effect July 1, 2008, and 24VAC30-73, applying to minor arterials, collectors, and local streets, became effective October 14, 2009. These regulations replaced and superseded the Minimum Standards of Entrances to State Highways (24VAC30-71) and Part IV, Entrance Permits, of the Land Use Permit Manual (24VAC30-150). The Highway Commission, predecessor to the Commonwealth Transportation Board, originally established minimum standards for entrances in 1946. The minimum standards were repealed, effective March 3, 2011, and the Land Use Permit Manual was repealed and replaced by the Land Use Permit Regulations (24VAC30-151) effective March 17, 2010.

VDOT intended to initiate this action earlier, but legislative mandates to amend 24VAC30-72 and 24VAC30-73 associated with Chapter 870 of the 2011 Acts of Assembly took precedence, so the consolidation could not begin until that action was completed, effective December 31, 2011.

The regulatory action streamlines VDOT's regulatory inventory by repealing 24VAC30-72 and amending 24VAC30-73 to include principal arterial highways so that it will apply to all highway functional classifications. The result simplifies the ability of VDOT to administer the single regulation and clarifies and simplifies the provisions of the regulation for regulated parties.

Rationale of Using Fast-Track Process: As this regulatory action streamlines state access management regulation into a single unified regulation and amends it for clarity and accuracy without making any substantive changes to the requirements of the regulations, VDOT believes this action is noncontroversial.

Substance: The amendments (i) integrate the provisions of 24VAC30-72 into 24VAC30-73 by changing language to apply to both principal arterials as well as minor arterials, collectors, and local streets and (ii) amend 24VAC30-73 to clarify, simplify, and improve the accuracy of existing provisions, including some pertaining to sight distance criteria for low volume commercial entrances, references to the Code of Virginia and cross references to Virginia Administrative Code, and documentation required for requesting exception to connector requirements.

Issues: The public (including regulated parties) will benefit from having a single, updated regulation that covers all classifications of highways rather than two regulations. This action reduces the number of regulations to consult and the time required by a regulated party to determine which regulation applies.

VDOT will benefit from having a single, updated regulation. Administrative time will be reduced by eliminating the need to refer to two sets of regulations based on the classification of a particular highway. Currently each regulation identifies possible exceptions to the requirements, resulting in a separate application form to request exceptions to each regulation. Having a single, unified regulation will allow the use of only one application form, saving the agency the time and effort to produce and maintain two forms and benefiting the public by streamlining the exception application process.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Commonwealth Transportation Board (Board) proposes to repeal 24VAC30-72 (Access Management Regulations: Principal Arterials) and to incorporate its provisions in 24VAC30-73 (Access Management Regulations: Minor Arterials, Collectors, and Local Streets). The latter chapter would be renamed simply Access Management Regulations. Further, the Board proposes to: 1) allow an alternative to the current requirement that low volume commercial entrance design and construction meet stopping sight distance provisions, and 2) amend language for improved clarity.

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

Estimated Economic Impact. Under the current regulations low volume commercial entrance design and construction

must meet stopping sight distance provisions in the Road Design Manual. The Board proposes to allow either meeting the stopping sight distance provisions or intersection sight distance provisions.

According to the Department of Transportation (Department), traditional stopping sight distance provisions are sometimes not feasible, particularly in mountainous areas. Currently in such cases the Departments Location & Design Division requires the submittal of an application for an entrance design exception for stopping sight distance. There is no application fee. The engineering documentation provided by the applicant to justify why the request would not cause a safety hazard would likely cost an average of $1,000.[1] Thus, the proposal to allow intersection sight distance instead of stopping sight distance would eliminate the approximate $1,000 cost for engineering documentation.

The low volume entrance category is only available to a narrow range of land uses (between 10 -50 trips per day, e.g. five lot private road subdivision, agricultural uses such as poultry houses, orchards, greenhouses). The Department estimates that there are no more than 50 to 75 developed annually. Of these, about 10%, or five to seven entrances, would likely be located in sufficiently rolling terrain that a stopping sight distance exception would be requested.[2] Thus, the proposal to allow either meeting the stopping sight distance provisions or intersection sight distance provisions would result in an estimated total annual cost savings of $5,000 to $7,000 for the affected property owners.

Repealing 24VAC30-72 (Access Management Regulations: Principal Arterials) and incorporating its provisions in 24VAC30-73 (Access Management Regulations: Minor Arterials, Collectors, and Local Streets) would have no impact on requirements for regulated entities. The proposed clarifying changes will also not affect requirements, but may nevertheless be somewhat beneficial to the extent that they reduce potential confusion among affected and other interested parties.

Businesses and Entities Affected. These regulations affect individuals and companies who apply for entrance permits and construct entrances connecting their businesses, residences, or subdivisions to the highway, as well as contractors and the public who interact with these entrances. The Department issued 2,579 entrance permits (private and commercial) during calendar year 2011, generally for new construction access to the highways. The number of entities affected each year is less than the total permits issued each year because many businesses, whether new or existing, obtain more than one permit (e.g. multiple entrances to the property).

Localities Particularly Affected. The proposed amendments affect all localities. The proposal to allow either meeting the stopping sight distance provisions or intersection sight distance provisions would particularly affect mountainous localities.

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

Effects on the Use and Value of Private Property. The proposal to allow either meeting the stopping sight distance provisions or intersection sight distance provisions would eliminate an approximate $1,000 cost for engineering documentation for affected property owners.

Small Businesses: Costs and Other Effects. The proposal to allow either meeting the stopping sight distance provisions or intersection sight distance provisions would eliminate an approximate $1,000 cost for engineering documentation for affected small businesses. Commensurately, some small engineering firms would likely lose the potential business associated with producing the documentation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses beyond potential moderate loss of demand for the services of some small engineering firms. This reduced demand is associated with reduced cost for other small firms and overall improved efficiency. Thus, there is likely no net adverse impact for small businesses and no apparent alternative method that would produce greater net benefit.

Real Estate Development Costs. The proposal to allow either meeting the stopping sight distance provisions or intersection sight distance provisions would eliminate an approximate $1,000 cost for engineering documentation for each of the owners of the approximate five to seven entrances developed per annum located in sufficiently rolling terrain to be affected.

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

the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] Source: Department of Transportation

[2] Ibid

Agency's Response to Economic Impact Analysis: Virginia Department of Transportation concurs with the economic impact analysis prepared by the Department of Planning and Budget (DPB) that repeals 24VAC30-72 and amends 24VAC30-73 so that the latter regulation applies to both principal arterials, as well as minor arterials, collectors, and local streets. DPB highlighted the benefits of allowing low volume commercial entrances to meet minimum intersection sight distance criteria as well as minimum stopping sight distance criteria. This change provides more flexibility in meeting standards, such as in mountainous areas, where traditional stopping sight distance provisions may not be able to be met, while preserving motorist safety. This amendment also allows applicants who are covered by this provision the ability to avoid additional costs of approximately $1,000 for documentation costs that would be required without the relaxed requirement. In addition to the cost savings identified related to the sight distance provision, this regulatory action will eliminate redundant regulations by repealing the 24VAC30-72 (Access Management Regulations: Principal Arterials) to create one regulation on highway access management. The public (including regulated parties) will benefit from having a single, updated regulation that covers all classifications of highways rather than two regulations. VDOT will benefit by reducing the time associated with administering and applying two sets of regulations.

Summary:

Pursuant to Executive Order No. 2 (2010), which states "Identify opportunities for creating efficiencies in state government, including streamlining, consolidating, or eliminating redundant and unnecessary . . . regulations" the amendments combine 24VAC30-72 (Access Management Regulations: Principal Arterials) and 24VAC30-73 (Access Management Regulations: Minor Arterials, Collectors, and Local Streets) into one chapter regulating highway access management. Additional amendments improve accuracy and clarity.

CHAPTER 73
ACCESS MANAGEMENT REGULATIONS~~: MINOR ARTERIALS, COLLECTORS, AND LOCAL STREETS~~

24VAC30-73-10. Definitions.

"Access management" means the systematic control of the location, spacing, design, and operation of entrances, median openings/crossovers, traffic signals, and interchanges for the purpose of providing vehicular access to land development in a manner that preserves the safety and efficiency of the ~~transportation system~~ systems of state highways.

"Collectors" means the functional classification of highways that provide land access service and traffic circulation within residential, commercial, and industrial areas. The collector system distributes trips from principal and minor arterials through the area to the ultimate destination. Conversely, collectors also collect traffic and channel it into the arterial system.

"Commissioner" means the individual who serves as the chief executive officer of the Department of Transportation or his designee.

"Commonwealth" means the Commonwealth of Virginia.

"Crossover" means an opening in a nontraversable median (such as a concrete barrier or raised island) that provides for crossing movements and left ~~and right~~ turning movements.

"Design speed" means the selected speed used to determine the geometric design features of the highway.

"District" means each of the nine areas in which VDOT is divided to oversee the maintenance and construction on the ~~state-maintained~~ state highways, bridges, and tunnels within the boundaries of the area.

"District administrator" means the VDOT employee assigned to supervise the district.

"District administrator's designee" means the VDOT employee or employees designated by the district administrator.

"Entrance" means any driveway, street, or other means of providing for movement of vehicles to or from the highway.

"Entrance, commercial" means any entrance serving land uses that generate more than 50 vehicular trips per day or the trip generation equivalent of more than five individual private residences or lots for individual private residences using the methodology in the Institute of Transportation Engineers Trip Generation, 8th Edition, 2008.

"Entrance, low volume commercial" means any entrance, other than a private entrance, serving five or fewer individual residences or lots for individual residences on a privately owned and maintained road or land uses that generate 50 or fewer vehicular trips per day using the methodology in the Institute of Transportation Engineers Trip Generation 8th Edition, 2008.

"Entrance, private" means an entrance that serves up to two private residences and is used for the exclusive benefit of the occupants or an entrance that allows agricultural operations to obtain access to fields or an entrance to civil and communication infrastructure facilities that generate 10 or fewer trips per day such as cell towers, pump stations, and stormwater management basins.

"Frontage road" means a road that generally runs parallel to a highway between the highway right-of-way and the front building setback line of the abutting properties and provides access to the abutting properties for the purpose of reducing

the number of entrances to the highway and separating the abutting property traffic from through traffic on the highway.

"Functional area" means the area of the physical highway feature, such as an intersection, roundabout, railroad grade crossing, or interchange, plus that portion of the highway that comprises the decision and maneuver distance and required vehicle storage length to serve that highway feature.

"Functional area of an intersection" means the physical area of an at-grade intersection plus all required storage lengths for separate turn lanes and for through traffic, including any maneuvering distance for separate turn lanes.

"Functional classification" means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway's intended purpose of providing priority to through traffic movement or adjoining property access. The functional classification system groups highways into three basic categories identified as (i) arterial, with the function to provide through movement of traffic; (ii) collector, with the function of supplying a combination of through movement and access to property; and (iii) local, with the function of providing access to property and to other streets.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way, that is part of the systems of state highways.

"Intersection" means (i) a crossing of two or more highways at grade, (ii) a crossover, or (iii) any at-grade connection with a highway such as a commercial entrance.

"Intersection sight distance" means the sight distance required at an intersection to allow the driver of a stopped vehicle a sufficient view of the intersecting highway to decide when to enter, or cross, the intersecting highway.

"Legal speed limit" means the speed limit set forth on signs lawfully posted on a highway or, in the absence of such signs, the speed limit established by Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 of the Code of Virginia.

"Level of service" means a qualitative measure describing the operational conditions within a vehicular traffic stream, generally in terms of such service measures as speed, travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. "Level-of-service" is defined and procedures are presented for determining the level of service in the Highway Capacity Manual, 2010 (Transportation Research Board).

"Limited access highway" means a highway especially designed for through traffic over which abutting properties have no easement or right of light, air, or access by reason of the fact that those properties abut upon the limited access highway.

"Local streets" means the functional classification for highways that comprise all facilities that are not collectors or arterials. Local streets serve primarily to provide direct access to abutting land and to other streets.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Median opening" means a crossover or a directional opening in a nontraversable median (such as a concrete barrier or raised island) that physically restricts movements to specific turns such as left turns and U-turns.

"Minor arterials" means the functional classification for highways that interconnect with and augment the principal arterial system. Minor arterials distribute traffic to smaller geographic areas providing service between and within communities.

"Operating speed" means the speed at which drivers are observed operating their vehicles during free-flow conditions with the 85th percentile of the distribution of observed speeds being the most frequently used measure of the operating speed of a particular location or geometric feature.

"Permit" or "entrance permit" means a document that sets the conditions under which VDOT allows a connection to a highway.

"Permit applicant" means the person or persons, firm, corporation, government, or other entity that has applied for a permit.

"Permittee" means the person or persons, firm, corporation, government, or other entity that has been issued a permit.

"Preliminary subdivision plat" means a plan of development as set forth in § 15.2-2260 of the Code of Virginia.

"Principal arterials" means the functional classification for major highways intended to serve through traffic where access is carefully controlled, generally highways of regional importance, with moderate to high volumes of traffic traveling relatively long distances and at higher speeds.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Reverse frontage road" means a road that is located to the rear of the properties fronting a highway and provides access to the abutting properties for the purpose of reducing the number of entrances to the highway and removing the abutting property traffic from through traffic on the highway.

"Right-of-way" means that property within the systems of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes

those public rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel.

~~"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.~~

"Roundabout" means a circular intersection with yield control of all entering traffic~~, right-of-way assigned~~ to traffic within the circular ~~roadway,~~ intersection and channelized approaches and a central island that deflect entering traffic to the right.

"Shared entrance" means a single entrance serving two or more adjoining parcels.

"Sight distance" means the distance visible to the driver of a vehicle when the view is unobstructed by traffic.

"Site plan" and "subdivision plat" mean a plan of development approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia.

"Stopping sight distance" means the distance required by a driver of a vehicle, traveling at a given speed, to bring the vehicle to a stop after an object on the highway becomes visible, including the distance traveled during the driver's perception and reaction times and the vehicle's braking distance.

"Systems of state highways" means all highways, streets, and roads under the ownership, the control, or the jurisdiction of VDOT, including but not limited to, the primary, secondary, and interstate highways.

"Trip" means a single or one-directional vehicle movement either entering or exiting a property; a vehicle leaving the property is one trip and a vehicle returning to the property is one trip.

"Turn lane" means a separate lane for the purpose of enabling a vehicle that is entering or leaving a highway to increase or decrease its speed to a rate at which it can more safely merge or diverge with through traffic; an acceleration or deceleration lane.

~~"Urban area" means an urbanized area with a population of 50,000 or more, or an urban place (small urban area) as designated by the Bureau of the Census having a population of 5,000 or more and not within any urbanized area. The Federal Highway Administration defines "urban area" in more detail based on the federal-aid highway law (23 USC § 101).~~

"VDOT" means the Virginia Department of Transportation, its successor, the Commissioner of Highways, or his designees.

24VAC30-73-20. Authority to regulate entrances to systems of state highways.

A. VDOT's authority to regulate ~~highway~~ entrances and manage access to highways is provided in §§ 33.1-13, 33.1-197, 33.1-198, 33.1-198.1, and 33.1-199 of the Code of Virginia~~, and its authority to make regulations concerning the use of highways generally is provided in § 33.1-12 (3) of the Code of Virginia~~. Each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions.

B. The Commonwealth Transportation Board has the authority to designate highways as limited access and to regulate access rights to those facilities as provided in § 33.1-58 of the Code of Virginia. No private or commercial entrances shall be permitted within limited access rights-of-way except as may be provided for by the regulation titled Change of Limited Access Control (24VAC30-401).

C. The district administrators or their designees are authorized to issue private entrance permits and commercial entrance permits in accordance with the provisions of this chapter.

24VAC30-73-30. ~~Application to minor arterials, collectors, and local streets~~ Applicability.

A. This chapter shall apply ~~on October 14, 2009,~~ to any highway with a functional classification as a principal arterial, minor arterial, collector, or local street unless otherwise indicated herein. ~~Any highway with a functional classification as a principal arterial is governed by the provisions of 24VAC30-72.~~

B. The commissioner shall publish maps of the Commonwealth on the VDOT website that show all highways with the above functional classifications and shall periodically update such maps.

24VAC30-73-60. General provisions governing entrances.

A. No entrance of any nature may be constructed within the right-of-way until the location has been approved by VDOT and an entrance permit has been issued. ~~Any person violating any provision of this chapter and any condition of approval of an entrance permit shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided for in § 33.1-198 of the Code of Virginia. Such person shall be civilly liable to the Commonwealth for actual damage sustained by the Commonwealth by reason of his wrongful act.~~ The provisions of § 33.1-198 of the Code of Virginia shall govern any violation.

B. VDOT will permit reasonably convenient access to a parcel of record. VDOT is not obligated to permit the most convenient access, nor is VDOT obligated to approve the

permit applicant's preferred entrance location or entrance design. If a parcel is served by more than one road in the systems of state highways, the district administrator's designee shall determine upon which road or roads the proposed entrance or entrances is or are to be constructed.

C. Entrance standards established by localities that are stricter than those of VDOT shall govern.

24VAC30-73-70. Commercial entrance design.

A. Low volume commercial entrance design and construction shall comply with the private entrance design standards in Appendix F of the Road Design Manual, 2011 (VDOT) and the stopping or intersection sight distance provision in 24VAC30-73-80. Commercial entrance design and construction shall comply with the provisions of this chapter and the standards in the Road Design Manual, 2011 (VDOT), the Road and Bridge Standards, 2008, revised 2011, the Road and Bridge Specifications, 2007, revised 2011 (VDOT), other VDOT engineering and construction standards as may be appropriate, and any additional conditions, restrictions, or modifications deemed necessary by the district administrator's designee to preserve the safety, use and maintenance of the systems of state highways. Entrance design and construction shall comply with applicable guidelines and requirements of the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.). Ramps for curb sections shall be provided as required in § 15.2-2021 of the Code of Virginia. The standard drawing for depressed curb ramp as shown in the Road and Bridge Standards, 2008, revised 2011, shall be utilized in the design.

1. In the event an entrance is proposed within the limits of a funded ~~roadway~~ highway project that will ultimately change a highway, the permit applicant may be required to construct, to the extent possible, entrances compatible with the ~~roadway's~~ highway's ultimate design.

2. All entrance design and construction shall accommodate pedestrian and bicycle users of the abutting highway in accordance with the Commonwealth Transportation Board's "Policy for Integrating Bicycle and Pedestrian Accommodations", 2004.

3. All entrance design and construction shall accommodate transit users of the abutting highway where applicable and provide accommodations to the extent possible.

4. Based on the existing and planned developments, the district administrator's designee will determine the need for curb and gutter, sidewalks, or other features within the general area of the proposed entrance in accordance with the requirements of this chapter and the design standards in Appendix F of the Road Design Manual, 2011 (VDOT).

5. Sites accessed by an entrance shall be designed so as to prevent unsafe and inefficient traffic movements from impacting travel on the abutting highway. At the request of the district administrator's designee, the permit applicant shall furnish a report that documents the impact of expected traffic movements upon the function of the abutting highway during the peak hours of the abutting highway or during the peak hours of the generator, whichever is appropriate as determined by the district administrator's designee.

6. The use of a shared entrance between adjacent property owners shall be the preferred method of access.

7. The construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers shall be approved in accordance with the crossover location approval process specified in Appendix F of the Road Design Manual, 2011 (VDOT).

B. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways.

1. The permit applicant shall supply sufficient information to demonstrate to the satisfaction of the district administrator's designee that neither the entrance~~,~~ nor the proposed traffic circulation patterns within the parcel~~,~~ will compromise the safety, use, operation, or maintenance of the abutting highway. A rezoning traffic impact statement ~~or a site plan/subdivision plat supplemental traffic analysis~~ submitted for a proposed development of a parcel in accordance with the Traffic Impact Analysis Regulations (24VAC30-155) may be used for this purpose, provided that it adequately documents the effect of the proposed entrance and its related traffic on the operation of the highway to be accessed.

2. If the proposed entrance will cause the systems of state highways to experience degradation in safety or a significant increase in delay or a significant reduction in capacity beyond an acceptable level of service, the applicant shall be required to submit a plan to mitigate these impacts and to bear the costs of such mitigation measures.

3. Proposed mitigation measures must be approved by the district administrator's designee prior to permit approval. The district administrator's designee will consider what improvements will be needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor. Mitigation measures that may be considered include but are not limited to:

a. Construction of auxiliary lanes or turning lanes, or pavement transitions/tapers;

b. Construction of new crossovers, or the relocation, removal, or consolidation of existing crossovers;

c. Installation, modification, or removal of traffic signals and related traffic control equipment;

d. Provisions to limit the traffic generated by the development served by the proposed entrance;

e. Dedication of additional right-of-way or easement, or both, for future ~~road~~ highway improvements;

f. Reconstruction of existing ~~roadway~~ highway to provide required vertical and horizontal sight distances;

g. Relocation or consolidation of existing entrances; or

h. Recommendations from adopted corridor studies, design studies, other access management practices and principles, or any combination of these, not otherwise mentioned in this chapter.

4. If an applicant is unwilling or unable to mitigate the impacts identified in the traffic impact analysis, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

24VAC30-73-80. Minimum sight distance for commercial entrances.

A. No less than minimum intersection sight distance shall be obtained for a commercial entrance and no less than minimum stopping or intersection sight distance shall be obtained for a low volume commercial entrance. Sight distances shall be measured in accordance with VDOT practices, and sight distance requirements shall conform to VDOT standards as described in Appendix F of the Road Design Manual, 2011 (VDOT). The legal speed limit shall be used unless the design speed is available and approved for use by VDOT.

B. The operating speed may be used in lieu of the legal speed limit in cases where the permit applicant furnishes the district administrator's designee with a speed study prepared in accordance with the Manual on Uniform Traffic Control Devices, 2003, revised 2007 (FHWA), methodology that demonstrates the operating speed of the segment of highway is lower than the legal speed limit and, in the judgment of the district administrator's designee, use of the operating speed will not compromise safety for either a driver at an entrance or a driver on the abutting highway.

C. VDOT may require that the vertical or horizontal alignment of the existing ~~roadway~~ highway be adjusted to accommodate certain design elements of a proposed commercial entrance including, but not limited to, median openings, crossovers, roundabouts, and traffic signals, where adjustment is deemed necessary. The cost of any work performed to adjust the horizontal or vertical alignment of the ~~roadway~~ highway to achieve required intersection sight distance at a proposed entrance shall be borne by the permit applicant.

24VAC30-73-90. Private entrances.

A. The property owner shall identify the desired location of the private entrance with the assistance of the district administrator's designee. If the minimum intersection sight distance standards specified in Appendix F of the Road Design Manual, 2011 (VDOT), cannot be met, the entrance should be placed at the location with the best possible sight distance as determined by the district administrator's designee. The district administrator's designee may require the property owner to grade slopes, clear brush, remove trees, or conduct other similar efforts, or any combination of these, necessary to provide the safest possible means of ingress and egress that can be reasonably achieved.

B. The property owner shall obtain an entrance permit and, on shoulder and ditch section roads, shall be responsible for installing the private entrance in accordance with VDOT policies and engineering standards. The property owner may request VDOT to perform the stabilization of the shoulder and installation of the entrance pipe. In such cases, VDOT may install the private entrance pipe and will stabilize the shoulder at the property owner's expense. If VDOT installs these portions of the entrance, a cost estimate for the installation will be provided to the property owner; however, VDOT will bill the property owner the actual cost of installation. The property owner shall be responsible for all grading beyond the shoulder.

C. Grading and installation of a driveway from the edge of the pavement to the right-of-way line shall be the responsibility of the property owner.

D. Installation of a private entrance on a curb and gutter street shall be the responsibility of the property owner.

E. Maintenance of private entrances shall be by the owner of the entrance, except that VDOT shall maintain:

1. On shoulder section ~~roadways~~ highways, that portion of the entrance within the normal shoulder portion of the ~~roadway~~ highway.

2. On ~~roadways~~ highways with ditches, the drainage pipe at the entrance.

3. On ~~roadways~~ highways with curb, gutter, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk. If a sidewalk is not present, that portion of the entrance that extends to the back of the curb line.

4. On ~~roadways~~ highways with curb, gutter, and sidewalk not belonging to VDOT, only to the flow line of the gutter pan.

5. On ~~roadways~~ highways with shoulders, ditches, and sidewalk belonging to VDOT, that portion of the entrance that extends to the back of the sidewalk.

24VAC30-73-110. Existing commercial entrances.

A. The tenure of a commercial entrance to any highway is conditional. Reconstruction, relocation, commercial entrance consolidation, or upgrading, or a combination of these, may be required at the owner's cost when the district administrator's designee determines after review that one of the conditions listed below exists. If the necessary changes are not made, the entrance may be closed at the direction of the district administrator's designee.

1. Safety - When the entrance has been found to be unsafe for public use in its present condition because of physical degradation of the entrance, increase in motor vehicle traffic, or some other safety-related condition.

2. Use - When traffic in and out of the entrance has changed significantly to require modifications or reconstruction, or both. Such changes may include, but are not limited to, changes in traffic volume or operational characteristics of the traffic.

3. Maintenance - When the entrance becomes unserviceable due to heavy equipment damage or reclamation by natural causes.

B. VDOT will maintain the commercial entrance only within the normal shoulder of the ~~roadway~~ highway or to the flow line of the gutter pan. The owner shall maintain all other portions of the entrance, including entrance aprons, curb and gutter, culvert and drainage structures.

C. Commercial entrances may also be reviewed by the district administrator's designee, and reconstruction, relocation, commercial entrance consolidation, or upgrading, or a combination of these, may be required, when any of the following occur:

1. The property is being considered for rezoning or other local legislative action that involves a change in use of the property.

2. The property is subject to a site plan or subdivision plat review.

3. There is a change in commercial use either by the property owner or by a tenant.

4. Vehicular/pedestrian circulation between adjoining properties becomes available.

These periodic reviews are necessary to provide both the driver and other highway users with a safe and operationally efficient means of travel on state highways.

D. The provisions of this section shall apply to low volume commercial entrances.

24VAC30-73-120. Commercial entrance access management.

A. As commercial entrance locations and designs are prepared and reviewed, appropriate access management regulations and standards shall be utilized to ensure the safety, integrity and operational characteristics of the ~~transportation system~~ systems of state highways are maintained. The proposed commercial entrance shall meet the access management standards contained in Appendix F of the Road Design Manual, 2011 (VDOT), and the regulations in this chapter to provide the users of such entrance with a safe means of ingress and egress while minimizing the impact of such ingress and egress on the operation of the highway.

B. A proposed development's compliance with the access management requirements specified below should be considered during the local government and VDOT's review of any rezoning, site plan, or subdivision plat for the development. VDOT's review of a rezoning traffic impact statement ~~and a site plan/subdivision plat supplemental traffic analysis~~ submitted for a development in accordance with the Traffic Impact Analysis Regulations (24VAC30-155) shall include comments on the development's compliance with the access management requirements specified below.

C. Access management requirements, in addition to other regulations in this chapter, include but are not limited to:

1. Restricting commercial entrance locations. To prevent undue interference with free traffic movement and to preserve safety, entrances to the highways shall not be permitted within the functional areas of intersections, roundabouts, railroad grade crossings, interchanges or similar areas with sensitive traffic operations. A request for an exception to this requirement submitted according to 24VAC30-73-120 D shall include a traffic engineering ~~investigation report~~ study that contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.

2. ~~Entrances~~ Commercial entrances shared with adjoining properties ~~on minor arterials and collectors~~. To reduce the number of entrances to state highways, a condition of entrance permit issuance shall be that entrances serve two or more parcels. ~~A street that meets the Secondary Street Acceptance Requirements (24VAC30-92) will be publicly maintained and shall be the preferred method for shared entrances as such entrances will allow for the future development of a network of publicly maintained streets. Otherwise a~~ A shared commercial entrance shall be created and designed to serve adjoining properties. A copy of the property owners' recorded agreement to share use of and maintain the entrance shall be included with the entrance permit application submitted to the district administrator's designee. The shared entrance shall be identified on any site plan or subdivision plat of the property. The district administrator's designee is authorized to approve an exception to this requirement upon submittal of a request according to 24VAC30-73-120 D that includes the following:

a. Written evidence that a reasonable agreement to share an entrance cannot be reached with adjoining property owners, or

b. Documentation that there are physical constraints, including but not limited to topography, environmentally sensitive areas, and hazardous uses, to creating a shared entrance.

3. Spacing of commercial entrances and intersections. The spacing of proposed entrances and intersections shall comply with the spacing standards for entrances and intersections in Appendix F of the Road Design Manual, 2011 (VDOT), except as specified below.

a. Where a plan of development or a condition of development that identifies the specific location of an

entrance or entrances was proffered pursuant to ~~§~~§§ 15.2-2297, 15.2-2298, or 15.2-2303 of the Code of Virginia as part of a rezoning approved by the locality prior to July 1, 2008, for principal arterials or October 14, 2009, for minor arterials, collectors, or local streets, such entrances shall be exempt from the applicable spacing standards for entrances and intersections, provided the requirements of § 15.2-2307 of the Code of Virginia have been met. Entrances shall be exempt from the applicable spacing standards for entrances and intersections when the location of such entrances are shown on a subdivision plat, site plan, preliminary subdivision plat, or a Secondary Street Acceptance Requirements (24VAC30-92) conceptual sketch that was submitted by the locality to VDOT for review and received by VDOT prior to July 1, 2008, for principal arterials or October 14, 2009, for minor arterials, collectors, or local streets, or is valid pursuant to §§ 15.2-2260 and 15.2-2261 of the Code of Virginia and was approved in accordance with §§ 15.2-2286 and 15.2-2241 through 15.2-2245 of the Code of Virginia prior to July 1, 2008, for principal arterials or October 14, 2009, for minor arterials, collectors, or local streets. The district administrator's designee is authorized to exempt such entrances from the spacing standards upon submittal of a request according to 24VAC30-73-120 D that includes documentation of the above criteria.

b. VDOT may work with a locality or localities on access management corridor plans. Such plans may allow for spacing standards that differ from and supersede the applicable spacing standards for entrances and intersections, subject to approval by the district administrator. Such plans may also identify the locations of any physical constraints to creating shared entrances or vehicular/pedestrian connections between adjoining properties (see 24VAC30-73-120 C 2 and C 4). If the permit applicant submits a request according to 24VAC30-73-120 D for an exception to the spacing standards and provides documentation that the location of the proposed commercial entrance is within the limits of an access management plan approved by the local government and by VDOT, the plan should guide the district administrator's designee in approving the exception request and in determining the appropriate location of the entrance.

c. On older, established business corridors ~~of~~ along a highway in a locality ~~within an urban area~~ where existing entrances and intersections did not meet the spacing standards prior to July 1, 2008, for principal arterials or October 14, 2009, for minor arterials, collectors, or local streets, spacing for new entrances and intersections may be allowed by the district administrator's designee that is consistent with the established spacing along the highway, provided that the permit applicant submits a request according to 24VAC30-73-120 D for an exception to the spacing standards that includes evidence that reasonable efforts were made to comply with the other access management requirements of this section including restricting entrances within the functional areas of intersections, sharing entrances with and providing vehicular and pedestrian connections between adjoining properties, and physically restricting entrances to right-in or right-out or both movements.

d. Where a developer proposes a development within a designated urban development area as defined in § 15.2-2223.1 of the Code of Virginia or an area designated in the local comprehensive plan for higher density development that incorporates principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections, the district administrator's designee may approve spacing standards for ~~public street~~ entrances and intersections internal to the development that differ from the otherwise applicable spacing standards, provided that the developer submits a request according to 24VAC30-73-120 D for an exception to the spacing standards that includes information on the design of the development and on the conformance of such entrances and intersections with the intersection sight distance standards specified in Appendix F of the Road Design Manual, 2011 (VDOT).

e. Where a development's second or additional commercial entrances are necessary for the streets in the development to be eligible for acceptance into the secondary system of state highways in accordance with the Secondary Street Acceptance Requirements (24VAC30-92) and such commercial entrances cannot meet the spacing standards for highways, the developer may submit a request according to 24VAC30-73-120 D for an exception to the spacing standards that includes information on the design of the development. The following shall apply to the exception request:

(1) For highways with a functional classification as a collector or local street, the district administrator's designee may approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance or entrances. Such commercial entrances shall be required to meet the intersection sight distance standards specified in Appendix F of the Road Design Manual, 2011 (VDOT).

(2) For highways with a functional classification as a principal or minor arterial, the district administrator's

designee shall, in consultation with the developer and the locality within which the development is proposed, either approve spacing standards that differ from the otherwise applicable spacing standards to allow the approval of the entrance or entrances, or waive such state requirements that necessitate second or additional commercial entrances. If approved, such commercial entrances shall be required to meet the intersection sight distance standards specified in Appendix F of the Road Design Manual, 2011 (VDOT).

f. Where a parcel of record has insufficient frontage on a highway to meet the spacing standards because of the dimensions of the parcel or a physical constraint such as topography or an environmentally sensitive area, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved. A request for an exception to this requirement submitted according to 24VAC30-73-120 D shall include a traffic engineering ~~investigation report~~ study that contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.

4. Vehicular/pedestrian circulation between adjoining undeveloped properties. To facilitate traffic circulation between adjacent properties, reduce the number of entrances to the highway, and maximize use of new signalized intersections, the permit applicant shall be required on a highway with a functional classification as a principal or minor arterial highway, and may be required by the district administrator's designee on a highway with a functional classification as a collector, as a condition of commercial entrance permit issuance, to record access easements and to construct vehicular connections to the boundaries of the adjoining undeveloped property (which may include frontage roads or reverse frontage roads) in such a manner that affords safe and efficient future access between the permit applicant's property and adjoining undeveloped properties.

a. Where appropriate, the permit applicant also shall construct pedestrian connections to the boundary lines of adjoining undeveloped properties and adjoining developed properties with sidewalks that abut the property.

b. At such time that a commercial entrance permit application is submitted for the adjoining property, a condition of permit issuance shall be to extend such vehicular/pedestrian connections into the proposed development.

c. Development sites under the same ownership or consolidated for the purposes of development and comprised of more than one building site shall provide a unified vehicular and pedestrian access connection and circulation system between the sites.

~~a.~~ d. Such connections shall not be required if the permit applicant submits a request for an exception according to 24VAC30-73-120 D and provides documentation that there are physical constraints to making such connections between properties, including but not limited to topography, environmentally sensitive areas, and hazardous uses, or provides documentation of other constraints to making such connections.

~~b.~~ e. If a permit applicant does not wish to comply with this requirement, the permit applicant's entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected.

5. Traffic signal spacing. To promote the efficient progression of traffic on highways, commercial entrances that are expected to serve sufficient traffic volumes and movements to require signalization shall not be permitted if the spacing between the entrance and at least one adjacent signalized intersection is below signalized intersection spacing standards in Appendix F of the Road Design Manual, 2011 (VDOT). If sufficient spacing between adjacent traffic signals is not available, the entrance shall be physically restricted to right-in or right-out movements or both or similar restrictions such that the public interests in a safe and efficient flow of traffic on the systems of state highways are protected and preserved. A request for an exception to this requirement submitted according to ~~subsection D of this section~~ 24VAC30-73-120 D shall include a traffic engineering ~~investigation report~~ study that (i) evaluates the suitability of the entrance location for design as a roundabout~~,~~ and (ii) contains specific and documented reasons showing that highway operation and safety will not be adversely impacted.

6. Limiting entrance movements. To preserve the safety and function of certain highways, the district administrator's designee may require an entrance to be designed and constructed in such a manner as to physically prohibit certain traffic movements.

D. A request for an exception from the access management requirements in ~~subsection C of this section~~ 24VAC30-73-120 C shall be submitted in writing to the district administrator's designee. The request shall identify the type of exception, describe the reasons for the request, and include all documentation specified in 24VAC30-73-120 C for the type of exception. After considering all pertinent information including any improvements that will be needed to the entrance or intersection to protect the operational characteristics of the highway, the district administrator's designee will advise the applicant in writing regarding the decision on the exception request within 30 calendar days of receipt of the written exception request, with a copy to the

district administrator. The applicant may appeal the decision of the district administrator's designee to the district administrator in accordance with the procedures for an appeal set forth in 24VAC30-73-50.

24VAC30-73-130. Drainage.

A. Entrances shall be constructed so as not to impair drainage within the right-of-way and so that surface water shall drain from the ~~roadway~~ highway.

B. Where deemed necessary by the district administrator's designee, a commercial entrance applicant shall provide copies of a complete drainage layout based on a drainage study by a licensed design professional. This layout shall clearly show how the permit applicant proposes to handle the drainage and run-off from applicant's development.

C. Pipe ends of culverts shall be reviewed independently by the district administrator's designee and grading or treatment at pipe ends shall minimize any hazard the pipe ends or structures may present to an errant vehicle.

VA.R. Doc. No. R14-3157; Filed September 25, 2013, 3:59 p.m.

STATE AIR POLLUTION CONTROL BOARD

State Implementation Plan Revision - Definition of the Term "Mail"

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit the regulation to EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are 9VAC5-10 (General Definitions) and 9VAC5-170 (General Administration), Revision F13.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: October 21, 2013, to November 20, 2013.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Code of Virginia because it is an agency action that is necessary to conform to changes in Virginia statutory law. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: 9VAC5-10-20 (General Definitions) provides definitions for terms used throughout the Regulations for the Control and Abatement of Air Pollution. 9VAC5-170 (Regulation for General Administration) establishes general administration provisions that support other provisions of the State Air Pollution Control Board's regulatory program. Chapter 348 of the 2013 Acts of Assembly has established that in regulatory provisions that the department administers, the term "mail" means electronic or postal delivery, and the term "certified mail" means, in some instances, electronically certified or postal certified mail. These regulatory amendments allow documents and notifications to be delivered through postal or electronic means as required by changes to § 10.1-1183 of the Code of Virginia pursuant to Chapter 348.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the SIP with the exception of the provisions relevant to 9VAC5-170 (General Administration); those provisions are being provided for informational purposes only and will not be submitted as part of the 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 regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at 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. Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4000;

2. Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (276) 676-4800;

3. Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700;

4. Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (434) 582-5120;

5. Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800;

6. Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020;

7. Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800; and

8. Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

Notice of Periodic Review 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 Criminal Justice Services is conducting a periodic review and small business impact review of **6VAC20-260, Regulations Relating to Bail Enforcement Agents.**

The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 21, 2013, and ends November 21, 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 Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, P.O. Box 1300, Richmond, VA 23218, email lisa.mcgee@dcjs.virginia.gov, telephone (804) 371-2419, FAX (804) 786-6344. When emailing comments, please put "Bail Enforcement Agents - Periodic Review Comment" in the subject line.

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 both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Total Maximum Daily Load Studies in the Cities of Virginia Beach and Chesapeake

The Virginia Department of Environmental Quality will host the final public meeting on water quality studies for several creeks located in the Cities of Virginia Beach and Chesapeake on Tuesday, October 22, 2013.

The meeting will start at 6:30 p.m. at Creeds Ruritan Barn, Virginia Beach Farm Bureau Office located at 1057 Princess Anne Road, Virginia Beach, Virginia. The purpose of the meeting is to provide information and discuss the outcome of the study with interested local community members and local government.

Beggars Bridge Creek, Upper and Lower Hell Point Creek, Muddy Creek, Lower Ashville Bridge Creek, Pocaty River, and Middle North Landing River were identified in Virginia's Water Quality Assessment and 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.

Pocaty River and Lower Ashville Bridge Creek were identified in Virginia's Water Quality Assessment and Integrated Report as impaired for not supporting the aquatic life use. The impairment is based on water quality monitoring data reports of sufficient violations of Virginia's water quality standard for dissolved oxygen. Lower Ashville Bridge Creek is also impaired for not supporting the aquatic life use due to violations of the pH water quality standard.

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, total maximum daily loads (TMDLs) were developed for the impaired waters. 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 this meeting will extend from October 23, 2013, to November 21, 2013. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, by telephone (757) 518-2111, or email jennifer.howell@deq.virginia.gov. Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Study to Restore Water Quality in Bull Creek, Buchanan County; Levisa Fork, Buchanan County; North and South Fork Pound River, Wise County; and Powell River, Lee and Wise Counties, Virginia

Announcement of an effort to restore water quality in Bull Creek, Buchanan County; Levisa Fork, Buchanan County; North and South Fork Pound River, Wise County; and Powell River, Lee and Wise Counties, Virginia.

Public meeting location: Norton Community Center, 201 Park Avenue, Norton, VA 24273, on October 24, 2013, from 6 p.m. to 8 p.m.

Purpose of notice: To seek public comment and announce a public meeting on phased revisions for water quality improvement studies by the Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Mines, Minerals and Energy (DMME) for the four coalfield streams.

Meeting description: Final public meeting on the phased revisions to the total maximum daily loads (TMDLs).

Description of study: DEQ and DMME have been working to identify source pollutants affecting the aquatic organisms in the waters of Bull Creek, Levisa Fork, North and South Pound River, and the Powell River. During the development of the studies the pollutants impairing the aquatic community were identified and TMDLs were developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, contamination levels must be reduced to the TMDL amount.

How a decision is made: The phased revision of a TMDL 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 revised TMDL report to the U.S. Environmental Protection Agency 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, October 24, 2013, to November 25, 2013. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review the draft monitoring plan: the draft monitoring plan, the phased TMDL reports, and the presentation from the public meeting are available from the contact below or on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs.aspx.

Contact for additional information: Martha Chapman, Regional 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.

STATE BOARD OF HEALTH

Notice of Periodic Review 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 State Board of Health is conducting a periodic review and small business impact review of **12VAC5-67, Advance Healthcare Directive Registry.**

The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 21, 2013, and ends November 12, 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 Debbie Condrey, Chief Information Officer, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7118, email debbie.condrey@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 both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE WATER CONTROL BOARD

Notice of Periodic Review 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 State Water Control Board is conducting a periodic review and small business impact review of **9VAC25-101, Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility Regulation.**

The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 21, 2013, and ends November 12, 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 Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email melissa.porterfield@deq.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 both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Notice of Periodic Review 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 State Water Control Board is conducting a periodic review and small business impact review of **9VAC25-590, Petroleum Underground Storage Tank Financial Responsibility Requirements.**

The review of this regulation will be guided by the principles in Executive Order 14 (2010).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 21, 2013, and ends November 12, 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 Melissa Porterfield, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email melissa.porterfield@deq.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 both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

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.

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/connect/commonwealth-calendar.

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/documents/cumultab.pdf.

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.

ERRATA

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: **6VAC20-171. Regulations Relating to Private Security Services.**

Publication: 29:23 VA.R. 2744-2795 July 15, 2013

Correction to Final Regulation:

Page 2765, 6VAC20-171-240, subdivision 9 d, line 2, after "issued," strike "photo identification" and insert "registration" to read: "department issued [~~photo identification~~ registration] card"

Page 2777, 6VAC20-171-350, subdivision D 3, line 1, after "(03E) -," strike "10" and insert "12" to read: "(03E) - [~~10~~ 12] hours"

VA.R. Doc. No. R09-1546; Filed October 4, 2013, 2:55 p.m.

STATE BOARD OF EDUCATION

Title of Regulation: **8VAC20-720. Regulations Governing Local School Boards and School Divisions.**

Publication: 28:26 VA.R. 2096-2098 August 27, 2012

Correction to Final Regulation:

Page 2097, column 2, 8VAC20-720-170 C 2, strike "comments" and insert "contracts" to read: "2. Such written [~~comments~~ contracts] or purchase orders shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia) [~~and from any local adopted regulations or procedures~~]."

VA.R. Doc. No. R08-1353; Filed October 2, 2013, 9:38 a.m.