VIRGINIA REGISTER OF REGULATIONS

VOL. 34 ISS. 10 | PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION | JANUARY 8, 2018

TABLE OF CONTENTS

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for $263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 136 Carlin Road, Conklin, NY 13748-1531.

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. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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).

January 2018 through January 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
34:10	December 19, 2017 **(Tuesday)**	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018
34:13	January 31, 2018	February 19, 2018
34:14	February 14, 2018	March 5, 2018
34:15	February 28, 2018	March 19, 2018
34:16	March 14, 2018	April 2, 2018
34:17	March 28, 2018	April 16, 2018
34:18	April 11, 2018	April 30, 2018
34:19	April 25, 2018	May 14, 2018
34:20	May 9, 2018	May 28, 2018
34:21	May 23, 2018	June 11, 2018
34:22	June 6, 2018	June 25, 2018
34:23	June 20, 2018	July 9, 2018
34:24	July 3, 2018 **(Tuesday)**	July 23, 2018
34:25	July 18, 2018	August 6, 2018
34:26	August 1, 2018	August 20, 2018
35:1	August 15, 2018	September 3, 2018
35:2	August 29, 2018	September17, 2018
35:3	September 12, 2018	October 1, 2018
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018
35:8	November 19, 2018 **(Monday)**	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 **(Friday)**	January 7, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Agency Decision

Title of Regulation: **2VAC5-319. Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability.**

Statutory Authority: § 3.2-4411.1 of the Code of Virginia.

Name of Petitioner: C.B. Ecker

Nature of Petitioner's Request: Petitioner requests amendments to 2VAC5-319, Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability, to (i) provide a mechanism to offer public comment regarding the regulation via a regional apiary inspector; (ii) establish provisions for short-term waivers, long-term waivers, and permanent exemptions from the best management practices included in the regulation; and (iii) authorize the Virginia State Beekeepers Association's website as an official communication outlet for the Virginia Department of Agriculture and Consumer Services (VDACS) and direct VDACS to establish or reinitiate official communication with certain entities to communicate honey beekeeping policy to best inform apiarists without broadband service.

Agency Decision: Request denied.

Statement of Reason for Decision: The Board of Agriculture and Consumer Services (board) voted to take no action on the petitioner's request for rulemaking for the following reasons: The petitioner requests amendments to 2VAC5-319, Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability, to (i) provide a mechanism to offer public comment regarding the regulation via a regional apiary inspector; (ii) establish provisions for short-term waivers, long-term waivers, and permanent exemptions from the best management practices included in the regulation; and (iii) authorize the Virginia State Beekeepers Association's website as an official communication outlet for the Virginia Department of Agriculture and Consumer Services (VDACS) and direct VDACS to establish or reinitiate official communication with certain entities to communicate honey beekeeping policy to best inform apiarists without broadband service. Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability, 2VAC5-319, was established pursuant to § 3.2-4411.1 of Virginia's Beekeeping Law. This section provides that an individual operating an apiary in a responsible manner, in compliance with local zoning restrictions, and in conformance with the agency's best management practices regulation shall not be liable for any personal injury or property damage that occurs in connection with his keeping of bees. Section 3.2-4411.1 further provides that the initial regulations shall be exempt from the requirements of Article 2 of the Virginia Administrative Process Act provided such regulations are adopted no later than November 1, 2016; however, the board shall publish proposed regulations in the Virginia Register of Regulations and allow at least 30 days for public comment. Virginia's Beekeeping Law does not provide authority to the board to establish methods for a person to request amendments to the regulation. In addition, § 2.2-4007 of the Virginia Administrative Process Act establishes a formal process by which a person can request changes to a regulation. Virginia's Beekeeping Law does not provide authority to the board to amend the regulation to allow for waivers or exemptions to provisions established in Best Management Practices for the Operation of Apiaries in Order to Limit Operator Liability, 2VAC5-319. The best management practices in the regulation are those that reduce risks associated with keeping honey bees. Amending the regulation to allow for waivers or exemptions to a voluntary best management practice could provide liability protection for those operations that should not be afforded the limited liability. Section 3.2-109 of the Code of Virginia establishes the board. However, neither § 3.2-4411.1 nor 3.2-109 of the Code of Virginia gives the board authority to establish methods for the communication of information related to beekeeping from VDACS to beekeepers.

Agency Contact: Debra Martin, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, or email debra.martin@vdacs.virginia.gov.

VA.R. Doc. No. R17-20; Filed December 8, 2017, 2:38 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Agency Decision

Title of Regulation: **9VAC25-260. Water Quality Standards.**

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

Name of Petitioner: Virginia Coal and Energy Alliance.

Nature of Petitioner's Request: The Virginia Coal and Energy Alliance (VCEA) has petitioned the State Water Control Board to take action on EPA's Freshwater Aquatic Life Ambient Water Quality criteria for selenium (EPA selenium criteria). The EPA selenium criteria were finalized and published in the Federal Register on July 13, 2016, and include four elements - two that are fish tissue-based and two that are water column-based. The updated EPA selenium criteria reflect the latest scientific knowledge at the national level and provide a more up-to-date evaluation of impacts

from selenium than Virginia's current surface water quality criteria at 9VAC25-260-140. Virginia's acute and chronic selenium criteria are over 25 years old, do not reflect the latest scientific information, and are unnecessarily stringent to protect aquatic life. As long as the outdated and obsolete criteria remain on the books, we are concerned that our members will be placed in peril of unreasonable compliance obligations, misguided enforcement actions and baseless lawsuits. At DEQ's July 20, 2016, Regulatory Advisory Panel meeting to address "carry-over" issues from the last Triennial Review of Water Quality Standards, VCEA representatives alerted DEQ to the availability of the new EPA selenium criteria and asked that selenium be addressed along with the other carry-over issues. VCEA now formally requests, pursuant to § 2.2-4007 of the Code of Virginia, that the existing surface water quality criteria for selenium be amended to incorporate the EPA selenium criteria, subject to appropriate tailoring for Virginia's waters and fish species. The board is empowered to adopt water quality standards in the Commonwealth. Section 62.1-44.15 of the Code of Virginia is required to review applicable water quality standards and as appropriate, modify and adopt federal standards 33 USC § 1313(c)(1) and 40 CFR 131.20(a). EPA has recently published technical support materials to assist states in adopting the new selenium criteria, including guidance on monitoring fish tissue, water quality assessment and listings under § 303(d) of the Clean Water Act, and implementation of the criteria in NPDES permits. These technical support materials should provide a sufficient basis to guide adoption of the EPA selenium criteria in Virginia, subject to modifications that reflect the unique characteristics of Virginia's waterbodies and fish species. We note that EPA's criteria include a hierarchy with a stated preference for the use of fish tissue data, where available, in evaluating compliance with the criteria. The criteria provide that where fish tissue data are available, the fish tissue criteria supersede the water column criteria. This same hierarchy should be adopted and the fish tissue criteria should be allowed to prevail over any water column criteria where fish tissue data are available. Importantly, the board will need to consider state- or regionally-specific tailoring of the fish tissue values set by EPA. EPA's data set for fish tissue covers 10 fish genera for chronic toxicity for fish reproductive effects and seven fish genera for nonproductive effects. Some of these species do not occur in some or all of Virginia's waters. As a result, we believe that the fish tissue criteria will need to be adjusted so that they are reflective of, and protective of, the fish species that are actually present. In particular, we ask that regional criteria specific to the coalfields region of the Commonwealth, given its unique geography, geology and hydrology, be considered. Further, a translation procedure, consistent with Appendix K in the EPA selenium criteria document, needs to be adopted to provide a process for use by dischargers seeking site-specific criteria. Whether to deviate from EPA's guidance in the technical support document "FAQs: Implementing the 2016 Selenium Criterion in CWA § 303(d) and 305(b) Assessment, Listing, and TMDL Programs," as it relates to fishless waters will also need to be evaluated. EPA's guidance counsels that where no fish tissue data are available because waters have insufficient in-stream habitat and/or flow to support a population of any fish species on a continuous basis, or waters that once supported populations of one or more fish species but no longer support fish, the water column values are the applicable criteria and the water column data are sufficient to determine whether the criteria have been met. We urge rejection of EPA's approach to fishless waters. Where a waterbody does not have an actual, existing aquatic life use, the use simply does not apply. In that case, the criteria adopted to protect such a use also do not apply. We submit that this is consistent with the longstanding approach to uses and criteria in Virginia. By way of simple example, the "Public Water Supply" use only applies where a public water supply is shown to be present. In the absence of a documented public water supply, neither the use nor the corresponding "PWS" criteria apply. Finally, given the time it is likely to take to implement any change in the selenium criteria, and the need for permittees to appropriately adjust their operations to comply with any new limits, authorizing longer term compliance schedules for permittees will need to be considered, since compliance with criteria-based limits may in some cases take more than five years.

Agency Decision: Request denied.

Statement of Reason for Decision: The State Water Control Board, at its meeting on December 6, 2017, through December 7, 2017, based on a report from the Department of Environmental Quality (DEQ), voted not to initiate a rulemaking to amend the selenium criteria found in the Water Quality Standards and to await issuance of the final technical support guidance documents from the U.S. Environmental Protection Agency (EPA). DEQ advised the board that EPA's technical support documents and implementation guidance are as important as the criteria themselves, and it could be premature to initiate a rulemaking without the documents and guidance. The "How" to protect aquatic life from a toxicant is as vital as the "What" to allow as acceptable levels of the contaminant. DEQ reported that EPA developed four technical support documents that cover Water Quality Standards adoption, NPDES permitting, waterbody assessment and § 303(d) (Impaired Waters) listing, and fish tissue monitoring to assist in implementation and held a public comment period from October 13, 2016, to February 2, 2017. However, they have not been finalized by EPA for use by the states, and it is unknown when that final action will occur. In addition, staff advised the board that Virginia's stakeholders want and should receive as much certainty as possible on implementation methods along with revised standards; recent examples are proposals for amended bacteria criteria (data period to generate a geometric-mean)

and ammonia criteria (justification for extended compliance schedules, beyond permit term).

Agency Contact: David Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R17-18; Filed December 14, 2017, 10:03 a.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Initial Agency Notice

Title of Regulation: **16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program.**

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Name of Petitioner: Robert R. Payne, University of Alabama at Birmingham.

Nature of Petitioner's Request: 16VAC25-60-120 currently provides as follows: "The employer shall comply with the manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment, unless specifically superseded by a more stringent corresponding requirement in 29 CFR Part 1910. The use of any machinery, vehicle, tool, material or equipment that is not in compliance with any applicable requirement of the manufacturer is prohibited, and shall either be identified by the employer as unsafe by tagging or locking the controls to render them inoperable or be physically removed from its place of use or operation." The petition requests the following language be added to the end of the current regulation: "Any employer who is using machinery, vehicles, tools, materials or equipment as part of a Process Safety Management (PSM) covered process, as defined in 29 CFR 1910.119, may adjust the operation, training, use, installation, inspection, testing, repair or maintenance after completion of the following:

• Documenting the adjustment from the Manufacturer's Specifications and Limitations (MS&L) in the Process Safety Information (PSI),

• Completing the Management of Change (MOC) requirement described in 29 CFR 1910.119(l) and

• Certification from a company executive that they have examined this adjustment and that to the best of their knowledge the information is true, accurate and complete."

Agency Plan for Disposition of Request: In accordance with § 2.2-4007 B of the Code of Virginia the petition has been filed with the Registrar of Regulations and will be published on January 8, 2018. Comment on the petition may be sent by email or regular mail or posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov. Comment will be requested until January 28, 2018. Following receipt of all comments on the petition to amend the regulation, the Safety and Health Codes Board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its next regularly scheduled meeting following the end of the comment period. The board does not currently have a meeting scheduled. The board will issue a written decision on the petition within 90 days of the close of the comment period, or within 14 days of its next meeting should the board not meet within the initial 90-day period.

Public Comment Deadline: January 28, 2018.

Agency Contact: Jay Withrow, Director, Division of Legal Support, VPP, ORA, OPP, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-9873, or email jay.withrow@doli.virginia.gov.

VA.R. Doc. No. R18-14; Filed December 18, 2017, 9:36 a.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Behavioral Health and Developmental Services intends to consider amending **12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services**. The purpose of the proposed action is to be consistent and comply with Chapters 136, 418, and 426 of the 2017 Acts of Assembly regarding the inclusion of occupational therapists and occupational therapy assistants in the definitions of qualified mental health professionals, qualified mental retardation professionals, or qualified paraprofessionals in mental health. Also, certain definitions are deferred, in accordance with Chapter 418, to the Department of Health Professions' Board of Counseling (18VAC115-80).

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

Statutory Authority: § 37.2-203 of the Code of Virginia.

Public Comment Deadline: February 7, 2018.

Agency Contact: Cleopatra L. Booker, PsyD, Director, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-1747, FAX (804) 692-0066, TTY (804) 371-8977, or email cleopatra.booker@dbhds.virginia.gov.

VA.R. Doc. No. R18-5245; Filed December 18, 2017, 9:19 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**, **18VAC110-30, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances**, and **18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers**. The purpose of the proposed action is to increase fees to cover expenses for the essential functions of review of applications, licensing, inspections, investigation of complaints against licensees, and adjudication and monitoring of disciplinary cases required for public health and safety in the Commonwealth. Section 54.1-113 of the Code of Virginia requires that at the end of each biennium, an analysis of revenues and expenditures of each regulatory board shall be performed. It is necessary that each board have sufficient revenue to cover its expenditures. Since the fees from licensees will no longer generate sufficient funds to pay operating expenses for the Board of Pharmacy in the next biennium, consideration of a fee increase is essential. In order to have sufficient funding for the operation of the board by fiscal year 2019–2020, it is necessary to begin the process of promulgating amendments to regulations.

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

Statutory Authority: §§ 54.1-2400, 54.1-3434.05, and 54.1-3434.5 of the Code of Virginia.

Public Comment Deadline: February 7, 2018.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R18-5322; Filed December 19, 2017, 11:52 a.m.

BOARD OF COUNSELING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Counseling intends to consider promulgating **18VAC115-70, Regulations Governing the Registration of Peer Recovery Specialists**. The purpose of the proposed action is to establish the requirements for the registration of peer recovery specialists pursuant to Chapters 418 and 426 of the 2017 Acts of Assembly. The proposed regulations include qualifications, fees, continuing education, standards of practice, and grounds for disciplinary action.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Comment Deadline: February 7, 2018.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R18-5240; Filed December 18, 2017, 8:06 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Counseling intends to consider promulgating **18VAC115-80, Regulations Governing the Registration of Qualified Mental Health Professionals**. The purpose of the proposed action is to establish the requirements for the registration of qualified mental health professionals pursuant to Chapters 418 and 426 of the 2017 Acts of Assembly. The proposed regulations establish qualifications, fees, continuing education, standards of practice, and grounds for disciplinary action.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Comment Deadline: February 7, 2018.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R18-5242; Filed December 18, 2017, 8:06 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

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: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-20, 4VAC20-252-50, 4VAC20-252-60, 4VAC20-252-70, 4VAC20-252-150).**

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

Effective Date: January 1, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments rescind the year-round reporting requirement for the striped bass charter fishery and establish the 2018 coastal area commercial fishery striped bass quota as 138,640 pounds.

4VAC20-252-20. Definitions.

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

"Chesapeake area" means the area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry).

~~"Commission" means the Marine Resources Commission.~~

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Commission" means the Marine Resources Commission.

"Great Wicomico-Tangier Striped Bass Management Area" means the area that includes the Great Wicomico River and those Virginia waters bounded by a line beginning at Dameron Marsh at NAD 83 North Latitude 37-46.9535, West Longitude 76-17.1294; thence extending to the southernmost point of Tangier Island, and thence north to a point on the Virginia-Maryland state boundary at NAD 83 North Latitude 37-57.0407, West Longitude 75-58.5043, thence westerly along the Virginia-Maryland state boundary to Smith Point.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

~~"Private recreational~~ "Recreational vessel" means any vessel ~~or~~, kayak, charter vessel, or headboat participating in the recreational striped bass fishery.

"Share" means a percentage of the striped bass commercial harvest quota.

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.

2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.

3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.

4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

"Spear" or "spearing" means to fish while the person is fully submerged under the water's surface with a mechanically aided device designed to accelerate a barbed spear.

"Striped bass" means any fish of the species Morone saxatilis, including any hybrid of the species Morone saxatilis.

"Trophy-size striped bass" means any striped bass that is 36 inches or greater in total length.

4VAC20-252-50. Concerning recreational fishing: general.

A. It shall be unlawful for any person fishing recreationally to take, catch, or attempt to take or catch any striped bass by any gear or method other than hook and line, rod and reel, hand line, or spearing.

B. It shall be unlawful for any person fishing recreationally to possess any striped bass while fishing in an area where or at a time when there is no open recreational striped bass season, except as described in 4VAC20-252-115. Striped bass caught contrary to this provision shall be returned to the water immediately.

C. It shall be unlawful for any person fishing recreationally to possess, land, and retain any striped bass in excess of the possession limit applicable for the area and season being fished within the 24-hour period of 12 a.m. through 11:59 p.m. Striped bass taken in excess of the possession limit shall be returned to the water immediately.

When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the applicable personal possession limit. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

D. It shall be unlawful to combine possession limits when there is more than one area or season open at the same time.

E. It shall be unlawful for any person while actively fishing pursuant to a recreational fishery to possess any striped bass that are smaller than the minimum size limit or larger than the maximum size limit for the area and season then open and being fished, except as described in 4VAC20-252-115. Any striped bass caught that does not meet the applicable size limit shall be returned to the water immediately.

F. It shall be unlawful for any person to sell, offer for sale, trade, or barter any striped bass taken by hook and line, rod and reel, hand line, or spearing provided, however, this provision shall not apply to persons possessing a commercial hook-and-line license and a striped bass permit and meeting the other requirements of this chapter.

G. It shall be unlawful for any person fishing recreationally to transfer any striped bass to another person, while on the water or while fishing from a pier or shore.

~~H. It shall be unlawful for the captain of any charter boat or charter vessel to take hook and line, rod and reel, hand line, or spear fishermen for hire unless the captain has obtained a Striped Bass Charter Boat Permit from the commission and is a Coast Guard charter licensee.~~

~~I. Striped bass charter boat permittees shall report to the commission, on forms provided by the commission, permit identification number, the number of striped bass caught, whether harvested or released; the water body where any striped bass is caught; and the number of anglers on board, captain included, within seven days after the trip occurred. It shall be unlawful for any striped bass charter boat permittee to fail to report (i) trips where striped bass are targeted but not successfully caught or (ii) the permittee's lack of participation in the fishery to the commission no later than 15 days following the last day of any open season. In addition, striped bass charter boat permittees engaging in the Bay and Coastal Spring Trophy-size Striped Bass Recreational Fishery and the Potomac River Tributaries Spring Striped Bass Recreational Fishery shall provide the report required by 4VAC20-252-60 and 4VAC20-252-70, respectively.~~

4VAC20-252-60. Bay and Coastal spring trophy-size striped bass recreational fisheries.

A. The open season for the Bay spring trophy-size striped bass recreational fishery shall be May 1 through June 15, inclusive.

B. The area open for the Bay spring trophy-size striped bass recreational fishery shall be the Chesapeake Bay and its tributaries, except the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.

C. The open season for the Coastal spring trophy-size striped bass recreational fishery shall be May 1 through May 15, inclusive.

D. The area open for the Coastal spring trophy-size striped bass recreational fishery is the coastal area as described in 4VAC20-252-20.

E. The minimum size limit for the fisheries described in this section shall be 36 inches total length.

F. The possession limit for the fisheries described in this section shall be one fish per person.

G. It shall be unlawful for any person participating in any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery to possess or land any trophy-size striped bass from a ~~private~~ recreational vessel unless the captain or operator of that ~~private~~ recreational vessel has obtained a Spring Recreational Striped Bass Trophy Permit. The captain or operator shall be

responsible for reporting for all anglers on the ~~private~~ recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

H. It shall be unlawful for any person participating in any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery to possess or land any trophy-size striped bass harvested recreationally from shore, a pier, or any other manmade structure without first having obtained a Spring Recreational Striped Bass Trophy Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

I. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report trips where striped bass are caught, whether harvested, released, or possessed, as described in subsection E of this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the 15th day after any close of the Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery.

J. Any permittee who did not participate in any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery shall notify the commission of his lack of participation by the 15th day after the close of any Bay spring trophy-size striped bass recreational fishery or Coastal spring trophy-size striped bass recreational fishery.

4VAC20-252-70. Potomac River tributaries spring trophy-size striped bass recreational fishery.

A. The open season for the Potomac River tributaries spring striped bass recreational fishery shall correspond to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring fishery.

B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.

C. The minimum size limit for this fishery shall correspond to the minimum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

D. The possession limit for this fishery shall be one fish per person.

E. It shall be unlawful for any person participating in any Potomac River tributaries spring trophy-size striped bass recreational fishery to possess or land any trophy-size striped bass from a ~~private~~ recreational vessel unless the captain or operator of that ~~private~~ recreational vessel has obtained a Spring Recreational Striped Bass Trophy Permit. The captain or operator shall be responsible for reporting for all anglers on the ~~private~~ recreational vessel and shall provide his Marine Resources Commission identification (MRC ID) number, the date of harvest, the number of individuals on board, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

F. It shall be unlawful for any person participating in any Potomac River tributaries spring trophy-size striped bass recreational fisheries to possess or land any trophy-size striped bass harvested recreationally from shore, a pier, or any other manmade structure without first having obtained a Spring Recreational Striped Bass Trophy Permit from the Marine Resources Commission. Any such permittee shall provide his MRC ID number, the date of harvest, the mode of fishing, the water body where the trophy-size striped bass was caught, and the number of trophy-size striped bass kept or released.

G. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report trips where striped bass are caught, whether harvested, released, or possessed, as described in this section, on forms provided by the commission within seven days after the trip occurred. It shall be unlawful for any permittee to fail to report trips where striped bass are targeted but not successfully caught by the 15th day after the close of any Potomac River tributaries spring trophy-size striped bass recreational fishery.

H. Any permittee who did not participate in any Potomac River tributaries spring trophy-size striped bass recreational fishery shall notify the commission of his lack of participation by the 15th day after the close of any Potomac River tributaries spring trophy-size striped bass recreational fishery.

4VAC20-252-150. Individual commercial harvest quota.

A. The commercial harvest quota for the Chesapeake area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be 1,064,997 pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake area is projected to reach 1,064,997 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be ~~136,141~~ 138,640 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach ~~136,141~~ 138,640 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

C. For the purposes of assigning an individual's tags for commercial harvests in the Chesapeake area as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to an estimate in numbers of fish per individual harvest quota based on the average weight of striped bass harvested by the permitted individual during the previous fishing year. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

D. For the purposes of assigning an individual's tags for commercial harvests in the coastal area of Virginia as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish per individual commercial harvest quota, based on the reported average coastal area harvest weight of striped bass harvested by the permitted individual during the previous fishing year, except as described in subsection E of this section. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

E. For any individual whose reported average coastal area harvest weight of striped bass in the previous fishing year was less than 12 pounds, a 12-pound minimum weight shall be used to convert that individual's harvest quota of striped bass, in pounds of fish, to harvest quota in number of fish.

VA.R. Doc. No. R18-5372; Filed December 13, 2017, 2:56 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: **4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-40, 4VAC20-260-50).**

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

Effective Date: December 13, 2017.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment establishes the basket as the only measure for oyster culling tolerance.

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 or~~ basket inspected by any police officer, it shall constitute a violation of this chapter, except as described in 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 or~~ basket of seed oysters inspected by any police officer, it shall constitute a violation of this 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 or~~ basket of clean cull oysters inspected by any police officer, it shall constitute a violation of this 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 or~~ basket of clean cull oysters inspected by any police officer, it shall constitute a violation of this 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 adhering so closely to the shell of any marketable oyster as to render removal impossible without destroying the oysters less than the minimum cull size need not be removed, and those oysters shall be considered lawful and shall not be included in the culling tolerances or standards as described in subsections A through D of this section.

G. It shall be unlawful for any person to sell any oysters less than the minimum cull size as described in this section.

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 the inside open part of the boat and stored in either a loose pile or baskets.

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 chapter.

D. It shall be unlawful for any person to buy, sell, or report clean cull oysters by any measure other than those described in § 28.2-526 A of the Code of Virginia filled to level full. The container described in § 28.2-526 A 2 is a basket. It shall be unlawful for any person to sell, purchase, or report the sale or purchase of any clean cull oysters harvested from public grounds, as described in 4VAC20-720-40, in excess of the harvest limits described in 4VAC20-720-80.

E. It shall be unlawful for any person to buy, sell, or report seed oysters by any measure other than as described in § 28.2-526 of the Code of Virginia.

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

1. For any oysters stored in a loose pile in a vehicle, a trailer, or the inside open part of a boat, the police officer shall use a shovel to take one basket of oysters to inspect, at random, provided that the entire ~~bushel or~~ basket shall be taken from one place in the open pile of oysters. The officer may inspect multiple baskets by repeating this procedure for each basket of oysters shoveled from the loose pile.

2. For any oysters stored in baskets in a vehicle, a trailer, or the inside open part of a boat, the police officer shall select one basket for inspection. The officer may inspect multiple baskets by repeating this procedure for each basket.

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 or~~ basket for purposes of inspection.

H. 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.

VA.R. Doc. No. R18-5326; Filed December 13, 2017, 2:14 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: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-45).**

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

Effective Date: January 1, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish a February 2018 recreational black sea bass fishery and associated permitting, monitoring, and reporting requirements.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the boat or vessel shall be responsible for that boat or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be from February 1 through February 28, May 15 through September 21, and October 22 through December 31.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

E. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass from February 1 through February 28 without first having obtained a Recreational Black Sea Bass Permit from the Marine Resources Commission. It shall be unlawful for any permittee to fail to contact the Marine Resources Commission Operation Station before returning to shore at the end of the fishing trip. The permittee shall provide the operation station with his name, Marine Resources Commission identification (MRC ID) number, the point of landing, a description of the vessel, and an estimated return to shore time. Any such permittee shall submit a report for any recreational black sea bass fishing trips, which incudes that permittee's MRC ID number, the date of fishing, the mode of fishing, and the number of black sea bass kept or released. That report shall be submitted to the commission or to the Standard Atlantic Fisheries Information System no later than March 15 of the current calendar year. Any authorized permittee shall allow commission staff to sample the catch to obtain biological information for scientific and management purposes only.

VA.R. Doc. No. R18-5373; Filed December 13, 2017, 3:06 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Forms

REGISTRAR'S NOTICE: The form used in administering the following regulation has been filed by the Virginia Department of Education. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **8VAC20-70. Regulations Governing Pupil Transportation.**

Contact Information: Emily V. Webb, Director, Office of Board Relations, Virginia Department of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2924, or email emily.webb@doe.virginia.gov.

FORMS (8VAC20-70)

~~School Bus Driver's Application for Physician's Certificate (rev. 9/12).~~

School Bus Driver's Application for Physician's Certificate, Form EB.001, (rev. 5/2017)

VA.R. Doc. No. R18-5379; Filed December 13, 2017, 3:23 p.m.

VIRGINIA STATE UNIVERSITY

Final Regulation

REGISTRAR'S NOTICE: Virginia State University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC110-10. Firearms and Weapons on Campus (amending 8VAC110-10-10).**

Statutory Authority: §§ 23.1-1301 and 23.1-2702 of the Code of Virginia.

Effective Date: January 5, 2018.

Agency Contact: Bonnie Holmes, Regulatory Coordinator, 1 Hayden Drive, Virginia State University, VA 23806, telephone (804) 524-5326, or email bholmes@vsu.edu.

Summary:

The amendment corrects a citation to the Code of Virginia, which changed because of the recodification of Title 23 to Title 23.1 of the Code of Virginia.

8VAC110-10-10. Definitions.

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

"Firearms" means any gun, rifle, pistol, or handgun designed to fire any projectile including ~~but not limited to~~ bullets, BBs, pellets, or shots, including paint balls, regardless of the propellant used.

"Police officer" means law-enforcement officials appointed pursuant to Article 3 (§ 15.2-1609 et seq.) of Chapter 16 and Chapter 17 (§ 15.2-1700 et seq.) of Title 15.2, ~~Chapter 17 (§ 23-232~~ Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title ~~23~~ 23.1, Chapter 2 (§ 29.1-200 et seq.) of Title 29.1, or Chapter 1 (§ 52-1 et seq.) of Title 52 of the Code of Virginia, currently sworn federal law-enforcement officers, or currently sworn and certified law-enforcement officers of all other jurisdictions of the United States of America.

"University property" means any property owned, leased, or controlled by Virginia State University.

"Weapons" means any instrument of combat, or any object not designed as an instrument of combat but carried for the purpose of inflicting or threatening bodily injury. Examples include ~~but are not limited to~~ firearms, knives with fixed blades or pocket knives with blades longer than four inches, razors, metal knuckles, blackjacks, hatchets, bows and arrows, nun chahkas, foils, stun weapons, or any explosive or incendiary device. "Stun weapon" is defined as any device that emits a momentary or pulsed output that is electrical,

audible, optical, or electromagnetic in nature and that is designed to temporarily incapacitate a person.

VA.R. Doc. No. R18-5378; Filed December 18, 2017, 3:47 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Proposed Regulation

Title of Regulation: **9VAC5-140. Regulation for Emissions Trading Programs (adding 9VAC5-140-6010 through 9VAC5-140-6430).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; §§ 108, 109, 110, and 302 of the Clean Air Act; 40 CFR Part 51.

Public Hearing Information:

March 7, 2018 - 5 p.m. - Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, Abingdon VA

March 8, 2018 - 5 p.m. - Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke VA

March 12, 2018 - 5 pm - Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach VA

March 14, 2018 - 5 p.m. - Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg VA

March 15, 2018 - 5 p.m. - Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge VA

March 19, 2018 - 1:30 p.m. - Department of Environmental Quality, Central Office, 1111 East Main Street, 3rd Floor Meeting Room, Richmond VA

Public Comment Deadline: April 9, 2018.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Basis: Section 10.1-1308 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. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

State Requirements: Executive Directive 11 (2017), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy," directs the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural Resources, to take the following actions in accordance with the provisions and requirements of Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia and Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia:

1. Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit CO_2 from electric power facilities that:

a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of CO_2 allowances through a multi-state trading program; and

b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on CO_2 emissions imposed in other states with such limits.

2. By no later than December 31, 2017, present the proposed regulation to the State Air Pollution Control Board for consideration for approval for public comment in accordance with the board's authority pursuant to § 10.1-1308 of the Code of Virginia.

Purpose: The regulation is needed to control CO_2 emissions in order to protect the public's health and welfare. The proposed regulation is being developed in order to meet the directives of Governor McAuliffe's Executive Directive 11 (2017), "Reducing Carbon Dioxide Emissions from the Electric Power Sector and Growing Virginia's Clean Energy Economy," which states:

> There is no denying the science and the real-world evidence that climate change threatens the Commonwealth of Virginia, from our homes and businesses to our critical military installations and ports. Rising storm surges and flooding could impact as many as 420,000 properties along Virginia's coast that would require $92 billion of reconstruction costs.
>
> The challenges and costs of bolstering resilience and minimizing risk are too great for any locality to bear alone. While the impacts are significant, there are technologies in the clean energy sector that could help mitigate these impacts while simultaneously creating jobs in twenty-first century industries. The number of solar jobs in Virginia has grown by 65 percent in the last year alone, and Virginia is now the ninth fastest growing solar jobs market in the country. Revenue for clean energy businesses in Virginia has increased from $300 million in 2014 to $1.5

billion in 2016. Through state leadership, Virginia can face the threats of climate change head on and do so in a way that makes clean energy a pillar of our future economic growth and a meaningful part of our energy portfolio.

With these considerations in mind, I issued Executive Order 57 (EO 57) on June 28, 2016. Under EO 57, I directed the Secretary of Natural Resources to convene a work group to study and recommend methods to reduce carbon dioxide emissions from electric power facilities and grow the clean energy economy within existing state authority. The group consisted of the Secretary of Natural Resources, the Secretary of Commerce and Trade, the Director of the Virginia Department of Environmental Quality, the Director of the Virginia Department of Mines, Minerals and Energy, and the Deputy Attorney General for Commerce, Environment, and Technology. This group facilitated extensive stakeholder engagement over the last year, including six in-person meetings and a ninety-day public comment period, before compiling its recommendations and submitting a final report to me on May 12, 2017.

Among the most significant recommendations from the group is the need to develop regulations limiting the total amount of carbon dioxide emitted from electric power facilities. Given the nature of the climate change threat and the promise of clean energy solutions, I agree with this recommendation.

Accordingly, pursuant to the authority vested in me as the Chief Executive Officer of the Commonwealth, and pursuant to Article V of the Constitution and the laws of Virginia, I hereby direct the Director of the Department of Environmental Quality, in coordination with the Secretary of Natural Resources, to take the following actions in accordance with the provisions and requirements of Virginia Code § 10. 1-1300, et seq. and Virginia Code § 2.2-4000, et seq.:

1. Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit carbon dioxide emissions from electric power facilities that:

a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of carbon dioxide allowances through a multi-state trading program; and

b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on carbon dioxide emissions imposed in other states with such limits.

2. By no later than December 31, 2017, present the proposed regulation to the State Air Pollution Control Board for consideration for approval for public comment in accordance with the Board's authority pursuant to Virginia Code § 10. 1-1308.

Additionally, Executive Order 57 Work Group's "Report and Final Recommendations to the Governor" states that:

> The Work Group received a number of presentations and written comments from stakeholders advocating for a regulation to limit carbon dioxide from power plants. These comments included recommendations that the Commonwealth join or participate in the Regional Greenhouse Gas Initiative (RGGI) or another regional trading program, that a price be put on carbon, and that Virginia strive to reduce its greenhouse gases by 30 to 40 percent by the year 2030. . . . Although many stakeholders provided feedback focused on specific in-state targets (such as 30x30), the Work Group believes that it is important and necessary that Virginia work through a regional model, like the established and successful RGGI, in order to achieve lower compliance costs and address the interstate nature of the electric grid.

The Work Group recommends that the Governor consider taking action via a regulatory process to establish a "trading-ready" carbon emissions reduction program for fossil fuel fired electric generating facilities that will enable participation in a broader, multi-state carbon market.

Substance:

1. The primary purpose of the proposed regulation is to implement a declining cap on carbon emissions. The administrative means of accomplishing this will be effected by linking Virginia to the Regional Greenhouse Gas Initiative, which is an established emissions trading program. An allowance will be issued for each ton of carbon emitted by an electricity generating facility. The company must then decide if it will reduce carbon emissions and sell the resulting additional allowances, or if it will not reduce carbon emissions and make up the difference with purchased allowances. The proposal includes two options on the base budgets, 33 million tons and 34 million tons, which will determine, based on a 3.0% annual reduction, the annual budgets and allocations for future years.

2. The mechanism for determining the cost of allowances will be a consignment auction.

3. A cost containment reserve allowance will be offered for sale at an auction for the purpose of containing the cost of CO_2 allowances in the event of higher than anticipated emission reduction costs. An emission containment reserve allowance will be withheld from sale at an auction for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.

4. Monitoring, recording, and recordkeeping requirements will be implemented to track compliance.

5. Conditional allowances will be allocated to the Department of Mines, Minerals and Energy in order to assist the department for the abatement and control of air pollution, specifically, CO_2.

Issues: The primary advantage to the public would be health and welfare benefits associated with controlling carbon pollution. The program is designed to avoid any significant economic impacts.

No significant advantages or disadvantages to the department can be identified. There may be a minor impact in terms of administering a new program.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Air Pollution Control Board (Board) proposes to establish the CO_2 Budget Trading Program in regulation.

Estimated Economic Impact.

Background:

Governor McAuliffe's Executive Directive 11 (2017)[1] directed the Director of the Department of Environmental Quality (DEQ), in coordination with the Secretary of Natural Resources, to:

> Develop a proposed regulation for the State Air Pollution Control Board's consideration to abate, control, or limit carbon dioxide emissions from electric power facilities that:
>
> a. Includes provisions to ensure that Virginia's regulation is "trading-ready" to allow for the use of market-based mechanisms and the trading of carbon dioxide allowances through a multi-state trading program; and
>
> b. Establishes abatement mechanisms providing for a corresponding level of stringency to limits on carbon dioxide emissions imposed in other states with such limits.

The Board's proposed CO_2 Budget Trading Program is designed to meet the requirements of Executive Directive 11.

Further, the Work Group established by Governor McAuliffe's Executive Order 57[2] to study and recommend methods to reduce carbon emissions from electric power generation facilities concluded in their final report "that it is important and necessary that Virginia work through a regional model, like the established and successful [Regional Greenhouse Gas Initiative], in order to achieve lower compliance costs and address the interstate nature of the electric grid." Thus the proposed regulation specifies participation in the Regional Greenhouse Gas Initiative (RGGI).

Regional Greenhouse Gas Initiative:

RGGI is a cooperative effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont to cap and reduce power sector carbon dioxide (CO_2) emissions. RGGI is composed of individual CO_2 Budget Trading Programs in each participating state. Through independent regulations, each state's CO_2 Budget Trading Program limits emissions of CO_2 from electric power plants, issues CO_2 allowances and establishes participation in regional CO_2 allowance auctions. Regulated power plants can use a CO_2 allowance issued by any participating state to demonstrate compliance with an individual state program. In this manner, the state programs, in aggregate, function as a single regional compliance market for CO_2 emissions.

Virginia's CO_2 Budget Trading Program:

Under the proposed regulation, fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems that serve an electricity generator with a nameplate capacity equal to or greater than 25 electrical megawatts are considered CO_2 budget units. Any source[3] that includes one or more such units is a CO_2 budget source, subject to the requirements of the regulation. The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source must hold CO_2 allowances for at least the amount of CO_2 emitted for the relevant time period. Fossil fuel power generating units owned by an individual facility and located at that individual facility that generates electricity and heat from fossil fuel for the primary use of operation of the facility are exempt from the requirements.

For the first year of Virginia's CO_2 Budget Trading Program, 2020, the intent is to allocate to each source conditional allowances approximately equal to the number of tons of CO_2 emitted by their units. The allowances are called "conditional" because the sources cannot just hold on to and use the allowances; the allowances must be sent to the consignment auction. The consignment auction is the quarterly RGGI regional CO_2 allowance auction where anyone can bid for the allowances. The allowances can be used by any regulated power plant (source) in any of the RGGI states. Similarly, Virginia sources can use allowances that either originated in Virginia or any other RGGI state.

If a Virginia source intended to emit fewer tons of CO_2 than it received in conditional allowances, then the source would purchase fewer allowances (through the auction) than it had auctioned off, and would earn the auction price per ton times the net number of tons it sells (minus a small fee kept by RGGI for administrative costs). A Virginia source that intended to emit exactly the number of tons of CO_2 it was allotted would buy back the same number of allowances it brought to the auction and would break even (minus the administrative fee). A source that planned to emit more CO_2 than it received in conditional allowances would purchase the

number of allowances it needed and pay the auction price times the number of tons beyond its allotted number.

For 2020, the proposed regulation specifies a Virginia base budget of either 33 million or 34 million tons of CO_2 allowances. (The proposed text at the Proposed Stage of this regulatory action includes the following: "Editor's Note: Two versions … are provided for comment. The board seeks comment on whether the base budget should be 33 million tons or 34 million tons, with corresponding 3% per year reductions.") The base budget declines by about 1 million tons of CO_2 allowances per year thereafter until 2030. Of the base budget, 95% is allocated to CO_2 budget sources and the remaining 5% is allocated to the Department of Mines, Minerals and Energy (DMME) to assist DEQ in the abatement and control of air pollution, specifically CO_2.

The proposed Virginia CO_2 Budget Trading Program includes mechanisms designed to ensure that the allowance price remains within a set range. Details concerning those mechanisms can be found in Appendix I.

Impact - Benefit of CO_2 Emission Reduction:

The Report of the Executive Order 57 Work Group[4] identifies several Virginia-specific environmental and economic harms that result from CO_2 emissions:

- According to data compiled by the Georgetown Climate Center and Old Dominion University's Mitigation and Adaptation Research Institute, the Commonwealth has already seen a 33 percent increase in heavy rainstorms and snowstorms in the last sixty years, as well as an 11 percent increase in precipitation from the largest storms.[5] The same report found that as many as 400,000 Virginia homes are at risk of damage from increased storm surges.

- Climate change also has the potential to endanger the agricultural sector. Half of Virginia's counties face increased risk of water shortages by 2050 as the result of climate-related shifts in precipitation and weather.[6]

- Other business sectors are similarly feeling the impacts of climate change as warmer temperatures affect worker productivity and the health of the workforce.[7]

Thus, reducing CO_2 emissions has the potential to benefit the Commonwealth.

The U.S. Environmental Protection Agency (EPA) and other federal agencies use estimates of the social cost of carbon (SC-CO2) to value the climate impacts of regulatory rulemakings.[8] The SC-CO_2 is a measure, in dollars, of the long-term damage done by a ton of CO_2 emissions in a given year. This dollar figure also represents the value of damages avoided for a reduction of a ton of CO_2 emissions in a given year (i.e., the benefit of a CO_2 reduction). It should be noted that the federal model estimates of the social cost of carbon are for the world overall.[9] Thus it is not possible to quantify the Virginia-specific benefits.

The SC-CO_2 is meant to be a comprehensive estimate of climate change damages and includes, among other things, changes in human health, property damages from increased flood risk, net agricultural productivity, and changes in energy system costs, such as reduced costs for heating and increased costs for air conditioning. However, according to the EPA, the federal SC-CO_2 estimates omit various impacts that likely would increase damages. The models used to develop SC-CO_2 estimates do not currently include all of the physical, ecological, and economic impacts of climate change recognized in the literature because of a lack of precise information on the nature of damages and because the science incorporated into these models naturally lags behind the most recent research. Nonetheless, current estimates of the SC-CO_2 are a useful measure to assess the climate impacts of CO_2 emission changes. Details about the federal model SC-CO_2 estimates and their development can be found in Appendix II of this report.

By design, under Virginia's proposed CO_2 Budget Trading Program, CO_2 emissions are reduced by about 1 million tons per year from 2020 to 2030. If a 3% discount rate is assumed,[10] then the benefit of a CO_2 reduction by about 1 million tons in 2021 versus 2020 would be about 4_2 million, while the benefit of a CO_2 reduction by about 1 million tons in 2030[11] would be about $50 million.[12] The estimated cumulative benefit for the ten years of CO_2 reduction would be about $460 million. The assumed discount rate makes a large difference in the estimated benefit. If a discount rate of 2.5% a year is used rather than 3%, then the estimated cumulative benefit for the ten years of CO_2 reduction would be about $680 million. On the other hand, using a discount rate of 5% a year rather than 3% results in an estimated cumulative benefit for the ten years of CO_2 reduction of about $140 million.[13]

Impact - Benefit of Incidental Reductions in SO_2 and NO_x:

Air pollutants such as sulfur dioxide (SO_2) and nitrogen oxides (NO_x) are co-produced along with CO_2 emissions from fossil-fuel power plants. SO_2 and NO_x can form particulate matter. Exposure to particulate matter can adversely affect the lungs and heart, leading to premature death in people with heart or lung disease, nonfatal heart attacks, aggravated asthma, decreased lung function, and increased respiratory symptoms, such as irritation of the airways, coughing or difficulty breathing.[14] In meeting CO_2 reduction requirements, there would also be reductions in SO_2 and NO_x emissions.

EPA developed the Co-Benefits Risk Assessment (COBRA) model,[15] to estimate the health co-benefits from the incidental reductions in SO_2 and NO_x emissions. EPA ran the COBRA model to analyze the effects if Virginia linked to RGGI and established its CO_2 Budget Trading Program. The EPA used two sets of assumptions: the RGGI Scenario and the Virginia (VA) Scenario. Table 1a compares the two scenarios.

Table 1a: Comparison of Assumptions in RGGI and VA Scenarios

	RGGI Scenario	Virginia Scenario
Natural Gas (NG) Prices	NG price assumptions obtained from the Energy Information Agency's 2017 Annual Energy Outlook report.[16]	NG price assumptions based on Dominion Energy's Integrated Resource Plan.[17] (NG prices are slightly higher under the VA scenario.)
Future Electricity Demand	Future electricity demand projections for Virginia come from the PJM Interconnection[18] which is the Regional Transmission Organization that covers Virginia and other eastern states.	Future electricity demand projections based on Dominion Energy's Integrated Resource Plan. (Future electricity demand projections are substantially higher under the VA scenario.)
Future Renewable Power Generation	Because Virginia is not presently linked to RGGI, it does not include any future Virginia renewable power generation.	Based on Dominion Energy's Integrated Resource Plan. (Includes future Virginia renewable power generation such as solar).

Table 1b displays the COBRA model's estimates of the reduction in mortality from the reductions in SO_2 and NOx emissions that would result from Virginia linking to RGGI and establishing the rules and requirements of Virginia's CO_2 Budget Trading Program.[19]

Table 1b: Health Benefits[20] of Incidental Reductions in SO_2 and NO_x

Year	Scenario	Tons NO_x Reduction	Tons SO_2 Reduction	Mortality (low estimate)	Mortality (high estimate)
2026	RGGI	11,169	2,424	5.2	11.9
2026	VA	6,317	1,636	3.2	7.3
2029	RGGI	10,851	2,551	5.3	12
2029	VA	8,140	2,310	4.4	10

Impact - Electricity Consumers:

According to recent presentations by DEQ, the "revenue received by CO_2 Budget Sources owned by regulated electric utilities flow to rate payers pursuant to State Corporation Commission (SCC) requirements."[21] While not described in the regulation, this action is predicated upon anticipated actions of the SCC which it may or may not take. This assumed action was incorporated in estimates DEQ provided the Board, which indicate the impact that the proposed Virginia CO_2 Budget Trading Program[22] would have on the average monthly electricity bills for residential, commercial, and industrial consumers (Table 2).[23]

Table 2: Virginia Average Monthly Bill Impact for Years 2017-2031 ($2015)

	Reference Case Bill ($ 2015)		Policy Scenario			
	RGGI Assumptions	Virginia Assumptions	RGGI Assumptions		Virginia Assumptions	
			Monthly Difference ($ 2015)	Percent Difference	Monthly Difference ($ 2015)	Percent Difference
Residential	$181.42	$181.82	$1.19	0.7%	$0.53	0.3%
Commercial	$1,019.44	$1,022.67	$9.59	0.9%	$4.24	0.4%
Industrial	$33,934.27	$34,065.64	$370.20	1.1%	$154.55	0.5%

Note: The estimates in Table 2 were produced by the Analysis Group, using the Integrated Planning Model developed by ICF. This was the only model available to DPB during the time period for this review, and DPB lacked the resources to verify the model or its assumptions. If the SCC resumes rate reviews, these assumptions should be reconsidered.

The reference case refers to the model's forecasts of electric bills without the adoption of the regulation and implementation of the Virginia CO_2 Budget Trading Program. In contrast, by 2031 the model's forecasts of electric bills resulting from adoption of the regulation increase by 0.7% to 1.1% using the RGGI assumptions, and by 0.3% to 0.5% using VA assumptions (in real dollars).

Impact - Electricity Producers:

The proposed regulations restrict CO_2 emissions by electricity producers. Electricity producers who find the restrictions binding, i.e. they would have emitted more than their allotted allowances without the restrictions, would need to combine finding alternative methods of producing electricity and purchasing additional allowances. The alternative methods would presumably be more expensive, otherwise the restrictions would not have been binding. Firms in this position would encounter increased costs due to the proposed regulation.

Electricity producers who do not find the restrictions binding can potentially profit by selling allowances that they do not need. Firms that had planned to emit fewer tons of CO_2 than they were allotted would fall into this category.

Assuming that all revenues raised from the auction by regulated utilities are returned to ratepayers, then these producers will not profit, because they cannot keep their sales revenue. Table 3 lists forecasted prices per ton of allowances in nominal dollars for specified years using both the RGGI and VA scenario assumptions.

Table 3: ICF Model's Forecasts of Allowance Prices with Virginia Participation in RGGI

Year	RGGI: Nominal$/Ton	VA: Nominal$/Ton
2020	$6.48	$6.08
2023	$7.71	$7.24
2026	$ 9.60	$9.02
2029	$11.44	$10.74
2031	$13.35	$12.53

Given the proposal to limit CO_2 emissions to 33 million tons in 2020, and that 5 percent of the emissions are allotted to DMME, 31.35 million tons of emissions would be allotted to sources in 2020. Based on the forecasted prices of $6.08 and $6.48 per ton, sources would spend approximately $191 million to $203 million for CO_2 emission allowances for the year 2020. Since the 2020 base budget is intended to be close to the amount of emissions actually being generated at that time, in net sources would not initially face significant additional costs from finding alternative lower-emitting but higher cost means of generating electricity.

Taking into account the annual reduction in the Virginia base budget in the proposed regulation and DMME's share of the base budget, 28.53 million tons of emissions would be allotted to sources in 2023. Based on the forecasted prices of $7.24 and $7.71 per ton, sources would spend approximately $207 million to $220 million for CO_2 emission allowances for the year 2023. Since the 2023 base budget is smaller than the 2020 base budget, and the demand for electricity is unlikely to fall, sources likely would need to find alternative, lower-emitting means of generating electricity.

Following the same reasoning, the source allotments for 2026 and 2029 would be 25.71 million tons and 22.89 million tons, respectively; and based on the forecasted prices of 9.0_2 to $ 9.60 and $10.74 to $11.44 per ton, sources would spend approximately $232 million to $247 million in 2026 and $246 million to $262 million in 2029 on CO_2 emission allowances. Given the further contraction in the base budget of allowances, sources would need to find alternative, lower-emitting means of generating electricity.

Impact - Fiscal:

The Joint Legislative Audit and Review Commission (JLARC) estimates that the fiscal impact (negative and positive) of the proposed regulation (in 2017 dollars) will be "approximately − $1.3 million in 2020, when the regulation would take effect, and [will] be $1.9 million in 2031, the last year in which information is available to develop an estimate."[24] JLARC notes that the latter cost equates to approximately one percent of projected state electricity costs in 2031, and that the majority of this impact would be due to an increase in electricity costs for public higher education institutions, which represented 70 percent of total electricity costs for state entities in FY17. Impacts are estimated as the

difference between electricity costs under the proposed regulation pursuant and electricity costs if the regulation was not adopted.

JLARC estimates that the cost to DEQ for administering the regulation and the cap and trade program would be approximately $95,000 per year to cover the salary and benefits for one staff position.[25] According to JLARC, DEQ staff indicated that the anticipated responsibilities of this staff person would include collecting and analyzing information necessary to allocate allowances to electricity generators, participating in RGGI meetings and webinars, and managing all correspondence with RGGI. While monitoring and compliance should be handled automatically by the RGGI carbon dioxide allowance tracking system, this staff person would have responsibility for managing DEQ compliance actions for electricity generators that are substantially and consistently out of compliance. Additional resources could be necessary if there is frequent need for compliance action by DEQ.

JLARC also estimates that the cost to DMME for administering the allowances it receives each year is approximately $105,000 to cover the salary and benefits for one staff position. This position would be an upper-level program manager responsible for establishing a program inventory that would maximize emission reductions. This position would manage a contract with a third-party administrator to sell the allowances allotted to DMME and make the funding available for use in a variety of programs to help reduce carbon dioxide emissions.

Businesses and Entities Affected. The proposed amendments particularly affect the 12 companies that operate the 32 electric power facilities with a capacity of >25 MW in the Commonwealth. All entities that use electricity, including industrial and commercial firms, farms, residences, government offices, schools and colleges, etc., are affected as well. All entities and people in Virginia would also likely experience the impact of environmental improvement.

Localities Particularly Affected. As CO_2 emissions are reduced over time, the regulation is likely to have a positive impact on all localities.

Projected Impact on Employment. The proposed reduction in allowed emissions of CO_2 over time may reduce employment associated with electricity production that is high in CO_2 emission such as coal, and may increase employment in electricity production that is low in CO_2 emission such as wind and solar.

Effects on the Use and Value of Private Property. It is difficult to estimate the effects of this regulation on the value of property. To the extent that the proposed amendments decrease flooding risk, and thus limit loss of use, the value of private property near bodies of water and other low-lying properties could become more valuable, or they could decline since it could cause the inventory of usable land to increase. Further, land values could increase in some areas as the demand for solar farms increases.

Real Estate Development Costs. The proposed amendments do not appear to significantly affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments likely would increase electricity costs for small businesses, but environmental improvements may lower other costs. Based upon the assumptions used for the model results displayed in Table 2, monthly electric bills should not increase by more than 1.1% ($2015) by 2031 due to the proposed program.

Alternative Method that Minimizes Adverse Impact. There is no clear alternative method that would minimize the adverse impact for small businesses, while still achieving the intended policy goals.

Adverse Impacts:

Businesses. The proposed amendments likely would increase electricity costs for businesses. Based upon the assumptions used for the model results displayed in Table 2, monthly electric bills should not increase by more than 1.1% ($2015) by 2031 due to the proposed program. The proposed limitations on CO_2 emissions for sources would increase electricity production costs for at least some electric power producing firms.

Localities. The proposed amendments likely would increase electricity costs for local governments. Based upon the assumptions used for the model results displayed in Table 2, monthly electric bills should not increase by more than 1.1% ($2015) by 2031 due to the proposed program.

Other Entities. The proposed amendments likely would increase electricity costs for homeowners, farms, state government, schools, colleges, and other entities. Based upon the assumptions used for the model results displayed in Table 2, monthly electric bills should not increase by more than 1.1% ($2015) by 2031 due to the proposed program.

---

[1]See https://governor.virginia.gov/media/9155/ed-11-reducing-carbon-dioxide-emissions-from-electric-power-facilities-and-growing-virginias-clean-energy-economy.pdf.

[2]See https://governor.virginia.gov/media/6396/eo-57-development-of-carbon-reduction-strategies-for-electric-power-generation-facilities.pdf.

[3]The proposed regulation defines source as "any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility

that emits or has the potential to emit any air pollutant. A source, including a source with multiple units, shall be considered a single facility."

[4]See https://naturalresources.virginia.gov/media/9156/eo57-report-final-5-12-17.pdf.

[5]Georgetown Climate Center and Old Dominion University Mitigation and Adaptation Research Institute, Understanding Virginia's Vulnerability to Climate Change, February 17, 2017, available at http://www.georgetownclimate.org/files/report/understanding-virginias-vulnerability-to-climate-change.pdf.

[6]Ibid.

[7]U.S. Global Change Research Program. Impacts of Climate Change on Human Health in the United States: A Scientific Assessment, April 2016, available at https://health2016.globalchange.gov/.

[8]Interagency Working Group on Social Cost of Greenhouse Gases, United States Government; Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis https://19january2017snapshot.epa.gov/sites/production/files/2016-12/documents/sc_co2_tsd_august_2016.pdf.

[9]Ibid, p.17.

[10]See Appendix II for a discussion of discount rates and how the SC-CO_2 estimates vary with use of different discount rates.

[11]The last year specified in the proposed regulation is 2030.

[12]See the table in Appendix II for estimated SC-CO_2 figures, and the text of Appendix II for discussion on how the figures are determined.

[13]All calculations use the federal government's SC-CO_2 estimates shown in Appendix II.

[14]See https://www.epa.gov/pm-pollution/health-and-environmental-effects-particulate-matter-pm.

[15]See https://www.epa.gov/statelocalenergy/co-benefits-risk-assessment-cobra-health-impacts-screening-and-mapping-tool.

[16]See https://www.eia.gov/outlooks/aeo/.

[17]See http://dominionenergy.mediaroom.com/2017-05-01-Dominion-Virginia-Power-Plan-Sees-More-Clean-Energy.

[18]See http://www.pjm.com/.

[19]The model estimates health benefits through reduced: mortality, various cardiovascular and respiratory ailments, and loss of work days. These estimates could not be verified by DPB staff within the timeframe for this review.

[20]See page F-1 of the User's Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA) to see EPA's assigned dollar values for various health conditions, including mortality. https://www.epa.gov/sites/production/files/2017-10/documents/cobra_user_manual_september2017_508_v2.pdf.

[21]DEQ November 16, 2017 presentation before the Board, p. 24: http://www.deq.virginia.gov/Portals/0/DEQ/Air/GHG/C17-pro.pdf?ver=2017-11-20-153710-670 DEQ December 4, 2017 presentation to the Commission on Electric Utility Regulation, p. 15, http://leg5.state.va.us/User_db/frmView.aspx?ViewId=5094&s=7.

[22]That is, participation in RGGI and reductions in CO_2 emissions, as stipulated in the proposed regulation.

[23]DEQ November 16, 2017 presentation before the Board, p. 43.

[24]JLARC's analysis, which was published on December 4, 2017, could not be verified by DPB staff within the timeframe for this review. JLARC notes that, "the fiscal impact is estimated to be negative in 2020 because it is expected that compliance will be easier in earlier years and electricity generators may hold or bank allowances that they do not need to reduce compliance costs in later years when the emissions cap decreases." Source: http://jlarc.virginia.gov/pdfs/fiscal_analysis/FIR/2017_ED11_review.pdf.

[25]Source: http://leg1.state.va.us/cgi-bin/legp504.exe?171+oth+HB2018F122+PDF.

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

Summary:

The proposed new regulation establishes the Virginia CO_2 Budget Trading Program. The proposed regulation (i) implements a declining cap on carbon emissions and establishes an allowance that will be issued for each ton of carbon emitted by an electricity generating facility, which can then decide whether to reduce carbon emissions and sell the resulting additional allowances or not reduce carbon emissions and make up the difference with purchased allowances; (ii) establishes a consignment auction as the mechanism for determining the cost of allowances; (iii) provides that a cost containment reserve allowance will be offered for sale at an auction for the purpose of containing the cost of CO_2 allowances in the event of higher than anticipated emission reduction costs and that an emission containment reserve allowance will be withheld from sale at an auction for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs; (iv) implements monitoring, recording, and recordkeeping requirements; and (v) allocates conditional allowances to the Department of Mines, Minerals and Energy.

The proposal includes two options on the base budgets, 33 million tons and 34 million tons, which will determine, based on a 3.0% annual reduction, the annual budgets, and allocations for future years.

Part VII
CO_2 Budget Trading Program

Article 1
CO_2 Budget Trading Program General Provisions

9VAC5-140-6010. Purpose.

This part establishes the Virginia component of the CO_2 Budget Trading Program, which is designed to reduce anthropogenic emissions of CO_2, a greenhouse gas, from CO_2 budget sources in an economically efficient manner.

9VAC5-140-6020. Definitions.

A. As used in this part, all words or terms not defined here shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by the context.

B. For the purpose of this part and any related use, the words or terms shall have the meanings given them in this section.

C. Terms defined.

"Account number" means the identification number given by the department or its agent to each COATS account.

"Acid rain emission limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide (SO_2) or nitrogen oxides (NO_X) under the Acid Rain Program under Title IV of the CAA.

"Acid Rain Program" means a multistate SO_2 and NO_X air pollution control and emission reduction program established by the administrator under Title IV of the CAA and 40 CFR Parts 72 through 78.

"Adjustment for banked allowances" means an adjustment applied to the Virginia CO_2 Budget Trading Program base budget for allocation years 2021 through 2025 to address allowances held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program, but not including accounts opened by participating states, that are in addition to the aggregate quantity of emissions from all CO_2 budget sources in all of the participating states at the end of the control period in 2020 and as reflected in the CO_2 Allowance Tracking System on March 17, 2021.

"Administrator" means the administrator of the U.S. Environmental Protection Agency or the administrator's authorized representative.

"Allocate" or "allocation" means the determination by the department of the number of CO_2 conditional allowances allocated to a CO_2 budget unit or the Department of Mines, Minerals and Energy (DMME).

"Allocation year" means a calendar year for which the department allocates CO_2 conditional allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part. The allocation year of each CO_2 conditional allowance is reflected in the unique identification number given to the allowance pursuant to 9VAC5-140-6250 C.

"Allowance" means an allowance up to one ton of CO_2 purchased from the consignment auction in accordance with Article 9 (9VAC5-140-6410 et seq.) of this part and that may be deposited in the compliance account of a CO_2 budget source.

"Allowance auction" or "auction" means an auction in which the department or its agent offers CO_2 allowances for sale.

"Alternate CO_2 authorized account representative" means, for a CO_2 budget source and each CO_2 budget unit at the source, the alternate natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the alternate natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program then, for a CO_2 Budget Trading Program compliance account, this alternate natural person shall be the same person as the alternate designated representative as defined in the respective program.

"Attribute" means a characteristic associated with electricity generated using a particular renewable fuel, such as its generation date, facility geographic location, unit vintage, emissions output, fuel, state program eligibility, or other characteristic that can be identified, accounted for, and tracked.

"Attribute credit" means a credit that represents the attributes related to one megawatt-hour of electricity generation.

"Automated Data Acquisition and Handling System" or "DAHS" means that component of the Continuous Emissions Monitoring System (CEMS), or other emissions monitoring system approved for use under Article 8 (9VAC5-140-6330 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9VAC5-140-6330 et seq.) of this part.

"Billing meter" means a measurement device used to measure electric or thermal output for commercial billing under a contract. The facility selling the electric or thermal output shall have different owners from the owners of the party purchasing the electric or thermal output.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

"CO_2 allowance deduction" or "deduct CO_2 allowances" means the permanent withdrawal of CO_2 allowances by the department or its agent from a COATS compliance account to account for the number of tons of CO_2 emitted from a CO_2 budget source for a control period or an interim control period, determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, or for the forfeit or retirement of CO_2 allowances as provided by this part.

"CO_2 Allowance Tracking System" or "COATS" means the system by which the department or its agent records allocations, deductions, and transfers of CO_2 allowances under the CO_2 Budget Trading Program. The tracking system may also be used to track CO_2 allowance prices and emissions from affected sources.

"CO_2 Allowance Tracking System account" means an account in COATS established by the department or its agent for purposes of recording the allocation, holding, transferring, or deducting of CO_2 allowances.

"CO_2 allowance transfer deadline" means midnight of March 1 occurring after the end of the relevant control period and each relevant interim control period or, if that March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which CO_2 allowances shall be submitted for recordation in a CO_2 budget source's compliance account for the source to meet the CO_2 requirements of 9VAC5-140-6050 C for the control period and each interim control period immediately preceding such deadline.

"CO_2 allowances held" or "hold CO_2 allowances" means the CO_2 allowances recorded by the department or its agent, or submitted to the department or its agent for recordation, in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 7 (9VAC5-140-6300 et seq.) of this part, in a COATS account.

"CO_2 authorized account representative" means, for a CO_2 budget source and each CO_2 budget unit at the source, the natural person who is authorized by the owners and operators of the source and all CO_2 budget units at the source, in accordance with Article 2 (9VAC5-140-6080 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the CO_2 Budget Trading Program or, for a general account, the natural person who is authorized, under Article 6 (9VAC5-140-6220 et seq.) of this part, to transfer or otherwise dispose of CO_2 allowances held in the general account. If the CO_2 budget source is also subject to the Acid Rain Program, CSAPR NO_X Annual Trading Program, CSAPR NO_X Ozone Season Trading Program, CSAPR SO_2 Group 1 Trading Program, or CSAPR SO_2 Group 2 Trading Program, then for a CO_2 Budget Trading Program compliance account, this natural person shall be the same person as the designated representative as defined in the respective program.

"CO_2 budget emissions limitation" means, for a CO_2 budget source, the tonnage equivalent, in CO_2 emissions in a control period or an interim control period, of the CO_2 allowances available for compliance deduction for the source for a control period or an interim control period.

"CO_2 budget permit" means the portion of the legally binding permit issued by the department pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) to a CO_2 budget source or CO_2 budget unit that specifies the CO_2 Budget Trading Program requirements applicable to the CO_2 budget source, to each CO_2 budget unit at the CO_2 budget source, and to the owners and operators and the CO_2 authorized account representative of the CO_2 budget source and each CO_2 budget unit.

"CO_2 budget source" means a source that includes one or more CO_2 budget units.

"CO_2 Budget Trading Program" means the Regional Greenhouse Gas Initiative (RGGI), a multistate CO_2 air pollution control and emissions reduction program as a means of reducing emissions of CO_2 from CO_2 budget sources.

"CO_2 budget unit" means a unit that is subject to the CO_2 Budget Trading Program requirements under 9VAC5-140-6040.

"CO_2 cost containment reserve allowance" or "CO_2 CCR allowance" means a CO_2 allowance that is offered for sale at an auction for the purpose of containing the cost of CO_2 allowances. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program base and adjusted budgets. CO_2 CCR allowances are subject to all applicable limitations contained in this part.

"CO_2 cost containment reserve trigger price" or "CCR trigger price" means the minimum price at which CO_2 CCR allowances are offered for sale at an auction. Beginning in 2020 and each calendar year thereafter, the CCR trigger price shall be 1.025 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent. The CCR trigger price in calendar year 2021 shall be $13. Each calendar year thereafter, the CCR trigger price shall be 1.07 multiplied by the CCR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1A.

Table 140-1A
CO_2 CCR Trigger Price

2020	$10.77
2021	$13.00
2022	$13.91
2023	$14.88
2024	$15.93
2025	$17.04
2026	$18.23
2027	$19.51
2028	$20.88
2029	$22.34
2030	$23.90

"CO_2 emission containment reserve allowance" or "CO_2 ECR allowance" means a CO_2 allowance that is withheld from sale at an auction by the department for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs.

"CO_2 emission containment reserve trigger price" or "ECR trigger price" means the price below which CO_2 allowances will be withheld from sale by the department or its agent at an auction. The ECR trigger price in calendar year 2021 shall be $6.00. Each calendar year thereafter, the ECR trigger price shall be 1.07 multiplied by the ECR trigger price from the previous calendar year, rounded to the nearest whole cent, as shown in Table 140-1B.

Table 140-1B
CO_2 ECR Trigger Price

2021	$ 6.00
2022	$ 6.42
2023	$ 6.87
2024	$ 7.35
2025	$ 7.86
2026	$ 8.42
2027	$ 9.00
2028	$ 9.63
2029	$10.31
2030	$11.03

"Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

"Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor (if applicable), a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

"Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. For a unit that is a CO_2 budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under 9VAC5-140-6040 on the date the unit commences commercial operation, the date the unit becomes a CO_2 budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of commercial operation.

"Commence operation" means to begin any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. For a unit that is a CO_2 budget unit under 9VAC5-140-6040 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. For a unit that is not a CO_2 budget unit under 9VAC5-140-6040 on the date of commencement of operation, the date the unit becomes a CO_2 budget unit under 9VAC5-140-6040 shall be the unit's date of commencement of operation.

"Compliance account" means a COATS account, established by the department or its agent for a CO_2 budget source under Article 6 (9VAC5-140-6220 et seq.) of this part, in which are held CO_2 allowances available for use by the source for a control period and each interim control period for the purpose of meeting the CO_2 requirements of 9VAC5-140-6050 C.

"Conditional allowance" means an allowance allocated by the department to CO_2 budget sources and to DMME. Such conditional allowance shall be consigned by the entity to whom it is allocated to the consignment auction as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, after which the conditional allowance becomes an allowance to be used for compliance purposes.

"Consignment auction" or "auction" means the CO_2 auction conducted on a quarterly basis by RGGI, Inc., in which CO_2 budget sources and DMME are allocated a share of allowances by the department that CO_2 budget sources and the holder of a public contract with DMME consign into the auction, and auction revenue is returned to CO_2 budget sources and the holder of a public contract with DMME in accordance with procedures established by the department.

"Continuous Emissions Monitoring System" or "CEMS" means the equipment required under Article 8 (9VAC5-140-6330 et seq.) of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated DAHS), a permanent record of stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with 40 CFR Part 75 and Article 8 (9VAC5-140-6330 et seq.) of this part. The following systems are types of CEMS required under Article 8 (9VAC5-140-6330 et seq.) of this part:

a. A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS and providing a

permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scf);

b. A NO_X emissions rate (or NO_X-diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emissions rate, in pounds per million British thermal units (lb/MMBtu);

c. A moisture monitoring system, as defined in 40 CFR 75.11(b)(2) and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

d. A CO_2 monitoring system, consisting of a CO_2 pollutant concentration monitor (or an O_2 monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated DAHS and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

e. An O_2 monitoring system, consisting of an O_2 concentration monitor and an automated DAHS and providing a permanent, continuous record of O_2, in percent O_2.

"Control period" means a three-calendar-year time period. The first control period is from January 1, 2021, to December 31, 2023, inclusive. Each subsequent compliance control period shall be a sequential three-calendar-year period. The first two compliance years of each control period are each defined as an interim control period, beginning on January 1, 2022.

"Cross State Air Pollution Rule (CSAPR) NO_X Annual Trading Program" means a multistate NO_X air pollution control and emission reduction program established in accordance with Subpart AAAAA of 40 CFR Part 97 and 40 CFR 52.38(a), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(a)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(a)(5), as a means of mitigating interstate transport of fine particulates and NO_X.

"Cross State Air Pollution Rule (CSAPR) NO_X Ozone Season Trading Program" means a multistate NO_X air pollution control and emission reduction program established in accordance with Subpart BBBBB of 40 CFR Part 97 and 40 CFR 52.38(b), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.38(b)(3) or (4) or that is established in a SIP revision approved by the administrator under 40 CFR 52.38(b)(5), as a means of mitigating interstate transport of ozone and NO_X.

"Cross State Air Pollution Rule (CSAPR) SO_2 Group 1 Trading Program" means a multistate SO_2 air pollution control and emission reduction program established in accordance with Subpart CCCCC of 40 CFR Part 97 and 40 CFR 52.39(a), (b), (d) through (f), (j), and (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(d) or (e) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(f), as a means of mitigating interstate transport of fine particulates and SO_2.

"Cross State Air Pollution Rule (CSAPR) SO_2 Group 2 Trading Program" means a multistate SO_2 air pollution control and emission reduction program established in accordance with Subpart DDDDD of 40 CFR Part 97 and 40 CFR 52.39(a), (c), and (g) through (k), including such a program that is revised in a SIP revision approved by the administrator under 40 CFR 52.39(g) or (h) or that is established in a SIP revision approved by the administrator under 40 CFR 52.39(i), as a means of mitigating interstate transport of fine particulates and SO_2.

"Department" means the Virginia Department of Environmental Quality.

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

"Excess emissions" means any tonnage of CO_2 emitted by a CO_2 budget source during a control period that exceeds the CO_2 budget emissions limitation for the source.

"Excess interim emissions" means any tonnage of CO_2 emitted by a CO_2 budget source during an interim control period multiplied by 0.50 that exceeds the CO_2 budget emissions limitation for the source.

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means the combustion of fossil fuel, alone or in combination with any other fuel, where the fossil fuel combusted comprises, or is projected to comprise, more than 10% of the annual heat input on a Btu basis during any year.

"General account" means a COATS account, established under Article 6 (9VAC5-140-6220 et seq.) of this part that is not a compliance account.

"Gross generation" means the electrical output in MWe at the terminals of the generator.

"Initial control period" means the period beginning January 1, 2020, and ending December 31, 2020.

"Interim control period" means a one-calendar-year time period, during each of the first and second calendar years of each three-year control period. The first interim control period starts January 1, 2021, and ends December 31,

2021, inclusive. The second interim control period starts January 1, 2022, and ends December 31, 2022, inclusive. Each successive three-year control period will have two interim control periods, comprised of each of the first two calendar years of that control period.

"Life-of-the-unit contractual arrangement" means a unit participation power sales agreement under which a customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity or associated energy from any specified unit pursuant to a contract:

a. For the life of the unit;

b. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

c. For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value shall be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value shall be reported, in accordance with 40 CFR Part 75, using the maximum potential flow rate and either the maximum CO_2 concentration in percent CO_2 or the minimum O_2 concentration in percent O_2.

"Minimum reserve price" means, in calendar year 2020, $2.00. Each calendar year thereafter, the minimum reserve price shall be 1.025 multiplied by the minimum reserve price from the previous calendar year, rounded to the nearest whole cent.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-6330 et seq.) of this part, including a CEMS, an excepted monitoring system, or an alternative monitoring system.

"Nameplate capacity" means the maximum electrical output in MWe that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the U.S. Department of Energy standards.

"Net-electric output" means the amount of gross generation in MWh the generators produce, including output from steam turbines, combustion turbines, and gas expanders, as measured at the generator terminals, less the electricity used to operate the plant (i.e., auxiliary loads); such uses include fuel handling equipment, pumps, fans, pollution control equipment, other electricity needs, and transformer losses as measured at the transmission side of the step up transformer (e.g., the point of sale).

"Non-CO_2 budget unit" means a unit that does not meet the applicability criteria of 9VAC5-140-6040.

"Operator" means any person who operates, controls, or supervises a CO_2 budget unit or a CO_2 budget source and shall include any holding company, utility system, or plant manager of such a unit or source.

"Owner" means any of the following persons:

a. Any holder of any portion of the legal or equitable title in a CO_2 budget unit;

b. Any holder of a leasehold interest in a CO_2 budget unit, other than a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the CO_2 budget unit;

c. Any purchaser of power from a CO_2 budget unit under a life-of-the-unit contractual arrangement in which the purchaser controls the dispatch of the unit; or

d. With respect to any general account, any person who has an ownership interest with respect to the CO_2 allowances held in the general account and who is subject to the binding agreement for the CO_2 authorized account representative to represent that person's ownership interest with respect to the CO_2 allowances.

"Participating state" means a state that has established a corresponding regulation as part of the CO_2 Budget Trading Program.

"Receive" or "receipt of" means, with regard to CO_2 allowances, the movement of CO_2 allowances by the department or its agent from one COATS account to another, for purposes of allocation, transfer, or deduction.

"Recordation," "record," or "recorded" means, with regard to CO_2 allowances, the movement of CO_2 allowances by the department or its agent from one COATS account to another, for purposes of allocation, transfer, or deduction.

"RGGI, Inc." means the 501(c)(3) nonprofit corporation created to support development and implementation of the Regional Greenhouse Gas Initiative (RGGI). Participating RGGI states use RGGI, Inc., as their agent to conduct the consignment auction and to operate and manage COATS.

"Reserve price" means the minimum acceptable price for each CO_2 allowance in a specific auction. The reserve price at an auction is either the minimum reserve price or the CCR trigger price, as specified in Article 9 (9VAC5-140-6410 et seq.) of this part.

"Serial number" means, when referring to CO_2 allowances, the unique identification number assigned to each CO_2 allowance by the department or its agent under 9VAC5-140 6250 C.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any air pollutant. A source, including a source with multiple units, shall be considered a single facility.

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

a. In person;

b. By U.S. Postal Service; or

c. By other means of dispatch or transmission and delivery.

Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Ton" or "tonnage" means any short ton, or 2,000 pounds. For the purpose of determining compliance with the CO_2 requirements of 9VAC5-140-6050 C, total tons for a control period shall be calculated as the sum of all recorded hourly emissions, or the tonnage equivalent of the recorded hourly emissions rates, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons. A short ton is equal to 0.9072 metric tons.

"Undistributed CO_2 allowances" means CO_2 allowances originally allocated to a set aside account as pursuant to 9VAC5-140-6210 that were not distributed.

"Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unsold CO_2 allowances" means CO_2 allowances that have been made available for sale in an auction conducted by the department or its agent, but not sold.

"Virginia CO_2 Budget Trading Program adjusted budget" means an adjusted budget determined in accordance with 9VAC5-140-6210 and is the annual amount of CO_2 tons available in Virginia for allocation in a given allocation year, in accordance with the CO_2 Budget Trading Program. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program adjusted budget.

"Virginia CO_2 Budget Trading Program base budget" means the budget specified in 9VAC5-140-6190. CO_2 CCR allowances offered for sale at an auction are separate from and additional to CO_2 allowances allocated from the Virginia CO_2 Budget Trading Program base budget.

9VAC5-140-6030. Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu - British thermal unit.

CAA - federal Clean Air Act.

CCR - cost containment reserve.

CEMS - Continuous Emissions Monitoring System.

COATS - CO_2 Allowance Tracking System.

CO_2 - carbon dioxide.

DAHS - Data Acquisition and Handling System.

EEM - efficiency measure.

H_2O - water.

lb - pound.

LME - low mass emissions.

MMBtu - million British thermal units.

MW - megawatt.

MWe - megawatt electrical.

MWh - megawatt hour.

NO_X - nitrogen oxides.

O_2 - oxygen.

ORIS - Office of Regulatory Information Systems.

QA/QC - quality assurance/quality control.

ppm - parts per million.

scf - standard cubic feet per hour.

SO_2 - sulfur dioxide.

9VAC5-140-6040. Applicability.

A. Any fossil fuel-fired unit that serves an electricity generator with a nameplate capacity equal to or greater than 25 MWe shall be a CO_2 budget unit, and any source that includes one or more such units shall be a CO_2 budget source, subject to the requirements of this part.

B. Exempt from the requirements of this part is any fossil fuel power generating unit owned by an individual facility and located at that individual facility that generates electricity and heat from fossil fuel for the primary use of operation of the facility.

9VAC5-140-6050. Standard requirements.

A. Permit requirements shall be as follows.

1. The CO_2 authorized account representative of each CO_2 budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO_2 budget unit required to have an operating permit pursuant to 9VAC5-85 shall:

a. Submit to the department a complete CO_2 budget permit application under 9VAC5-140-6160 in accordance with the deadlines specified in 9VAC5-140-6150; and

b. Submit in a timely manner any supplemental information that the department determines is necessary in order to review the CO_2 budget permit application and issue or deny a CO_2 budget permit.

2. The owners and operators of each CO_2 budget source required to have an operating permit pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) and each CO_2 budget unit required to have an operating permit pursuant to 9VAC5-85 for the source shall have a CO_2 budget permit and operate the CO_2 budget source and the CO_2 budget unit at the source in compliance with such CO_2 budget permit.

B. Monitoring requirements shall be as follows.

1. The owners and operators and, to the extent applicable, the CO_2 authorized account representative of each CO_2 budget source and each CO_2 budget unit at the source shall comply with the monitoring requirements of Article 8 (9VAC5-140-6330 et seq.) of this part.

2. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part shall be used to determine compliance by the unit with the CO_2 requirements under subsection C of this section.

C. CO_2 requirements shall be as follows.

1. The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under 9VAC5-140-6260, as of the CO_2 allowance transfer deadline, in the source's compliance account in an amount not less than the total CO_2 emissions for the control period from all CO_2 budget units at the source, less the CO_2 allowances deducted to meet the requirements of subdivision 2 of this subsection, with respect to the previous two interim control periods as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

2. The owners and operators of each CO_2 budget source and each CO_2 budget unit at the source shall hold CO_2 allowances available for compliance deductions under 9VAC5-140-6260, as of the CO_2 allowance transfer deadline, in the source's compliance account in an amount not less than the total CO_2 emissions for the interim control period from all CO_2 budget units at the source multiplied by 0.50, as determined in accordance with Article 6 (9VAC5-140-6220 et seq.) and Article 8 (9VAC5-140-6330 et seq.) of this part.

3. Each ton of CO_2 emitted in excess of the CO_2 budget emissions limitation for a control period shall constitute a separate violation of this part and applicable state law.

4. Each ton of excess interim emissions shall constitute a separate violation of this part and applicable state law.

5. A CO_2 budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later of January 1, 2020, or the date on which the unit commences operation.

6. CO_2 allowances shall be held in, deducted from, or transferred among COATS accounts in accordance with Article 5 (9VAC5-140-6190 et seq.), Article 6 (9VAC5-140-6220 et seq.), and Article 7 (9VAC5-140-6300 et seq.) of this part.

7. A CO_2 allowance shall not be deducted, to comply with the requirements under subdivision 1 or 2 of this subsection, for a control period that ends prior to the year for which the CO_2 allowance was allocated.

8. A CO_2 allowance under the CO_2 Budget Trading Program is a limited authorization by the department to emit one ton of CO_2 in accordance with the CO_2 Budget Trading Program. No provision of the CO_2 Budget Trading Program, the CO_2 budget permit application, or the CO_2 budget permit or any provision of law shall be construed to limit the authority of the department or a participating state to terminate or limit such authorization.

9. A CO_2 allowance under the CO_2 Budget Trading Program does not constitute a property right.

D. The owners and operators of a CO_2 budget source that has excess emissions in any control period shall:

1. Forfeit the CO_2 allowances required for deduction under 9VAC5-140-6260 D 1; and

2. Pay any fine, penalty, or assessment or comply with any other remedy imposed under 9VAC5-140-6260 D 2.

E. Recordkeeping and reporting requirements shall be as follows:

1. Unless otherwise provided, the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source shall keep on site at the source each of the following documents for a period of 10 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 10 years, in writing by the department.

a. The account certificate of representation for the CO_2 authorized account representative for the source and each CO_2 budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 9VAC5-140-6110, provided that the certificate and documents shall be retained on site at the source beyond such 10-year period until such documents are superseded because of the submission of a new account certificate of representation changing the CO_2 authorized account representative.

b. All emissions monitoring information, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part and 40 CFR 75.57.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the CO_2 Budget Trading Program.

d. Copies of all documents used to complete a CO_2 budget permit application and any other submission under the CO_2 Budget Trading Program or to demonstrate compliance with the requirements of the CO_2 Budget Trading Program.

2. The CO_2 authorized account representative of a CO_2 budget source and each CO_2 budget unit at the source shall submit the reports and compliance certifications required under the CO_2 Budget Trading Program, including those under Article 4 (9VAC5-140-6170 et seq.) of this part.

F. Liability requirements shall be as follows.

1. No permit revision shall excuse any violation of the requirements of the CO_2 Budget Trading Program that occurs prior to the date that the revision takes effect.

2. Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget source, including a provision applicable to the CO_2 authorized account representative of a CO_2 budget source, shall also apply to the owners and operators of such source and of the CO_2 budget units at the source.

3. Any provision of the CO_2 Budget Trading Program that applies to a CO_2 budget unit, including a provision applicable to the CO_2 authorized account representative of a CO_2 budget unit, shall also apply to the owners and operators of such unit.

G. No provision of the CO_2 Budget Trading Program, a CO_2 budget permit application, or a CO_2 budget permit shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the CO_2 authorized account representative of the CO_2 budget source or CO_2 budget unit from compliance with any other provisions of applicable state and federal law or regulations.

9VAC5-140-6060. Computation of time.

A. Unless otherwise stated, any time period scheduled, under the CO_2 Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

B. Unless otherwise stated, any time period scheduled, under the CO_2 Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

C. Unless otherwise stated, if the final day of any time period, under the CO_2 Budget Trading Program, falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

9VAC5-140-6070. Severability.

If any provision of this part, or its application to any particular person or circumstances, is held invalid, the remainder of this part, and the application thereof to other persons or circumstances, shall not be affected thereby.

Article 2
CO_2 Authorized Account Representative for CO_2 Budget Sources

9VAC5-140-6080. Authorization and responsibilities of the CO_2 authorized account representative.

A. Except as provided under 9VAC5-140-6090, each CO_2 budget source, including all CO_2 budget units at the source, shall have one and only one CO_2 authorized account representative, with regard to all matters under the CO_2 Budget Trading Program concerning the source or any CO_2 budget unit at the source.

B. The CO_2 authorized account representative of the CO_2 budget source shall be selected by an agreement binding on the owners and operators of the source and all CO_2 budget units at the source and must act in accordance with the certificate of representation under 9VAC5-140-6110.

C. Upon receipt by the department or its agent of a complete account certificate of representation under 9VAC5-140-6110, the CO_2 authorized account representative of the source shall represent and, by his representations, actions, inactions, or submissions, legally bind each owner and operator of the CO_2 budget source represented and each CO_2 budget unit at the source in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CO_2 authorized account representative by the department or a court regarding the source or unit.

D. No CO_2 budget permit shall be issued, and no COATS account shall be established for a CO_2 budget source, until the department or its agent has received a complete account certificate of representation under 9VAC5-140-6110 for a CO_2 authorized account representative of the source and the CO_2 budget units at the source.

E. Each submission under the CO_2 Budget Trading Program shall be submitted, signed, and certified by the CO_2 authorized account representative for each CO_2 budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CO_2 authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the CO_2 budget sources or CO_2 budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

F. The department or its agent will accept or act on a submission made on behalf of owners or operators of a CO_2 budget source or a CO_2 budget unit only if the submission has been made, signed, and certified in accordance with subsection E of this section.

9VAC5-140-6090. Alternate CO_2 authorized account representative.

A. An account certificate of representation may designate one and only one alternate CO_2 authorized account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the alternate CO_2 authorized account representative is selected shall include a procedure for authorizing the alternate CO_2 authorized account representative to act in lieu of the CO_2 authorized account representative.

B. Upon receipt by the department or its agent of a complete account certificate of representation under 9VAC5-140-6110, any representation, action, inaction, or submission by the alternate CO_2 authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.

C. Except in this section and 9VAC5-140-6080 A, 9VAC5-140-6100, 9VAC5-140-6110, and 9VAC5-140-6230, whenever the term "CO_2 authorized account representative" is used in this part, the term shall be construed to include the alternate CO_2 authorized account representative.

9VAC5-140-6100. Changing the CO_2 authorized account representatives and the alternate CO_2 authorized account representative; changes in the owners and operators.

A. The CO_2 authorized account representative may be changed at any time upon receipt by the department or its agent of a superseding complete account certificate of representation under 9VAC5-140-6110. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative or alternate CO_2 authorized account representative prior to the time and date when the department or its agent receives the superseding account certificate of representation shall be binding on the new CO_2 authorized account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.

B. The alternate CO_2 authorized account representative may be changed at any time upon receipt by the department or its agent of a superseding complete account certificate of representation under 9VAC5-140-6110. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous or alternate CO_2 authorized account representative or alternate CO_2 authorized account representative prior to the time and date when the department or its agent receives the superseding account certificate of representation shall be binding on the new alternate CO_2 authorized account representative and the owners and operators of the CO_2 budget source and the CO_2 budget units at the source.

C. Changes in the owners and operators shall be addressed as follows.

1. In the event a new owner or operator of a CO_2 budget source or a CO_2 budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any alternate CO_2 authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the department, as if the new owner or operator were included in such list.

2. Within 30 days following any change in the owners and operators of a CO_2 budget source or a CO_2 budget unit, including the addition of a new owner or operator, the CO_2 authorized account representative or alternate CO_2 authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

9VAC5-140-6110. Account certificate of representation.

A. A complete account certificate of representation for a CO_2 authorized account representative or an alternate CO_2 authorized account representative shall include the following elements in a format prescribed by the department or its agent:

1. Identification of the CO_2 budget source and each CO_2 budget unit at the source for which the account certificate of representation is submitted;

2. The name, address, email address, telephone number, and facsimile transmission number of the CO_2 authorized account representative and any alternate CO_2 authorized account representative;

3. A list of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source;

4. The following certification statement by the CO_2 authorized account representative and any alternate CO_2 authorized account representative: "I certify that I was selected as the CO_2 authorized account representative or alternate CO_2 authorized account representative, as applicable, by an agreement binding on the owners and operators of the CO_2 budget source and each CO_2 budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO_2 Budget Trading Program on behalf of the owners and operators of the CO_2 budget source and of each CO_2 budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department or a court regarding the source or unit."; and

5. The signature of the CO_2 authorized account representative and any alternate CO_2 authorized account representative and the dates signed.

B. Unless otherwise required by the department or its agent, documents of agreement referred to in the account certificate of representation shall not be submitted to the department or its agent. Neither the department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9VAC5-140-6120. Objections concerning the CO_2 authorized account representative.

A. Once a complete account certificate of representation under 9VAC5-140-6110 has been submitted and received, the department and its agent will rely on the account certificate of representation unless and until the department or its agent receives a superseding complete account certificate of representation under 9VAC5-140-6110.

B. Except as provided in 9VAC5-140-6100 A or B, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO_2 authorized account representative shall affect any representation, action, inaction, or submission of the CO_2 authorized account representative or the finality of any decision or order by the department or its agent under the CO_2 Budget Trading Program.

C. Neither the department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CO_2 authorized account representative, including private legal disputes concerning the proceeds of CO_2 allowance transfers.

9VAC5-140-6130. Delegation by CO_2 authorized account representative and alternate CO_2 authorized account representative.

A. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.

B. An alternate CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent under this part.

C. To delegate authority to make an electronic submission to the department or its agent in accordance with subsections A and B of this section, the CO_2 authorized account representative or alternate CO_2 authorized account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

1. The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or alternate CO_2 authorized account representative;

2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "electronic submission agent";

3. For each such natural person, a list of the type of electronic submissions under subsection A or B of this section for which authority is delegated to him; and

4. The following certification statement by such CO_2 authorized account representative or alternate CO_2 authorized account representative: "I agree that any electronic submission to the department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO_2 authorized account representative or alternate CO_2 authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6130 D shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6130 D, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under 9VAC5-140-6130 is terminated."

D. A notice of delegation submitted under subsection C of this section shall be effective, with regard to the CO_2 authorized account representative or alternate CO_2 authorized account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or alternate CO_2 authorized account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

E. Any electronic submission covered by the certification in subdivision C 4 of this section and made in accordance with a notice of delegation effective under subsection D of this section shall be deemed to be an electronic submission by the CO_2 authorized account representative or alternate CO_2 authorized account representative submitting such notice of delegation.

F. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to review information in the CO_2 allowance tracking system under this part.

G. An alternate CO_2 authorized account representative may delegate, to one or more natural persons, his authority to review information in the CO_2 allowance tracking system under this part.

H. To delegate authority to review information in the CO_2 allowance tracking system in accordance with subsections F and G of this section, the CO_2 authorized account representative or alternate CO_2 authorized account representative, as appropriate, must submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

1. The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or alternate CO_2 authorized account representative;

2. The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as the "reviewer";

3. For each such natural person, a list of the type of information under subsection F or G of this section for which authority is delegated to him; and

4. The following certification statement by such CO_2 authorized account representative or alternate CO_2 authorized account representative: "I agree that any information that is reviewed by a natural person identified in this notice of delegation and of a type listed for such information accessible by the reviewer in this notice of delegation and that is made when I am a CO_2 authorized account representative or alternate CO_2 authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under subsection I of this section shall be deemed to be a reviewer by me. Until this notice of delegation is superseded by another notice of delegation under subsection I of this section, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under this section is terminated."

I. A notice of delegation submitted under subsection H of this section shall be effective, with regard to the CO_2 authorized account representative or alternate CO_2 authorized account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or alternate CO_2 authorized account representative as appropriate. The superseding notice of delegation may replace any previously identified reviewer, add a new reviewer, or eliminate entirely any delegation of authority.

Article 3
Permits

9VAC5-140-6140. CO_2 budget permit requirements.

A. Each CO_2 budget source shall have a permit issued by the department pursuant to 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

B. Each CO_2 budget permit shall contain all applicable CO_2 Budget Trading Program requirements and shall be a complete and distinguishable portion of the permit under subsection A of this section.

9VAC5-140-6150. Submission of CO_2 budget permit applications.

For any CO_2 budget source, the CO_2 authorized account representative shall submit a complete CO_2 budget permit application under 9VAC5-140-6160 covering such CO_2 budget source to the department by the later of January 1, 2020, or 12 months before the date on which the CO_2 budget source, or a new unit at the source, commences operation.

9VAC5-140-6160. Information requirements for CO_2 budget permit applications.

A complete CO_2 budget permit application shall include the following elements concerning the CO_2 budget source for which the application is submitted, in a format prescribed by the department:

1. Identification of the CO_2 budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration of the U.S. Department of Energy if applicable;

2. Identification of each CO_2 budget unit at the CO_2 budget source; and

3. The standard requirements under 9VAC5-140-6050.

Article 4
Compliance Certification

9VAC5-140-6170. Compliance certification report.

A. For each control period in which a CO_2 budget source is subject to the CO_2 requirements of 9VAC5-140-6050 C, the CO_2 authorized account representative of the source shall submit to the department by March 1 following the relevant control period, a compliance certification report. A compliance certification report is not required as part of the compliance obligation during an interim control period.

B. The CO_2 authorized account representative shall include in the compliance certification report under subsection A of this section the following elements, in a format prescribed by the department:

1. Identification of the source and each CO_2 budget unit at the source;

2. At the CO_2 authorized account representative's option, the serial numbers of the CO_2 allowances that are to be deducted from the source's compliance account under 9VAC5-140-6260 for the control period; and

3. The compliance certification under subsection C of this section.

C. In the compliance certification report under subsection A of this section, the CO_2 authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the CO_2 budget units at the source in compliance with the CO_2 Budget Trading Program, whether the source and each CO_2 budget unit at the source for which the compliance certification is submitted was operated during the calendar years covered by the report in compliance with the requirements of the CO_2 Budget Trading Program, including:

1. Whether the source was operated in compliance with the CO_2 requirements of 9VAC5-140-6050 C;

2. Whether the monitoring plan applicable to each unit at the source has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute CO_2 emissions to the unit, in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part;

3. Whether all the CO_2 emissions from the units at the source were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

4. Whether the facts that form the basis for certification under Article 8 (9VAC5-140-6330 et seq.) of this part of each monitor at each unit at the source, or for using an excepted monitoring method or alternative monitoring method approved under Article 8 (9VAC5-140-6330 et seq.) of this part, if any, have changed; and

5. If a change is required to be reported under subdivision 4 of this subsection, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

9VAC5-140-6180. Action on compliance certifications.

A. The department or its agent may review and conduct independent audits concerning any compliance certification or any other submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

B. The department or its agent may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on the information in the compliance certifications or other submissions, as adjusted under subsection A of this section.

Article 5
CO_2 Allowance Allocations

Editor's Note: Two versions of 9VAC5-140-6190 are provided for comment. The board seeks comment on whether the base budget should be 33 million tons or 34 million tons, with corresponding 3.0% per year reductions. The first version (Version 1) represents a 33 million ton base budget, and the second version (Version 2) represents a 34 million ton base budget.

9VAC5-140-6190. Base budgets.

Version 1, 33 million ton base budget:

A. The Virginia CO_2 Budget Trading Program base budget shall be as follows:

1. For 2020, the Virginia CO_2 Budget Trading Program base budget is 33 million tons.

2. For 2021, the Virginia CO_2 Budget Trading Program base budget is 32.01 million tons.

3. For 2022, the Virginia CO_2 Budget Trading Program base budget is 31.02 million tons.

4. For 2023, the Virginia CO_2 Budget Trading Program base budget is 30.03 million tons.

5. For 2024, the Virginia CO_2 Budget Trading Program base budget is 29.04 million tons.

6. For 2025, the Virginia CO_2 Budget Trading Program base budget is 28.05 million tons.

7. For 2026, the Virginia CO_2 Budget Trading Program base budget is 27.06 million tons.

8. For 2027, the Virginia CO_2 Budget Trading Program base budget is 26.07 million tons.

9. For 2028, the Virginia CO_2 Budget Trading Program base budget is 25.08 million tons.

10. For 2029, the Virginia CO_2 Budget Trading Program base budget is 24.09 million tons.

11. For 2030, the Virginia CO_2 Budget Trading Program base budget is 23.10 million tons.

B. The department will allocate conditional allowances to CO_2 budget units and to DMME. After a conditional allowance has been consigned in an auction by a CO_2 budget unit and the holder of a public contract with DMME as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, the conditional allowance becomes an allowance to be used for compliance purposes.

C. For 2031 and each succeeding calendar year, the Virginia CO_2 Budget Trading Program base budget is 23.10 million tons.

Version 2, 34 million ton base budget:

A. The Virginia CO_2 Budget Trading Program base budget shall be as follows:

1. For 2020, the Virginia CO_2 Budget Trading Program base budget is 34 million tons.

2. For 2021, the Virginia CO_2 Budget Trading Program base budget is 32.98 million tons.

3. For 2022, the Virginia CO_2 Budget Trading Program base budget is 31.96 million tons.

4. For 2023, the Virginia CO_2 Budget Trading Program base budget is 30.94 million tons.

5. For 2024, the Virginia CO_2 Budget Trading Program base budget is 29.92 million tons.

6. For 2025, the Virginia CO_2 Budget Trading Program base budget is 28.90 million tons.

7. For 2026, the Virginia CO_2 Budget Trading Program base budget is 27.88 million tons.

8. For 2027, the Virginia CO_2 Budget Trading Program base budget is 26.86 million tons.

9. For 2028, the Virginia CO_2 Budget Trading Program base budget is 25.84 million tons.

10. For 2029, the Virginia CO_2 Budget Trading Program base budget is 24.82 million tons.

11. For 2030, the Virginia CO_2 Budget Trading Program base budget is 23.80 million tons.

B. The department will allocate conditional allowances to CO_2 budget units and to DMME. After a conditional allowance has been consigned in an auction by a CO_2 budget unit and the holder of a public contract with DMME as specified under Article 9 (9VAC5-140-6410 et seq.) of this part, the conditional allowance becomes an allowance to be used for compliance purposes.

C. For 2031 and each succeeding calendar year, the Virginia CO_2 Budget Trading Program base budget is 23.80 million tons.

9VAC5-140-6200. Undistributed and unsold CO_2 allowances.

A. The department may retire undistributed CO_2 allowances at the end of each control period.

B. The department may retire unsold CO_2 allowances at the end of each control period.

Editor's Note: Two versions of 9VAC5-140-6210 are provided for comment. The board seeks comment on whether the base budget should be 33 million tons or 34 million tons, with corresponding 3.0% per year reductions. The first version (Version 1) represents a 33 million ton base budget, and the second version (Version 2) represents a 34 million ton base budget.

9VAC5-140-6210. CO_2 allowance allocations.

Version 1, 33 million ton base budget:

A. The department will allocate 95% of the Virginia CO_2 Budget Trading Program base budget to CO_2 budget sources to be consigned to auction to the Virginia Consignment Auction Account.

B. The department will allocate 5.0% of the Virginia CO_2 Budget Trading Program base budget to DMME to be consigned to auction by DMME to assist the department for the abatement and control of air pollution, specifically, CO_2.

C. For allocation years 2020 through 2031, the Virginia CO_2 Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO_2 CCR allowances.

D. The cost containment reserve (CCR) allocation shall be managed as follows. The department will allocate CO_2 CCR allowances, separate from and additional to the Virginia CO_2 Budget Trading Program base budget set forth in 9VAC5-140-6190, to the Virginia Auction Account. The CCR allocation is for the purpose of containing the cost of CO_2 allowances. The department will allocate CO_2 CCR allowances as follows.

1. The department will initially allocate 3.3 million CO_2 CCR allowances for calendar year 2020.

2. On or before January 1, 2021, and each year thereafter, the department will allocate current vintage year CCR allowances equal to the quantity in Table 140-5A, and withdraw the number of CO_2 CCR allowances that remain in the Virginia Auction Account at the end of the prior calendar year.

Table 140-5A
CCR Allowances from 2021 Forward

2021	3.201
2022	3.102
2023	3.003
2024	2.904
2025	2.805
2026	2.706
2027	2.607
2028	2.508
2029	2.409
2030 and each year thereafter	2.310

E. Annual base budgets as described in subsections A and B of this section may be decreased in any year as necessary to account for transfers to the Virginia Emission Containment Reserve (ECR) account and adjustments for banked allowances. The department will convert and transfer any CO_2 allowances that have been withheld from any auction in the prior year into the Virginia ECR account. The ECR withholding is for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs. The department will withhold CO_2 ECR allowances as follows:

1. If the condition in 9VAC5-140-6420 D 1 is met at an auction, then the maximum number of CO_2 ECR allowances that will be withheld from that auction will be equal to the quantity shown in Table 140-5B minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR account.

Table 140-5B
ECR Allowances from 2021 Forward

2021	3.201
2022	3.102
2023	3.003
2024	2.904
2025	2.805
2026	2.706
2027	2.607
2028	2.508
2029	2.409
2030 and each year thereafter	2.310

2. Allowances that have been transferred into the Virginia ECR account shall not be withdrawn.

F. The adjustment for banked allowances shall be as follows. On March 15, 2021, the department will determine the third adjustment for banked allowances quantity for allocation years 2021 through 2025 through the application of the following formula:

TABA = ((TA – TAE)/5) x RS%

Where:

TABA is the adjustment for banked allowances quantity in tons.

TA, adjustment, is the total quantity of allowances of vintage years prior to 2021 held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program but not including accounts opened by participating states, as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019, and 2020 emissions from all CO_2 budget sources in all participating states, reported pursuant to CO_2 Budget Trading Program as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

RS% is Virginia budget divided by the regional budget.

G. CO_2 Budget Trading Program adjusted budgets for 2021 through 2025 shall be determined as follows. On April 15, 2021, the department will determine the Virginia CO_2 Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

AB = BB – TABA

Where:

AB is the Virginia CO_2 Budget Trading Program adjusted budget.

BB is the Virginia CO_2 Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

H. The department or its agent will publish the CO_2 trading program adjusted budgets for the 2021 through 2025 allocation years.

I. Timing requirements for CO_2 allowance allocations shall be as follows.

1. By May 1, 2019, the department will submit to RGGI, Inc., the CO_2 conditional allowance allocations, in a format prescribed by RGGI, Inc., and in accordance with 9VAC5-140-6215 A and B, for the initial control period, 2020.

2. By May 1, 2020, and May 1 of every third year thereafter, the department will submit to RGGI, Inc., the CO_2 allowance allocations, in a format prescribed by RGGI, Inc., for the applicable control period, and in accordance with 9VAC5-140-6215 A and B.

Version 2, 34 million ton base budget:

A. The department will allocate 95% of the Virginia CO_2 Budget Trading Program base budget to CO_2 budget sources to be consigned to auction to the Virginia Consignment Auction Account.

B. The department will allocate 5.0% of the Virginia CO_2 Budget Trading Program base budget to DMME to be consigned to auction by the holder of a public contract with DMME to assist the department for the abatement and control of air pollution, specifically CO_2.

C. For allocation years 2020 through 2031, the Virginia CO_2 Budget Trading Program adjusted budget shall be the maximum number of allowances available for allocation in a given allocation year, except for CO_2 CCR allowances.

D. The cost containment reserve (CCR) allocation shall be managed as follows. The department will allocate CO_2 CCR allowances, separate from and additional to the Virginia CO_2 Budget Trading Program base budget set forth in 9VAC5-140-6190, to the Virginia Auction Account. The CCR allocation is for the purpose of containing the cost of CO_2 allowances. The department will allocate CO_2 CCR allowances as follows.

1. The department will initially allocate 3.4 million CO_2 CCR allowances for calendar year 2020.

2. On or before January 1, 2021, and each year thereafter, the department will allocate current vintage year CCR allowances equal to the quantity in Table 140-5A, and withdraw the number of CO_2 CCR allowances that remain in the Virginia Auction Account at the end of the prior calendar year.

Table 140-5A
CCR Allowances from 2021 Forward

2021	3.298
2022	3.196
2023	3.094
2024	2.992
2025	2.890
2026	2.788
2027	2.686
2028	2.584
2029	2.482
2030 and each year thereafter	2.390

E. Annual base budgets as described in subsections A and B of this section may be decreased in any year as necessary to account for transfers to the Virginia Emission Containment Reserve (ECR) account and adjustments for banked allowances. The department will convert and transfer any CO_2 allowances that have been withheld from any auction in

the prior year into the Virginia ECR account. The ECR withholding is for the purpose of additional emission reduction in the event of lower than anticipated emission reduction costs. The department will withhold CO_2 ECR allowances as follows:

1. If the condition in 9VAC5-140-6420 D 1 is met at an auction, then the maximum number of CO_2 ECR allowances that will be withheld from that auction will be equal to the quantity shown in Table 140-5B minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR account.

Table 140-5B
ECR Allowances from 2021 Forward

2021	3.298
2022	3.196
2023	3.094
2024	2.992
2025	2.890
2026	2.788
2027	2.686
2028	2.584
2029	2.482
2030 and each year thereafter	2.390

2. Allowances that have been transferred into the Virginia ECR account shall not be withdrawn.

F. The adjustment for banked allowances shall be as follows. On March 15, 2021, the department will determine the third adjustment for banked allowances quantity for allocation years 2021 through 2025 through the application of the following formula:

TABA = ((TA – TAE)/5) x RS%

Where:

TABA is the adjustment for banked allowances quantity in tons.

TA, adjustment, is the total quantity of allowances of vintage years prior to 2021 held in general and compliance accounts, including compliance accounts established pursuant to the CO_2 Budget Trading Program but not including accounts opened by participating states, as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

TAE, adjustment emissions, is the total quantity of 2018, 2019, and 2020 emissions from all CO_2 budget sources in all participating states, reported pursuant to CO_2 Budget Trading Program as reflected in the CO_2 Allowance Tracking System on March 15, 2021.

RS% is Virginia budget divided by the regional budget.

G. CO_2 Budget Trading Program adjusted budgets for 2021 through 2025 shall be determined as follows. On April 15, 2021, the department will determine the Virginia CO_2 Budget Trading Program adjusted budgets for the 2021 through 2025 allocation years by the following formula:

AB = BB – TABA

Where:

AB is the Virginia CO_2 Budget Trading Program adjusted budget.

BB is the Virginia CO_2 Budget Trading Program base budget.

TABA is the adjustment for banked allowances quantity in tons.

H. The department or its agent will publish the CO_2 trading program adjusted budgets for the 2021 through 2025 allocation years.

I. Timing requirements for CO_2 allowance allocations shall be as follows:

1. By May 1, 2019, the department will submit to RGGI, Inc., the CO_2 conditional allowance allocations, in a format prescribed by RGGI, Inc., and in accordance with 9VAC5-140-6215 A and B, for the initial control period, 2020.

2. By May 1, 2020, and May 1 of every third year thereafter, the department will submit to RGGI, Inc., the CO_2 allowance allocations, in a format prescribed by RGGI, Inc., for the applicable control period, and in accordance with 9VAC5-140-6215 A and B.

9VAC5-140-6215. CO_2 allocation methodology.

A. The net-electric output in MWh used with respect to CO_2 allowance allocations under subsection B of this section for each CO_2 budget unit shall be:

1. For units operating on or before January 1, 2020, the average of the three amounts of the unit's net-electric output during 2016, 2017, and 2018 to determine allocations for the initial control period.

2. For all units operating in each control period after 2020, the average of the three amounts of the unit's total net-electric output during the three most recent years for which data are available prior to the start of the control period.

B. 1. For each control period beginning in 2020 and thereafter, the department will allocate to all CO_2 budget units

that have a net-electric output, as determined under subsection A of this section, a total amount of CO_2 conditional allowances equal to the CO_2 base budget.

2. The department will allocate CO_2 conditional allowances to each CO_2 budget unit under subdivision 1 of this subsection in an amount determined by multiplying the total amount of CO_2 allowances allocated under subdivision 1 of this subsection by the ratio of the baseline electrical output of such CO_2 budget unit to the total amount of baseline electrical output of all such CO_2 budget units and rounding to the nearest whole allowance as appropriate.

3. New CO_2 budget units will be allocated CO_2 conditional allowances once they have established electrical output data to be used in the conditional allowance allocation process.

C. For the purpose of the allocation process as described in subsections A and B of this section, CO_2 budget units shall report the unit's net-electric output to the department on a yearly basis as follows:

1. By March 1, 2019, each CO_2 budget unit shall report yearly net-electric output data during 2016, 2017, and 2018.

2. By March 1, 2020, and each year thereafter, each CO_2 budget unit shall report yearly net-electric output data for the previous year.

Article 6
CO_2 Allowance Tracking System

9VAC5-140-6220. CO_2 Allowance Tracking System accounts.

A. Consistent with 9VAC5-140-6230 A, the department or its agent will establish one compliance account for each CO_2 budget source. Allocations of CO_2 conditional allowances pursuant to Article 5 (9VAC5-140-6190 et seq.) of this part and deductions or transfers of CO_2 conditional allowances pursuant to 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the compliance accounts in accordance with this section.

B. Consistent with 9VAC5-140-6230 B, the department or its agent will establish, upon request, a general account for any person. Transfers of CO_2 allowances pursuant to Article 7 (9VAC5-140-6300 et seq.) of this part will be recorded in the general account in accordance with this article.

9VAC5-140-6230. Establishment of accounts.

A. Upon receipt of a complete account certificate of representation under 9VAC5-140-6110, the department or its agent will establish a conditional allowance account and a compliance account for each CO_2 budget source and a conditional compliance account for DMME for which the account certificate of representation was submitted.

B. General accounts shall operate as follows.

1. Any person may apply to open a general account for the purpose of holding and transferring CO_2 allowances. An application for a general account may designate one and only one CO_2 authorized account representative and one and only one alternate CO_2 authorized account representative who may act on behalf of the CO_2 authorized account representative. The agreement by which the alternate CO_2 authorized account representative is selected shall include a procedure for authorizing the alternate CO_2 authorized account representative to act in lieu of the CO_2 authorized account representative. A complete application for a general account shall be submitted to the department or its agent and shall include the following elements in a format prescribed by the department or its agent:

a. Name, address, email address, telephone number, and facsimile transmission number of the CO_2 authorized account representative and any alternate CO_2 authorized account representative;

b. At the option of the CO_2 authorized account representative, organization name and type of organization;

c. A list of all persons subject to a binding agreement for the CO_2 authorized account representative or any alternate CO_2 authorized account representative to represent their ownership interest with respect to the CO_2 allowances held in the general account;

d. The following certification statement by the CO_2 authorized account representative and any alternate CO_2 authorized account representative: "I certify that I was selected as the CO_2 authorized account representative or the CO_2 alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CO_2 Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the department or its agent or a court regarding the general account.";

e. The signature of the CO_2 authorized account representative and any alternate CO_2 authorized account representative and the dates signed; and

f. Unless otherwise required by the department or its agent, documents of agreement referred to in the application for a general account shall not be submitted

to the department or its agent. Neither the department nor its agent shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Authorization of the CO_2 authorized account representative shall be as follows:

a. Upon receipt by the department or its agent of a complete application for a general account under subdivision 1 of this subsection:

(1) The department or its agent will establish a general account for the person for whom the application is submitted.

(2) The CO_2 authorized account representative and any alternate CO_2 authorized account representative for the general account shall represent and, by his representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CO_2 allowances held in the general account in all matters pertaining to the CO_2 Budget Trading Program, notwithstanding any agreement between the CO_2 authorized account representative or any alternate CO_2 authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CO_2 authorized account representative or any alternate CO_2 authorized account representative by the department or its agent or a court regarding the general account.

(3) Any representation, action, inaction, or submission by any alternate CO_2 authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CO_2 authorized account representative.

b. Each submission concerning the general account shall be submitted, signed, and certified by the CO_2 authorized account representative or any alternate CO_2 authorized account representative for the persons having an ownership interest with respect to CO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CO_2 authorized account representative or any alternate CO_2 authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CO_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

c. The department or its agent will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision 2 b of this subsection.

3. Changing CO_2 authorized account representative and alternate CO_2 authorized account representative, and changes in persons with ownership interest, shall be accomplished as follows:

a. The CO_2 authorized account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous alternate CO_2 authorized account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new CO_2 authorized account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

b. The alternate CO_2 authorized account representative for a general account may be changed at any time upon receipt by the department or its agent of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CO_2 authorized account representative, or the previous alternate CO_2 authorized account representative, prior to the time and date when the department or its agent receives the superseding application for a general account shall be binding on the new alternate CO_2 authorized account representative and the persons with an ownership interest with respect to the CO_2 allowances in the general account.

c. In the event a new person having an ownership interest with respect to CO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representations, actions, inactions, and submissions of the CO_2 authorized account representative and any alternate CO_2 authorized account representative, and the decisions, orders, actions, and inactions of the department or its agent, as if the new person were included in such list.

d. Within 30 days following any change in the persons having an ownership interest with respect to CO_2 allowances in the general account, including the addition

or deletion of persons, the CO_2 authorized account representative or any alternate CO_2 authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CO_2 allowances in the general account to include the change.

4. Objections concerning CO_2 authorized account representative shall be governed as follows:

a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the department or its agent will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the department or its agent.

b. Except as provided in subdivisions 3 a and 3 b of this subsection, no objection or other communication submitted to the department or its agent concerning the authorization, or any representation, action, inaction, or submission of the CO_2 authorized account representative or any alternate CO_2 authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CO_2 authorized account representative or any alternate CO_2 authorized account representative or the finality of any decision or order by the department or its agent under the CO_2 Budget Trading Program.

c. Neither the department nor its agent will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CO_2 authorized account representative or any alternate CO_2 authorized account representative for a general account, including private legal disputes concerning the proceeds of CO_2 allowance transfers.

5. Delegation by CO_2 authorized account representative and alternate CO_2 authorized account representative shall be accomplished as follows:

a. A CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.

b. An alternate CO_2 authorized account representative may delegate, to one or more natural persons, his authority to make an electronic submission to the department or its agent provided for under this article and Article 7 (9VAC5-140-6300 et seq.) of this part.

c. To delegate authority to make an electronic submission to the department or its agent in accordance with subdivisions 5 a and 5 b of this subsection, the CO_2 authorized account representative or alternate CO_2 authorized account representative, as appropriate, shall submit to the department or its agent a notice of delegation, in a format prescribed by the department that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number of such CO_2 authorized account representative or alternate CO_2 authorized account representative;

(2) The name, address, email address, telephone number, and facsimile transmission number of each such natural person, referred to as "electronic submission agent";

(3) For each such natural person, a list of the type of electronic submissions under subdivision 5 c (1) or 5 c (2) of this subsection for which authority is delegated to him; and

(4) The following certification statement by such CO_2 authorized account representative or alternate CO_2 authorized account representative: "I agree that any electronic submission to the department or its agent that is by a natural person identified in this notice of delegation and of a type listed for such electronic submission agent in this notice of delegation and that is made when I am a CO_2 authorized account representative or alternate CO_2 authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d shall be deemed to be an electronic submission by me. Until this notice of delegation is superseded by another notice of delegation under 9VAC5-140-6230 B 5 d, I agree to maintain an email account and to notify the department or its agent immediately of any change in my email address unless all delegation authority by me under 9VAC5-140-6230 B 5 is terminated."

d. A notice of delegation submitted under subdivision 5 c of this subsection shall be effective, with regard to the CO_2 authorized account representative or alternate CO_2 authorized account representative identified in such notice, upon receipt of such notice by the department or its agent and until receipt by the department or its agent of a superseding notice of delegation by such CO_2 authorized account representative or alternate CO_2 authorized account representative as appropriate. The superseding notice of delegation may replace any previously identified electronic submission agent, add a new electronic submission agent, or eliminate entirely any delegation of authority.

e. Any electronic submission covered by the certification in subdivision 5 c (4) of this subsection and made in accordance with a notice of delegation effective under subdivision 5 d of this subsection shall be deemed to be an electronic submission by the CO_2 authorized account

representative or alternate CO_2 authorized account representative submitting such notice of delegation.

C. The department or its agent will assign a unique identifying number to each account established under subsection A or B of this section.

9VAC5-140-6240. CO_2 Allowance Tracking System responsibilities of CO_2 authorized account representative.

Following the establishment of a COATS account, all submissions to the department or its agent pertaining to the account, including submissions concerning the deduction or transfer of CO_2 allowances in the account, shall be made only by the CO_2 authorized account representative for the account.

9VAC5-140-6250. Recordation of CO_2 allowance allocations.

A. By January 1 of each calendar year, the department or its agent will record in the following accounts:

1. In each CO_2 budget source's and DMME's conditional allowance account, the CO_2 conditional allowances allocated to those sources and DMME by the department prior to being consigned to auction; and

2. In each CO_2 budget source's compliance account, the CO_2 allowances purchased at auction by CO_2 budget units at the source under 9VAC5-140-6210 A.

B. Each year the department or its agent will record CO_2 allowances, as allocated to the unit under Article 5 (9VAC5-140-6190 et seq.) of this part, in the compliance account for the year after the last year for which CO_2 allowances were previously allocated to the compliance account. Each year, the department or its agent will also record CO_2 allowances, as allocated under Article 5 (9VAC5-140-6190 et seq.) of this part, in an allocation set-aside for the year after the last year for which CO_2 allowances were previously allocated to an allocation set-aside.

C. Serial numbers for allocated CO_2 allowances shall be managed as follows. When allocating CO_2 allowances to and recording them in an account, the department or its agent will assign each CO_2 allowance a unique identification number that will include digits identifying the year for which the CO_2 allowance is allocated.

9VAC5-140-6260. Compliance.

A. CO_2 allowances that meet the following criteria are available to be deducted for a CO_2 budget source to comply with the CO_2 requirements of 9VAC5-140-6050 C for a control period or an interim control period.

1. The CO_2 allowances are of allocation years that fall within a prior control period, the same control period, or the same interim control period for which the allowances will be deducted.

2. The CO_2 allowances are held in the CO_2 budget source's compliance account as of the CO_2 allowance transfer deadline for that control period or interim control period or are transferred into the compliance account by a CO_2 allowance transfer correctly submitted for recordation under 9VAC5-140-6300 by the CO_2 allowance transfer deadline for that control period or interim control period.

3. The CO_2 allowances are not necessary for deductions for excess emissions for a prior control period under subsection D of this section.

B. Following the recordation, in accordance with 9VAC5-140-6310, of CO_2 allowance transfers submitted for recordation in the CO_2 budget source's compliance account by the CO_2 allowance transfer deadline for a control period or interim control period, the department or its agent will deduct CO_2 allowances available under subsection A of this section to cover the source's CO_2 emissions, as determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, for the control period or interim control period, as follows:

1. Until the amount of CO_2 allowances deducted equals the number of tons of total CO_2 emissions, or 0.50 times the number of tons of total CO_2 emissions for an interim control period, determined in accordance with Article 8 (9VAC5-140-6330 et seq.) of this part, from all CO_2 budget units at the CO_2 budget source for the control period or interim control period; or

2. If there are insufficient CO_2 allowances to complete the deductions in subdivision 1 of this subsection, until no more CO_2 allowances available under subsection A of this section remain in the compliance account.

C. Identification of available CO_2 allowances by serial number and default compliance deductions shall be managed as follows:

1. The CO_2 authorized account representative for a source's compliance account may request that specific CO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period or interim control period in accordance with subsection B or D of this section. Such identification shall be made in the compliance certification report submitted in accordance with 9VAC5-140-6170.

2. The department or its agent will deduct CO_2 allowances for a control period from the CO_2 budget source's compliance account, in the absence of an identification or in the case of a partial identification of available CO_2 allowances by serial number under subdivision 1 of this subsection, as follows: Any CO_2 allowances that are available for deduction under subdivision 1 of this subsection. CO_2 allowances shall be deducted in chronological order (i.e., CO_2 allowances from earlier allocation years shall be deducted before CO_2 allowances

from later allocation years). In the event that some, but not all, CO_2 allowances from a particular allocation year are to be deducted, CO_2 allowances shall be deducted by serial number, with lower serial number allowances deducted before higher serial number allowances.

D. Deductions for excess emissions shall be managed as follows.

1. After making the deductions for compliance under subsection B of this section, the department or its agent will deduct from the CO_2 budget source's compliance account a number of CO_2 allowances equal to three times the number of the source's excess emissions. In the event that a source has insufficient CO_2 allowances to cover three times the number of the source's excess emissions, the source shall be required to immediately transfer sufficient allowances into its compliance account.

2. Any CO_2 allowance deduction required under subdivision 1 of this subsection shall not affect the liability of the owners and operators of the CO_2 budget source or the CO_2 budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under applicable state law. The following guidelines will be followed in assessing fines, penalties, or other obligations:

a. For purposes of determining the number of days of violation, if a CO_2 budget source has excess emissions for a control period, each day in the control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

b. Each ton of excess emissions is a separate violation.

c. For purposes of determining the number of days of violation, if a CO_2 budget source has excess interim emissions for an interim control period, each day in the interim control period constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

d. Each ton of excess interim emissions is a separate violation.

3. The propriety of the department's determination that a CO_2 budget source had excess emissions and the concomitant deduction of CO_2 allowances from that CO_2 budget source's account may be later challenged in the context of the initial administrative enforcement, or any civil or criminal judicial action arising from or encompassing that excess emissions violation. The commencement or pendency of any administrative enforcement, or civil or criminal judicial action arising from or encompassing that excess emissions violation will not act to prevent the department or its agent from initially deducting the CO_2 allowances resulting from the department's original determination that the relevant CO_2 budget source has had excess emissions. Should the department's determination of the existence or extent of the CO_2 budget source's excess emissions be revised either by a settlement or final conclusion of any administrative or judicial action, the department will act as follows:

a. In any instance where the department's determination of the extent of excess emissions was too low, the department will take further action under subdivisions 1 and 2 of this subsection to address the expanded violation.

b. In any instance where the department's determination of the extent of excess emissions was too high, the department will distribute to the relevant CO_2 budget source a number of CO_2 allowances equaling the number of CO_2 allowances deducted which are attributable to the difference between the original and final quantity of excess emissions. Should such CO_2 budget source's compliance account no longer exist, the CO_2 allowances will be provided to a general account selected by the owner or operator of the CO_2 budget source from which they were originally deducted.

E. The department or its agent will record in the appropriate compliance account all deductions from such an account pursuant to subsections B and D of this section.

F. Action by the department on submissions shall be as follows:

1. The department may review and conduct independent audits concerning any submission under the CO_2 Budget Trading Program and make appropriate adjustments of the information in the submissions.

2. The department may deduct CO_2 allowances from or transfer CO_2 allowances to a source's compliance account based on information in the submissions, as adjusted under subdivision 1 of this subsection.

9VAC5-140-6270. Banking.

Each CO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CO_2 allowance is deducted or transferred under 9VAC5-140-6180, 9VAC5-140-6260, 9VAC5-140-6280, or Article 7 (9VAC5-140-6300 et seq.) of this part.

9VAC5-140-6280. Account error.

The department or its agent may, at its sole discretion and on its own motion, correct any error in any COATS account. Within 10 business days of making such correction, the department or its agent will notify the CO_2 authorized account representative for the account.

9VAC5-140-6290. Closing of general accounts.

A. A CO_2 authorized account representative of a general account may instruct the department or its agent to close the account by submitting a statement requesting deletion of the account from the COATS and by correctly submitting for recordation under 9VAC5-140-6300 a CO_2 allowance transfer of all CO_2 allowances in the account to one or more other COATS accounts.

B. If a general account shows no activity for a period of one year or more and does not contain any CO_2 allowances, the department or its agent may notify the CO_2 authorized account representative for the account that the account will be closed in the COATS 30 business days after the notice is sent. The account will be closed after the 30-day period unless before the end of the 30-day period the department or its agent receives a correctly submitted transfer of CO_2 allowances into the account under 9VAC5-140-6300 or a statement submitted by the CO_2 authorized account representative demonstrating to the satisfaction of the department or its agent good cause as to why the account should not be closed. The department or its agent will have sole discretion to determine if the owner or operator of the unit demonstrated that the account should not be closed.

Article 7
CO_2 Allowance Transfers

9VAC5-140-6300. Submission of CO_2 allowance transfers.

The CO_2 authorized account representatives seeking recordation of a CO_2 allowance transfer shall submit the transfer to the department or its agent. To be considered correctly submitted, the CO_2 allowance transfer shall include the following elements in a format specified by the department or its agent:

1. The numbers identifying both the transferor and transferee accounts;

2. A specification by serial number of each CO_2 allowance to be transferred;

3. The printed name and signature of the CO_2 authorized account representative of the transferor account and the date signed;

4. The date of the completion of the last sale or purchase transaction for the allowance, if any; and

5. The purchase or sale price of the allowance that is the subject of a sale or purchase transaction under subdivision 4 of this section.

9VAC5-140-6310. Recordation.

A. Within five business days of receiving a CO_2 allowance transfer, except as provided in subsection B of this section, the department or its agent will record a CO_2 allowance transfer by moving each CO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

1. The transfer is correctly submitted under 9VAC5-140-6300; and

2. The transferor account includes each CO_2 allowance identified by serial number in the transfer.

B. A CO_2 allowance transfer into or out of a compliance account that is submitted for recordation following the CO_2 allowance transfer deadline and that includes any CO_2 allowances that are of allocation years that fall within a control period prior to or the same as the control period to which the CO_2 allowance transfer deadline applies will not be recorded until after completion of the process pursuant to 9VAC5-140-6260 B.

C. Where a CO_2 allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the department or its agent will not record such transfer.

9VAC5-140-6320. Notification.

A. Within five business days of recordation of a CO_2 allowance transfer under 9VAC5-140-6310, the department or its agent will notify each party to the transfer. Notice will be given to the CO_2 authorized account representatives of both the transferor and transferee accounts.

B. Within 10 business days of receipt of a CO_2 allowance transfer that fails to meet the requirements of 9VAC5-140-6310 A, the department or its agent will notify the CO_2 authorized account representatives of both accounts subject to the transfer of (i) a decision not to record the transfer and (ii) the reasons for such nonrecordation.

C. Nothing in this section shall preclude the submission of a CO_2 allowance transfer for recordation following notification of nonrecordation.

Article 8
Monitoring, Reporting, and Recordkeeping

9VAC5-140-6330. General requirements.

A. The owners and operators, and to the extent applicable, the CO_2 authorized account representative of a CO_2 budget unit shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section and all applicable sections of 40 CFR Part 75. Where referenced in this article, the monitoring requirements of 40 CFR Part 75 shall be adhered to in a manner consistent with the purpose of monitoring and reporting CO_2 mass emissions pursuant to this part. For purposes of complying with such requirements, the definitions in 9VAC5-140-6020 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "CEMS" in 40 CFR Part 75 shall be replaced by the terms "CO_2 budget unit," "CO_2 authorized account representative," and "CEMS," respectively, as

defined in 9VAC5-140-6020. For units not subject to an acid rain emissions limitation, the term "administrator" in 40 CFR Part 75 shall be replaced with "the department or its agent." Owners or operators of a CO_2 budget unit who monitor a non-CO_2 budget unit pursuant to the common, multiple, or bypass stack procedures in 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16 (b)(2)(ii)(B) pursuant to 40 CFR 75.13, for purposes of complying with this part, shall monitor and report CO_2 mass emissions from such non-CO_2 budget unit according to the procedures for CO_2 budget units established in this article.

B. The owner or operator of each CO_2 budget unit shall meet the following general requirements for installation, certification, and data accounting.

1. Install all monitoring systems necessary to monitor CO_2 mass emissions in accordance with 40 CFR Part 75, except for equation G-1. Equation G-1 in Appendix G shall not be used to determine CO_2 emissions under this part. This may require systems to monitor CO_2 concentration, stack gas flow rate, O_2 concentration, heat input, and fuel flow rate.

2. Successfully complete all certification tests required under 9VAC5-140-6340 and meet all other requirements of this section and 40 CFR Part 75 applicable to the monitoring systems under subdivision 1 of this subsection.

3. Record, report, and quality-assure the data from the monitoring systems under subdivision 1 of this subsection.

C. The owner or operator shall meet the monitoring system certification and other requirements of subsection B of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under subdivision B 1 of this section on and after the following dates:

1. The owner or operator of a CO_2 budget unit, except for a CO_2 budget unit under subdivision 2 of this subsection, shall comply with the requirements of this section by January 1, 2020.

2. The owner or operator of a CO_2 budget unit that commences commercial operation July 1, 2020, shall comply with the requirements of this section by (i) January 1, 2021, or (ii) the earlier of 90 unit operating days after the date on which the unit commences commercial operation, or 180 calendar days after the date on which the unit commences commercial operation.

3. For the owner or operator of a CO_2 budget unit for which construction of a new stack or flue installation is completed after the applicable deadline under subdivision 1 or 2 of this subsection by the earlier of (i) 90 unit operating days after the date on which emissions first exit to the atmosphere through the new stack or flue or (ii) 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

D. Data shall be reported as follows:

1. Except as provided in subdivision 2 of this subsection, the owner or operator of a CO_2 budget unit that does not meet the applicable compliance date set forth in subsection C of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report maximum potential, or as appropriate minimum potential, values for CO_2 concentration, CO_2 emissions rate, stack gas moisture content, fuel flow rate, heat input, and any other parameter required to determine CO_2 mass emissions in accordance with 40 CFR 75.31(b)(2) or (c)(3) or Section 2.4 of Appendix D of 40 CFR Part 75 as applicable.

2. The owner or operator of a CO_2 budget unit that does not meet the applicable compliance date set forth in subdivision C 3 of this section for any monitoring system under subdivision B 1 of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in Subpart D, or Appendix D of 40 CFR Part 75, in lieu of the maximum potential, or as appropriate minimum potential, values for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under subdivision C 3 of this section.

a. CO_2 budget units subject to an acid rain emissions limitation or CSAPR NO_X Ozone Season Trading Program that qualify for the optional SO_2, NO_X, and CO_2 (for acid rain) or NO_X (for CSAPR NO_X Ozone Season Trading Program) emissions calculations for low mass emissions (LME) units under 40 CFR 75.19 and report emissions for such programs using the calculations under 40 CFR 75.19, shall also use the CO_2 emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

b. CO_2 budget units subject to an acid rain emissions limitation that do not qualify for the optional SO_2, NO_X, and CO_2 (for acid rain) or NO_X (for CSAPR NO_X Ozone Season Trading Program) emissions calculations for LME units under 40 CFR 75.19 shall not use the CO_2 emissions calculations for LME units under 40 CFR 75.19 for purposes of compliance with these regulations.

c. CO_2 budget units not subject to an acid rain emissions limitation shall qualify for the optional CO_2 emissions calculation for LME units under 40 CFR 75.19, provided that they emit less than 100 tons of NO_X annually and no more than 25 tons of SO_2 annually.

3. The owner or operator of a CO_2 budget unit shall report net-electric output data to the department as required by Article 5 (9VAC5-140-6190 et seq.) of this part.

E. Prohibitions shall be as follows.

1. No owner or operator of a CO_2 budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required CEMS without having obtained prior written approval in accordance with 9VAC5-140-6380.

2. No owner or operator of a CO_2 budget unit shall operate the unit so as to discharge, or allow to be discharged, CO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this article and 40 CFR Part 75.

3. No owner or operator of a CO_2 budget unit shall disrupt the CEMS, any portion thereof, or any other approved emissions monitoring method, and thereby avoid monitoring and recording CO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article and 40 CFR Part 75.

4. No owner or operator of a CO_2 budget unit shall retire or permanently discontinue use of the CEMS, any component thereof, or any other approved emissions monitoring system under this article, except under any one of the following circumstances:

a. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article and 40 CFR Part 75, by the department for use at that unit that provides emissions data for the same pollutant or parameter as the retired or discontinued monitoring system; or

b. The CO_2 authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 9VAC5-140-6340 D 3 a.

9VAC5-140-6340. Initial certification and recertification procedures.

A. The owner or operator of a CO_2 budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under 9VAC5-140-6330 B 1 if the following conditions are met:

1. The monitoring system has been previously certified in accordance with 40 CFR Part 75; and

2. The applicable quality-assurance and quality-control requirements of 40 CFR 75.21 and Appendix B and Appendix D of 40 CFR Part 75 are fully met for the certified monitoring system described in subdivision 1 of this subsection.

B. The recertification provisions of this section shall apply to a monitoring system under 9VAC5-140-6330 B 1 exempt from initial certification requirements under subsection A of this section.

C. Notwithstanding subsection A of this section, if the administrator has previously approved a petition under 40 CFR 75.72(b)(2)(ii), or 40 CFR 75.16(b)(2)(ii)(B) as pursuant to 40 CFR 75.13 for apportioning the CO_2 emissions rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative requirement in 40 CFR Part 75, the CO_2 authorized account representative shall submit the petition to the department under 9VAC5-140-6380 A to determine whether the approval applies under this program.

D. Except as provided in subsection A of this section, the owner or operator of a CO_2 budget unit shall comply with the following initial certification and recertification procedures for a CEMS and an excepted monitoring system under Appendix D of 40 CFR Part 75 and under 9VAC5-140-6330 B 1. The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology in 40 CFR 75.19 or that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 shall comply with the procedures in subsection E or F of this section, respectively.

1. For initial certification, the owner or operator shall ensure that each CEMS required under 9VAC5-140-6330 B 1, which includes the automated DAHS, successfully completes all of the initial certification testing required under 40 CFR 75.20 by the applicable deadlines specified in 9VAC5-140-6330 C. In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this article in a location where no such monitoring system was previously installed, initial certification in accordance with 40 CFR 75.20 is required.

2. For recertification, the following requirements shall apply.

a. Whenever the owner or operator makes a replacement, modification, or change in a certified CEMS under 9VAC5-140-6330 B 1 that the administrator or the department determines significantly affects the ability of the system to accurately measure or record CO_2 mass emissions or to meet the quality-assurance and quality-control requirements of 40 CFR 75.21 or Appendix B to 40 CFR Part 75, the owner or operator shall recertify the monitoring system according to 40 CFR 75.20(b).

b. For systems using stack measurements such as stack flow, stack moisture content, CO_2 or O_2 monitors, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the administrator or the department determines to significantly change the flow or concentration profile, the owner or operator shall recertify the CEMS according to 40 CFR 75.20(b). Examples of changes that require recertification include

replacement of the analyzer, change in location or orientation of the sampling probe or site, or change of flow rate monitor polynomial coefficients.

3. The approval process for initial certifications and recertification shall be as follows: Subdivisions 3 a through 3 d of this subsection apply to both initial certification and recertification of a monitoring system under 9VAC5-140-6330 B 1. For recertifications, replace the words "certification" and "initial certification" with the word "recertification," replace the word "certified" with "recertified," and proceed in the manner prescribed in 40 CFR 75.20(b)(5) and (g)(7) in lieu of subdivision 3 e of this subsection.

a. The CO_2 authorized account representative shall submit to the department or its agent, the appropriate EPA Regional Office and the administrator a written notice of the dates of certification in accordance with 9VAC5-140-6360.

b. The CO_2 authorized account representative shall submit to the department or its agent a certification application for each monitoring system. A complete certification application shall include the information specified in 40 CFR 75.63.

c. The provisional certification date for a monitor shall be determined in accordance with 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the CO_2 Budget Trading Program for a period not to exceed 120 days after receipt by the department of the complete certification application for the monitoring system or component thereof under subdivision 3 b of this subsection. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of 40 CFR Part 75, will be considered valid quality-assured data, retroactive to the date and time of provisional certification, provided that the department does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the department.

d. The department will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision 3 b of this subsection. In the event the department does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the CO_2 Budget Trading Program.

(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the department will issue a written notice of approval of the certification application within 120 days of receipt.

(2) If the certification application is incomplete, then the department will issue a written notice of incompleteness that sets a reasonable date by which the CO_2 authorized account representative shall submit the additional information required to complete the certification application. If the CO_2 authorized account representative does not comply with the notice of incompleteness by the specified date, then the department may issue a notice of disapproval under subdivision 3 d (3) of this subsection. The 120-day review period shall not begin before receipt of a complete certification application.

(3) If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of 40 CFR Part 75, or if the certification application is incomplete and the requirement for disapproval under subdivision 3 d (2) of this subsection is met, then the department will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the department and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subdivision 3 e of this subsection for each monitoring system or component thereof, which is disapproved for initial certification.

(4) The department may issue a notice of disapproval of the certification status of a monitor in accordance with 9VAC5-140-6350 B.

e. If the department issues a notice of disapproval of a certification application under subdivision 3 d (3) of this subsection or a notice of disapproval of certification status under subdivision 3 d (3) of this subsection, then:

(1) The owner or operator shall substitute the following values for each disapproved monitoring system, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under 40 CFR 75.20(a)(5)(i) or 40 CFR 75.20(g)(7): (i) for units using or intending to monitor for CO_2 mass emissions using heat input or for units using the low mass emissions excepted methodology under 40 CFR 75.19, the maximum potential hourly heat input of the unit; or (ii) for units intending to monitor for CO_2 mass emissions using a CO_2 pollutant concentration monitor and a flow monitor, the maximum potential concentration of CO_2 and the maximum potential flow rate of the unit under Section 2.1 of Appendix A of 40 CFR Part 75.

(2) The CO_2 authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and 3 b of this subsection; and

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the department's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

E. The owner or operator of a unit qualified to use the low mass emissions excepted methodology under 9VAC5-140-6330 D 3 shall meet the applicable certification and recertification requirements of 40 CFR 75.19(a)(2), 40 CFR 75.20(h), and this section. If the owner or operator of such a unit elects to certify a fuel flow meter system for heat input determinations, the owner or operator shall also meet the certification and recertification requirements in 40 CFR 75.20(g).

F. The CO_2 authorized account of each unit for which the owner or operator intends to use an alternative monitoring system approved by the administrator and, if applicable, the department under Subpart E of 40 CFR Part 75 shall comply with the applicable notification and application procedures of 40 CFR 75.20(f).

9VAC5-140-6350. Out-of-control periods.

A. Whenever any monitoring system fails to meet the quality assurance/quality control (QA/QC) requirements or data validation requirements of 40 CFR Part 75, data shall be substituted using the applicable procedures in Subpart D or Appendix D of 40 CFR Part 75.

B. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under 9VAC5-140-6340 or the applicable provisions of 40 CFR Part 75, both at the time of the initial certification or recertification application submission and at the time of the audit, the department or administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this subsection, an audit shall be either a field audit or an audit of any information submitted to the department or the administrator. By issuing the notice of disapproval, the department or administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the initial certification or recertification procedures in 9VAC5-140-6340 for each disapproved monitoring system.

9VAC5-140-6360. Notifications.

The CO_2 authorized account representative for a CO_2 budget unit shall submit written notice to the department and the administrator in accordance with 40 CFR 75.61.

9VAC5-140-6370. Recordkeeping and reporting.

A. The CO_2 authorized account representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under 40 CFR 75.73, and the requirements of 9VAC5-140-6080 E.

B. The owner or operator of a CO_2 budget unit shall submit a monitoring plan in the manner prescribed in 40 CFR 75.62.

C. The CO_2 authorized account representative shall submit an application to the department within 45 days after completing all CO_2 monitoring system initial certification or recertification tests required under 9VAC5-140-6340, including the information required under 40 CFR 75.63 and 40 CFR 75.53(e) and (f).

D. The CO_2 authorized account representative shall submit quarterly reports, as follows:

1. The CO_2 authorized account representative shall report the CO_2 mass emissions data for the CO_2 budget unit, in an electronic format prescribed by the department unless otherwise prescribed by the department for each calendar quarter.

2. The CO_2 authorized account representative shall submit each quarterly report to the department or its agent within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR Part 75 and 40 CFR 75.64. Quarterly reports shall be submitted for each CO_2 budget unit, or group of units using a common stack, and shall include all of the data and information required in Subpart G of 40 CFR Part 75, except for opacity, heat input, NOx, and SO_2 provisions.

3. The CO_2 authorized account representative shall submit to the department or its agent a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

a. The monitoring data submitted were recorded in accordance with the applicable requirements of this article and 40 CFR Part 75, including the quality assurance procedures and specifications;

b. For a unit with add-on CO_2 emissions controls and for all hours where data are substituted in accordance with

40 CFR 75.34(a)(1), the add-on emissions controls were operating within the range of parameters listed in the QA/QC program under Appendix B of 40 CFR Part 75 and the substitute values do not systematically underestimate CO_2 emissions; and

c. The CO_2 concentration values substituted for missing data under Subpart D of 40 CFR Part 75 do not systematically underestimate CO_2 emissions.

9VAC5-140-6380. Petitions.

A. Except as provided in subsection C of this section, the CO_2 authorized account representative of a CO_2 budget unit that is subject to an acid rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in writing by the administrator, and subsequently approved in writing by the department.

B. Petitions for a CO_2 budget unit that is not subject to an acid rain emissions limitation shall meet the following requirements.

1. The CO_2 authorized account representative of a CO_2 budget unit that is not subject to an acid rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to any requirement of 40 CFR Part 75. Application of an alternative to any requirement of 40 CFR Part 75 is in accordance with this article only to the extent that the petition is approved in writing by the administrator and subsequently approved in writing by the department.

2. In the event that the administrator declines to review a petition under subdivision 1 of this subsection, the CO_2 authorized account representative of a CO_2 budget unit that is not subject to an acid rain emissions limitation may submit a petition to the department requesting approval to apply an alternative to any requirement of this article. That petition shall contain all of the relevant information specified in 40 CFR 75.66. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved in writing by the department.

C. The CO_2 authorized account representative of a CO_2 budget unit that is subject to an acid rain emissions limitation may submit a petition to the administrator under 40 CFR 75.66 and to the department requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a CO_2 concentration CEMS used under 40 CFR 75.71(a)(2). Application of an alternative to any such requirement is in accordance with this article only to the extent the petition is approved in writing by the administrator and subsequently approved in writing by the department.

9VAC5-140-6390. (Reserved.)

9VAC5-140-6400. (Reserved.)

Article 9
Auction of CO_2 CCR and ECR Allowances

9VAC5-140-6410. Purpose.

The following requirements shall apply to each allowance auction. The department or its agent may specify additional information in the auction notice for each auction. Such additional information may include the time and location of the auction, auction rules, registration deadlines, and any additional information deemed necessary or useful.

9VAC5-140-6420. General requirements.

A. The department's agent will include the following information in the auction notice for each auction:

1. The number of CO_2 allowances offered for sale at the auction, not including any CO_2 CCR allowances;

2. The number of CO_2 CCR allowances that will be offered for sale at the auction if the condition of subdivision 1 of this subsection is met;

3. The minimum reserve price for the auction;

4. The CCR trigger price for the auction;

5. The maximum number of CO_2 allowances that may be withheld from sale at the auction if the condition of subdivision D 1 of this section is met; and

6. The ECR trigger price for the auction.

B. The department's agent will follow these rules for the sale of CO_2 CCR allowances.

1. CO_2 CCR allowances shall only be sold at an auction in which total demand for allowances, above the CCR trigger price, exceeds the number of CO_2 allowances available for purchase at the auction, not including any CO_2 CCR allowances.

2. If the condition of subdivision 1 of this subsection is met at an auction, then the number of CO_2 CCR allowances offered for sale by the department or its agent at the auction shall be equal to the number of CO_2 CCR allowances in the Virginia auction account at the time of the auction.

3. After all of the CO_2 CCR allowances in the Virginia auction account have been sold in a given calendar year, no additional CO_2 CCR allowances will be sold at any auction for the remainder of that calendar year, even if the condition of subdivision 1 of this subsection is met at an auction.

4. At an auction in which CO_2 CCR allowances are sold, the reserve price for the auction shall be the CCR trigger price.

5. If the condition of subdivision 1 of this subsection is not satisfied, no CO_2 CCR allowances shall be offered for sale at the auction, and the reserve price for the auction shall be equal to the minimum reserve prices.

C. The department's agent shall implement the reserve price as follows: (i) no allowances shall be sold at any auction for a price below the reserve price for that auction and (ii) if the total demand for allowances at an auction is less than or equal to the total number of allowances made available for sale in that auction, then the auction clearing price for the auction shall be the reserve price.

D. The department's agent will meet the following rules for the withholding of CO_2 ECR allowances from an auction.

1. CO_2 ECR allowances shall only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the ECR trigger price prior to the withholding from the auction of any ECR allowances.

2. If the condition in subdivision 1 of this subsection is met at an auction, then the maximum number of CO_2 ECR allowances that may be withheld from that auction will be equal to the quantity shown in Table 140-5B of 9VAC5-140-6210 E minus the total quantity of CO_2 ECR allowances that have been withheld from any prior auction in that calendar year. Any CO_2 ECR allowances withheld from an auction will be transferred into the Virginia ECR Account.

9VAC5-140-6430. Consignment auction.

In accordance with Article 5 (9VAC5-140-6190 et seq.) of this part, conditional allowances shall be consigned by the CO_2 budget source to whom they are allocated or DMME to each auction on a quarterly pro rata basis in accordance with procedures specified by the department. At the completion of the consignment auction, a conditional allowance shall become an allowance to be used for compliance purposes.

VA.R. Doc. No. R17-5140; Filed December 19, 2017, 10:39 a.m.

STATE WATER CONTROL BOARD

Final Regulation

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

Title of Regulation: **9VAC25-120. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests (amending 9VAC25-120-10, 9VAC25-120-15, 9VAC25-120-20, 9VAC25-120-50 through 9VAC25-120-80).**

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

Effective Date: February 26, 2018.

Small Business Impact Review Report of Findings: This final regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Agency Contact: Matthew Richardson, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4195, FAX (804) 698-4032, or email matthew.richardson@deq.virginia.gov.

Summary:

This general permit contains effluent limitations, monitoring requirements, and special conditions for discharges of petroleum-contaminated wastewater, chlorinated hydrocarbon contaminated wastewater, and wastewater from hydrostatic tests. The changes to the regulation make this general permit similar to other general permits issued recently and clarify and update permit limits and conditions.

Substantive changes to the existing regulation include (i) including "associated distribution equipment" as components that can be hydrostatically tested under general permit coverage; (ii) requiring the permittee to notify a municipal separate storm sewer system (MS4) owner of the existence of the discharge at the time of registration under the general permit and to include a copy of that notification with the registration statement; (iii) clarifying that dewatering projects "shall be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion"; (iv) requiring that hydrostatic discharge flows "be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream

channel and stream bank erosion"; and (v) clarifying that total residual chlorine data below the quantification level of 0.1 mg/L shall be reported as "<QL."

CHAPTER 120
~~GENERAL~~ VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES, GROUNDWATER REMEDIATION, AND HYDROSTATIC TESTS

9VAC25-120-10. Definitions.

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

"Board" means the State Water Control Board.

"Central wastewater treatment facilities" means any facility that treats (for disposal, recycling, or recovery of materials) or recycles hazardous or nonhazardous waste, hazardous or nonhazardous industrial wastewater, or used material from ~~offsite~~ off-site. This includes both a facility that treats waste received from off-site exclusively, and a facility that treats waste generated on-site as well as waste received from ~~off site~~ off-site.

"Chlorinated hydrocarbon solvents" means solvents containing carbon, hydrogen, and chlorine atoms and the constituents resulting from the degradation of ~~these~~ chlorinated hydrocarbon solvents.

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

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

"Petroleum products" means petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. "Petroleum products" does not include hazardous waste as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

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

9VAC25-120-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set forth in Title 40 of the Code of Federal Regulations is referenced or adopted ~~herein~~ in this chapter and incorporated by reference, that regulation shall be as it exists and has been published ~~as a final regulation in the Federal Register prior to July 1, 2012, with the effective date as published in the Federal Register notice or February 26, 2013, whichever is later~~ as of July 1, 2017.

9VAC25-120-20. Purpose.

This general permit regulation governs the discharge of wastewaters from sites contaminated by petroleum products, chlorinated hydrocarbon solvents, the hydrostatic testing of ~~petroleum and~~ natural gas storage tanks and pipelines, the hydrostatic testing and dewatering of petroleum storage tank systems and associated distribution equipment, and the hydrostatic testing of water storage tanks and pipelines. These wastewaters may be discharged from the following activities: excavation dewatering, conducting aquifer tests to characterize site conditions, pumping contaminated groundwater to remove free product ~~from the ground~~, discharges resulting from another petroleum product or chlorinated hydrocarbon solvent cleanup activity approved by the board, hydrostatic tests of natural gas and petroleum storage tanks or pipelines, hydrostatic tests and dewatering of ~~underground and above ground~~ storage tanks and associated distribution equipment, and hydrostatic tests of water storage ~~tanks and~~ tank systems or pipelines. Discharges not associated with petroleum-contaminated water, water contaminated by chlorinated hydrocarbon solvents, or hydrostatic tests are not covered under this general permit.

9VAC25-120-50. Effective date of the permit.

This general permit will become effective on February 26, ~~2013~~ 2018. This general permit will expire on February 25, ~~2018~~ 2023. This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-120-60.

9VAC25-120-60. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters within the Commonwealth of Virginia provided that:

1. The owner submits a registration statement, if required to do so, in accordance with 9VAC25-120-70, and that registration statement is accepted by the board;

2. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-120-80; and

3. The board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

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

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B of the VPDES Permit Regulation;

2. The owner is proposing to discharge within five miles upstream of a public water supply intake or to state waters specifically named in other board regulations which prohibit such discharges;

3. The owner is proposing to discharge to surface waters where there are permitted central wastewater treatment facilities reasonably available, as determined by the board;

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

5. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Compliance with this general permit constitutes compliance [, for purposes of enforcement,] with [§§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of] the federal Clean Water Act~~,~~ and the State Water Control Law~~, and applicable regulations under either~~ with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. [~~Any owner that was authorized to discharge under the petroleum contaminated sites, groundwater remediation, and hydrostatic tests general permit issued in~~] ~~2008~~ [~~2013 and that submits a complete registration statement on or before February 26,~~] ~~2013~~ [~~2018, is authorized to continue to discharge under the terms of the~~] ~~2008~~ [~~2013 general permit~~ Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal date established by the board, which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to discharge] until such time as the board either:

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

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

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

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

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

c. Issue an individual permit with appropriate conditions; or

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

9VAC25-120-70. Registration statement.

A. Any owner seeking coverage under this general permit ~~who~~ that is required to submit a registration statement shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges from petroleum contaminated sites, ~~ground water~~ groundwater remediation, and hydrostatic tests.

B. Owners of the following types of proposed or existing discharges are not required to submit a registration statement to apply for coverage under this general permit:

1. Short term projects (14 consecutive calendar days or less in duration) including:

a. Emergency repairs;

b. Dewatering projects;

c. Utility work and repairs in areas of known contamination;

d. Tank placement or removal in areas of known contamination;

e. Pilot studies or pilot tests, including aquifer tests; and

f. New well construction discharges of groundwater;

2. Hydrostatic testing of petroleum and natural gas storage tanks ~~and,~~ pipelines, or distribution system components; and

3. Hydrostatic testing of water storage tanks ~~and,~~ pipelines, or distribution system components.

Owners of these types of discharges are authorized to discharge under this permit immediately upon the permit's effective date of February 26, ~~2013~~ 2018.

Owners shall notify the department's regional office in writing within 14 days of the completion of the discharge. The notification shall include the owner's name and address, the type of discharge that occurred, the physical location of the discharge work, and the receiving stream. If the discharge is to a municipal separate storm sewer system (MS4), the owner shall also notify the MS4 owner within 14 days of the completion of the discharge.

Owners of these types of discharges are not required to submit a notice of termination of permit coverage at the completion of the discharge.

C. Deadlines for submitting registration statements.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge, unless exempted by subsection B of this section.

2. Existing facilities.

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

b. Any owner that was authorized to discharge under the petroleum contaminated sites, ~~ground water~~ groundwater remediation, and hydrostatic tests general VPDES permit [~~that became effective on February 26,~~] ~~2008~~ [~~2013,~~] ~~who~~ that is not exempted under subsection B of this section and [~~who~~ that] intends to continue coverage under this general permit shall submit a complete registration statement to the board [~~on or before January 27,~~] ~~2013~~ [~~2018~~ at least 30 days prior to the expiration date of the existing permit or a later submittal established by the board].

D. Late registration statements. Registration statements will be accepted after [~~February 26,~~] ~~2013~~ [~~2018~~ the expiration date of the permit], but authorization to discharge will not be retroactive. [~~Owners described in subdivision C 2 b of this section that submit registration statements after January 27,~~] ~~2013~~ [~~2018, are authorized to discharge under the provisions of 9VAC25-120-60 D if a complete registration statement is submitted on or before February 26,~~] ~~2013~~ [~~2018.~~]

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

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

2. ~~Location of facility, address, telephone number, and email address (if available)~~ Facility street address (if different from mailing address) or location (if the facility location does not have a mailing address);

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

4. Nature of business conducted at the facility;

5. Type of petroleum or natural gas products, or chlorinated hydrocarbon solvents causing or that caused the contamination;

6. Identification of activities that will result in a point source discharge from the ~~contaminated~~ site;

7. Whether a site characterization report for the site has been submitted to the Department of Environmental Quality;

8. Characterization or description of the wastewater or nature of contamination including all related analytical data;

9. The location of the discharge point and identification of the waterbody into which the discharge will occur. For linear projects, the location of all the proposed discharge points along the project length and the associated waterbody for each discharge point;

10. The frequency with which the discharge will occur (i.e., daily, monthly, continuously);

11. An estimate of how long each discharge will last;

12. An estimate of the total volume of wastewater to be discharged;

13. An estimate of the average and maximum flow rate of the discharge;

14. A diagram of the proposed wastewater treatment system identifying the individual treatment units;

15. A USGS 7.5 minute topographic map or equivalent computer generated map that indicates the receiving waterbody name or names, the discharge point or points, the property boundaries, as well as springs, other surface waterbodies, drinking water wells, and public water supplies that are identified in the public record or are otherwise known to the applicant within a 1/2 mile radius of the proposed discharge or discharges;

16. ~~Whether the facility will discharge to a municipal separate storm sewer system (MS4). If so, the name of the MS4 owner. The owner of the facility shall notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under the general permit and shall copy the DEQ regional office with the notification.~~ A

determination of whether the facility will discharge to an MS4. If the facility discharges to an MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge information at the time of registration under this permit and include that notification with the registration statement. The ~~notification~~ notice shall include the following information: the name of the facility, a contact person and ~~phone~~ telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number;

17. Whether central wastewater facilities are available to the site, and if so, whether the option of discharging to the central wastewater facility has been evaluated and the results of that evaluation;

18. Whether the facility currently has ~~a~~ any permit issued by the board, and if so, the permit number;

19. Any ~~applicable~~ pollution complaint number associated with the project;

20. A statement as to whether the material being treated or to be discharged is certified as a hazardous waste under the Virginia Hazardous Waste ~~Regulation~~ Management Regulations (9VAC20-60); and

21. The following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations. I do also hereby grant duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit."

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

G. The registration statement shall be delivered by either postal or electronic mail to the DEQ regional office serving the area where the facility is located.

9VAC25-120-80. General permit.

Any owner whose registration statement is accepted by the board, or ~~who~~ that is automatically authorized to discharge under this permit, shall comply with the requirements of the general permit and be subject to all requirements of 9VAC25-31-170 B of the VPDES ~~permit regulation~~ Permit Regulation. Not all ~~pages~~ of Part I A of the general permit will apply to every permittee. The determination of which ~~pages~~ provisions apply will be based on the type of contamination at the individual site and the nature of the waters receiving the discharge. Part I B and all ~~pages~~ of Part II apply to all permittees.

General Permit No.: VAG83
Effective Date: February 26, ~~2013~~ 2018
Expiration Date: February 25, ~~2018~~ 2023

~~GENERAL~~ VPDES GENERAL PERMIT FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES, GROUNDWATER REMEDIATION, AND HYDROSTATIC TESTS

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

In compliance with the provisions of the Clean Water Act, as amended, the State Water Control Law and regulations adopted pursuant thereto, the owner is authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except to designated public water supplies or waters specifically named in other board regulations which prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I - Effluent Limitations and Monitoring Requirements, and Part II - Conditions Applicable to All VPDES Permits, as set forth ~~herein~~ in this general permit.

If there is any conflict between the requirements of a board approved cleanup plan and this permit, the requirements of this permit shall govern.

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. SHORT TERM PROJECTS.

The following types of short term projects (14 consecutive calendar days or less in duration) are authorized under this permit:

a. Emergency repairs;

b. Dewatering projects~~(1)~~. Dewatering projects shall be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

c. Utility work and repairs in areas of known contamination;

d. Tank placement or removal in areas of known contamination;

e. Pilot studies or pilot tests, including aquifer tests; and

f. New well construction discharges of groundwater.

Effluent limits for short term projects correspond to the type of contamination at the project site and are given in Tables A ~~2~~ 3 through A 5 below. The sampling frequency for these projects shall be once per ~~project term~~ discharge. Discharge monitoring reports for these projects are not required to be submitted to the department, but shall be retained by the owner for a period of at least three years from the completion date of the project.

Owners shall notify the department's regional office in writing within 14 days of the completion of the project discharge. The notification shall include the owner's name and address, the type of discharge that occurred, the physical location of the project work, and the receiving stream. If the discharge is to a municipal separate storm sewer system (MS4), the owner shall also notify the MS4 owner within 14 days of the completion of the discharge.

~~(1) Dewatering projects shall be managed to ensure that they are discharging to an adequate channel or pipe and do not cause erosion in the receiving stream.~~

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

2. DISCHARGES OF HYDROSTATIC TEST WATERS -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS(2)	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	1/discharge	Estimate
pH (standard units)	6.0	9.0	1/discharge	Grab
Total Petroleum Hydrocarbons (TPH, mg/l) (1)	NA	15.0	1/discharge	Grab
Total Organic Carbon (TOC, mg/l)	NA	NL	1/discharge	Grab
Total Residual Chlorine (TRC, mg/l)(3)	NA	0.011(3)	1/discharge	Grab
Total Suspended Solids (TSS)	NA	NL	1/discharge	Grab

NL = No limitation, monitoring required

NA = Not applicable

The equipment being tested shall be substantially free of debris, raw material, product, or other residual materials.

The discharge flow shall be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets, and to minimize downstream channel and stream bank erosion.

(1)TPH is the sum of individual gasoline range organics and diesel range organics or TPH-GRO and TPH-DRO to be measured by EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) for gasoline and diesel range organics, or by EPA SW 846 Methods 8260B (1996) and 8270D (2014).

(2)Discharge monitoring reports for hydrostatic test discharges are not required to be submitted to the department but shall be retained by the owner for a period of at least three years from the completion date of the hydrostatic test.

Owners shall notify the department's regional office in writing within 14 days of the completion of the hydrostatic test discharge. The notification shall include the owner's name and address, the type of hydrostatic test that occurred, the physical location of the test work, and the receiving stream.

(3)Total residual chlorine limitation of 0.011 mg/l and chlorine monitoring only apply to discharges of test water that have been chlorinated or come from a chlorinated water supply. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL."

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

~~2.~~ 3. GASOLINE CONTAMINATION -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number ~~XXXX~~ xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	(4)	Estimate
Benzene (µg/l)(1)	NA	12.0	(4)	Grab
Toluene (µg/l)(1)	NA	43.0	(4)	Grab
Ethylbenzene (µg/l)(1)	NA	4.3	(4)	Grab
Total Xylenes (µg/l)(1)	NA	33.0	(4)	Grab
MTBE (methyl tert-butyl ether) (µg/l)(1)				
Freshwaters not listed as public water supplies and saltwater	NA	440.0	1/Month(4)	Grab
Freshwaters listed as public water supply	NA	15.0	2/Month(4)	Grab
pH (standard units)	6.0	9.0	(4)	Grab
Total Recoverable Lead (µg/l)(2)				
Freshwaters not listed as public water supplies and saltwater	NA	$e^{(1.273(\ln \text{hardness})) - 3.259}$	(4)	Grab
Freshwaters listed as public water supply	NA	Lower of $e^{(1.273(\ln \text{hardness})) - 3.259}$ or 15	(4)	Grab
Hardness (mg/l $CaCO_3$)(2)	NL	NA	(4)	Grab
Ethylene Dibromide (µg/l)(2)				
Freshwaters not listed as public water supplies and saltwater	NA	1.9	1/Month(4)	Grab
Freshwaters listed as public water supply	NA	0.161	2/Month(4)	Grab
1,2 Dichloroethane (µg/l)(2)	NA	3.8	(4)	Grab
Ethanol (µg/l)(3)	NA	4100.0	(4)	Grab

NL = No limitation, monitoring required

NA = Not applicable

(1)Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136) or EPA SW 846 Method 8021B ~~(1996)~~ (2014).

(2)Monitoring for this parameter is required only when contamination results from leaded fuel. Lead shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136). The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l. 1,2 dichloroethane and ethylene dibromide (EDB) shall be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136. EDB in wastewaters discharged to public water supplies shall be analyzed using EPA SW 846 Method 8011 (1992) or EPA Drinking Water Method 504.1 (1995).

(3)Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) or EPA SW 846 Method 8260B (1996).

(4)The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month. If the first ~~year~~ 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, monitoring frequency ~~shall~~ may be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation~~,~~ or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 1/month upon issuance of the letter or notice or ~~initiation~~ execution of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January in each year of permit coverage.

The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first ~~year's~~ 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced to 1/quarter and the other parameters to 1/month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol ~~shall~~ may be reduced to 1/quarter and the other parameters to1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation~~,~~ or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or ~~initiation~~ execution of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January in each year of permit coverage.

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

~~3.~~ 4. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	(4)	Estimate
Naphthalene (µg/l)(1)	NA	8.9	(4)	Grab
Total Petroleum Hydrocarbons (mg/l)(2)	NA	15.0	(4)	Grab
pH (standard units)	6.0	9.0	(4)	Grab
Benzene (µg/l)(3)	NA	12.0	2/Month(4)	Grab
MTBE (methyl tert-butyl ether) (µg/l)(3)	NA	15.0	2/Month(4)	Grab

NL = No limitation, monitoring required

NA = Not applicable

(1)Naphthalene shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part 136 or a current and appropriate EPA SW 846 Method.

(2)TPH shall be analyzed using EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) for diesel range organics, or by EPA SW 846 Method 8270D ~~(2007)~~ (2014).

(3)Monitoring for benzene and MTBE is only required for discharges into freshwaters listed as public water supplies. Benzene and MTBE shall be analyzed according to a

current and appropriate EPA Wastewater Method (40 CFR Part 136) or EPA SW 846 Method.

(4)The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month.

The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first ~~year's~~ 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced to once per month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol ~~shall~~ may be reduced to 1/quarter or the other parameters to1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation~~,~~ or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or ~~initiation~~ execution of the enforcement action and remain in effect until the permit's expiration date.

~~Part I~~

~~A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS~~

~~4. DISCHARGES OF HYDROSTATIC TEST WATERS - - ALL RECEIVING WATERS.~~

~~During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.~~

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

~~EFFLUENT CHARACTERISTICS~~	~~DISCHARGE LIMITATIONS~~		~~MONITORING REQUIREMENTS(2)~~	
	~~Instantaneous Minimum~~	~~Instantaneous Maximum~~	~~Frequency~~	~~Sample Type~~
~~Flow (GPD)~~	~~NA~~	~~NL~~	~~1/discharge~~	~~Estimate~~
~~pH (standard units)~~	~~6.0~~	~~9.0~~	~~1/discharge~~	~~Grab~~
~~Total Petroleum Hydrocarbons (TPH, mg/l) (1)~~	~~NA~~	~~15.0~~	~~1/discharge~~	~~Grab~~
~~Total Organic Carbon (TOC, mg/l)~~	~~NA~~	~~NL~~	~~1/discharge~~	~~Grab~~
~~Total Residual Chlorine (TRC, mg/l) (3)~~	~~NA~~	~~0.011 (3)~~	~~1/discharge~~	~~Grab~~
~~Total Suspended Solids (TSS)~~	~~NA~~	~~NL~~	~~1/discharge~~	~~Grab~~

~~NL = No limitation, monitoring required~~

~~NA = Not applicable~~

~~The equipment being tested shall be substantially free of debris, raw material, product, or other residual materials.~~

~~The discharge flow shall be controlled in such a manner that prevents flooding, erosion, or excessive sediment influx into the receiving water body.~~

~~(1)TPH is the sum of individual gasoline range organics and diesel range organics or TPH-GRO and TPH-DRO to be measured by EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) for gasoline and diesel range organics, or by EPA SW 846 Methods 8260B (1996) and 8270D (2007). .~~

~~(2)Discharge monitoring reports for hydrostatic test discharges are not required to be submitted to the department, but shall be retained by the owner for a period of at least three years from the completion date of the hydrostatic test.~~

~~Owners shall notify the department's regional office in writing within 14 days of the completion of the hydrostatic test discharge. The notification shall include the owner's name and address, the type of hydrostatic test that occurred, the physical location of the test work, and the receiving stream.~~

~~(3)Total Residual Chlorine limitation of 0.011 mg/l and chlorine monitoring only apply to discharges of test water that have been chlorinated or come from a chlorinated water supply.~~

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

5. CONTAMINATION BY CHLORINATED HYDROCARBON SOLVENTS -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	1/Month	Estimate
			2/Month if public water supply[2]	Estimate
Chloroform (CAS # 67663), (µg/l)[1]	NA	80.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
1,1 Dichloroethane (CAS # 75343) (µg/l)[1]	NA	2.4	1/Month	Grab
			2/Month if public water supply[2]	Grab
1,2 Dichloroethane (CAS # 107062) (µg/l)[1]	NA	3.8	1/Month	Grab
			2/Month if public water supply[2]	Grab
1,1 Dichloroethylene (CAS # 75354) (µg/l)[1]	NA	7.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
cis-1,2 Dichloroethylene (CAS # 159592) (µg/l)[1]	NA	70.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
trans 1,2 Dichloroethylene (CAS # 156605) (µg/l)[1]	NA	100.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
Methylene Chloride (CAS # 75092) (µg/l)[1]	NA	5.0	1/Month	Grab
			2/Month if public water supply[2]	Grab

Tetrachloroethylene (CAS # 127184) (µg/l)[1]	NA	5.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
1,1,1 Trichloroethane (CAS # 71556) (µg/l)[1]	NA	54.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
1,1,2 Trichloroethane (CAS # 79005) (µg/l)[1]	NA	5.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
Trichloroethylene (CAS # 79016) (µg/l)[1]	NA	5.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
Vinyl Chloride (CAS # 75014) (µg/l)[1]	NA	2.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
Carbon Tetrachloride (CAS # 56235) (µg/l)[1]	NA	2.3	1/Month	Grab
			2/Month if public water supply[2]	Grab
1,2 Dichlorobenzene (CAS # 95501) (µg/l)[1]	NA	15.8	1/Month	Grab
			2/Month if public water supply[2]	Grab
Chlorobenzene (CAS # 108907) (µg/l)[1]	NA	3.4	1/Month	Grab
			2/Month if public water supply[2]	Grab
Trichlorofluoromethane (CAS # 75694) (µg/l)[1]	NA	5.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
Chloroethane (CAS # 75003) (µg/l)[1]	NA	3.6	1/Month	Grab
			2/Month if public water supply[2]	Grab

pH (standard units)	6.0	9.0	1/Month	Grab
			2/Month if public water supply(2)	Grab

NL = No limitation, monitoring required

NA = Not applicable

(1)This constituent shall be analyzed by a current and appropriate gas chromatograph/mass spectroscopy method from EPA SW 846 or the EPA Wastewater Method series from 40 CFR Part 136.

(2)Monitoring frequency for discharges into surface waters listed as public water supplies shall be 2/month for the first year of permit coverage. If the first ~~year~~ 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, monitoring frequency ~~shall~~ may be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or ~~initiation~~ execution of the enforcement action and remain in effect until the permit's expiration date.

Part I

B. Special conditions.

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

2. The permittee shall sample each permitted outfall each calendar month in which a discharge occurs. When no discharge occurs from an outfall during a calendar month, the discharge monitoring report for that outfall shall be submitted indicating "No Discharge."

3. ~~O & M Manual~~ Operation and maintenance (O&M) manual. If the permitted discharge is through a treatment works, within 30 days of coverage under this general permit, the permittee shall develop and maintain ~~on site~~ on-site, an ~~Operations and Maintenance (O & M) Manual~~ O&M manual for the treatment works permitted [~~herein~~ in this general permit]. This manual shall detail practices and procedures ~~which~~ that will be followed to ensure compliance with the requirements of this permit. The permittee shall operate the treatment works in accordance with the ~~O & M Manual~~ O&M manual. The manual shall be made available to the department upon request.

4. Operation schedule. The permittee shall construct, install and begin operating the treatment works described in the registration statement prior to discharging to surface waters. The permittee shall notify the department's regional office within five days after the completion of installation and commencement of operation.

5. Materials storage. Except as expressly authorized by this permit or another permit issued by the board, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

6. If the permittee discharges to surface waters through ~~a municipal separate storm sewer system~~ an MS4, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system in writing of the existence of the discharge and provide the following information: the name of the facility, a contact person and ~~phone~~ telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number. A copy of such notification shall be provided to the department. Discharge Monitoring Reports (DMRs) required to be submitted under this permit shall be submitted to both the department and the owner of the municipal separate storm sewer system.

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

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

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

10. Discharges to waters with an approved ~~"total maximum daily load" (TMDL)~~ TMDL. Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

11. Termination of coverage. Provided that the board agrees that the discharge covered under this general permit is no longer needed, the permittee may request termination of coverage under the general permit, for the entire facility or for specific outfalls, by submitting a request for termination of coverage. This request for termination of coverage shall be sent to the department's regional office with appropriate documentation or references to documentation already in the department's possession. Upon the permittee's receipt of the regional director's approval, coverage under this general permit will be terminated. Termination of coverage under this general permit does not relieve the permittee of responsibilities under other board regulations or directives.

[12. The permittee shall notify the department as soon as the permittee knows or has reason to believe:

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

(1) One hundred micrograms per liter;

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

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

(4) The level established by the board.

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

(1) Five hundred micrograms per liter;

(2) One milligram per liter for antimony;

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

(4) The level established by the board.]

Part II
Conditions Applicable ~~To~~ to All VPDES Permits

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

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

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

B. Records.

1. Records of monitoring information shall include:

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

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individual or individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

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

C. Reporting monitoring results.

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

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

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

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

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

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

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

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

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

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

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse ~~affects~~ effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit the report to the department within five days of discovery of the discharge in accordance with Part II I [~~2~~ 1 b]. Unusual and extraordinary discharges include [~~but are not limited to~~] any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

I. Reports of noncompliance.

[1.] The permittee shall report any noncompliance ~~which~~ that may adversely affect state waters or may endanger public health [~~as follows:~~.]

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

[~~a.~~ (1)] Any unanticipated bypass; and

[~~b.~~ (2)] Any upset which causes a discharge to surface waters.

[~~2.~~ b.] A written report shall be submitted within five days and shall contain:

[~~a.~~ (1)] A description of the noncompliance and its cause;

[~~b.~~ (2)] The period of noncompliance including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

[~~c.~~ (3)] Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

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

[3. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.]

J. Notice of planned changes.

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

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

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

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

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants [~~which~~ that] are subject neither to effluent limitations nor to notification requirements [~~specified elsewhere in this permit~~ under Part I B 12]; or

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

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

K. Signatory requirements.

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

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

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

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking

elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

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

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

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

c. The written authorization is submitted to the department.

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

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

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

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

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

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

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

only when the operation is necessary to achieve compliance with the conditions of this permit.

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

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

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur [~~which~~ that] does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours~~, and~~ or whenever the facility is discharging. Nothing contained

[~~herein~~ in this general permit] shall make an inspection unreasonable during an emergency.

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

Y. Transfer of ~~permits~~ permit coverage.

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

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

a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;

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

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

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

DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-120)

Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, U.S. Environmental Protection Agency, Third Edition as amended by Final Updates I, II, IIA, IIB, IIIA, IIIB, IVA, and IVB, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847, ~~http://www.epa.gov/SW-846.~~ https://www.epa.gov/hw-sw846

Method 504.1, rev. 1.1 (August 1995)

Method 7010 (February 2007)

Method 8011 (July 1992)

Method 8015C (November 2000)

Method 8015C (February 2007)

~~Method 8021B (December 1996)~~ Method 8021B (July 2014)

Method 8260B (December 1996)

~~Method 8270D (February 2007)~~ Method 8270D (July 2014)

Method 9040C (November 2004)

Methods for the Determination of Organic Compounds in Drinking Water, Supplement III, EPA Publication 600/R-95/131 (August 1995), U.S. Environmental Protection Agency, Office of Research and Development, Washington, D.C. 20460

VA.R. Doc. No. R16-4715; Filed December 14, 2017, 9:32 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of 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 State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 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: **9VAC25-196. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less (amending 9VAC25-196-10, 9VAC25-196-15, 9VAC25-196-40 through 9VAC25-196-70).**

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

Effective Date: March 2, 2018.

Small Business Impact Review Report of Findings: This final regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Agency Contact: Matthew Richardson, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4195, FAX (804) 698-4032, or email matthew.richardson@deq.virginia.gov.

Summary:

This regulatory action revises and reissues the existing general permit that expires on March 1, 2018. This general permit establishes effluent limitations and monitoring requirements for point source discharges of 50,000 gallons per day or less of noncontact cooling water and cooling equipment blowdown to surface waters. The general permit regulation is being reissued to continue making it available as a permitting option for this type of discharger. The changes make this general permit similar to other general permits issued recently and clarify and update permit limit and conditions.

Substantive changes to the existing regulation include (i) requiring permittees to notify a municipal separate storm sewer system (MS4) owner of the existence of the discharge at the time of registration under the general permit and to include a copy of that notification with the registration statement; (ii) removing the effluent limitations and monitoring requirements for the first four years of the previous permit term as these requirements are not applicable for this reissuance; (iii) clarifying that the "1/3 months" monitoring frequency means the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December; and (iv) requiring the permittee to develop an operation and maintenance manual for equipment or systems used to meet effluent limitations within 90 days of permit coverage.

CHAPTER 196
~~GENERAL~~ VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT FOR NONCONTACT COOLING WATER DISCHARGES OF 50,000 GALLONS PER DAY OR LESS

9VAC25-196-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in § 62.1-44.2 et seq. of the Code of Virginia (State Water Control Law) and ~~9VAC25-31-10~~ 9VAC25-31 (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Blowdown" means a discharge of recirculating water from any cooling equipment or cooling process in order to maintain a desired quality of the recirculating water. Boiler blowdown is excluded from this definition.

"Board" means the State Water Control Board.

"Cooling water" means water used for cooling which does not come into direct contact with any raw product, intermediate product (other than heat) or finished product. For the purposes of this general permit, cooling water can be generated from any cooling equipment blowdown or produced as a result of any noncontact cooling process ~~through either a single pass (once through) or recirculating system~~.

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

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

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

9VAC25-196-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted ~~herein~~ in this chapter and incorporated by reference, that regulation shall be as it exists and has been published ~~as a final regulation in the Federal Register prior to July 1, 2012, with the effective date as published in the Federal Register notice or March 2, 2013, whichever is later~~ as of July 1, 2017.

9VAC25-196-40. Effective date of the permit.

This general permit will become effective on March 2, ~~2013~~ 2018. This general permit will expire on March 1, ~~2018~~ 2023. This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-196-50.

9VAC25-196-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner submits and receives acceptance by the board of the registration statement of 9VAC25-196-60, submits the required permit fee, and complies with the effluent limitations and other requirements of 9VAC25-196-70, and provided that the board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

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

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner is proposing to discharge to Class V stockable trout waters, Class VI natural trout waters, or any state waters specifically named in other board regulations that prohibit such discharges;

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

4. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

D. The owner shall not use tributyltin, any chemical additives containing tributyltin, or ~~any hexavalent chromium-based~~ water treatment chemicals containing hexavalent chromium in the cooling water systems.

E. The owner shall not use groundwater remediation wells as the source of cooling water.

F. Compliance with this general permit constitutes compliance [, for purposes of enforcement,] with [§§ 301, 302, 306, 307, 318, 404, and 405(a) through (b) of] the federal Clean Water Act~~,~~ and the State Water Control Law~~, and applicable regulations under either~~ with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

G. Continuation of permit coverage.

1. [~~Any owner that was authorized to discharge under the noncontact cooling water discharges general permit issued in~~] ~~2008~~ [~~2013 and that submits a complete registration statement on or before March 2,~~] ~~2013~~ [~~2018, is authorized to continue to discharge under the terms of the~~] ~~2008~~ [~~2013 general permit~~ Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 30 days prior to the expiration date of the permit, or a later submittal established by the board, which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to discharge] until such time as the board either:

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

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

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

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

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

c. Issue ~~an~~ a VPDES individual permit with appropriate conditions; or

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

9VAC25-196-60. Registration statement.

A. Deadlines for submitting registration statements. The owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the ~~general~~ VPDES general permit for noncontact cooling water discharges of 50,000 gallons per day or less.

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

2. Existing facilities.

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

b. Any owner that was authorized to discharge under the [expiring or expired] VPDES general ~~VPDES~~ permit [~~that became effective on March 2,~~] ~~2008~~ [~~2013,~~] and ~~who~~ that intends to continue coverage under this general permit shall submit a complete registration statement to the board [~~on or before February 1,~~] ~~2013~~ [~~2018~~ at least 30 days prior to the expiration date of the existing permit or a later submittal established by the board].

B. Late registration statements. Registration statements will be accepted after [~~March~~] ~~2, 2013~~ [~~1, 2018~~ the expiration date of the general permit], but authorization to discharge will not be retroactive. [~~Owners described in subdivision A 2 b of this section that submit registration statements after February 1,~~] ~~2013~~ [~~2018, are authorized to discharge under the provisions of 9VAC25-196-50 G if a complete~~

~~registration statement is submitted on or before March 2,~~] ~~2013~~ [~~1, 2018.~~]

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

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

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

3. ~~Does the facility currently have a VPDES permit? Permit Number if yes~~ Current VPDES permit registration number (if applicable);

4. ~~Listing~~ List of point source discharges that are not composed entirely of cooling water;

5. ~~Listing~~ List of type and size (tons) of cooling equipment or noncontact cooling water processes;

6. The following information if any chemical or nonchemical treatment~~, or both,~~ is employed in each ~~of the~~ cooling water ~~systems~~ system:

a. Description of the treatment to be employed (both chemical and nonchemical) and its purpose; for chemical additives other than chlorine, provide the information prescribed in subdivisions 6 b, c, d, e, and f;

b. Name and manufacturer of each additive used;

c. List of active ingredients and percent composition of each additive;

d. Proposed dosing schedule and quantity of chemical usage, and either an engineering analysis [,] or a technical evaluation of the active ingredients [,] to determine the discharge concentration ~~in the discharge~~ of each contaminant;

e. Available aquatic toxicity information for each proposed additive used; ~~and~~

f. Any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation of the discharge; and

g. Safety data sheet for each proposed additive.

7. Description of any type of treatment or retention being provided to the wastewater before discharge (i.e., retention ponds, settling ponds, etc.);

8. A schematic drawing of the cooling water equipment that shows the source of the cooling water, its flow through the facility, and each noncontact cooling water discharge point;

9. A USGS 7.5 minute topographic map or equivalent computer generated map extending to at least one mile beyond the property boundary. The map must show the outline of the facility and the location of each of its existing and proposed intake and discharge points, and must include all springs, rivers and other surface water bodies;

10. The following discharge information:

a. A ~~listing~~ list of all cooling water discharges identified by a unique number, latitude, and longitude;

b. The source of cooling water for each discharge;

c. An estimate of the maximum daily flow in gallons per day for each discharge;

d. The name of the waterbody receiving direct discharge or discharge through the municipal separate storm sewer system (MS4); and

e. The duration and frequency of the discharge for each separate discharge point~~; continuous, intermittent, or seasonal~~;

11. ~~Whether the facility will discharge to a municipal separate storm sewer system (MS4). If so, the name of the MS4 owner. The owner of the facility shall notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under the general permit and shall copy the DEQ regional office with the notification.~~ A determination of whether the facility will discharge to a MS4. If the facility discharges to a MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge at the time of registration under this permit and include that notification with the registration statement. The ~~notification~~ notice shall include the following information: the name of the facility, a contact person and ~~phone~~ telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number if a reissuance; and

12. The following certification:

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

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

E. The registration statement shall be delivered by either postal or electronic mail to the DEQ regional office serving the area where the facility is located.

9VAC25-196-70. General permit.

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

General Permit No: VAG25
Effective Date: March 2, ~~2013~~ 2018
Expiration Date: March 1, ~~2018~~ 2023

GENERAL PERMIT FOR NONCONTACT COOLING WATER DISCHARGES OF 50,000 GALLONS PER DAY OR LESS

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of noncontact cooling water discharges of 50,000 gallons per day or less are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except Class V stockable trout waters, Class VI natural trout waters, and those specifically named in board regulations that prohibit such discharges. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I - Effluent Limitations and Monitoring Requirements, and Part II - Conditions Applicable to all VPDES Permits, as set forth ~~herein~~ in this general permit.

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

~~During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge noncontact cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s): outfall(s) _____.~~

~~1. Effluent limitations and monitoring requirements for the first four years of the permit term (March 2, 2013, through March 1, 2017). Discharges shall be limited and monitored by the permittee as specified below:~~

~~EFFLUENT CHARACTERISTICS~~	~~DISCHARGE LIMITATIONS~~		~~MONITORING REQUIREMENTS~~	
	~~Maximum~~	~~Minimum~~	~~Frequency~~	~~Sample Type~~
~~Flow (MGD)~~	~~0.05~~	~~NA~~	~~1/3 Months~~	~~Estimate~~
~~Temperature (°C)~~	~~(1)~~	~~NA~~	~~1/3 Months~~	~~Immersion Stabilization~~
~~pH (SU)~~	~~9.0(2)~~	~~6.0(2)~~	~~1/3 Months~~	~~Grab~~
~~Ammonia N(3) (mg/l)~~	~~NL~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Total Residual Chlorine(3) (mg/l)~~	~~Nondetectable~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Hardness (mg/l $CaCO_3$)(7)~~	~~NL~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Total Recoverable Copper(4) (µg/l)~~	~~NL~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Total Recoverable Zinc(4) (µg/l)~~	~~NL~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Total Recoverable Silver(4), (5) (µg/l)~~	~~NL~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Total Phosphorus(6) (mg/l)~~	~~NL~~	~~NA~~	~~1/3 Months~~	~~Grab~~

~~NL = No limitation, monitoring required~~
~~NA = Not applicable~~

~~(1)The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.~~
~~The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.~~
~~(2)Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.~~
~~(3)Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls directly discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.~~
~~(4)A specific analytical method is not specified; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].~~

~~Material~~	~~Max QL (µg/l)~~
~~Copper~~	~~1.0~~
~~Zinc~~	~~50.0~~
~~Silver~~	~~1.0~~

~~Quality control/assurance information shall be submitted to document that the required QL has been attained.~~
~~(5)Silver monitoring is only required where a Cu/Ag anode is used.~~
~~(6)Phosphorus monitoring is only required where an additive containing phosphorus is used.~~
~~(7)Hardness monitoring is only required for discharges to freshwater streams, perennial streams, or dry ditches.~~

~~2.~~ 1. Effluent limitations and monitoring requirements for ~~the last year of the permit term (March 2, 2017, through March 1, 2018),~~ discharges to freshwater receiving ~~streams~~ waterbodies. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	(1)	NA	1/3 Months	Immersion Stabilization
pH (SU)	9.0(2)	6.0(2)	1/3 Months	Grab
Ammonia-N(3) (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine(3) (mg/l)	Nondetectable	NA	1/3 Months	Grab
Total Recoverable Copper(4) (µg/l)	9.0	NA	1/3 Months	Grab
Total Recoverable Zinc(4) (µg/l)	120	NA	1/3 Months	Grab
Total Recoverable Silver(4), (5) (µg/l)	3.4	NA	1/3 Months	Grab
Total Phosphorus(6) (mg/l)	NL	NA	1/3 Months	Grab
NL = No limitation, monitoring required				

NA = Not applicable

1/3 Months = the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December

(1)The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.
The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.
(2)Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.
(3)Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls directly discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.
(4)A specific analytical method is not specified; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

Material	Max QL (µg/l)
Copper	1.0
Zinc	50.0
Silver	1.0

Quality control/assurance information shall be submitted to document that the required QL has been attained.
(5)Silver monitoring is only required where a Cu/Ag anode is used.
(6)Phosphorus monitoring is only required where an additive containing phosphorus is used.

~~3.~~ 2. Effluent limitations and monitoring requirements for ~~the last year of the permit term (March 2, 2017, through March 1, 2018),~~ discharges to saltwater receiving ~~streams~~ waterbodies. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	(1)	NA	1/3 Months	Immersion Stabilization
pH (SU)	9.0(2)	6.0(2)	1/3 Months	Grab
Ammonia-N(3) (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine(3) (mg/l)	Nondetectable	NA	1/3 Months	Grab
Total Recoverable Copper(4) (µg/l)	6.0	NA	1/3 Months	Grab
Total Recoverable Zinc(4) (µg/l)	81	NA	1/3 Months	Grab
Total Recoverable Silver(4), (5) (µg/l)	1.9	NA	1/3 Months	Grab
Total Phosphorus(6) (mg/l)	NL	NA	1/3 Months	Grab
NL = No limitation, monitoring required				

NA = Not applicable

1/3 Months = the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December

(1)The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.

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

(3)Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine monitoring only apply to outfalls ~~directly~~ discharging to surface waters where either: (i) a treatment additive that contains chlorine or chlorine compounds is used or (ii) the source of cooling water is chlorinated. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL." Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.

(4)A specific analytical method is not specified; however, a maximum quantification level (Max QL) value for each metal has been established. An appropriate method to meet the Max QL value shall be selected using any approved method presented in 40 CFR Part 136. If the test result is less than the method quantification level (QL), a "<[QL]" shall be reported where the actual analytical test QL is substituted for [QL].

Material	Max QL (µg/l)
Copper	1.0
Zinc	50.0
Silver	1.0

Quality control/assurance information shall be submitted to document that the required QL has been attained.

(5)Silver monitoring is only required where a Cu/Ag anode is used.

(6)Phosphorus monitoring is only required where an additive containing phosphorus is used.

B. Special conditions.

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

2. No discharges other than cooling water, as defined, are permitted under this general permit.

3. The use of any chemical additives not identified in the registration statement, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ before any changes are made to the chemical or nonchemical treatment technology employed in the cooling water system. Requests for approval of the change shall be made in writing and shall include the following information:

a. Describe the chemical or nonchemical treatment to be employed and its purpose; if chemical additives are used, provide the information prescribed in subdivisions 3 b, c, d, e, and f;

b. Provide the name and manufacturer of each additive used;

c. Provide a list of active ingredients and percentage of composition;

d. Give the proposed schedule and quantity of chemical usage, and provide either an engineering analysis~~,~~ or a technical evaluation of the active ingredients~~,~~ to determine the concentration in the discharge;

e. Attach available aquatic toxicity information for each additive proposed for use; ~~and~~

f. Attach any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation for the discharge; and

g. Attach a safety data sheet for each proposed additive.

4. ~~Where cooling water is discharged through a municipal storm sewer system to surface waters, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system in writing of the existence of the discharge and provide the following information: the name of the facility, a contact person and phone number, the nature of the discharge, the location of the discharge, and the facility's VPDES general permit number. A copy of such notification shall be provided to the department. Discharge Monitoring Reports (DMRs) required by this permit shall~~

~~be submitted to both the department and the owner of the municipal separate storm sewer system.~~ A determination of whether the facility will discharge to a MS4. If the facility discharges to a MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge at the time of registration under this permit and include that notification with the registration statement. The notice shall include the following information: the name of the facility, a contact person and telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number if a reissuance. Discharge monitoring reports (DMRs) required by this permit shall be submitted to both the department and the owner of the MS4.

5. ~~The permittee shall at all times properly operate and maintain all cooling water systems. Inspection shall be conducted for each cooling water unit by the plant personnel at least once per year with reports maintained on site~~ Operation and maintenance manual requirement.

a. Within 90 days after the date of coverage under this general permit, the permittee shall develop an operation and maintenance (O&M) manual for the equipment or systems used to meet effluent limitations. The O&M manual shall be reviewed within 90 days of changes to the equipment or systems used to meet effluent limitations. The O&M manual shall be certified in accordance with Part II K of this permit. The O&M manual shall be made available for review by department personnel upon request.

b. This manual shall detail the practices and procedures that will be followed to ensure compliance with the requirements of this permit. Within 30 days of a request by the department, the current O&M manual shall be submitted to the board for review and approval. The permittee shall operate the treatment works in accordance with the O&M manual. Noncompliance with the O&M manual shall be deemed a violation of the permit.

c. This manual shall include, but not necessarily be limited to, the following items:

(1) Techniques to be employed in the collection, preservation, and analysis of effluent samples;

(2) Discussion of best management practices;

(3) Design, operation, routine preventative maintenance of equipment or systems used to meet effluent limitations, critical spare parts inventory, and recordkeeping;

(4) A plan for the management or disposal of waste solids and residues, and a requirement that all solids shall be handled, stored, and disposed of so as to prevent a discharge to state waters; and

(5) Procedures for measuring and recording the duration and volume of treated wastewater discharged.

6. The permittee shall notify the department as soon as ~~they know~~ the permittee knows or ~~have~~ has reason to believe:

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

(1) One hundred micrograms per liter (100 µg/l);

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

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

(4) The level established by the board in accordance with 9VAC25-31-220 F.

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

(1) Five hundred micrograms per liter (500 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

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

(4) The level established by the board in accordance with 9VAC25-31-220 F.

7. Geothermal systems using groundwater and no chemical additives. Geothermal systems using groundwater and no chemical additives may be eligible for reduced monitoring requirements.

If a geothermal system was covered by the previous noncontact cooling water general permit, and the monitoring results from the previous permit term demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to reduce the monitoring to once in the first monitoring quarter of the first year of this permit term.

Owners of new geothermal systems, and previously unpermitted geothermal systems that receive coverage under this permit shall submit monitoring results to the department for the first four monitoring quarters after coverage begins. If the monitoring results demonstrate full

compliance with the effluent limitations, the permittee may request authorization from the department to suspend monitoring for the remainder of the permit term.

Should the permittee be issued a warning letter or notice of violation related to violation of effluent limitations, ~~a notice of violation,~~ or be the subject of an active enforcement action regarding effluent limit violations, upon issuance of the letter or notice, or initiation of the enforcement action, the monitoring frequency shall revert to 1/3 months and remain in effect until the permit's expiration date.

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

9. Discharges to waters with an approved ~~"total maximum daily load" (TMDL)~~ TMDL. Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

10. Notice of termination.

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

(1) Operations have ceased at the facility and there are no longer cooling water discharges from the facility;

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

(3) All cooling water discharges associated with this facility have been covered by ~~an~~ a VPDES individual ~~VPDES~~ permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

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

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

(2) Facility name and location;

(3) VPDES noncontact cooling water discharges general permit number; and

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

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility and there are no longer noncontact cooling water discharges from the facility;

(c) A statement indicating that all noncontact cooling water discharges have been covered by ~~an~~ a VPDES individual ~~VPDES~~ permit; or

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

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

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

e. The notice of termination shall be submitted to the DEQ regional office serving the area where the noncontact cooling water discharge is located.

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

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

Part II
Conditions Applicable to All VPDES Permits

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

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

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

B. Records.

1. Records of monitoring information shall include:

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

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

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

C. Reporting monitoring results.

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

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

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

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

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

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

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

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

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

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

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse ~~affects~~ effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I [~~2~~ 1 b]. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

I. Reports of noncompliance.

[1.] The permittee shall report any noncompliance ~~which~~ that may adversely affect state waters or may endanger public health.

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

[~~a.~~ (1)] Any unanticipated bypass; and

[~~b.~~ (2)] Any upset which causes a discharge to surface waters.

[~~2.~~ b.] A written report shall be submitted within five days and shall contain:

[~~a.~~ (1)] A description of the noncompliance and its cause;

[~~b.~~ (2)] The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

[~~c.~~ (3)] Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

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

[3. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.]

J. Notice of planned changes.

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

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

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

(2) After proposal of standards of performance in accordance with § 306 of Clean Water Act which are

applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements [~~specified elsewhere in this permit~~ under Part I B 6]; or

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

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

K. Signatory requirements.

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

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

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

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

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

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

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

c. The written authorization is submitted to the department.

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

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

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

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

~~modification;~~ or denial of a permit coverage renewal ~~application~~.

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

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with ~~a~~ currently effective permit coverage shall submit a new 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.

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

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

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

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

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

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Y. Transfer of ~~permits~~ permit coverage.

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

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

a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;

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

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

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

VA.R. Doc. No. R16-4714; Filed December 14, 2017, 9:40 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the

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

Title of Regulation: **9VAC25-890. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (amending 9VAC25-890-1 through 9VAC25-890-40; repealing 9VAC25-890-50).**

Statutory Authority: § 62.1-44.15:28 of the Code of Virginia.

Public Hearing Information:

February 9, 2018 - 10 a.m. - Department of Environmental Quality Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193

February 12, 2018 - 2 p.m. - Department of Environmental Quality DEQ Central Office, 1111 East Main Street, 3rd Floor Conference Room, Richmond, VA 23219

February 14, 2018 - 1 p.m. - Department of Environmental Quality Blue Ridge Regional Office, Room 600, 3019 Peters Creek Road, Roanoke, VA 24019

Public Comment Deadline: March 9, 2018.

Agency Contact: Jaime Bauer, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4416, FAX (804) 698-5106, or email jaime.bauer@deq.virginia.gov.

Summary:

The proposed regulatory action reissues the existing Virginia Pollutant Discharge Elimination System general permit that expires on June 30, 2018. The proposed regulatory action establishes appropriate and necessary permitting requirements for discharges from small municipal separate stormwater systems (MS4) located within the Census Urbanized Areas to discharge stormwater to waters of the state. The general permit establishes the minimum control measures to reduce the potential discharge of pollutants in municipal stormwater as well as requirements for demonstration of compliance with total maximum daily load (TMDL) wasteload allocations for local watersheds and the Chesapeake Bay. The primary issue that needs to be addressed is that the existing general permit expires on June 30, 2018, and must be reissued to authorize small MS4s to continue to discharge after that date.

Proposed substantive changes to the existing regulation include (i) revising the permit in accordance with the U.S. Environmental Protection Agency's small MS4 federal regulations (Small MS4 Remand Rule) promulgated on January 9, 2017, such as revising registration statement requirements to eliminate submittal of the permittee's MS4 Program Plan, including more specific best management practices (BMPs) and strategies for implementation as part of the permit, and removing the requirement approval of MS4 program plans and TMDL action plans by the Department of Environmental Quality; (ii) requiring permittees to provide MS4 maps in a geographic information system shapefile format; (iii) streamlining construction site stormwater runoff control and post-construction stormwater management for new development and development on prior developed lands by incorporating existing erosion and sediment control and Virginia Stormwater Management Program regulations by reference; (iv) revising existing and new source load reductions to be implanted during the permit term for those permittees discharging to the Chesapeake Bay watershed in accordance with the Chesapeake Bay TMDL and Watershed Implementation Plans; and (v) adding a requirement that local TMDL action plans be made available for public review.

9VAC25-890-1. Definitions.

The words and terms used in this chapter shall have the meanings defined in the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia)~~, this chapter,~~ and 9VAC25-870 unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Date brought on line" means the date when the ~~operator~~ permittee determines that a new stormwater management facility is properly functioning ~~to meet its designed pollutant load reduction~~.

~~"MS4 Program Plan" means the completed registration statement and all approved additions, changes and modifications detailing the comprehensive program implemented by the operator under this state permit to reduce the pollutants in the stormwater discharged from its municipal separate storm sewer system (MS4) that has been submitted and accepted by the department.~~

~~"Operator" means the MS4 operator that has been issued coverage under the General Permit for Discharges of Stormwater from small municipal separate storm sewer systems.~~

"High-priority facilities" means facilities owned or operated by the permittee that actively engaged in the following activities: (i) composting facilities, (ii) equipment storage and maintenance facilities, (iii) materials storage yards, (iv) pesticide storage facilities, (v) public works yards, (vi) recycling facilities, (vii) salt storage facilities, (viii) solid waste handling and transfer facilities, and (ix) vehicle storage and maintenance yards.

"MS4 regulated service area" or "service area" means for Phase II permittees, the drainage area served by the permittee's MS4 that is located within an urbanized area as determined by the 2010 decennial census performed by the Bureau of the Census. MS4 regulated service area may also be referred to as "served by the MS4" as it pertains to the tables in Part II A of this permit.

"Physically interconnected" means that one MS4 is connected to a second MS4 in such a manner that it allows for direct discharges to the second system.

"Pollutants of concern" or "POC" means pollutants specifically identified in a U.S. Environmental Protection Agency approved total maximum daily load (TMDL) report as causing a water quality impairment.

9VAC25-890-10. Purpose; delegation of authority; effective date of the state permit.

A. This general permit regulation governs point source stormwater discharges from regulated small municipal separate storm sewer systems (small MS4s) to surface waters of the Commonwealth of Virginia. Nonmunicipal stormwater or wastewater discharges are not authorized by this permit except in accordance with 9VAC25-890-20 C.

B. This general permit will become effective on July 1, ~~2013~~ 2018, and will expire ~~five years from the effective date~~ June 30, 2023.

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

9VAC25-890-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the ~~United States~~ U.S. Environmental Protection Agency set forth in ~~the Code of Federal Regulations~~ Title 40 CFR is referenced and incorporated ~~herein~~ in this chapter, that regulation shall be as it exists and has been published in the July 1, ~~2012~~ 2017, update.

9VAC25-890-20. Authorization to discharge.

A. Any operator covered by this general permit is authorized to discharge stormwater from the small ~~MS4~~ municipal separate storm sewer system (MS4) to surface waters of the Commonwealth of Virginia provided that ~~the~~:

1. The operator submits a complete and accurate registration statement in accordance with 9VAC25-890-30 and that registration statement is accepted by the board~~,~~;

2. The operator submits any permit fees required by 9VAC25-870-700 et seq. (Part XIII)~~, and~~;

3. The operator complies with the requirements of 9VAC25-890-40; and

4. The board has not notified the owner that the discharge is ineligible for coverage in accordance with subsection C of this section.

B. The operator is not authorized by this general permit to discharge to surface waters specifically named in other board regulations that prohibit such discharges.

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

1. The operator is required to obtain an individual permit in accordance with 9VAC25-870-410 B;

2. The operator is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges; or

3. The operator fails to implement BMPs to the MEP standard in order to demonstrate progress toward meeting the water quality requirements as listed in 9VAC25-31-220 D 1 a.

D. Nonstormwater discharges or flows into the small MS4 are authorized by this state permit and do not need to be addressed in the MS4 ~~Program~~ program required under 9VAC25-890-40~~, Section II B 3,~~ Part I E 3 if:

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or state permit for nonstormwater discharges;

2. The individual nonstormwater discharges or flows have been identified ~~in writing~~ by the department as de minimis discharges that are not significant sources of pollutants to surface waters and do not require a separate VPDES permit;

3. The nonstormwater discharges or flows are identified ~~at 9VAC25-870-400 D 2 c (3)~~ in this subdivision D 3 and have not been identified by the operator or by the board as significant contributors of pollutants to the small MS4~~; or~~:

a. Dechlorinated water line flushing;

b. Landscape irrigation;

c. Diverted stream flows;

d. Rising groundwaters;

e. Uncontaminated groundwater infiltration, as defined at 40 CFR 35.2005(20);

f. Uncontaminated pumped groundwater;

g. Discharges from potable water sources;

h. Foundation drains;

i. Air conditioning condensation;

j. Irrigation water;

k. Springs;

l. Water from crawl space pumps;

m. Footing drains;

n. Lawn watering;

o. Individual residential car washing;

p. Flows from riparian habitats and wetlands;

q. Dechlorinated swimming pool discharges;

r. Street wash water;

s. Discharges or flows from firefighting activities; or

t. Other activities generating discharges identified by the department as not requiring VPDES authorization.

4. The immediate discharge of materials ~~resulting from a spill~~ is necessary to ~~prevent loss of~~ protect life~~, personal injury,~~ or ~~severe~~ property ~~damage~~ as determined by fire department personnel or emergency management officials or any discharge in accordance with 9VAC25-31-40. The operator shall take, or ensure that the responsible party takes, all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This state permit does not transfer liability for a spill itself from the ~~party(ies)~~ party responsible for the spill to the operator nor relieve the ~~party(ies)~~ party responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302.

~~D.~~ E. In the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator's control, the operator shall submit a written explanation of the circumstances that prevented state permit compliance to the department in the annual report. Circumstances beyond the control of the operator include ~~but are not limited to~~ abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the operator (operator error is not a condition beyond the control of the operator). The failure to provide adequate program funding, staffing or equipment maintenance shall not be an acceptable explanation for failure to meet state permit conditions. The board will determine, at its sole discretion, whether the reported information will result in an enforcement action.

~~E.~~ F. Discharges that are excluded from ~~obtaining a state permit~~ permitting requirements pursuant to 9VAC25-870-300 are exempted from the regulatory requirements of this state permit.

~~F. Pursuant to 9VAC25-870-400 D 3, for~~ G. For those portions of ~~a~~ the small MS4 engaging in activities that are covered under a separate VPDES permit for discharges associated with industrial ~~stormwater discharges~~ activities, the ~~operator~~ permittee shall follow the conditions established ~~under~~ by the separate VPDES permit.

H. Upon termination of ~~separate VPDES~~ permit coverage for those activities addressed in subsection G of this section, the discharges from the outfalls previously ~~separate VPDES~~ authorized ~~outfalls~~ under the VPDES permit for stormwater discharges associated with industrial activities shall meet the conditions of this state permit provided it has been determined by the board that an individual MS4 permit is not required.

~~G.~~ I. Stormwater discharges from specific MS4 ~~operator~~ permittee activities that have been granted conditional exclusion for "no exposure" of industrial activities and materials to stormwater under the separate VPDES permitting program shall comply with this state permit unless a separate VPDES permit is obtained. The department is responsible for determining compliance with the conditional exclusion under the State Water Control Law and attendant regulations.

~~H.~~ J. Receipt of this general permit does not relieve any ~~operator~~ permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

~~I.~~ K. Continuation of permit coverage.

1. Any ~~operator~~ permittee that was authorized to discharge under the state permit ~~issued in 2008~~ effective July 1, 2013, and that submits a complete registration statement ~~in accordance with Section III M of 9VAC25-890-40~~ on or before June 1, 2018, is authorized to continue to discharge under the terms of the ~~2008~~ July 1, 2013, state permit until such time as the board either:

~~1.~~ a. Issues coverage to the ~~operator~~ permittee under this state permit; or

~~2.~~ b. Notifies the ~~operator~~ permittee that the discharge is not eligible for coverage under this state permit.

2. When the permittee is not in compliance with the conditions of the expiring or expired general permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the 2013 general permit;

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

c. Issue a new state permit with appropriate conditions; or

d. Take other actions authorized by the VPDES (9VAC25-31) and VSMP (9VAC25-870) regulations.

9VAC25-890-30. ~~State permit application (registration statement)~~ Registration statement.

A. Deadline for submitting a registration statement.

1. Operators of small MS4s ~~designated~~ described under 9VAC25-870-400 B~~,~~ that are applying for initial coverage under this general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the board grants a later date.

2. In order to continue uninterrupted coverage under the general permit, operators of small MS4s shall submit a new registration statement ~~at least 90 days before the expiration date of the existing state permit~~ no later than June 1, 2018, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

B. ~~Registration statement.~~ The registration statement shall include the following information:

1. The name and location ~~(county or city name)~~ of the small MS4 ~~for which the registration statement is submitted~~;

2. The name~~,~~ of the owner or operator of the small MS4;

3. The mailing address of the owner of operator of the small MS4;

4. The type (city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other)~~, and address of the operator of the small MS4~~;

5. The name, title, mailing address, telephone number, and email address for the following individuals:

a. The responsible official who meets the criteria established in 9VAC-25-870-370 A 3;

b. The MS4 permit contact; and

c. The annual permit maintenance fee contact.

6. The following outfall information:

a. The unique outfall identifier;

b. The estimated MS4 acreage served;

c. The name of the receiving surface water to which the outfall discharges;

d. Whether or not the receiving water is listed as impaired in the Virginia 2014 305(b)/303(d) Water Quality Assessment Integrated Report; and

e. The name of any applicable TMDL for the segment of the receiving water.

~~3.~~ 7. The 6th Order Hydrologic Unit ~~Code(s)~~ Codes as identified in the ~~most recent version of Virginia's 6th Order~~ Virginia National Watershed Boundary Dataset ~~(available on the department website)~~ (version 5, July 2016) currently receiving discharges or that have potential to receive discharges from the small MS4;

~~4.~~ 8. The estimated drainage area, in acres, served by the small MS4 directly discharging to any impaired receiving surface waters listed in the ~~2010~~ 2014 Virginia 305(b)/303(d) Water Quality Assessment Integrated Report, and a description of the land use for each ~~such~~ drainage area;

~~5. A listing of any TMDL wasteloads allocated to the small MS4. This information may be found on the department website;~~

~~6.~~ 9. The ~~name(s)~~ names of any physically interconnected MS4s to which the small MS4 discharges;

~~7. For operators that had coverage under the previous VSMP General Permit, a copy of the currently implemented MS4 Program Plan. The operator shall continue to implement this plan and any updates as required by this state permit in accordance with Table 1 in 9VAC25-890-40;~~

~~8. For operators applying for initial coverage designated under 9VAC25-890-10 A, a schedule of development of an MS4 Program Plan that includes the following:~~

~~a. A list of best management practices (BMPs) that the operator proposes to implement for each of the stormwater minimum control measures and their associated measurable goals pursuant to 9VAC25-890-40, Section II B, that includes:~~

~~(1) A list of the existing policies, ordinances, schedules, inspection forms, written procedures, and any other documents necessary for best management practice implementation, upon which the operator expects to rely for such implementation; and~~

~~(2) The individuals, departments, divisions, or units responsible for implementing the best management practices;~~

~~b. The objective and expected results of each best management practice in meeting the measurable goals of the stormwater minimum control measures;~~

~~c. The implementation schedule for BMPs including any interim milestones for the implementation of a proposed new best management practice; and~~

~~d. The method that will be utilized to determine the effectiveness of each best management practice and the MS4 Program as a whole;~~

~~9.~~ 10. A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures;

~~10. The name, address, telephone number and email address of either the principal executive officer or ranking elected official as defined in 9VAC25-870-370;~~

11. ~~The name, position title, address, telephone number and email address of any duly authorized representative as defined in 9VAC25-870-370; and~~ For those permittees whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, a draft second phase Chesapeake Bay TMDL action plan; and

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

C. The registration statement shall be signed in accordance with ~~9VAC25-870-370~~ 9VAC25-890-40 Part III K 4.

D. An operator may file its own registration statement, or the operator and other operators of small MS4s may jointly submit a registration statement. If responsibilities for meeting the stormwater minimum control measures will be shared with other municipalities or governmental entities, the registration statement must describe which stormwater minimum control measures the operator will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the small MS4.

E. ~~Where to submit.~~ The registration statement ~~shall be submitted to the department~~ may be delivered to the DEQ Central Office, Office of VPDES Permits or by electronic mail to an electronic mailbox specified by the department.

9VAC25-890-40. General permit.

Any MS4 operator whose registration statement is accepted by the ~~department~~ board will receive ~~coverage under~~ the following ~~state~~ general permit and shall comply with the requirements ~~therein~~ in this general permit and be subject to ~~all applicable requirements of the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Regulations (9VAC25-870)~~ the requirements of 9VAC25-870 and 9VAC25-31.

General Permit No.: VAR04
Effective Date: July 1, ~~2013~~ 2018
Expiration Date: June 30, ~~2018~~ 2023

GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM REGULATIONS, VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATIONS, AND THE VIRGINIA ~~STORMWATER MANAGEMENT ACT~~ STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the ~~Virginia Stormwater Management Act~~ State Water Control Law and regulations adopted pursuant thereto, ~~this state permit authorizes~~ operators of small municipal separate storm sewer systems are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board regulations which prohibit such discharges.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, ~~Section~~ Part I-Discharge Authorization and Special Conditions, ~~Section II—MS4 Program~~ Part II-TMDL Special Conditions, and ~~Section~~ Part III-Conditions Applicable ~~To~~ to All State and VPDES Permits, as set forth ~~herein~~ in this general permit. ~~The operator shall utilize all legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, specific contract language, order or interjurisdictional agreements.~~

~~For operators of small MS4s that are applying for initial coverage under this general permit, the schedule to develop and implement the MS4 Program Plan shall be submitted with the completed registration statement.~~

~~For operators that have previously held MS4 state permit coverage, the operator shall update the MS4 Program Plan in accordance with the following schedule. Until such time as the required updates are completed and implemented, the operator shall continue to implement the MS4 Program consistent with the MS4 Program Plan submitted with the registration statement.~~

Table 1: Schedule of MS4 Program Plan Updates Required in this Permit

Program Update Requirement	Permit Reference	Update Completed By
Public Education Outreach Plan (Minimum Control Measure 1 – Public Education and Outreach on Stormwater Impacts)	Section II B 1	12 months after permit coverage
Illicit Discharge Procedures – (Minimum Control Measure 3 – Illicit Discharge Detection and Elimination)	Section II B 3	
Individual Residential Lot Special Criteria (Minimum Control Measure 5 – Post-Construction Stormwater Management in New Development and Development on Prior Developed Lands)	Section II B 5 c (1) (d)	
Operator-Owned Stormwater Management Inspection Procedures (Minimum Control Measure 5 – Post-Construction Stormwater Management in New Development and Development on Prior Developed Lands)	Section II B 5	
Identification of Locations Requiring SWPPPs (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 b	
Nutrient Management Plan (NMP) Locations – (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 c (1) (a)	
Training Schedule and Program – (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6	
Updated TMDL Action Plans (TMDLs approved before July of 2008) – (Special Conditions for Approved Total Maximum Daily Loads (TMDL) Other Than Chesapeake Bay)	Section I B	24 months after permit coverage
Chesapeake Bay TMDL Action Plan – (Special Condition for Chesapeake Bay TMDL)	Section I C	
Stormwater Management Progressive Compliance and Enforcement – (Minimum Control Measure 4 – Construction Site Stormwater Runoff Control)	Section II B 5	
Daily Good Housekeeping Procedures (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 a	
Other TMDL Action Plans for applicable TMDLs approved between July 2008 and June 2013 – (Special Conditions for Approved Total Maximum Daily Loads (TMDL) Other Than Chesapeake Bay)	Section I B	36 months after permit coverage

~~Outfall Map Completed (Minimum Control Measure 3 – Illicit Discharge Detection and Elimination) – Applicable to new boundaries identified as "urbanized" areas in the 2010 Decennial Census~~	~~Section II B 3 a (3)~~	~~48 months after permit coverage~~
~~SWPPP Implementation (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)~~	~~Section II B 6 b (3)~~	
~~NMP Implementation (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)~~	~~Section II B 6 c (1) (b)~~	~~60 months after permit coverage~~
~~*Updates should be submitted with the appropriate annual report.~~		

~~SECTION~~ Part I
~~DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS~~ Discharge Authorization and Special Conditions

A. Coverage under this state permit. During the period beginning with the date of coverage under this general permit and lasting until the expiration and reissuance of this state permit, the ~~operator~~ permittee is authorized to discharge stormwater and those authorized nonstormwater discharges described in 9VAC25-890-20 C in accordance with this state permit from the small municipal separate storm sewer system identified in the registration statement into surface waters within the boundaries of the Commonwealth of Virginia and consistent with 9VAC25-890-30.

~~B. Special conditions for approved total maximum daily loads (TMDL) other than the Chesapeake Bay TMDL. An approved TMDL may allocate an applicable wasteload to a small MS4 that identifies a pollutant or pollutants for which additional stormwater controls are necessary for the surface waters to meet water quality standards. The MS4 operator shall address the pollutants in accordance with this special condition where the MS4 has been allocated a wasteload in an approved TMDL.~~

~~1. The operator shall maintain an updated MS4 Program Plan that includes a specific TMDL Action Plan for pollutants allocated to the MS4 in approved TMDLs. TMDL Action Plans may be implemented in multiple phases over more than one state permit cycle using the adaptive iterative approach provided adequate progress to reduce the pollutant discharge in a manner consistent with the assumptions and requirements of the specific TMDL wasteload is demonstrated in accordance with subdivision 2 e of this subsection. These TMDL Actions Plans shall identify the best management practices and other interim milestone activities to be implemented during the remaining terms of this state permit.~~

~~a. In accordance with Table 1, the operator shall update the MS4 Program Plans to address any new or modified requirements established under this special condition for pollutants identified in TMDL wasteload allocations approved prior to July 9, 2008.~~

~~b. In accordance with Table 1, the operator shall update the MS4 Program Plan to incorporate approvable TMDL Action Plans that identify the best management practices and other interim milestone activities that will be implemented during the remaining term of this permit for pollutants identified in TMDL wasteload allocations approved either on or after July 9, 2008, and prior to issuance of this permit.~~

~~c. Unless specifically denied in writing by the department, TMDL Action Plans and updates developed in accordance with this section become effective and enforceable 90 days after the date received by the department.~~

~~2. The operator shall:~~

~~a. Develop and maintain a list of its legal authorities such as ordinances, state and other permits, orders, specific contract language, and interjurisdictional agreements applicable to reducing the pollutant identified in each applicable WLA;~~

~~b. Identify and maintain an updated list of all additional management practices, control techniques and system design and engineering methods, beyond those identified in Section II B, that have been implemented as part of the MS4 Program Plan that are applicable to reducing the pollutant identified in the WLA;~~

~~c. Enhance its public education and outreach and employee training programs to also promote methods to eliminate and reduce discharges of the pollutants identified in the WLA;~~

~~d. Assess all significant sources of pollutant(s) from facilities of concern owned or operated by the MS4 operator that are not covered under a separate VPDES permit and identify all municipal facilities that may be a significant source of the identified pollutant. For the purposes of this assessment, a significant source of pollutant(s) from a facility of concern means a discharge where the expected pollutant loading is greater than the~~

average pollutant loading for the land use identified in the TMDL. (For example, a significant source of pollutant from a facility of concern for a bacteria TMDL would be expected to be greater at a dog park than at other recreational facilities where dogs are prohibited);

e. Develop and implement a method to assess TMDL Action Plans for their effectiveness in reducing the pollutants identified in the WLAs. The evaluation shall use any newly available information, representative and adequate water quality monitoring results, or modeling tools to estimate pollutant reductions for the pollutant or pollutants of concern from implementation of the MS4 Program Plan. Monitoring may include BMP, outfall, or in stream monitoring, as appropriate, to estimate pollutant reductions. The operator may conduct monitoring, utilize existing data, establish partnerships, or collaborate with other MS4 operators or other third parties, as appropriate. This evaluation shall include assessment of the facilities identified in subdivision 2 d of this subsection. The methodology used for assessment shall be described in the TMDL Action Plan.

3. Analytical methods for any monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved method does not exist, the operator must use a method consistent with the TMDL.

4. The operator is encouraged to participate as a stakeholder in the development of any TMDL implementation plans applicable to their discharge. The operator may incorporate applicable best management practices identified in the TMDL implementation plan in the MS4 Program Plan or may choose to implement BMPs of equivalent design and efficiency provided that the rationale for any substituted BMP is provided and the substituted BMP is consistent with the assumptions and requirements of the TMDL WLA.

5. Annual reporting requirements.

a. The operator shall submit the required TMDL Action Plans with the appropriate annual report and in accordance with the associated schedule identified in this state permit.

b. On an annual basis, the operator shall report on the implementation of the TMDL Action Plans and associated evaluation including the results of any monitoring conducted as part of the evaluation.

6. The operator shall identify the best management practices and other steps that will be implemented during the next state permit term as part of the operator's reapplication for coverage as required under Section III M.

7. For planning purposes, the operator shall include an estimated end date for achieving the applicable wasteload allocations as part of its reapplication package due in accordance with Section III M.

C. Special condition for the Chesapeake Bay TMDL. The Commonwealth in its Phase I and Phase II Chesapeake Bay TMDL Watershed Implementation Plans (WIP) committed to a phased approach for MS4s, affording MS4 operators up to three full five year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I and II WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of 5.0% of L2 as specified in the 2010 Phase I WIP. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

1. Definitions. The following definitions apply to this state permit for the purpose of the special condition for discharges in the Chesapeake Bay Watershed:

"Existing sources" means pervious and impervious urban land uses served by the MS4 as of June 30, 2009.

"New sources" means pervious and impervious urban land uses served by the MS4 developed or redeveloped on or after July 1, 2009.

"Pollutants of concern" or "POC" means total nitrogen, total phosphorus, and total suspended solids.

"Transitional sources" means regulated land disturbing activities that are temporary in nature and discharge through the MS4.

2. Chesapeake Bay TMDL planning.

a. In accordance with Table 1, the operator shall develop and submit to the department for its review and acceptance an approvable Chesapeake Bay TMDL Action Plan. Unless specifically denied in writing by the department, this plan becomes effective and enforceable 90 days after the date received by the department. The plan shall include:

(1) A review of the current MS4 program implemented as a requirement of this state permit including a review of the existing legal authorities and the operator's ability to ensure compliance with this special condition;

(2) The identification of any new or modified legal authorities such as ordinances, state and other permits, orders, specific contract language, and interjurisdictional agreements implemented or needing to be implemented to meet the requirements of this special condition;

(3) The means and methods that will be utilized to address discharges into the MS4 from new sources;

(4) An estimate of the annual POC loads discharged from the existing sources as of June 30, 2009, based on the 2009 progress run. The operator shall utilize the applicable versions of Tables 2 a-d in this section based on the river basin to which the MS4 discharges by multiplying the total existing acres served by the MS4 on June 30, 2009, and the 2009 Edge of Stream (EOS) loading rate:

Table 2 a: Calculation Sheet for Estimating Existing Source Loads for the James River Basin

***Based on Chesapeake Bay Program Watershed Model Phase 5.3.2**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/acre)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		9.39	
Regulated Urban Pervious			6.99	
Regulated Urban Impervious	Phosphorus		1.76	
Regulated Urban Pervious			0.5	
Regulated Urban Impervious	Total Suspended Solids		676.94	
Regulated Urban Pervious			101.08	

Table 2 b: Calculation Sheet for Estimating Existing Source Loads for the Potomac River Basin

***Based on Chesapeake Bay Program Watershed Model Phase 5.3.2**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/acre)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		16.86	
Regulated Urban Pervious			10.07	
Regulated Urban Impervious	Phosphorus		1.62	
Regulated Urban Pervious			0.41	
Regulated Urban Impervious	Total Suspended Solids		1,171.32	
Regulated Urban Pervious			175.8	

Table 2 c: Calculation Sheet for Estimating Existing Source Loads for the Rappahannock River Basin *Based on Chesapeake Bay Program Watershed Model Phase 5.3.2				
Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/acre)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		9.38	
Regulated Urban Pervious			5.34	
Regulated Urban Impervious	Phosphorus		1.41	
Regulated Urban Pervious			0.38	
Regulated Urban Impervious	Total Suspended Solids		423.97	
Regulated Urban Pervious			56.01	

Table 2 d: Calculation Sheet for Estimating Existing Source Loads for the York River Basin *Based on Chesapeake Bay Program Watershed Model Phase 5.3.2				
Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/acre)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		7.31	
Regulated Urban Pervious			7.65	
Regulated Urban Impervious	Phosphorus		1.51	
Regulated Urban Pervious			0.51	
Regulated Urban Impervious	Total Suspended Solids		456.68	
Regulated Urban Pervious			72.78	

(5) A determination of the total pollutant load reductions necessary to reduce the annual POC loads from existing sources utilizing the applicable versions of Tables 3 a-d in this section based on the river basin to which the MS4 discharges. This shall be calculated by multiplying the total existing acres served by the MS4 by the first permit cycle required reduction in loading rate. For the purposes of this determination, the operator shall utilize those existing acres identified by the 2000 U.S. Census Bureau urbanized area and served by the MS4.

Table 3 a: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the James River Basin

***Based on Chesapeake Bay Program Watershed Model Phase 5.3.2**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
Regulated Urban Impervious	Nitrogen		0.04	
Regulated Urban Pervious			0.02	
Regulated Urban Impervious	Phosphorus		0.01	
Regulated Urban Pervious			0.002	
Regulated Urban Impervious	Total Suspended Solids		6.67	
Regulated Urban Pervious			0.44	

Table 3 b: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the Potomac River Basin

***Based on Chesapeake Bay Program Watershed Model Phase 5.3.2**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
Regulated Urban Impervious	Nitrogen		0.08	
Regulated Urban Pervious			0.03	
Regulated Urban Impervious	Phosphorus		0.01	
Regulated Urban Pervious			0.001	
Regulated Urban Impervious	Total Suspended Solids		11.71	
Regulated Urban Pervious			0.77	

Table 3 c: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the Rappahannock River Basin

***Based on Chesapeake Bay Program Watershed Model Phase 5.3.2**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
Regulated Urban Impervious	Nitrogen		0.04	
Regulated Urban Pervious			0.02	
Regulated Urban Impervious	Phosphorus		0.01	
Regulated Urban Pervious			0.002	
Regulated Urban Impervious	Total Suspended Solids		4.24	
Regulated Urban Pervious			0.25	

Table 3 d: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the York River Basin

***Based on Chesapeake Bay Program Watershed Model Phase 5.3.2**

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
Regulated Urban Impervious	Nitrogen		0.03	
Regulated Urban Pervious			0.02	
Regulated Urban Impervious	Phosphorus		0.01	
Regulated Urban Pervious			0.002	
Regulated Urban Impervious	Total Suspended Solids		4.60	
Regulated Urban Pervious			0.32	

(6) The means and methods, such as management practices and retrofit programs that will be utilized to meet the required reductions included in subdivision 2 a (5) of this subsection, and a schedule to achieve those reductions. The schedule should include annual benchmarks to demonstrate the ongoing progress in meeting those reductions;

(7) The means and methods to offset the increased loads from new sources initiating construction between July 1, 2009, and June 30, 2014, that disturb one acre or greater as a result of the utilization of an average land cover condition greater than 16% impervious cover for the design of post-development stormwater management facilities. The operator shall utilize Table 4 to develop the equivalent pollutant load for nitrogen and total suspended solids. The operator shall offset 5.0% of the calculated increased load from these new sources during the permit cycle.

(8) The means and methods to offset the increased loads from projects as grandfathered in accordance with 9VAC25-870-48, that disturb one acre or greater that begin construction after July 1, 2014, where the project utilizes an average land cover condition greater than 16% impervious cover in the design of post-development stormwater management facilities. The operator shall utilize Table 4 to develop the equivalent pollutant load for nitrogen and total suspended solids.

(9) The operator shall address any modification to the TMDL or watershed implementation plan that occurs during the term of this state permit as part of its permit reapplication and not during the term of this state permit.

Table 4: Ratio of Phosphorus Loading Rate to Nitrogen and Total Suspended Solids Loading Rates for Chesapeake Bay Basins

Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)	Phosphorus Loading Rate (lbs/acre)	Nitrogen Loading Rate (lbs/acre)	Total Suspended Solids Loading Rate (lbs/acre)
James River Basin	1.0	5.2	420.9
Potomac River Basin	1.0	6.9	469.2
Rappahannock River Basin	1.0	6.7	320.9
York River Basin	1.0	9.5	531.6

(10) A list of future projects and associated acreage that qualify as grandfathered in accordance with 9VAC25-870-48;

(11) An estimate of the expected costs to implement the requirements of this special condition during the state permit cycle; and

(12) An opportunity for receipt and consideration of public comment regarding the draft Chesapeake Bay TMDL Action Plan.

b. As part of development of the Chesapeake Bay TMDL Action Plan, the operator may consider:

(1) Implementation of BMPs on unregulated lands provided any necessary baseline reduction is not included toward meeting the required reduction in this permit;

(2) Utilization of stream restoration projects, provided that the credit applied to the required POC load reduction is prorated based on the ratio of regulated urban acres to total drainage acres upstream of the restored area;

(3) Establishment of a memorandum of understanding (MOU) with other MS4 operators that discharge to the same or adjacent eight-digit hydrologic unit within the same basin to implement BMPs collectively. The MOU shall include a mechanism for dividing the POC reductions created by BMP implementation between the cooperative MS4s;

(4) Utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting;

(5) A more stringent average land cover condition based on less than 16% impervious cover for new sources initiating construction between July 1, 2009, and June 30, 2014, and all grandfathered projects where allowed by law; and

(6) Any BMPs installed after June 30, 2009, as part of a retrofit program may be applied towards meeting the required load reductions provided any necessary baseline reductions are not included.

3. Chesapeake Bay TMDL Action Plan implementation. The operator shall implement the TMDL Action Plan according to the schedule therein. Compliance with this requirement represents adequate progress for this state permit term towards achieving TMDL wasteload allocations consistent with the assumptions and requirements of the TMDL. For the purposes of this permit, the implementation of the following represents implementation to the maximum extent practicable and demonstrates adequate progress:

a. Implementation of nutrient management plans in accordance with the schedule identified in the minimum control measure in Section II related to pollution prevention/good housekeeping for municipal operations;

b. Implementation of the minimum control measure in Section II related to construction site stormwater runoff control in accordance with this state permit shall address discharges from transitional sources;

c. Implementation of the means and methods to address discharges from new sources in accordance with the minimum control measure in Section II related to post-construction stormwater management in new development and development of prior developed lands and in order to offset 5.0% of the total increase in POC loads between July 1, 2009, and June 30, 2014. Increases in the POC load from grandfathered projects initiating construction after July 1, 2014, must be offset prior to completion of the project; and

d. Implementation of means and methods sufficient to meet the required reductions of POC loads from existing sources in accordance with the Chesapeake Bay TMDL Action Plan.

4. Annual reporting requirements.

a. In accordance with Table 1, the operator shall submit the Chesapeake Bay Action Plan with the appropriate annual report.

b. Each subsequent annual report shall include a list of control measures implemented during the reporting period and the cumulative progress toward meeting the compliance targets for nitrogen, phosphorus, and total suspended solids.

c. Each subsequent annual report shall include a list of control measures, in an electronic format provided by the department, that were implemented during the reporting cycle and the estimated reduction achieved by the control. For stormwater management controls, the report shall include the information required in Section II B 5 e and shall include whether an existing stormwater management control was retrofitted, and if so, the existing stormwater management control type retrofit used.

d. Each annual report shall include a list of control measures that are expected to be implemented during the next reporting period and the expected progress toward meeting the compliance targets for nitrogen, phosphorus, and total suspended solids.

5. The operator shall include the following as part of its reapplication package due in accordance with Section III M:

a. Documentation that sufficient control measures have been implemented to meet the compliance target identified in this special condition. If temporary credits or offsets have been purchased in order to meet the compliance target, the list of temporary reductions utilized to meet the required reduction in this state permit and a schedule of implementation to ensure the permanent reduction must be provided; and

b. A draft second phase Chesapeake Bay TMDL Action Plan designed to reduce the existing pollutant load as follows:

(1) The existing pollutant of concern loads by an additional seven times the required reductions in loading rates using the applicable Table 3 for sources included in the 2000 U.S. Census Bureau urbanized areas;

(2) The existing pollutant of concerns loads by an additional eight times the required reductions in loading rates using the applicable Table 3 for expanded sources identified in the U.S. Census Bureau 2010 urbanized areas;

(3) An additional 35% reduction in new sources developed between 2009 and 2014 and for which the land use cover condition was greater than 16%; and

(4) Accounts for any modifications to the applicable loading rate provided to the operator as a result of TMDL modification.

SECTION II
MUNICIPAL SEPARATE STORM SEWER SYSTEM MANAGEMENT PROGRAM

A. B. The operator of a small MS4 must permittee shall develop, implement, and enforce a MS4 Program program designed to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable (MEP), to protect water quality, to ensure compliance by the operator permittee with water quality standards, and to satisfy the appropriate water quality requirements of the Clean Water Act State Water Control Law and its attendant regulations. The permittee shall utilize the legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order, or interjurisdictional agreements. The MS4 Program must program shall include the minimum control measures (MCM) described in paragraph B of this section Part I E. Implementation of best management practices (BMP) consistent with the provisions of an iterative MS4 Program program required pursuant to this section general permit constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable," protects water quality in the absence of a TMDL wasteload allocation (WLA), ensures compliance by the operator permittee with water quality standards, and satisfies the appropriate water quality requirements of the Clean Water Act and regulations in the absence of a TMDL WLA. The requirements of this section and those special conditions set out in Section I B Part II also apply where a WLA is applicable.

C. The MS4 program plan.

1. The MS4 program plan shall include, at a minimum, the following:

a. The roles and responsibilities of each of the permittee's divisions and departments in the implementation of the requirements of the permit tasked with ensuring that the permit requirements are met;

b. If the permittee utilizes another entity to implement portions of the MS4 program, a copy of the written agreement. The description of each party's roles and responsibilities, including any written agreements with third parties, shall be updated as necessary;

c. For each of the MCM in Part I E, the following information shall be included:

(1) Each specific requirement as listed in Part I E for each MCM;

(2) A description of the BMPs that the permittee anticipates will be implemented to demonstrate compliance with the permit conditions in Part I E;

(3) All standard operating procedures or policies necessary to implement the BMPs;

(4) The measurable goal by which each BMP or strategy will be evaluated; and

(5) The persons, positions, or departments responsible for implementing each BMP or strategy; and

d. A list of documents incorporated by reference including the version and date of the document being incorporated.

2. If the permittee is receiving initial coverage under this general VPDES permit for the discharge of stormwater, the permittee shall:

a. No later than six months following the date of permit coverage, submit to the department a schedule for the development of each component of the MS4 program plan in accordance with Part I C 1 that does not exceed the expiration date of this permit; and

b. Provide to the department a copy of the MS4 program plan upon completion of development.

3. If the permittee was previously covered under the General VPDES Permit for the Discharge of Stormwater from MS4 effective July 1, 2013, the permittee shall post the most up-to-date version of MS4 program plan on the permittee's stormwater website or location where the small MS4 program plan can be obtained as required by Part I E 2. Until such time that the MS4 program plan is updated in accordance with Part I E, the permittee shall continue to implement the MS4 program plan in effect at the time that coverage is issued under this general permit.

4. Revisions to the MS4 program plan are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality to the MEP. As such, revisions made in accordance with this permit as a result of the iterative process do not require modification of this permit. The permittee shall summarize revisions to the MS4 program plan as part of the annual report as described in Part I D 2.

5. The permittee may demonstrate compliance with one or more of the MCM in Part I E through implementation of separate statutory or regulatory programs provided that the permittee's MS4 program identifies and fully describes any program that will be used to satisfy one or more of the minimum control measures of Part I E. If the program that the permittee is using requires the approval of a third party, the program shall be fully approved by the third party, or the permittee shall be working toward getting full approval. Documentation of the program's approval status, or the progress toward achieving full approval, shall be included in the annual report required by Part I D. The permittee shall remain responsible for compliance with the permit requirements if the other entity fails to implement one or more components of the control measures.

6. The permittee may rely on another entity to satisfy the permit requirements to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding permit requirement;

c. The other entity agrees to implement the control measure on behalf of the permittee; and

d. The agreement between the parties is documented in writing and retained by the permittee with the MS4 program plan for as long as the agreement is active.

The permittee shall remain responsible for compliance with requirements of the permit and shall document in the annual reports required in accordance with Part I D that another entity is being relied on to satisfy all or part of the state permit requirements. The permittee shall provide the information required in Part I D.

7. If the permittee relies on another governmental entity regulated under 9VAC25-870-380 to satisfy all of the state permit obligations, including the obligation to file periodic reports required by Part I D, the permittee must note that fact in the registration statement, but is not required to file the periodic reports. The permittee remains responsible for compliance with the state permit requirements if the other entity fails to implement the control measures or components thereof.

D. Annual reporting requirements.

1. The permittee shall submit an annual report to the department no later than October 1 of each year. The report shall cover the previous year from July 1 to June 30.

2. The annual report shall include the following general information:

a. The permittee, system name, and permit number;

b. The reporting period for which the annual report is being submitted;

c. A signed certification as per Part III K;

d. Each annual reporting item as specified in the MCM in Part I E; and

e. An evaluation of the MS4 program implementation, including a review of each MCM, to determine the MS4 program's effectiveness and whether or not changes to the MS4 program plan are necessary.

3. For permittees receiving initial coverage under this general VPDES permit for the discharge of stormwater, the annual report shall include a status update on each component of the MS4 program plan being developed. Once the MS4 program plan has been updated to include implementation of a specific MCM in Part I E, the permittee shall follow the reporting requirements established in Part I D 2.

4. For those permittees with requirements established under Part II A, the annual report shall include a status report on the implementation of the Chesapeake Bay TMDL action plan in accordance with Part II A of this permit including any revisions to the plan.

5. For those permittees with requirements established under Part II B, the annual report shall include a status report on the implementation of the local TMDL action plans in accordance with Part II B including any revisions to the plan.

6. For the purposes of this permit, the MS4 program plan and annual report shall be maintained separately and submitted to the department as required by this permit as two separate documents.

~~B.~~ E. Minimum control measures.

~~NOTE regarding minimum control measures for public education and outreach on stormwater impacts and public involvement/participation: "Public" is not defined in this permit. However, the department concurs with the following EPA statement, which was published in the Federal Register, Volume 64, No. 235, page 68,750 on December 8, 1999, regarding "public" and its applicability to MS4 programs: "EPA acknowledges that federal and state facilities are different from municipalities. EPA believes, however, that the minimum measures are flexible enough that they can be implemented by these facilities. As an example, DOD commentators asked about how to interpret the term "public" for military installations when implementing the public education measure. EPA agrees with the suggested interpretation of "public" for DOD facilities as "the resident and employee population within the fence line of the facility." The department recommends that nontraditional MS4 operators, such as state and federal entities and local school districts, utilize this statement as guidance when determining their applicable "public" for compliance with this permit.~~

1. Public education and outreach ~~on stormwater impacts~~.

a. The ~~operator~~ permittee shall ~~continue to~~ implement ~~the~~ a public education and outreach program ~~as included in the registration statement until the program is updated to meet the conditions of this state permit. Operators who have not previously held MS4 permit coverage shall implement this program in accordance with the schedule provided with the completed registration statement.~~ designed to:

~~b. The public education and outreach program should be designed with consideration of the following goals:~~

(1) ~~Increasing target audience~~ Increase the public's knowledge ~~about the steps that can be taken~~ of how to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;

(2) ~~Increasing target audience~~ Increase the public's knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and

(3) ~~Implementing~~ Implement a diverse program with strategies that are targeted ~~towards audiences~~ toward individuals or groups most likely to have significant stormwater impacts.

~~c.~~ b. The ~~updated program shall be designed to: (1) Identify, at a minimum,~~ permittee shall identify no less than three high-priority ~~water quality~~ stormwater issues~~,~~ ~~that contribute to the discharge of stormwater (e.g.,~~ to meet the goal of educating the public in accordance with Part I E 1 a. High-priority issues may include the following examples: Chesapeake Bay nutrients, pet wastes ~~and,~~ local ~~bacteria~~ receiving water impairments, TMDLs, high-quality receiving waters, and illicit discharges from commercial ~~sites) and a rationale for the selection of the three high priority water quality issues;~~ sites.

~~(2) Identify and estimate the population size of the target audience or audiences who is most likely to have significant impacts for each high-priority water quality issue;~~

~~(3) Develop relevant message or messages and associated educational and outreach materials (e.g., various media such as printed materials, billboard and mass transit advertisements, signage at select locations, radio advertisements, television advertisements, websites, and social media) for message distribution to the selected target audiences while considering the viewpoints and concerns of the target audiences including minorities, disadvantaged audiences, and minors;~~

~~(4) Provide for public participation during public education and outreach program development;~~

~~(5) Annually conduct sufficient education and outreach activities designed to reach an equivalent 20% of each high priority issue target audience. It shall not be considered noncompliance for failure to reach 20% of the target audience. However, it shall be a compliance issue if insufficient effort is made to annually reach a minimum of 20% of the target audience; and~~

~~(6) Provide for the adjustment of target audiences and messages including educational materials and delivery mechanisms to reach target audiences in order to address any observed weaknesses or shortcomings.~~

c. The high-priority public education and outreach program, as a whole, shall:

(1) Clearly identify the high-priority stormwater issues;

(2) Explain the importance of the high-priority stormwater issues;

(3) Include measures or actions the public can take to minimize the impact of the high-priority stormwater issues; and

(4) Provide a contact name and telephone number or location where the public can find out more information.

d. The permittee shall use two or more of the strategies listed in Table 1 below to communicate to the public the high-priority stormwater issues identified in accordance with Part I E 1 b including how to reduce stormwater pollution.

Table 1
Strategies for Public Outreach and Education

Strategies	Examples (provided as examples and are not meant to be all inclusive or limiting)
Traditional written materials	Informational brochures, newsletters, fact sheets, utility bill inserts, or recreational guides for targeted groups of citizens
Alternative materials	Bumper stickers, refrigerator magnets, t-shirts, or drink koozies
Signage	Temporary or permanent signage in public places or facilities, vehicle signage, bill boards, or storm drain stenciling
Media materials	Information disseminated through electronic media, radio, televisions, movie theater, or newspaper
Speaking engagements	Presentations to school, church, industry, trade, special interest, or community groups
Curriculum materials	Materials developed for school-aged children, students at local colleges or universities, or extension classes offered to local citizens
Training materials	Materials developed to disseminate during workshops offered to local citizens, trade organization, or industrial officials

~~d.~~ e. The ~~operator~~ permittee may coordinate ~~their~~ its public education and outreach efforts with other MS4 ~~operators~~ permittees; however, each operator shall be individually responsible for meeting all of its state permit requirements.

~~e. Prior to application for continued state permit coverage required in Section III M, the operator shall evaluate the education and outreach program for:~~

~~(1) Appropriateness of the high priority stormwater issues;~~

~~(2) Appropriateness of the selected target audiences for each high priority stormwater issue;~~

~~(3) Effectiveness of the message or messages being delivered; and~~

~~(4) Effectiveness of the mechanism or mechanisms of delivery employed in reaching the target audiences.~~

f. The MS4 ~~Program Plan~~ program plan shall ~~describe how the conditions of this permit shall be updated in accordance with Table 1.~~ include:

(1) A list of the high-priority stormwater issues the permittee will communicate to the public as part of the public education and outreach program;

(2) The rationale for selection of each high-priority stormwater issue and an explanation of how each education or outreach strategy is intended to have a positive impact on stormwater discharges;

(3) Identification of the public audience to receive each high-priority stormwater message;

(4) The strategies from Table 1 of Part I E 1 d to be used to communicate each high-priority stormwater message; and

(5) The anticipated time periods the messages will be communicated or made available to the public.

g. The ~~operator~~ annual report shall include the following information ~~in each annual report submitted to the department during this permit term~~:

(1) A list of the ~~education and outreach activities conducted during the reporting period for each high-priority water quality issue, the estimated number of people reached, and an estimated percentage of the target audience or audiences that will be reached~~ high-priority stormwater issues the permittee addressed in the public education and outreach program; and

(2) A list of the ~~education and outreach activities that will be conducted during the next reporting period for each high priority water quality issue, the estimated number of people that will be reached, and an estimated percentage of the target audience or audiences that will be reached~~ strategies used to communicate each high-priority stormwater issue.

2. Public ~~involvement/participation~~ involvement and participation.

~~a. Public involvement.~~

~~(1) The operator shall comply with any applicable federal, state, and local public notice requirements.~~

~~(2)~~ a. The ~~operator~~ permittee shall develop and implement procedures for the following:

~~(a) Maintain an updated MS4 Program Plan. Any required updates to the MS4 Program Plan shall be completed at a minimum of once a year and shall be updated in conjunction with the annual report. The operator shall post copies of each MS4 program plan on its webpage at a minimum of once a year and within 30 days of submittal of the annual report to the department.~~

~~(b) Post copies of each annual report on the operator's webpage within 30 days of submittal to the department and retain copies of annual reports online for the duration of this state permit; and~~

~~(c) Prior to applying for coverage as required by Section III M, notify the public and provide for receipt of comment of the proposed MS4 Program Plan that will be submitted with the registration statement. As part of the reapplication, the operator shall address how it considered the comments received in the development of its MS4 Program Plan. The operator shall give public notice by a method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to solicit public participation.~~

(1) The public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding land disturbing activities, or other potential stormwater pollution concerns;

(2) The public to provide input on the permittee's MS4 program;

(3) Receiving public input or complaints;

(4) Responding to public input or complaints; and

(5) Maintaining documentation of public input received and the permittee's response.

b. No later than three months after this permit's effective date, the permittee shall develop and maintain a webpage dedicated to the MS4 program and stormwater pollution prevention. The following information shall be posted on this webpage:

(1) The effective MS4 permit and coverage letter;

(2) The most current MS4 program plan or location where the MS4 program plan can be obtained;

(3) The annual report for each year of the term covered by this permit;

(4) A mechanism for the public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding land disturbing activities, or other potential stormwater pollution concerns in accordance with Part I E 2 a (1); and

(5) Methods for how the public can provide input on the permittee's MS4 program in accordance with Part I E 2 a (2).

~~b. Public participation. The operator shall participate, through promotion, sponsorship, or other involvement, in a minimum of four local activities annually (e.g., stream cleanups; hazardous waste cleanup days; and meetings with watershed associations, environmental advisory committees, and other environmental organizations that operate within proximity to the operator's small MS4). The activities shall be aimed at increasing public participation to reduce stormwater pollutant loads; improve water quality; and support local restoration and clean up projects, programs, groups, meetings, or other opportunities for public involvement.~~ c. The permittee shall implement no less than four activities per year from

two or more of the categories listed in Table 2 below to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects.

Table 2
Public Involvement Opportunities

Public involvement opportunities	Examples (provided as example and are not meant to be all inclusive or limiting)
Monitoring	Establish or support citizen monitoring group
Restoration	Stream or watershed clean-up day, adopt-a-water way program,
Educational events	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education Standards of Learning or curriculum requirements, watershed walks, participation on environmental advisory committees
Disposal or collection events	Household hazardous chemicals collection, vehicle fluids collection
Pollution prevention	Adopt-a-storm drain program, implement a storm drain marking program, promote use of residential stormwater BMPs, implement pet waste stations in public areas, adopt-a-street program.

d. The permittee may coordinate the public involvement opportunities listed in Table 2 with other MS4 permittees; however, each permittee shall be individually responsible for meeting all of the permit requirements.

~~c.~~ e. The MS4 ~~Program Plan~~ program plan shall include ~~written procedures for implementing this program.~~:

(1) The webpage address where mechanisms for the public to report (i) potential illicit discharges, improper disposal, or spills to the MS4, (ii) complaints regarding land disturbing activities, or (iii) other potential stormwater pollution concerns;

(2) The webpage address that contains the methods for how the public can provide input on the permittee's MS4 program; and

(3) A description of the public involvement activities to be implemented by the permittee, the anticipated time period the activities will occur, and a metric for each activity to determine if the activity is beneficial to water quality. An example of metrics may include the weight of trash collected from a stream cleanup, the number of participants in a hazardous waste collection event, etc.

~~d. Each~~ f. The annual report shall include the following information:

(1) A ~~web link to the MS4 Program Plan and annual report; and~~ summary of any public input on the MS4 program received and how the permittee responded;

(2) ~~Documentation of compliance with the public participation requirements of this section.~~ A webpage link to the permittee's MS4 program and stormwater website;

(3) A description of the public involvement activities implemented by the permittee;

(4) A report of the metric as defined for each activity and an evaluation as to whether or not the activity is beneficial to improving water quality; and

(5) The name of other MS4 permittees who participated in the public involvement opportunities.

3. Illicit discharge detection and elimination.

a. The ~~operator~~ permittee shall develop and maintain an accurate ~~storm sewer system~~ MS4 map and information table ~~and shall update it in accordance with the schedule set out in Table 1.~~ as follows:

(1) ~~The storm sewer system map must show the following~~ A map of the storm sewer system owned or operated by the permittee within the Census Urbanized Area identified by the 2010 decennial census that includes, at a minimum:

(a) ~~The location of all MS4 outfalls.~~ MS4 outfalls discharging to surface waters, except as follows:

(i) In cases where the outfall is located outside of the MS4 ~~operator's~~ permittee's legal responsibility, the ~~operator~~ permittee may elect to map the known point of discharge location closest to the actual ~~outfall. Each mapped outfall must be given a unique identifier, which must be noted on the map; and~~ outfall; and

(ii) In cases where the MS4 outfall discharges to receiving water channelized underground, the permittee may elect to map the point downstream at which the receiving water emerges above ground as a point of discharge. If there are multiple outfalls discharging to an underground channelized receiving water, the map shall identify that the point of discharge represents more than one outfall.

(b) A unique identifier for each mapped item required in Part I E 3; and

(c) The name and location of ~~all~~ receiving waters ~~receiving discharges from the MS4 outfalls and the associated HUC~~ to which the MS4 outfall or point of discharge discharges.

(2) The ~~associated information table shall include for each outfall the following:~~ permittee shall maintain an information table associated with the storm sewer system map that includes the following information for each outfall or point of discharge for those cases in which the permittee elects to map the known point of discharge in accordance with Part I E 3 a (1) (a):

(a) ~~The~~ A unique identifier as specified on the storm sewer system map;

(b) The latitude and longitude of the outfall or point of discharge;

(c) The estimated ~~MS4 acreage served;~~ regulated acreage draining to the outfall or point of discharge;

(d) The name of the receiving ~~surface~~ water ~~and~~;

(e) The 6th Order Hydrologic Unit Code of the receiving water;

(f) An indication as to whether the receiving water is listed as impaired in the Virginia ~~2010 303(d)/305(b)~~ 2014 305(b)/303(d) Water Quality Assessment Integrated Report; and

~~(d)~~ (g) The name of any ~~applicable TMDL or~~ EPA approved TMDLs for which the permittee is assigned a wasteload allocation.

~~(3) Within 48 months of coverage under this state permit, the operator shall have a complete and updated storm sewer system map and information table that includes all MS4 outfalls located within the boundaries identified as "urbanized" areas in the 2010 Decennial Census and shall submit the updated information table as an appendix to the annual report.~~

(3) No later than December 31, 2018, the permittee shall submit to DEQ a GIS-compatible shapefile of the permittee's MS4 map as described in Part I E 3 a. If the permittee does not have an MS4 map in a GIS format, the permittee shall provide the map as a PDF document.

(4) ~~The operator shall maintain a copy of the current storm sewer system map and outfall information table for review upon request by the public or by the department.~~ No later than October 1 of each year, the permittee shall update the storm sewer system map and outfall information table to include any new outfalls constructed or TMDLs approved or both during the immediate preceding reporting period.

(5) The ~~operator~~ permittee shall ~~continue to identify other points of discharge. The operator shall notify in writing the~~ provide written notification to any downstream adjacent MS4 of any known physical interconnection established or discovered after the effective date of this permit.

b. The ~~operator~~ permittee shall ~~effectively~~ prohibit, through ordinance, policy, standard operating procedures, or other legal mechanism, to the extent allowable under federal, state, or local law, regulations, or ordinances, unauthorized nonstormwater discharges into the storm sewer system ~~to the extent allowable under federal, state, or local law, regulation, or ordinance~~. ~~Categories of nonstormwater~~ Nonstormwater discharges or flows ~~(i.e., illicit discharges)~~ identified in ~~9VAC25-870-400 D 2 c (3) must~~ 9VAC25-890-20 C 3 shall only be addressed ~~only~~ if they are identified by the ~~operator~~ permittee as a significant ~~contributors~~ contributor of pollutants discharging to the ~~small~~ MS4. Flows that have been identified ~~in writing~~ by the department as de minimis discharges are not significant sources of pollutants to surface water ~~and do not require a VPDES permit~~.

c. The ~~operator~~ permittee shall ~~develop,~~ maintain and implement ~~and update, when appropriate,~~ illicit discharge detection and elimination (IDDE) written procedures to detect, identify, and address unauthorized nonstormwater discharges, including illegal dumping, to the small MS4 with the goal of eliminating the unauthorized discharge. ~~These~~ Written procedures shall include:

(1) A description of the legal authorities, policies, standard operating procedures or other legal mechanisms available to the permittee to eliminate identified sources of ongoing illicit discharges including procedures for using legal enforcement authorities.

~~Written dry~~ (2) Dry weather field screening ~~methodologies~~ protocols to detect, identify, and eliminate illicit discharges to the MS4 ~~that include field observations and field screening monitoring and that provide~~. The protocol shall include:

(a) A prioritized schedule of field screening activities and rationale for prioritization determined by the ~~operator~~ permittee based on such criteria as age of the infrastructure, land use, historical illegal discharges, dumping or cross connections.

~~(b) The minimum number of field screening activities the operator shall complete annually to be determined as follows: (i) if the total number of outfalls in the small MS4 is less than 50, all outfalls shall be screened annually or (ii) if the small MS4 has 50 or more total outfalls, a minimum of 50 outfalls shall be screened annually.~~

(b) If the total number of MS4 outfalls is equal to or less than 50, a schedule to screen all outfalls annually;

(c) If the total number of MS4 outfalls is greater than 50, a schedule to screen a minimum of 50 outfalls annually such that no more than 50% are screened in the previous 12-month period; and

~~(c) Methodologies to collect the general information such as time~~ (d) A mechanism to track the following information:

(i) The outfall unique identifier;

(ii) Time since the last ~~rain, the~~ precipitation event;

(iii) The estimated quantity of the last ~~rain, site~~ precipitation event;

(iv) Site descriptions (e.g., conveyance type and dominant watershed land uses)~~,~~;

(v) Whether or not a discharge was observed;

(vi) If a discharge was observed, the estimated discharge rate (e.g., width ~~of water surface, approximate~~ and depth of ~~water, approximate flow velocity, and~~ discharge flow rate)~~, and visual observations~~; and

(vii) Visual characteristics of the discharge (e.g., order, color, clarity, floatables, deposits or stains, vegetation condition, structural condition, and biology).

~~(d)~~ (3) A ~~time frame~~ timeframe upon which to conduct an investigation ~~or investigations~~ to identify and locate the source of any observed ~~continuous or intermittent~~ nonstormwater unauthorized discharge ~~prioritized as follows: (i) illicit discharges suspected of being sanitary sewage or significantly contaminated must be investigated first and (ii) investigations of illicit discharges suspected of being less hazardous to human health and safety such as noncontact cooling water or wash water may be delayed until after all suspected sanitary sewage or significantly contaminated discharges have been investigated, eliminated, or identified~~. Priority of investigations shall be given to discharges of sanitary sewage and those believed to be a risk to human health and public safety. Discharges authorized under a separate VPDES or state permit require no further action under this permit.

~~(e)~~ (4) Methodologies to determine the source of all illicit discharges ~~shall be conducted~~. If the permittee is unable to identify the source of an illicit discharge ~~is found, but~~ within six months of ~~the~~ beginning ~~of~~ the investigation ~~neither the source nor the same nonstormwater discharge has been identified,~~ then the ~~operator~~ permittee shall document ~~such in accordance with Section II B 3 f~~ that the source remains unidentified. If the observed discharge is intermittent, the ~~operator must~~ permittee shall document ~~that a minimum of three separate investigations were made in an attempt~~ that attempts to observe the discharge ~~when it was~~ flowing were unsuccessful. ~~If these attempts are unsuccessful, the operator shall document such in accordance with Section II B 3 f.~~

~~(f) Mechanisms to eliminate identified sources of illicit discharges including a description of the policies and procedures for when and how to use legal authorities.~~

~~(g) Methods~~ (5) Methodologies for conducting a follow-up investigation ~~in order to verify that the discharge has been eliminated.~~ as necessary for illicit discharges that are continuous or that permittees expect to occur more frequently than a one-time discharge to verify that the discharge has been eliminated;

~~(h)~~ (6) A mechanism to track all illicit discharge investigations to document the following:

~~(i) the~~ (a) The date ~~or dates~~ that the illicit discharge was initially observed ~~and reported~~;

~~(ii) the~~ (b) The results of the investigation, including the source, if identified;

~~(iii) any~~ (c) Any follow-up to the investigation;

~~(iv) resolution~~ (d) Resolution of the investigation; and

~~(v) the~~ (e) The date that the investigation was closed.

~~d. The operator shall promote, publicize, and facilitate public reporting of illicit discharges into or from MS4s. The operator shall conduct inspections in response to complaints and follow up inspections as needed to ensure that corrective measures have been implemented by the responsible party.~~

~~e.~~ d. The MS4 ~~Program Plan~~ program plan shall include ~~all procedures developed by the operator to detect, identify, and address nonstormwater discharges to the MS4 in accordance with the schedule in Table 1. In the interim, the operator shall continue to implement the program as included as part of the registration statement until the program is updated to meet the conditions of this permit. Operators, who have not previously held MS4 permit coverage, shall implement this program in accordance with the schedule provided with the completed registration statement.~~:

(1) The MS4 map and information table required by Part I E 3 a. The map and information table may be incorporated into the MS4 program plan by reference. The map shall be made available to the department within 14 days upon request;

(2) Copies of written notifications of new physical interconnections given by the permittee to other MS4s; and

(3) The IDDE procedures described in Part I E 3 c.

~~f. Annual reporting requirements. Each~~ e. The annual report shall include:

(1) ~~A list of any written notifications of physical interconnection given by the operator to other MS4s;~~ A confirmation statement that the MS4 map and information table are up-to-date as of June 30 of the reporting year;

(2) The total number of outfalls screened during the reporting period~~, the screening results, and detail of any follow-up actions necessitated by the screening results~~ as part of the dry weather screening program; and

(3) ~~A summary of each investigation conducted by the operator of any suspected illicit discharge. The summary must include: (i) the date that the suspected discharge was observed, reported, or both; (ii) how the investigation was resolved, including any follow-up, and (iii) resolution of the investigation and the date the investigation was closed.~~ A list of illicit discharges to the MS4 including spills reaching the MS4 with information as follows:

(a) The source of illicit discharge;

(b) The date that the discharge was observed, reported, or both;

(c) Whether the discharge was discovered by the permittee during dry weather screening, reported by the public, or other method (describe);

(d) How the investigation was resolved;

(e) A description of any follow-up activities; and

(f) The date the investigation was closed.

4. Construction site stormwater runoff control.

a. ~~Applicable oversight requirements.~~ The ~~operator~~ permittee shall utilize its legal authority, such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements, to address discharges entering the MS4. ~~from the following land-disturbing activities:~~ The permittee shall control construction site stormwater runoff as follows:

~~(1) Land-disturbing activities as defined in § 62.1-44.15:51 of the Code of Virginia that result in the disturbance of 10,000 square feet or greater;~~

~~(2) Land-disturbing activities in jurisdictions in Tidewater Virginia, as defined in § 62.1-44.15:68 of the Code of Virginia, that disturb 2,500 square feet or greater and are located in areas designated as Resource Protection Areas (RPA), Resource Management Areas (RMA) or Intensely Developed Acres (IDA), pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act;~~

~~(3) Land-disturbing activities disturbing less than the minimum land-disturbance identified in subdivision (1) or (2) above for which a local ordinance requires that an erosion and sediment control plan be developed; and~~

~~(4) Land-disturbing activities on individual residential lots or sections of residential developments being developed by different property owners and where the total land-disturbance of the residential development is 10,000 square feet or greater. The operator may utilize an agreement in lieu of a plan as provided in § 62.1-44.15:55 of the Code of Virginia for this category of land disturbances.~~

(1) If the permittee is a city, county, or town that has adopted a Virginia Erosion and Sediment Control Program (VESCP), the permittee shall implement the VESCP consistent with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840);

(2) If the permittee is a town that has not adopted a VESCP, the permittee shall rely on the surrounding city or county in which the town is located to implement a VESCP consistent with the Virginia Erosion and Sediment Control Law (§ 62.1-44:15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840);

(3) If the permittee is a state agency; public institution of higher education including community colleges, colleges, and universities; or federal entity and has developed standards and specifications in accordance with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840), the permittee shall implement the most recent department approved standards and specifications; or

(4) If the permittee is a state agency; public institution of higher education including community colleges, colleges, and universities; or federal entity and has not developed standards and specifications in accordance with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840), the permittee shall inspect all land-disturbing activities as defined in § 62.1-44.15:51 of the Code of Virginia that result in the disturbance activities of 10,000 square feet or greater, or 2,500 square feet or greater in accordance with areas designated under the Chesapeake Bay Preservation Act, as follows:

(a) During or immediately following initial installation of erosion and sediment controls;

(b) At least once per every two-week period;

(c) Within 48 hours following any runoff producing storm event; and

(d) At the completion of the project prior to the release of any performance bond.

(5) If the permittee is a subdivision of a local government such as a school board or other local government body, the permittee shall inspect those projects resulting in a land disturbance as defined in § 62.1-44.15.51 of the Code of Virginia occurring on lands owned or operated by the permittee that result in the disturbance of 10,000 square feet or greater, 2,500 square feet or greater in accordance with areas designated under the Chesapeake Bay Preservation Act, or in accordance with more stringent thresholds established by the local government, as follows:

(a) During or immediately following initial installation of erosion and sediment controls;

(b) At least once per every two-week period;

(c) Within 48 hours following any runoff producing storm event; and

(d) at the completion of the project prior to the release of any performance bond.

~~b. Required plan approval prior to commencement of the land disturbing activity. The operator shall require that land disturbance not begin until an erosion and sediment control plan or an agreement in lieu of a plan as provided in § 62.1-44.15:55 is approved by a VESCP authority in accordance with the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia). The plan shall be:~~

~~(1) Compliant with the minimum standards identified in 9VAC25-840-40 of the Erosion and Sediment Control Regulations; or~~

~~(2) Compliant with department approved annual standards and specifications. Where applicable, the plan shall be consistent with any additional or more stringent, or both, erosion and sediment control requirements established by state regulation or local ordinance.~~

~~c. Compliance and enforcement.~~

~~(1) The operator shall inspect land disturbing activities for compliance with an approved erosion and sediment control plan or agreement in lieu of a plan in accordance with the minimum standards identified in 9VAC25-840-40 or with department approved annual standards and specifications.~~

~~(2) The operator shall implement an inspection schedule for land disturbing activities identified in Section II B 4 a as follows:~~

~~(a) Upon initial installation of erosion and sediment controls;~~

~~(b) At least once during every two week period;~~

~~(c) Within 48 hours of any runoff producing storm event; and~~

~~(d) Upon completion of the project and prior to the release of any applicable performance bonds.~~

~~Where an operator establishes an alternative inspection program as provided for in 9VAC25-840-60 B 2, the written schedule shall be implemented in lieu of Section II B 4 c (2) and the written plan shall be included in the MS4 Program Plan.~~

~~(3) Operator inspections shall be conducted by personnel who hold a certificate of competence in accordance with 9VAC25-850-40. Documentation of certification shall be made available upon request by the VESCP authority or other regulatory agency.~~

~~(4) The operator shall promote to the public a mechanism for receipt of complaints regarding regulated land disturbing activities and shall follow up on any complaints regarding potential water quality and compliance issues.~~

~~(5) The operator shall utilize its legal authority to require compliance with the approved plan where an inspection finds that the approved plan is not being properly implemented.~~

~~(6) The operator shall utilize, as appropriate, its legal authority to require changes to an approved plan when an inspection finds that the approved plan is inadequate to effectively control soil erosion, sediment deposition, and runoff to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources.~~

~~(7) The operator shall require implementation of appropriate controls to prevent nonstormwater discharges to the MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during land disturbing activity inspections of the MS4. The discharge of nonstormwater discharges other than those identified in 9VAC25-890-20 through the MS4 is not authorized by this state permit.~~

~~(8) The operator may develop and implement a progressive compliance and enforcement strategy provided that such strategy is included in the MS4 Program Plan and is consistent with 9VAC25-840.~~

~~d. Regulatory coordination. The operator shall implement enforceable procedures to require that large construction activities as defined in 9VAC25-870-10 and small construction activities as defined in 9VAC25-870-10, including municipal construction activities, secure~~

~~necessary state permit authorizations from the department to discharge stormwater.~~

~~e. MS4 Program requirements.~~ b. The ~~operator's~~ permittee's MS4 ~~Program Plan~~ program plan shall include:

(1) If the permittee implements a construction site stormwater runoff control program in accordance with Part I E 4 a (1), the local ordinance citations for the VESCP program;

(2) If the permittee implements a construction site stormwater runoff control program in accordance with Part I E 4 a (3):

(a) The most recently approved standards and specification or if incorporated by reference, the location where the standards and specification can be viewed; and

(b) A copy of the most recent standard and specification approval letter from the department;

~~(1)~~ (3) A description of the legal authorities utilized to ensure compliance with ~~the minimum control measure in Section II related to~~ Part I E 4 a to control construction site stormwater runoff control such as ordinances, permits, orders, specific contract language, policies, and interjurisdictional agreements;

~~(2) Written plan review procedures and all associated documents utilized in plan review;~~

~~(3) For the MS4 operators who obtain department approved standards and specifications, a copy of the current standards and specifications;~~

(4) Written inspection procedures to ensure the erosion and sediment controls are properly implemented and all associated documents utilized during inspection including the inspection schedule;

(5) Written procedures for requiring compliance ~~and enforcement, including a progressive compliance and enforcement strategy, where appropriate~~ through corrective action or enforcement action to the extent allowable under federal, state, or local law, regulation, ordinance, or other legal mechanisms; and

(6) The roles and responsibilities of each of the ~~operator's~~ permittee's departments, divisions, or subdivisions in implementing the ~~minimum control measure in Section II related to~~ construction site stormwater runoff control ~~If the operator utilizes another entity to implement portions of the MS4 Program Plan, a copy of the written agreement must be retained in the MS4 Program Plan. The description of each party's roles and responsibilities, including any written agreements with third parties, shall be updated as necessary~~ requirements in Part I E 4.

~~Reference may be made to any listed requirements in this subdivision provided the location of where the reference material can be found is included and the reference material is made available to the public upon request.~~

~~f. Reporting requirements. The operator shall track regulated land disturbing activities and submit the following information in all annual reports:~~ c. The annual report shall include the following:

(1) ~~Total number of regulated land disturbing activities;~~ If the permittee implements a construction site stormwater runoff program in accordance with Part I E 4 a (3):

(a) A confirmation statement that land disturbing projects that occurred during the reporting period have been conducted in accordance with the current department approved standards and specifications for erosions and sediment control; and

(b) If one or more of the land disturbing projects were not conducted with the department approved standards and specifications, an explanation as to why the projects did not conform to the approved standards and specifications.

~~(2) Total number of acres disturbed;~~

~~(3)~~ (2) Total number of inspections conducted; and

~~(4) A summary of the enforcement actions taken, including the~~ (3) The total number and type of enforcement actions ~~taken during the reporting period~~ implemented and the type of enforcement actions.

5. Post-construction stormwater management ~~in~~ for new development and development on prior developed lands.

a. ~~Applicable oversight requirements. The operator~~ The permittee shall address post-construction stormwater runoff that enters the MS4 from the following land-disturbing activities by implementing a post construction stormwater runoff management program as follows:

~~(1) New development and development on prior developed lands that are defined as large construction activities or small construction activities in 9VAC25-870-10;~~

~~(2) New development and development on prior developed lands that disturb greater than or equal to 2,500 square feet, but less than one acre, located in a Chesapeake Bay Preservation Area designated by a local government located in Tidewater, Virginia, as defined in § 62.1-44.15:68 of the Code of Virginia; and~~

~~(3) New development and development on prior developed lands where an applicable state regulation or local ordinance has designated a more stringent~~

~~regulatory size threshold than that identified in subdivision (1) or (2) above.~~

(1) If the permittee is a city, county, or town, with an approved Virginia Stormwater Management Program (VSMP), the permittee shall implement the VSMP consistent with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870) as well as develop an inspection and maintenance program in accordance with Parts I E 5 b and c;

(2) If the permittee is a town that has not adopted a VSMP, the permittee shall rely on the surrounding city or county in which the town is located to implement a VSMP consistent with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870) and develop an inspection and maintenance program in accordance with Part I E 5 b and c;

(3) If the permittee is a state agency; public institution of higher education including community colleges, colleges, and universities; or federal entity and has developed standards and specifications in accordance with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870) the permittee shall implement the most recent department approved standards and specifications and develop an inspection and maintenance program in accordance with Part I E 5 b;

(4) If the permittee is a state agency; public institution of higher education including community colleges, colleges, and universities; or federal entity and has not developed standards and specifications in accordance with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and Virginia Stormwater Management Regulations (9VAC25-870), the permittee shall implement a post-construction stormwater runoff control through compliance with 9VAC25-870 and with the implementation of a maintenance and inspection program consistent with Part I E 5 b; or

(5) If the permittee is a subdivision of a local government such as a school board or other local government body, the permittee shall implement a post-construction stormwater runoff control through compliance with 9VAC25-870 or in accordance with more stringent local requirements, if applicable, and with the implementation of a maintenance and inspection program consistent with Part I E 5 b.

~~b. Required design criteria for stormwater runoff controls. The operator shall utilize legal authority, such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements, to require that activities identified in Section II B 5 a address stormwater runoff in such a manner that stormwater runoff controls are designed and installed:~~

~~(1) In accordance with the appropriate water quality and water quantity design criteria as required in Part II (9VAC25-870-40 et seq.) of 9VAC25-870;~~

~~(2) In accordance with any additional applicable state or local design criteria required at project initiation; and~~

~~(3) Where applicable, in accordance with any department approved annual standards and specifications.~~

~~Upon board approval of a Virginia Stormwater Management Program authority (VSMP Authority) as defined in § 62.1-44.15:24 of the Code of Virginia and reissuance of the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, the operator shall require that stormwater management plans are approved by the appropriate VSMP Authority prior to land disturbance. In accordance with § 62.1-44.15:27 M of the Code of Virginia, VSMPs shall become effective July 1, 2014, unless otherwise specified by state law or by the board.~~

~~c. Inspection, operation, and maintenance verification of stormwater management facilities.~~ b. The permittee shall implement an inspection and maintenance program for those stormwater management facilities owned or operated by the permittee that discharges to the MS4 as follows:

~~(1) For stormwater management facilities not owned by the MS4 operator, the following conditions apply:~~

~~(a) The operator shall require adequate long-term operation and maintenance by the owner of the stormwater management facility by requiring the owner to develop a recorded inspection schedule and maintenance agreement to the extent allowable under state or local law or other legal mechanism;~~

~~(b) The operator or his designee shall implement a schedule designed to inspect all privately owned stormwater management facilities that discharge into the MS4 at least once every five years to document that maintenance is being conducted in such a manner to ensure long-term operation in accordance with the approved designs.~~

~~(c) The operator shall utilize its legal authority for enforcement of maintenance responsibilities if maintenance is neglected by the owner. The operator may develop and implement a progressive compliance and enforcement strategy provided that the strategy is included in the MS4 Program Plan.~~

~~(d) Beginning with the issuance of this state permit, the operator may utilize strategies other than maintenance agreements such as periodic inspections, homeowner outreach and education, and other methods targeted at promoting the long-term maintenance of stormwater control measures that are designed to treat stormwater runoff solely from the individual residential lot. Within 12 months of coverage under this permit, the operator shall develop and implement these alternative strategies and include them in the MS4 Program Plan.~~

~~(2) For stormwater management facilities owned by the MS4 operator, the following conditions apply:~~

~~(a) The operator shall provide for adequate long-term operation and maintenance of its stormwater management facilities in accordance with written inspection and maintenance procedures included in the MS4 Program Plan.~~ (1) The permittee shall develop and maintain written inspection and maintenance procedures in order to ensure adequate long-term operation and maintenance of its stormwater management facilities;

~~(b)~~ (2) The ~~operator~~ permittee shall inspect ~~these~~ stormwater management facilities ~~annually~~ owned or operated by the permittee no less than once per year. The ~~operator~~ permittee may choose to implement an alternative schedule to inspect these stormwater management facilities based on facility type and expected maintenance needs provided that the alternative schedule and rationale is included in the MS4 ~~Program Plan.~~ program plan; and

~~(c) The operator shall conduct maintenance on its stormwater management facilities as necessary.~~ (3) If during the inspection of the stormwater management facility conducted in accordance with Part I E 5 b (2), it is determined that maintenance is required, the permittee shall conduct the maintenance in accordance with the written procedures developed under Part I E 5 b (1).

c. For those permittees described in Part I E 5 a (1) or (2), the permittee shall:

(1) Implement an inspection and enforcement program for stormwater management facilities not owned by the permittee (i.e., privately owned) that includes:

(a) An inspection frequency of no less than once per five years for all privately owned stormwater management facilities that discharge into the MS4; and

(b) Adequate long-term operation and maintenance by the owner of the stormwater management facility by requiring the owner to develop a recorded inspection schedule and maintenance agreement to the extent allowable under state or local law or other legal mechanism;

(2) Utilize its legal authority for enforcement of the maintenance responsibilities if maintenance is neglected by the owner; and

(3) The permittee may develop and implement a progressive compliance and enforcement strategy provided that the strategy is included in the MS4 program plan.

~~d. MS4 Program Plan requirements. The operator's MS4 Program Plan shall be updated in accordance with Table 1 to include:~~

~~(1) A list of the applicable legal authorities such as ordinance, state and other permits, orders, specific contract language, and interjurisdictional agreements to ensure compliance with the minimum control measure in Section II related to post-construction stormwater management in new development and development on prior developed lands;~~

~~(2) Written policies and procedures utilized to ensure that stormwater management facilities are designed and installed in accordance with Section II B 5 b;~~

~~(3) Written inspection policies and procedures utilized in conducting inspections;~~

~~(4) Written procedures for inspection, compliance and enforcement to ensure maintenance is conducted on private stormwater facilities to ensure long-term operation in accordance with approved design;~~

~~(5) Written procedures for inspection and maintenance of operator-owned stormwater management facilities;~~

~~(6) The roles and responsibilities of each of the operator's departments, divisions, or subdivisions in implementing the minimum control measure in Section II related to post-construction stormwater management in new development and development on prior developed lands. If the operator utilizes another entity to implement portions of the MS4 Program Plan, a copy of the written agreement must be retained in the MS4 Program Plan. Roles and responsibilities shall be updated as necessary.~~

~~e. Stormwater management facility tracking and reporting requirements. The operator shall maintain an updated electronic database of all known operator-owned and privately-owned stormwater management facilities that discharge into the MS4. The database shall include the following:~~ d. The permittee shall maintain an electronic database or spreadsheet of all known permittee-owned or permittee-operated and privately owned stormwater management facilities that discharge into the MS4. The database shall also include all BMPs implemented by the permittee to meet the Chesapeake Bay TMDL load reduction as required in Part II A. A database shall include the following information as applicable:

(1) The stormwater management facility type;

(2) ~~A general description of the facility's location, including the address or latitude and longitude;~~ The stormwater management facility or BMPs location as latitude and longitude;

(3) The acres treated by the ~~facility, including total acres, as well as the breakdown of pervious and impervious acres;~~ stormwater management facility or BMP, including total acres, pervious acres, and impervious acres;

(4) The date the facility was brought online (MM/YYYY). If the date brought online is not known, the ~~operator~~ permittee shall use June 30, 2005 ~~as the date brought online for all previously existing stormwater management facilities~~;

(5) The ~~sixth order hydrologic unit code (HUC)~~ 6th Order Hydrologic Unit Code in which the stormwater management facility is located;

~~(6) The name of any impaired water segments within each HUC listed in the 2010 § 305(b)/303(d) Water Quality Assessment Integrated Report to which the stormwater management facility discharges;~~

~~(7)~~ (6) Whether the stormwater management facility or BMP is ~~operator owned~~ owned or operated by the permittee or ~~privately owned~~ privately owned;

(7) Whether or not the stormwater management facility is part of the permittee's Chesapeake Bay TMDL action plan required in Part II A or local TMDL action plan required in Part II B, or both;

(8) ~~Whether a maintenance agreement exists if the stormwater management facility is privately owned; and~~ If the stormwater management facility is privately owned, whether a maintenance agreement exists; and

(9) The date of the ~~operator's~~ permittee's most recent inspection of the stormwater management facility or BMP.

e. The electronic database or spreadsheet shall be updated no later than 30 days after a new stormwater management facility is brought online, a new BMP is implemented to meet a TMDL load reduction as required in Part II, or discovered if it is an existing stormwater management facility.

f. The permittee shall use the DEQ Construction Stormwater Database or other application as specified by the department to report each stormwater management facility installed after July 1, 2014, to address the control of post-construction runoff from land disturbing activities for which the permittee is required to obtain a General VPDES Permit for Discharges of Stormwater from Construction Activities.

g. No later than October 1 of each year, the permittee shall electronically report the stormwater management facilities and BMPs implemented between July 1 and June 30 of each year using the DEQ BMP Warehouse and associated reporting template for any practices not reported in accordance with Part I E 5 f including stormwater management facilities installed to control post-development stormwater runoff from land disturbing activities less than one acre in accordance with the Chesapeake Bay Preservation Act regulations (9VAC25-830) and for which a General VPDES Permit for Discharges of Stormwater from Construction Activities was not required.

h. The MS4 program plan shall include:

(1) If the permittee implements a VSMP in accordance with Part I E 5 a (1) and (2):

(a) A copy of the VSMP approval letter issued by the department;

(b) Written inspection procedures and all associated documents utilized in the inspection of privately owned stormwater management facilities; and

(c) Written procedures for compliance and enforcement of inspection and maintenance requirements for privately owned BMPs.

(2) If the permittee implements a post-development stormwater runoff control program in accordance with Part I E 5 a (3):

(a) The most recently approved standards and specification or if incorporated by reference, the location where the standards and specification can be viewed; and

(b) A copy of the most recent standard and specification approval letter from the department.

(3) A description of the legal authorities utilized to ensure compliance with Part I E 5 a for post-construction stormwater runoff control such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements;

(4) Written inspection procedures and all associated documents utilized during inspection of stormwater management facilities owned or operated by the permittee;

(5) The roles and responsibilities of each of the permittee's departments, divisions, or subdivisions in implementing the post-construction stormwater runoff control program; and

(6) The stormwater management facility spreadsheet or database incorporated by reference and the location or link where the spreadsheet or database can be reviewed.

~~In addition, the operator shall annually track and report the total number of inspections completed and, when applicable, the number of enforcement actions taken to ensure long-term maintenance.~~

~~The operator shall submit an electronic database or spreadsheet of all stormwater management facilities brought online during each reporting year with the appropriate annual report. Upon such time as the department provides the operators access to a statewide web-based reporting electronic database or spreadsheet, the operator shall utilize such database to complete the pertinent reporting requirements of this state permit.~~

i. The annual report shall include the following information:

(1) If the permittee implements a Virginia Stormwater Management Program in accordance with Part I E 5 a (1) and (2):

(a) The number of privately owned stormwater management facility inspections conducted; and

(b) The number of enforcement actions initiated by the permittee to ensure long-term maintenance of privately owned stormwater management facilities including the type of enforcement action;

(2) Total number of inspections conducted on stormwater management facilities owned or operated by the permittee;

(3) A description of the significant activities performed on the stormwater management facilities owned or operated by the permittee to ensure it continues to perform as designed. This does not include activities such as grass mowing or trash collection;

(4) A confirmation statement that the permittee submitted stormwater management facility information through the Virginia Construction Stormwater General Permit database for those land disturbing activities for which the permittee was required to obtain coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities in accordance with Part I E 5 f or a statement that the permittee did not complete any projects requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities; and

(5) A confirmation statement that the permittee electronically reported BMPs using the DEQ BMP Warehouse in accordance with Part I E 5 g and the date on which the information was submitted.

6. ~~Pollution prevention/good housekeeping for municipal operations.~~ Pollution prevention and good housekeeping for facilities owned or operated by the permittee.

a. ~~Operations and maintenance activities. The MS4 Program Plan submitted with the registration statement shall be implemented by the operator until updated in accordance with this state permit. In accordance with Table 1, the operator~~ The permittee shall ~~develop~~ maintain and implement written procedures ~~designed to minimize or prevent pollutant discharge from: (i) daily operations~~ for those activities at facilities owned or operated by the permittee, such as road, street, and parking lot maintenance; ~~(ii)~~ equipment maintenance; and ~~(iii)~~ the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers~~. The written procedures shall be utilized as part of the employee training. At a minimum, the written procedures shall be~~ designed to:

(1) Prevent illicit discharges;

(2) Ensure the proper disposal of waste materials, including landscape wastes;

(3) Prevent the discharge of ~~municipal~~ wastewater or permittee vehicle wash water or both into the MS4 without authorization under a separate VPDES permit;

~~(4) Prevent the discharge of wastewater into the MS4 without authorization under a separate VPDES permit;~~

~~(5)~~ (4) Require implementation of best management practices when discharging water pumped from utility construction and maintenance activities;

~~(6)~~ (5) Minimize the pollutants in stormwater runoff from bulk storage areas (e.g., salt storage, topsoil stockpiles) through the use of best management practices;

~~(7)~~ (6) Prevent pollutant discharge into the MS4 from leaking municipal automobiles and equipment; and

~~(8)~~ (7) Ensure that the application of materials, including fertilizers and pesticides, is conducted in accordance with the manufacturer's recommendations.

b. ~~Municipal facility pollution prevention and good housekeeping.~~ The written procedures established in accordance with Part I E 6 a shall be utilized as part of the employee training program.

~~(1) Within 12 months of state permit coverage, the operator shall identify all municipal high-priority facilities. These high-priority facilities shall include: (i) composting facilities, (ii) equipment storage and maintenance facilities, (iii) materials storage yards, (iv) pesticide storage facilities, (v) public works yards, (vi) recycling facilities, (vii) salt storage facilities, (viii) solid waste handling and transfer facilities, and (ix) vehicle storage and maintenance yards.~~

~~(2)~~ c. Within 12 months of state permit coverage, the operator shall identify which of the municipal high-priority facilities have a high potential of discharging

pollutants. Municipal high-priority facilities that have a high potential for discharging pollutants are those facilities identified in ~~subsection (1) above~~ Part I E 6 a. The permittee shall maintain and implement a site stormwater pollution prevention plan (SWMPP) for each high-priority facility owned or operated by the permittee with a high potential to discharge pollutants that are not covered under a separate VPDES permit and which any of the following materials or activities occur and are expected to have exposure to stormwater resulting from rain, snow, snowmelt or runoff:

~~(a)~~ (1) Areas where residuals from using, storing or cleaning machinery or equipment remain and are exposed to stormwater;

~~(b)~~ (2) Materials or residuals on the ground or in stormwater inlets from spills or leaks;

~~(c)~~ (3) Material handling equipment ~~(except adequately maintained vehicles)~~;

~~(d)~~ (4) Materials or products that would be expected to be mobilized in stormwater runoff during ~~loading/unloading~~ loading or unloading or transporting activities (e.g., rock, salt, fill dirt);

~~(e)~~ (5) Materials or products stored outdoors (except final products intended for outside use where exposure to stormwater does not result in the discharge of pollutants);

~~(f)~~ (6) Materials or products that would be expected to be mobilized in stormwater runoff contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

~~(g)~~ (7) Waste material except waste in covered, ~~non-leaking~~ nonleaking containers (e.g., dumpsters);

~~(h)~~ (8) Application or disposal of process wastewater (unless otherwise permitted); or

~~(i)~~ (9) Particulate matter or visible deposits of residuals from roof stacks, vents or both not otherwise regulated (i.e., under an air quality control permit) and evident in the stormwater runoff.

~~(3) The operator shall develop and implement specific stormwater pollution prevention plans for all high-priority facilities identified in subdivision 2 of this subsection. The operator shall complete SWPPP development and implementation shall be completed within 48 months of coverage under this state permit. Facilities covered under a separate VPDES permit shall adhere to the conditions established in that permit and are excluded from this requirement.~~

~~(4)~~ d. Each SWPPP as required in Part I E 6 c shall include the following:

~~(a)~~ (1) A site description that includes a site map identifying all outfalls, direction of stormwater flows, existing source controls, and receiving water bodies;

~~(b)~~ (2) A ~~discussion~~ description and checklist of the potential pollutants and pollutant sources;

~~(c)~~ (3) A ~~discussion~~ description of all potential nonstormwater discharges;

~~(d)~~ (4) Written procedures designed to reduce and prevent pollutant discharge;

~~(e)~~ (5) A description of the applicable training as required in ~~Section II B 6 d;~~ Part I E 6 m;

~~(f)~~ (6) Procedures to conduct an annual comprehensive site compliance evaluation;

~~(g)~~ (7) An inspection and maintenance schedule for site specific source controls. The date of each inspection and associated findings and follow-up shall be logged in each SWPPP;

(8) An inspection log for each site specific source control including the date and inspection findings; and

~~(h) The contents of each SWPPP shall be evaluated and modified as necessary to accurately reflect any discharge, release, or spill from the high-priority facility reported in accordance with Section III G. For each such discharge, release, or spill, the SWPPP must include the following information: date of incident; material discharged, released, or spilled; and quantity discharged, released or spilled; and~~ (9) A log of each unauthorized discharge, release, or spill incident reported in accordance with Part III G including the following information:

(a) Date of incident;

(b) Material discharged, released, or spilled; and

(c) Estimated quantity discharged, released or spilled;

e. No later than June 30 of each year, the permittee shall annually review any high-priority facility owned or operated by the permittee for which a SWPPP has not been developed to determine if the facility has a high potential to discharge pollutants as described in Part I E 6 c. If the facility is determined to be a high-priority facility with a high potential to discharge pollutants, the permittee shall develop a SWPPP meeting the requirements of Part I E 6 d no later than December 31 of that same year.

f. The permittee shall review the contents of any site specific SWPPP no later than 30 days after any unauthorized discharge, release, or spill reported in accordance with Part III G to determine if additional measures are necessary to prevent future unauthorized discharges, releases, or spills. If necessary, the SWPPP

shall be updated no later than 90 days after the unauthorized discharge.

~~(i) A copy of each SWPPP shall be kept at each facility and shall be kept updated and utilized as part of staff training required in Section II B 6 d.~~ g. The SWPPP shall be kept at the high-priority facility with a high potential to discharge and utilized as part of staff training required in Part I E 6 m. The SWPPP and associated documents may be maintained as a hard copy or electronically as long as the documents are available to employees at the applicable site.

h. If activities change at a facility such that the facility no longer meets the criteria of a high-priority facility with a high potential to discharge pollutants as described in Part I E 6 c, the permittee may remove the facility from the list of high-priority facilities with a high potential to discharge pollutants.

~~c. Turf and landscape management.~~

~~(1)~~ i. The ~~operator~~ permittee shall maintain and implement turf and landscape nutrient management plans that have been developed by a certified turf and landscape nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia on all lands owned or operated by the ~~MS4 operator~~ permittee where nutrients are applied to a contiguous area greater than one acre. ~~Implementation shall be in accordance with the following schedule:~~ If nutrients are being applied to achieve final stabilization of a land disturbance project, application shall follow the manufacturer's recommendations.

~~(a) Within 12 months of state permit coverage, the operator shall identify all applicable lands where nutrients are applied to a contiguous area of more than one acre. A latitude and longitude shall be provided for each such piece of land and reported in the annual report.~~

~~(b) Within 60 months of state permit coverage, the operator shall implement turf and landscape nutrient management plans on all lands where nutrients are applied to a contiguous area of more than one acre. The following measurable outcomes are established for the implementation of turf and landscape nutrient management plans: (i) within 24 months of permit coverage, not less than 15% of all identified acres will be covered by turf and landscape nutrient management plans; (ii) within 36 months of permit coverage, not less than 40% of all identified acres will be covered by turf and landscape nutrient management plans; and (iii) within 48 months of permit coverage, not less than 75% of all identified acres will be covered by turf and landscape nutrient management plans. The operator shall not fail to meet the measurable goals for two consecutive years.~~

~~(c) MS4 operators with lands regulated under § 10.1-104.4 of the Code of Virginia shall continue to implement turf and landscape nutrient management plans in accordance with this statutory requirement.~~ j. Permittees with lands regulated under § 10.1-104.4 of the Code of Virginia, including state agencies, state colleges and universities, and other state government entities, shall continue to implement turf and landscape nutrient management plans in accordance with this statutory requirement.

~~(2) Operators shall annually track the following:~~

~~(a) The total acreage of lands where turf and landscape nutrient management plans are required; and~~

~~(b) The acreage of lands upon which turf and landscape nutrient management plans have been implemented.~~

~~(3)~~ k. The ~~operator~~ permittee shall not apply any deicing agent containing urea or other forms of nitrogen or phosphorus to parking lots, roadways, and sidewalks, or other paved surfaces.

l. The permittee shall require through the use of contract language, training, standard operating procedures, etc., that contractors employed by the permittee and engaging in activities with the potential to discharge pollutants use appropriate control measures to minimize the discharge of pollutants to the MS4.

~~d. Training. The operator shall conduct training for employees. The training requirements may be fulfilled, in total or in part, through regional training programs involving two or more MS4 localities provided; however, that each operator shall remain individually liable for its failure to comply with the training requirements in this permit. Training is not required if the topic is not applicable to the operator's operations and therefore does not have applicable personnel provided the lack of applicability is documented in the MS4 Program Plan. The operator shall determine and document the applicable employees or positions to receive each type of training. The operator shall develop an annual written training plan including a schedule of training events that ensures implementation of the training requirements as follows:~~ m. The permittee shall develop a training plan in writing for applicable staff that ensures the following:

(1) ~~The operator shall provide biennial training to applicable field~~ Field personnel received training in the recognition and reporting of illicit discharges~~.~~ no less than once per 24 months;

(2) ~~The operator shall provide biennial training to applicable employees in good housekeeping and pollution prevention practices that are to be employed during road, street, and parking lot maintenance.~~ Employees performing road, street, and parking lot

maintenance receive training in pollution prevention and good housekeeping associated with those activities no less than once per 24 months;

(3) ~~The operator shall provide biennial training to applicable employees in good housekeeping and pollution prevention practices that are to be employed in and around maintenance and public works facilities.~~ Employees working in and around maintenance, public works, or recreational facilities receive training in good housekeeping and pollution prevention practices associated with those facilities no less than once per 24 months;

(4) ~~The operator shall ensure that employees,~~ Employees and ~~require that~~ contractors~~,~~ hired by the permittee who apply pesticides and herbicides are ~~properly~~ trained or certified in accordance with the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia)~~.~~;

(5) ~~The operator shall ensure that employees~~ Employees and contractors serving as plan reviewers, inspectors, program administrators, and construction site operators obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations~~.~~;

(6) ~~The operator shall ensure that applicable employees obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations.~~ Employees and contractors implementing the stormwater program obtain the appropriate certifications as required under the Virginia Stormwater Management Act and its attendant regulations; and

~~(7) The operators shall provide biennial training to applicable employees in good housekeeping and pollution prevention practices that are to be employed in and around recreational facilities.~~

~~(8) The appropriate emergency response employees shall have training in spill responses. A summary of the training or certification program provided to emergency response employees shall be included in the first annual report.~~ (7) Employees whose duties include emergency response have been trained in spill response. Training of emergency responders such as firefighters and law-enforcement officers on the handling of spill releases as part of a larger emergency response training shall satisfy this training requirement and be documented in the training plan.

~~(9) The operator shall keep documentation on each training event including the training date, the number of employees attending the training, and the objective of the training event for a period of three years after each training event.~~ n. The permittee shall maintain documentation of each training event conducted to fulfill the requirements of Part I E 6 m for a minimum of three years after the training event. The documentation shall include the following information:

(1) The date of the training event;

(2) The number of employees attending the training event; and

(3) The objective of the training event.

o. The permittee may fulfill the training requirements in Part I E 6 m, in total or in part, through regional training programs involving two or more MS4 permittees; however, the permittee shall remain responsible for ensuring compliance with the training requirements.

~~e. The operator shall require that municipal contractors use appropriate control measures and procedures for stormwater discharges to the MS4 system. Oversight procedures shall be described in the MS4 Program Plan.~~

~~f. At a minimum, the MS4 Program Plan shall contain:~~ p. The MS4 program plan shall include:

(1) The written ~~protocols being used to satisfy~~ procedures for the ~~daily~~ operations and maintenance ~~requirements;~~ activities as required by Part I E 6 a;

(2) ~~A list of all municipal high-priority facilities that identifies those facilities that have a high potential for chemicals or other materials to be discharged in stormwater and a schedule that identifies the year in which an individual SWPPP will be developed for those facilities required to have a SWPPP. Upon completion of a SWPPP, the SWPPP shall be part of the MS4 Program Plan. The MS4 Program Plan shall include the location in which the individual SWPPP is located;~~ A list of all high-priority facilities owned or operated by the permittee required in accordance with Part I E 6 c, and whether or not the facility has a high potential to discharge;

(3) ~~A list of lands where nutrients are applied to a contiguous area of more than one acre. Upon completion of a turf and landscape nutrient management plan, the turf and landscape nutrient management plan shall be part of the MS4 Program Plan. The MS4 Program Plan shall include the location in which the individual turf and landscape nutrient management plan is located; and~~ A list of lands for which turf and landscape nutrient management plans are required in accordance with Part I E 6 i and j, including the following information:

(a) The total acreage on which nutrients are applied;

(b) The date of the most recently approved nutrient management plan for the property; and

(c) The MS4 program plan shall include the location in which the individual turf and landscape nutrient management plan is located.

(4) A summary of mechanisms the permittee uses to ensure contractors working on behalf of the permittees implement the necessary good housekeeping and pollution prevention procedures, and stormwater pollution plans as appropriate; and

~~(4)~~ (5) The ~~annual~~ written training plan ~~for the next reporting cycle.~~ as required in Part I E 6 m.

~~g. Annual reporting requirements.~~ q. The annual report shall include the following:

(1) ~~A summary report on the development and implementation of the daily operational procedures;~~ A summary of any daily operational procedures developed or modified in accordance with Part I E 6 a during the reporting period;

(2) ~~A summary report on the development and implementation of the required SWPPPs;~~ A summary of any new SWPPPs developed in accordance Part I E 6 c during the reporting period;

(3) A summary of any SWPPPs modified in accordance with Part I E 6 f during the reporting period;

~~(3) A summary report on the development and implementation of the turf and landscape nutrient management plans that includes:~~ (4) A summary of any new turf and landscape nutrient management plans developed that includes:

(a) ~~The total acreage of lands where turf and landscape nutrient management plans are required~~ Location and the total acreage of each land area; and

(b) ~~The acreage of lands upon which turf and landscape nutrient management plans have been implemented~~ The date of the approved nutrient management plan; and

~~(4) A summary report on the required training, including a list of training events, the training date, the number of employees attending training and the objective of the training.~~ (5) A list of the training events conducted in accordance with Part I E 6 m, including the following information:

(a) The date of the training event;

(b) The number of employees who attended the training event; and

(c) The objective of the training event.

~~C. If an existing program requires the implementation of one or more of the minimum control measures of Section II B, the operator, with the approval of the board, may follow that program's requirements rather than the requirements of Section II B. A program that may be considered includes, but is not limited to, a local, state or tribal program that imposes, at a minimum, the relevant requirements of Section II B.~~

~~The operator's MS4 Program Plan shall identify and fully describe any program that will be used to satisfy one or more of the minimum control measures of Section II B.~~

~~If the program the operator is using requires the approval of a third party, the program must be fully approved by the third party, or the operator must be working towards getting full approval. Documentation of the program's approval status, or the progress towards achieving full approval, must be included in the annual report required by Section II E 3. The operator remains responsible for compliance with the permit requirements if the other entity fails to implement the control measures (or component thereof).~~

~~D. The operator may rely on another entity to satisfy the state permit requirements to implement a minimum control measure if: (i) the other entity, in fact, implements the control measure; (ii) the particular control measure, or component thereof, is at least as stringent as the corresponding state permit requirement; and (iii) the other entity agrees to implement the control measure on behalf of the operator. The agreement between the parties must be documented in writing and retained by the operator with the MS4 Program Plan for the duration of this state permit.~~

~~In the annual reports that must be submitted under Section II E 3, the operator must specify that another entity is being relied on to satisfy some of the state permit requirements.~~

~~If the operator is relying on another governmental entity regulated under 9VAC25-870-380 to satisfy all of the state permit obligations, including the obligation to file periodic reports required by Section II E 3, the operator must note that fact in the registration statement, but is not required to file the periodic reports.~~

~~The operator remains responsible for compliance with the state permit requirements if the other entity fails to implement the control measure (or component thereof).~~

~~E. Evaluation and assessment.~~

~~1. MS4 Program Evaluation. The operator must annually evaluate:~~

~~a. Program compliance;~~

~~b. The appropriateness of the identified BMPs (as part of this evaluation, the operator shall evaluate the effectiveness of BMPs in addressing discharges into waters that are identified as impaired in the 2010 § 305(b)/303(d) Water Quality Assessment Integrated Report); and~~

~~c. Progress towards achieving the identified measurable goals.~~

~~2. Recordkeeping. The operator must keep records required by the state permit for at least three years. These records must be submitted to the department only upon specific request. The operator must make the records, including a~~

description of the stormwater management program, available to the public at reasonable times during regular business hours.

3. Annual reports. The operator must submit an annual report for the reporting period of July 1 through June 30 to the department by the following October 1 of that year. The reports shall include:

a. Background Information.

(1) The name and state permit number of the program submitting the annual report;

(2) The annual report permit year;

(3) Modifications to any operator's department's roles and responsibilities;

(4) Number of new MS4 outfalls and associated acreage by HUC added during the permit year; and

(5) Signed certification;

b. The status of compliance with state permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

c. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

d. A summary of the stormwater activities the operator plans to undertake during the next reporting cycle;

e. A change in any identified best management practices or measurable goals for any of the minimum control measures including steps to be taken to address any deficiencies;

f. Notice that the operator is relying on another government entity to satisfy some of the state permit obligations (if applicable);

g. The approval status of any programs pursuant to Section II C (if appropriate), or the progress towards achieving full approval of these programs; and

h. Information required for any applicable TMDL special condition contained in Section I.

F. Program Plan modifications.

1. Program modifications requested by the operator. Modifications to the MS4 Program are expected throughout the life of this state permit as part of the iterative process to reduce the pollutant loadings and to protect water quality. As such, modifications made in accordance with this state permit as a result of the iterative process do not require modification of this permit unless the department determines that the changes meet the criteria referenced in 9VAC25-870-630 or 9VAC25-870-650. Updates and modifications to the MS4 Program may be made during the life of this state permit in accordance with the following procedures:

a. Adding (but not eliminating or replacing) components, controls, or requirements to the MS4 Program may be made by the operator at any time. Additions shall be reported as part of the annual report.

b. Updates and modifications to specific standards and specifications, schedules, operating procedures, ordinances, manuals, checklists, and other documents routinely evaluated and modified are permitted under this state permit provided that the updates and modifications are done in a manner that (i) is consistent with the conditions of this state permit, (ii) follow any public notice and participation requirements established in this state permit, and (iii) are documented in the annual report.

c. Replacing, or eliminating without replacement, any ineffective or infeasible strategies, policies, and BMPs specifically identified in this permit with alternate strategies, policies, and BMPs may be requested at any time. Such requests must be made in writing to the department and signed in accordance with 9VAC25-870-370, and include the following:

(1) An analysis of how or why the BMPs, strategies, or policies are ineffective or infeasible, including information on whether the BMPs, strategies, or policies are cost prohibitive;

(2) Expectations regarding the effectiveness of the replacement BMPs, strategies, or policies;

(3) An analysis of how the replacement BMPs are expected to achieve the goals of the BMPs to be replaced;

(4) A schedule for implementing the replacement BMPs, strategies, and policies; and

(5) An analysis of how the replacement strategies and policies are expected to improve the operator's ability to meet the goals of the strategies and policies being replaced.

d. The operator follows the public involvement requirements identified in Section II B 2 (a).

2. MS4 Program updates requested by the department. In a manner and following procedures in accordance with the Virginia Administrative Process Act, the Virginia Stormwater Management regulations, and other applicable state law and regulations, the department may request changes to the MS4 Program to assure compliance with the statutory requirements of the Virginia Stormwater Management Act and its attendant regulations to:

~~a. Address impacts on receiving water quality caused by discharges from the MS4;~~

~~b. Include more stringent requirements necessary to comply with new state or federal laws or regulations; or~~

~~c. Include such other conditions necessary to comply with state or federal law or regulation.~~

~~Proposed changes requested by the department shall be made in writing and set forth the basis for and objective of the modification as well as the proposed time schedule for the operator to develop and implement the modification. The operator may propose alternative program modifications or time schedules to meet the objective of the requested modification, but any such modifications are at the discretion of the department.~~

Part II
TMDL Special Conditions

A. Chesapeake Bay TMDL special condition.

1. The Commonwealth in its Phase I and Phase II Chesapeake Bay TMDL Watershed Implementation Plans (WIPs) committed to a phased approach for MS4s, affording MS4 permittees up to three full five-year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I and II WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of an additional 35% of L2 as specified in the 2010 Phase I and II WIPs. In combination with the 5.0% reduction of L2 that has already been achieved for a total reduction at the end of this permit term of 40% of L2. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

2. The following definitions apply to Part II of this state permit for the purpose of the Chesapeake Bay TMDL special condition for discharges in the Chesapeake Bay Watershed:

"Existing sources" means pervious and impervious urban land uses served by the MS4 as of June 30, 2009.

"New sources" means pervious and impervious urban land uses served by the MS4 developed or redeveloped on or after July 1, 2009.

"Pollutants of concern" or "POC" means total nitrogen, total phosphorus, and total suspended solids.

"Transitional sources" means regulated land disturbing activities that are temporary in nature and discharge through the MS4.

3. Reduction requirements. No later than the expiration date of this permit, the permittee shall reduce the load of total nitrogen, total phosphorus, and total suspended solids from existing developed lands served by the MS4 as of June 30, 2009, within the 2010 Census Urbanized Area by at least 40% of the Level 2 (L2) Scoping Run Reductions. The 40% reduction is the sum of (i) the first phase reduction of 5.0% of the L2 Scoping Run Reductions based on the lands located within the 2000 Census Urbanized Areas required by June 30, 2018; (ii) the second phase reduction of at least 35% of the L2 Scoping Run based on lands within the 2000 Census Urbanized Areas required by June 30, 2023; and (iii) the reduction of at least 40% of the L2 Scoping Run based on lands within the 2010 expanded Census Urbanized Areas required by June 30, 2023. The required reduction shall be calculated using Tables 3a, 3b, 3c, and 3d below as applicable:

Table 3a
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the James River, Lynnhaven, and Little Creek Basins

		A	B	C	D	E	F	G
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	Loading (lbs/yr)[3]	MS4 required Chesapeake Bay total L2 loading rate reduction	Percentage of L2 required reduction by 6/30/2023	40% cumulative reduction Required by 6/30/2023 (lbs/yr)[4]	Sum of 40% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	9.39			9%	40%		
	Regulated urban pervious	6.99			6%	40%		
Phosphorus	Regulated urban impervious	1.76			16%	40%		
	Regulated urban pervious	0.5			7.25%	40%		
Total suspended solids	Regulated urban impervious	676.94			20%	40%		
	Regulated urban pervious	101.08			8.75%	40%		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census Urbanized Area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column F = Column C x (Column D ÷ 100) x (Column E ÷ 100).

[5]Column G = The sum of the subsource cumulative reduction required by 6/30/23 (lbs/yr) as calculated in Column F.

Table 3b
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the Potomac River Basin

		A	B	C	D	E	F	G
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	Loading (lbs/ac/yr)[3]	MS4 required Chesapeake Bay total L2 loading rate reduction	Percentage of L2 required reduction by 6/30/2023	40% cumulative reduction required by 6/30/2023 (lbs/yr)[4]	Sum of 40% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	16.86			9%	40%		
	Regulated urban pervious	10.07			6%	40%		

Phosphorus	Regulated Urban Impervious	1.62			16%	40%		
	Regulated urban pervious	0.41			7.25%	40%		
Total suspended solids	Regulated urban impervious	1171.32			20%	40%		
	Regulated urban pervious	175.8			8.75%	40%		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census Urbanized Area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B

[4]Column F = Column C x (Column D ÷ 100) x (Column E ÷ 100)

[5]Column G = The sum of the subsource cumulative reduction required by 6/30/23 (lbs/yr) as calculated in Column F.

Table 3c
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the Rappahannock River Basin

		A	B	C	D	E	F	G
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	Loading (lbs/ac/yr)[3]	MS4 required Chesapeake Bay total L2 loading rate reduction	Percentage of L2 required reduction by 6/30/2023	40% cumulative reduction Required by 6/30/2023 (lbs/yr)[4]	Sum of 40% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	9.38			9%	40%		
	Regulated urban pervious	5.34			6%	40%		
Phosphorus	Regulated urban impervious	1.41			16%	40%		
	Regulated urban pervious	0.38			7.25%	40%		
Total suspended solids	Regulated urban impervious	423.97			20%	40%		
	Regulated urban pervious	56.01			8.75%	40%		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census Urbanized Area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column F = Column C x (Column D ÷ 100) x (Column E ÷ 100).

[5]Column G = The sum of the subsource cumulative reduction required by 6/30/23 (lbs/yr) as calculated in Column F.

Table 3d
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the York River and Poquoson Coastal Basin

		A	B	C	D	E	F	G
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	Loading (lbs/ac/yr)[3]	MS4 required Chesapeake Bay total L2 loading rate reduction	Percentage of L2 required reduction by 6/30/2023	40 % cumulative reduction required by 6/30/2023 (lbs/yr)[4]	Sum of 40% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	7.31			9%	40%		
	Regulated urban pervious	7.65			6%	40%		
Phosphorus	Regulated urban impervious	1.51			16%	40%		
	Regulated urban pervious	0.51			7.25%	40%		
Total suspended solids	Regulated urban impervious	456.68			20%	40%		
	Regulated urban pervious	72.78			8.75%	40%		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census Urbanized Area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column F = Column C x (Column D ÷ 100) x (Column E ÷ 100).

[5]Column G = The sum of the subsource cumulative reduction required by 6/30/23 (lbs/yr) as calculated in Column F.

4. No later than the expiration date of this permit, the permittee shall offset 40% of the increased loads from new sources initiating construction between July 1, 2009, and June 30, 2019, and designed in accordance with 9VAC25-870 Part II C (9VAC25-870-93 et seq.) if the following conditions apply:

a. The activity disturbed one acre or greater; and

b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 of Part II A 5 to develop the equivalent pollutant load for nitrogen and total suspended solids for new sources meeting the requirements of this condition.

5. No later than the expiration date of this permit, the permittee shall offset the increased loads from projects grandfathered in accordance with 9VAC25-870-48 that begin construction after July 1, 2014, if the following conditions apply:

a. The activity disturbs one acre or greater; and

b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 below to develop the equivalent pollutant load for nitrogen and total suspended solids for grandfathered sources meeting the requirements of this condition.

Table 4
Ratio of Phosphorus Loading Rate to Nitrogen and Total Suspended Solids Loading Rates for Chesapeake Bay Basins

Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)	Phosphorus Loading Rate (lbs/acre)	Nitrogen Loading Rate (lbs/acre)	Total Suspended Solids Loading Rate (lbs/acre)
James River Basin, Lynnhaven, and Little Creek Basins	1.0	5.2	420.9
Potomac River Basin	1.0	6.9	469.2
Rappahannock River Basin	1.0	6.7	320.9
York River Basin (including Poquoson Coastal Basin)	1.0	9.5	531.6

6. Reductions achieved in accordance with the General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems effective July 1, 2013, shall be applied to the total reduction requirements to demonstrate compliance with Part II A 3, A 4, and A 5.

7. Reductions shall be achieved in each river basin as calculated in Part II A 3 or for reductions in accordance with Part II A 4 and A 5 in the basin in which the new source or grandfathered project occurred.

8. Loading and reduction values greater than or equal to 10 pounds calculated in accordance with Part II A 3, A 4, and A 5 shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading and reduction values of less than 10 pounds reported in accordance with Part II A 3, A 4, and A 5 shall be calculated and reported to two significant digits.

9. Reductions required in Part II A 3, A 4, and A 5 shall be achieved through one or more of the following:

a. BMPs approved by the Chesapeake Bay Program;

b. BMPs approved by the department; or

c. A trading program described in Part II A 10.

10. The permittee may acquire and use total nitrogen and total phosphorus credits in accordance with § 62.1-44.19:21 of the Code of Virginia and total suspend solids in accordance with § 62.1-44.19:21.1 of the Code of Virginia for purposes of compliance with the required reductions in Part II A 3 a through A 3 d, A 4, and A 5, provided the use of credits has been approved by the department. The exchange of credits is subject to the following requirements:

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

b. The credits are generated and applied to a compliance obligation in the same tributary;

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

d. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that the permittee has acquired the credits;

e. Total nitrogen and total phosphorus credits shall be either point source credits generated by point sources covered by the Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia, or nonpoint source credits certified pursuant to § 62.1-44.19:20 of the Code of Virginia;

f. Sediment credits shall be derived from one of the following:

(1) Implementation of BMP in a defined area outside of an MS4 service area, in which case the necessary baseline sediment reduction for such defined area shall be achieved prior to the permittee's use of additional reductions as credit; or

(2) A point source wasteload allocation established by the Chesapeake Bay total maximum daily load, in which case the credit is the difference between the wasteload allocation specified as an annual mass load and any lower monitored annual mass load that is discharged as certified on a form supplied by the department.

g. Sediment credits shall not be associated with phosphorus credits used for compliance with the stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 62.1-44.15:28 of the Code of Virginia.

11. No later than 12 months after the permit effective date, the permittee shall submit an updated Chesapeake Bay

TMDL action plan for the reductions required in Part II A 3, A 4, and A 5 that includes the following information:

a. Any new or modified legal authorities, such as ordinances, permits, policy, specific contract language, orders, and interjurisdictional agreements, implemented or needing to be implemented to meet the requirements of Part II A 3, A 4, and A 5.

b. The load and cumulative reduction calculations for each river basin calculated in accordance with Part II A 3, A 4, and A 5.

c. The total reductions achieved as of July 1, 2018, for each pollutant of concern in each river basin;

d. A list of BMPs implemented prior to July 1, 2018, to achieve reductions associated with the Chesapeake Bay TMDL including:

(1) The date of implementation; and

(2) The reductions achieved.

e. The BMPs to be implemented by the permittee prior to the expiration of this permit to meet the cumulative reductions calculated in Part II A 3, A 4, and A 5, including as applicable:

(1) Type of BMP;

(2) Project name;

(3) Location;

(4) Percent removal efficiency for each pollutant of concern; and

(5) Calculation of the reduction expected to be achieved by the BMP calculated and reported in accordance with the methodologies established in Part II A 8 for each pollutant of concern; and

f. A summary of any comments received as a result of public participation required in Part II A 12, the permittee's response, identification of any public meetings to address public concerns, and any revisions made to Chesapeake Bay TMDL action plan as a result of public participation.

12. Prior to submittal of the action plan required in Part II A 11, the permittee shall provide an opportunity for public comment on the additional BMPs proposed to meet the reductions not previously approved by the department in the first phase Chesapeake Bay TMDL action plan for no less than 15 days.

13. The Chesapeake Bay TMDL action plan shall be incorporated by reference into the MS4 program plan required by Part I B of this permit.

14. For each reporting period, the corresponding annual report shall include the following information:

a. A list of BMPs implemented during the reporting period but not reported to the DEQ BMP Warehouse in accordance with Part I E 5 g and the estimated reduction of pollutants of concern achieved by each and reported in pounds per year;

b. If the permittee acquired credits during the reporting period to meet all or a portion of the required reductions in Part II A 3, A 4, or A 5, a statement that credits were acquired;

c. The progress, using the final design efficiency of the BMPs, toward meeting the required cumulative reductions for total nitrogen, total phosphorus, and total suspended solids; and

d. A list of BMPs that are planned to be implemented during the next reporting period.

B. Local TMDL special condition

1. The permittee shall develop a local TMDL action plan designed to reduce loadings for pollutants of concern if the permittee discharges the pollutants of concern to an impaired water for which a TMDL has been approved by the U.S. Environmental Protection Agency (EPA) as described in Part II B 1 a and 1 b:

a. For TMDLs approved by the EPA prior to July 1, 2013, and in which an individual or aggregate wasteload has been allocated to the permittee, the permittee shall update the previously approved local TMDL action plans to meet the conditions of Part II B 3, B 4, B 5, B 6, and B 7 as applicable, no later than 18 months after the permit effective date and continue implementation of the action plan; and

b. For TMDLs approved by EPA on or after July 1, 2013, and prior to June 30, 2018, and in which an individual or aggregate wasteload has been allocated to the permittee, the permittee shall develop and initiate implementation of action plans to meet the conditions of Part II B 3, B 4, B 5, B 6, and B 7 as applicable for each pollutant for which wasteloads have been allocated to the permittee's MS4 no later than 30 months after the permit effective date.

2. TMDL action plans may be implemented in multiple phases over more than one permit cycle using the adaptive iterative approach provided adequate progress is achieved in the implementation of BMPs designed to reduce pollutant discharges in a manner that is consistent with the assumptions and requirements of the applicable TMDL.

3. Each local TMDL action plan developed by the permittee shall include the following:

a. The TMDL project name;

b. The EPA approval date of the TMDL;

c. The wasteload allocated to the permittee (individually or in aggregate), and the corresponding percent reduction, if applicable;

d. Identification of the significant sources of the pollutants of concern discharging to the permittee's MS4 and are not covered under a separate VPDES permit. For the purposes of this requirement, a significant source of pollutants means a discharge where the expected pollutant loading is greater than the average pollutant loading for the land use identified in the TMDL;

e. The BMPs designed to reduce the pollutants of concern in accordance with Parts II B 4, B 5, and B 6;

f. Any calculations required in accordance with Part II B 4, B 5, or B 6;

g. For action plans developed in accordance with Part II B 4 and B 5, an outreach strategy to enhance the public's education (including employees) on methods to eliminate and reduce discharges of the pollutants; and

h. A schedule of anticipated actions planned for implementation during this permit term.

4. Bacterial TMDLs.

a. If the permittee is an approved VSMP authority, the permittee shall select and implement at least three of the strategies listed in Table 5 below designed to reduce the load of bacteria to the MS4. Selection of the strategies shall correspond to sources identified in Part II B 3 e.

b. If the permittee is not an approved VSMP authority, the permittee shall select at least one strategy listed in Table 5 below designed to reduce the load of bacteria to the MS4 relevant to sources of bacteria applicable within the MS4 regulated service area. Selection of the strategies shall correspond to sources identified in Part II B 3 e.

Table 5
Strategies for Bacteria Reduction Stormwater Control/Management Strategy

Source	Strategies (provided as an example and not meant to be all inclusive or limiting)
Domestic pets (dogs and cats)	Provide signage to pick up dog waste, providing pet waste bags and disposal containers. Adopt and enforce pet waste ordinances or policies, or leash laws or policies. Place dog parks away from environmentally sensitive areas. Maintain dog parks by removing disposed of pet waste bags and cleaning up other sources of bacteria. Protect riparian buffers and provide unmanicured vegetative buffers along streams to dissuade stream access.
Urban wildlife	Educate the public on how to reduce food sources accessible to urban wildlife (e.g., manage restaurant dumpsters and grease traps, residential garbage, feed pets indoors). Install storm drain inlet or outlet controls. Clean out storm drains to remove waste from wildlife. Implement and enforce urban trash management practices. Implement rooftop disconnection programs or site designs that minimize connections to reduce bacteria from rooftops Implement a program for removing animal carcasses from roadways and properly disposing of the same (either through proper storage or through transport to a licensed facility).
Illicit connections or illicit discharges to the MS4	Implement an enhanced dry weather screening and illicit discharge, detection, and elimination program beyond the requirements of Part I E 3 to identify and remove illicit connections and identify leaking sanitary sewer lines infiltrating to the MS4 and implement repairs. Implement a program to identify potentially failing septic systems. Educate the public on how to determine whether their septic system is failing. Implement septic tank inspection and maintenance program. Implement an educational program beyond any requirements in Part I E 1 though E 6 to explain to citizens why they should not dump materials into the MS4. Marinas.

Dry weather urban flows (irrigations, carwashing, powerwashing, etc.)	Implement public education programs to reduce dry weather flows from storm sewers related to lawn and park irrigation practices, carwashing, powerwashing and other nonstormwater flows. Provide irrigation controller rebates. Implement and enforce ordinances or policies related to outdoor water waste. Inspect commercial trash areas, grease traps, washdown practices, and enforce corresponding ordinances or policies.
Birds (Canadian geese, gulls, pigeons, etc.)	Identify areas with high bird populations and evaluate deterrents, population controls, habitat modifications and other measures that may reduce bird-associated bacteria loading. Prohibit feeding of birds.
Other sources	Enhance maintenance of stormwater management facilities owned or operated by the permittee. Enhance requirements for third parties to maintain stormwater management facilities. Develop BMPs for locating, transporting, and maintaining portable toilets used on permittee-owned sites. Educate third parties that use portable toilets on BMPs for use. Provide public education on appropriate recreational vehicle dumping practices.

5. Local sediment, phosphorus, and nitrogen TMDLs.

a. The permittee shall reduce the loads associated with sediment, phosphorus, or nitrogen through implementation of one or more of the following:

(1) One or more of the BMPs from the Virginia Stormwater BMP Clearinghouse listed in 9VAC25-870-65 or other approved BMPs found on the Virginia Stormwater BMP Clearinghouse website;

(2) One or more BMPs approved by the Chesapeake Bay program; or

(3) Land disturbance thresholds lower than Virginia's regulatory requirements for erosion and sediment control and post development stormwater management.

b. The permittee may meet the local TMDL requirements for sediment, phosphorus, or nitrogen through BMPs implemented to meet the requirements of the Chesapeake Bay TMDL in Part II A as long as the BMPs are implemented in the watershed for which local water quality is impaired.

c. The permittee shall calculate the anticipated load reduction achieved from each BMP and include the calculations in the action plan required in Part II B 3 g.

d. No later than 36 months after the effective date of this permit, the permittee shall submit to the department the anticipated end dates by which the permittee will meet each WLA for sediment, phosphorus, or nitrogen. The proposed end date may be developed in accordance with Part II B 2.

6. Polychlorinated biphenyl (PCB) TMDLs.

a. For each PCB TMDL action plan, the permittee shall include an inventory of potentially significant sources of PCBs owned or operated by the permittee that drains to the MS4 that includes the following information:

(1) Location of the potential source;

(2) Whether or not the potential source is from current site activities or activities previously conducted at the site that have been terminated (i.e. legacy activities); and

(3) A description of any measures being implemented or to be implemented to prevent exposure to stormwater and the discharge of PCBs from the site.

b. If at any time during the term of this permit, the permittee discovers a previously unidentified significant source of PCBs within the permittee's MS4 regulated service area, the permittee shall notify DEQ in writing within 30 days of discovery.

7. Prior to submittal of the action plan required in Part II B 1, the permittee shall provide an opportunity for public comment proposed to meet the local TMDL action plan requirements for no less than 15 days.

8. The MS4 program plan as required by Part I B of this permit shall incorporate each local TMDL action plan. Local TMDL action plans may be incorporated by reference into the MS4 program plan provided that the program plan includes the date of the most recent local TMDL action plan and identification of the location where a copy of the local TMDL action plan may be obtained.

9. For each reporting period, each annual report shall include a summary of actions conducted to implement each local TMDL action plans.

~~SECTION~~ Part III
~~CONDITIONS APPLICABLE TO ALL STATE PERMITS~~
Conditions Applicable to All State and VPDES Permits

NOTE: Discharge monitoring is not required for this general permit. If the operator chooses to monitor stormwater discharges or control measures, the operator must comply with the requirements of Part III A, B, and C as appropriate.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the ~~monitored~~ monitoring 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 state permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

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

B. Records.

1. Monitoring ~~records/reports~~ records and reports shall include:

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

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

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

C. Reporting monitoring results.

1. The operator shall submit the results of the monitoring ~~required by~~ as may be performed in accordance with this state permit with the annual report unless another reporting schedule is specified elsewhere in this state permit.

2. Monitoring results shall be reported on a ~~Discharge Monitoring Report~~ discharge monitoring report (DMR); on forms provided, approved or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.

3. If the operator monitors any pollutant specifically addressed by this state permit more frequently than required by this state 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 state permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

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

D. Duty to provide information. The operator shall furnish ~~to the department,~~ within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this state permit or to determine compliance with this state permit. The board, department, or EPA may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and Virginia Stormwater Management Act. The operator shall also furnish to the board, department, or EPA upon request, copies of records required to be kept by this state permit.

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

F. Unauthorized stormwater discharges. Pursuant to ~~§ 62.1-44.15:26~~ § 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the ~~board~~ department, it shall be unlawful to cause a stormwater discharge from a MS4.

G. Reports of unauthorized discharges. Any operator of a small MS4 who discharges or causes or allows a discharge of

sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117 ~~or~~, 40 CFR Part 302, or § 62.1-44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters~~;~~ or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters~~,~~ shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" (Part III U) or "upset," ~~as defined herein~~ (Part III V), should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with ~~Section~~ Part III I 2. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

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

1. An oral report to the department shall be provided within 24 hours ~~to the department~~ from the time the operator becomes aware of the circumstances. The following shall be included as information ~~which~~ that shall be reported within 24 hours under this ~~paragraph~~ subdivision:

a. Any unanticipated bypass; and

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

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

a. A description of the noncompliance and its cause;

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

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The ~~board or its designee~~ department may waive the written report on a case-by-case basis for reports of noncompliance under ~~Section~~ Part III I if the oral report has been received within 24 hours and no adverse impact on surface waters has been reported.

3. The operator shall report all instances of noncompliance not reported under ~~Sections~~ Part III I 1 or 2, in writing, ~~at~~ as part of the ~~time the next monitoring~~ annual reports that are submitted. The reports shall contain the information listed in ~~Section~~ Part III I 2.

NOTE: The ~~immediate (within 24 hours)~~ reports required ~~to be provided to the department~~ in ~~Sections~~ Part III G, H, and I ~~may~~ shall be made to the ~~appropriate Regional Office Pollution Response Program as found at http://deq.virginia.gov/Programs/PollutionResponsePreparedness.aspx~~ department. Reports may be made by telephone, email, or ~~by~~ fax. For reports outside normal working hours, ~~leave~~ leaving a recorded message ~~and this~~ shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency ~~Services~~ Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registrations statement, to the department, ~~it~~ the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

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

a. The operator plans an alteration or addition to any building, structure, facility, or installation ~~from which there is or may be a discharge of pollutants, the construction of which commenced~~ that may meet one of the criteria for determining whether a facility is a new source in 9VAC25-870-420:

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

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

b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this state permit; or

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

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purpose of this ~~subsection,~~ chapter, a responsible corporate officer means: (i) ~~A~~ 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 ~~which~~ that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

c. For a municipality, state, federal, or other public agency: ~~By~~ by either a principal executive officer or ranking elected official. For purposes of this ~~subsection~~ chapter, a principal executive officer of a public agency includes:

(1) The chief executive officer of the agency, or

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports~~, etc~~ and other information. All reports required by state permits, including annual reports, and other information requested by the board or department shall be signed by a person described in ~~Section~~ Part III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in ~~Section~~ Part III K 1;

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

c. The signed and dated written authorization is submitted to the department.

3. Changes to authorization. If an authorization under ~~Section~~ Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the ~~facility,~~ MS4, a new authorization satisfying the requirements of ~~Section~~ Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly ~~gather~~ gathered and ~~evaluate~~ evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my

knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

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

M. Duty to reapply. If the operator wishes to continue an activity regulated by this state permit after the expiration date of this state permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing state permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

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

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

P. Oil and hazardous substance liability. Nothing in this state permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

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

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters and in compliance with all applicable state and federal laws and regulations.

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

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

U. Bypass.

1. "Bypass," as defined in 9VAC25-870-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ~~assure~~ ensure efficient operation. These bypasses are not subject to the provisions of ~~Sections~~ Part III U 2 and U 3.

2. Notice.

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

b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in ~~Section~~ Part III I.

3. Prohibition of bypass.

a. ~~Bypass~~ Except as provided in Part III U 1, bypass is prohibited, and the board or ~~its designee~~ department may take enforcement action against an operator for bypass, unless:

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

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

(3) The operator submitted notices as required under ~~Section~~ Part III U 2.

b. The ~~board or its designee~~ department may approve an anticipated bypass, after considering its adverse effects, if the ~~board or its designee~~ department determines that it will meet the three conditions listed ~~above~~ in ~~Section~~ Part III U 3 a.

V. Upset.

1. An "upset," as defined in 9VAC25-870-10, ~~constitutes an affirmative defense to an action brought for noncompliance with technology based state permit effluent limitations if the requirements of Section III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review. 2.~~ means an exceptional incident in which there is unintentional and temporary noncompliance with technology based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based state permit effluent limitations if the requirements of Part III V 4 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

~~3.~~ 4. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

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

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

c. The operator submitted notice of the upset as required in ~~Section~~ Part III I; and

d. The operator complied with any remedial measures required under ~~Section~~ Part III S.

~~4.~~ 5. In any enforcement proceeding the operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The operator shall allow the department as the board's designee, EPA, or an authorized representative (including an authorized ~~contractor acting as a representative of the administrator),~~ contractor), upon presentation of credentials and other documents as may be required by law, to:

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

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

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

4. Sample or monitor at reasonable times, for the purposes of ~~assuring state~~ ensuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater Management Act, any substances or parameters at any location.

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

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

Y. Transfer of state permits.

1. State permits are not transferable to any person except after notice to the department. Except as provided in ~~Section~~ Part III Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has

been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under ~~Section~~ Part III Y 1, this state permit may be automatically transferred to a new operator if:

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

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

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

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

9VAC25-890-50. ~~Delegation of authority.~~ (Repealed.)

~~The director, 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.~~

VA.R. Doc. No. R16-4777; Filed December 19, 2017, 11:54 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Title of Regulation: **12VAC5-230. State Medical Facilities Plan (amending 12VAC5-230-10, 12VAC5-230-420, 12VAC5-230-610, 12VAC5-230-620).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 9, 2018.

Agency Contact: Domica Winstead, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2157, FAX (804) 527-4502, or email domica.winstead@vdh.virginia.gov.

Basis: The regulation is promulgated under the authority of § 32.1-102.2 of the Code of Virginia. Section 32.1-102.2 of the Code of Virginia requires the Board of Health to promulgate regulations that establish concise procedures for the prompt review of applications for certificates of public need consistent with Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia. Section 32.1-102.2 of the Code of Virginia further requires the board to promulgate regulations that establish specific criteria for determining need in rural areas, giving due consideration to distinct and unique geographic, socioeconomic, cultural, transportation, and other barriers to access to care in such areas.

Purpose: The purpose of this regulatory action is to update definitions related to cardiac catheterization and update the occupancy standard utilized for determining the need for new nursing home beds.

Updated regulations to implement the State Medical Facilities Plan are essential to protect the health of Virginians as the Department of Health has determined that excess capacity or underutilization of medical facilities are detrimental to both cost effectiveness and quality of medical services in Virginia; the department seeks to promote the availability and accessibility of proven technologies through planned geographical distribution of medical facilities; the department seeks to promote the development and maintenance of services and access to those services by all Virginians who need them without respect to their ability to pay; the department seeks to encourage the conversion of facilities to new and efficient uses and the reallocation of resources to meet evolving community needs; and the department discourages the proliferation of services that would undermine the ability of essential community providers to maintain their financial viability.

Substance: This regulatory action (i) amends the existing definitions for "cardiac catheterization" and "diagnostic equivalent procedure"; (ii) adds new definitions for "diagnostic cardiac catheterization," "complex therapeutic cardiac catheterization," and "simple therapeutic cardiac catheterization"; (iii) establishes requirements for proposals to provide simple and complex therapeutic cardiac catheterization; (iv) amends requirements for calculating need for additional nursing facility beds in a health planning district by requiring the analysis of both the average and median occupancy levels of Medicaid-certified nursing facility beds; and (v) reduces the occupancy level required to approve expansion of beds in an existing nursing facility from 93% to 90%.

Issues: The primary advantages of the regulatory action to the public are that the criteria for demonstrating public need for the included facilities will more closely reflect changes in

technology, as well as application of service and utilization patterns, and will therefore help increase access to the services for the citizens of the Commonwealth. The Department of Health does not foresee any disadvantages to the public. The primary advantage to the agency and the Commonwealth is the promotion of access to health care services. There are no disadvantages associated with the proposed regulatory action in relation to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes to 1) make a distinction between simple and complex cardiac catheterization procedures, 2) no longer require hospitals to have open heart surgery services on premises as a condition to perform diagnostic and simple cardiac catheterization procedures, provided they follow certain guidelines, 3) assign greater value of diagnostic equivalent procedures for complex and pediatric cardiac catheterization procedures relative to simple ones, 4) lower the statistical threshold occupancy rates used in determining the need for additional nursing home beds, and 5) add and revise certain statistical threshold values to improve measurement accuracy.

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

Estimated Economic Impact. Currently, all therapeutic cardiac catheterization procedures are considered the same in the regulation. The board proposes new definitions for simple (relieving coronary artery narrowing) and complex (correcting congenital or acquired structural valvular abnormalities) cardiac catheterization procedures to reflect current industry practices.

The board also proposes to no longer require, subject to a number of conditions, hospitals to have open heart surgery services on-site to perform simple procedures. Currently, only diagnostic and emergency therapeutic cardiac catheterization procedures can be performed without open heart surgery services back-up. According to the Virginia Department of Health (VDH), there are 29 hospitals with cardiac catheterization laboratories that do not have on-site open heart surgery services but may start performing elective simple therapeutic procedures under the proposed regulation provided they adhere to certain guidelines. This change would benefit those affected hospitals in that they would be allowed to offer these procedures if they wish. This change will likely also improve access to these services as most of the hospitals without on-site heart surgery services tend to be in rural areas.

VDH believes that the risks of taking the time to transfer the patient with a simple cardiac issue to a hospital with an open heart surgery back-up outweigh the risks of getting the procedure done sooner at a hospital without one. Thus, outcomes are expected to be better if patients get simple therapeutic procedures without being transferred. In addition, elective simple procedures can be performed without open heart surgery back-up only if certain conditions are met. Those conditions are set by the American Heart Association/American Stroke Association's Percutaneous Coronary Intervention without Surgical Back-up Policy Guidance. This policy guidance includes ten requirements to improve the chances of a favorable outcome when simple elective procedures are performed without an open heart surgery back-up.

The Board further proposes to give greater relative value to complex and pediatric diagnostic equivalent procedures (DEP). DEP is a measure of the relative complexity of various cardiac catheterization procedures. Currently, a diagnostic procedure equals 1 DEP, a cardiac procedure (simple or complex) equals 2 DEPs, and a same session procedure (diagnostic and simple or complex procedure) equals 3 DEPs. Under the proposed regulation, diagnostic procedure will stay at 1 DEP, a simple therapeutic procedure will equal 2 DEPs, a same session diagnostic and simple therapeutic procedure will equal 3 DEPs, and a complex therapeutic procedure will equal 5 DEPs. If any of the procedures is for a pediatric patient, it will equal twice as many DEPs (i.e., a pediatric diagnostic procedure will equal 2 DEPs, a simple therapeutic pediatric procedure will equal 4 DEPs, a same session pediatric diagnostic and simple therapeutic procedure will equal 6 DEPs, and a pediatric complex therapeutic procedure will equal 10 DEPs). According to VDH, pediatric procedures frequently require continuous anesthesia services and therefore tend to be complex.

The proposed greater DEP values for complex therapeutic and pediatric procedures will make it easier to demonstrate the need for expansion (12VAC5-230-390) or the need for new cardiac catheterization services (12VAC5-230-400) and the need for new open heart surgery services (12VAC5-230-450) because DEP thresholds for new or expansion of services are not changing. For example, if currently 500 diagnostics (500 DEPs), 200 simple (400 DEPs), and 100 complex (200 DEPs) procedures are performed on average per facility in a planning district, the average facility will have a total of 1,100 DEPs and no facility would qualify an expansion of services under 12VAC5-230-390 because on average there will be less than 1,200 cardiac catheterization DEPs per facility. However, under the proposed regulation, the same district will have an average of 1,400 DEPs (500 DEPs+400 DEPs+500 DEPs) per hospital and will satisfy that criteria for expansion. This proposed change will make it easier to demonstrate the need for additional cardiac catheterization and open heart surgery services. Ease of demonstration may reduce a barrier to entry into the catheterization and open heart surgery industry and promote competition. However, VDH notes that the expected impact

may be limited because the majority of procedures are diagnostic and simple therapeutic.

Moreover, the Board proposes to lower the statistical threshold occupancy rate used in determining the need for additional Medicaid certified nursing home bed capacity. Currently, a health planning district must have at least 93% average annual occupancy rate to demonstrate the need for new or expansion of existing number of beds. The Board proposes to reduce the average annual occupancy rate to 90%. According to VDH, the Centers for Medicare and Medicaid Services now pay for Medicare short-stay rehabilitation patients in nursing facilities, which has caused facilities to reserve beds for those patients and served to help reduce the average length of stays and occupancy levels. The proposed change is expected to offset that reduction and provide a more accurate assessment of the need for additional nursing facility beds in each planning district. A lower statistical threshold to demonstrate the need for additional bed capacity than the current threshold should somewhat help ease a potential barrier to entry and promote competition in the nursing home industry.

Finally, the Board proposes to add and revise certain statistical threshold values to improve measurement accuracy. For example, the Board proposes to require in the case of determining the need for new beds, that the median annual occupancy rate in the district be at least 93% in addition to meeting the revised 90% average annual occupancy rate. Using median and average occupancy rates together is expected to better assess the need for new beds in the district given the statistical characteristics of this particular data set. Similarly, the Board proposes to include in the sample occupancy data from which the occupancy rates are calculated, facilities that have been in operation at least one year as opposed to at least three years as currently required. VDH reports that a facility reaches its full capacity within a year, and the current requirement does not allow useful data from the second and third years to be used in calculating bed need in the district.

Businesses and Entities Affected. The proposed changes apply to 105 hospitals that are either currently providing or may seek to provide cardiac catheterization services. Of these, there are 29 hospitals with cardiac catheterization laboratories that do not have on-site open heart surgery services but may start performing elective simple therapeutic procedures under the proposed regulation provided they adhere to certain guidelines.

Also, the proposed regulation applies to the 284 existing nursing homes in Virginia. The number of potential nursing home applicants for the development of nursing homes in Virginia is not known.

Localities Particularly Affected. The proposed changes do not affect a particular locality more than others.

Projected Impact on Employment. The proposed regulation would allow 29 hospitals that do not have on-site open heart surgery services to start performing elective simple therapeutic procedures. This change may shift some of the elective simple therapeutic procedures being performed at hospitals with open heart surgery back-up to hospitals without such a back-up and accordingly shift demand for labor involved in performing such procedures among the hospitals.

The proposed greater DEP values for more complex and pediatric procedures would make it easier to demonstrate the need for such services and reduce a potential barrier to entry into cardiac catheterization and open heart surgery services. Similarly, a lower statistical threshold to demonstrate the need for additional bed capacity should somewhat help ease a potential barrier to entry. A reduction in barriers to entry may lead to additional employment in those areas.

Effects on the Use and Value of Private Property. The shift of elective simple therapeutic procedures from hospitals that have open heart surgery back-up to hospitals without may affect their asset values accordingly.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Only one nursing home is considered a small business. The costs and other effects on that nursing home are the same as those discussed above.

Alternative Method that Minimizes Adverse Impact. No direct adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The indirect adverse impact on hospitals that have open heart back-up services are the same as those discussed above.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The Virginia Department of Health concurs with the results of the analysis.

Summary:

The proposed amendments (i) make a distinction between simple and complex cardiac catheterization procedures, (ii) no longer require hospitals to have open heart surgery

services on premises as a condition to perform diagnostic and simple cardiac catheterization procedures, provided they follow certain guidelines, (iii) assign greater value of diagnostic equivalent procedures for complex and pediatric cardiac catheterization procedures relative to simple ones, (iv) lower the statistical threshold occupancy rates used in determining the need for additional nursing home beds, and (v) add and revise certain statistical threshold values to improve measurement accuracy.

Part I
Definitions and General Information

12VAC5-230-10. Definitions.

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

"Acute psychiatric services" means hospital-based inpatient psychiatric services provided in distinct inpatient units in general hospitals or freestanding psychiatric hospitals.

"Acute substance abuse disorder treatment services" means short-term hospital-based inpatient treatment services with access to the resources of (i) a general hospital, (ii) a psychiatric unit in a general hospital, (iii) an acute care addiction treatment unit in a general hospital licensed by the Department of Health, or (iv) a chemical dependency specialty hospital with acute care medical and nursing staff and life support equipment licensed by the Department of ~~Mental~~ Behavioral Health~~, Mental Retardation~~ and ~~Substance Abuse~~ Developmental Services.

"Bassinet" means an infant care station, including warming stations and isolettes.

"Bed" means that unit, within the complement of a medical care facility, subject to COPN review as required by Article 1.1 (§ 32.1-102.1 et seq.) of the Code of Virginia and designated for use by patients of the facility or service. For the purposes of this chapter, bed does include cribs and bassinets used for pediatric patients~~,~~ but does not include cribs and bassinets in the newborn nursery or neonatal special care setting.

"Cardiac catheterization" means ~~a~~ an invasive procedure where a flexible tube is inserted into the patient through an extremity blood vessel and advanced under fluoroscopic guidance into the heart chambers or coronary arteries. ~~Cardiac~~ A cardiac catheterization may ~~include therapeutic intervention,~~ be conducted for diagnostic or therapeutic purposes but does not include a simple right heart catheterization for monitoring purposes as might be performed in an electrophysiology laboratory, pulmonary angiography as an isolated procedure, or cardiac pacing through a right electrode catheter.

"Commissioner" means the State Health Commissioner.

"Competing applications" means applications for the same or similar services and facilities that are proposed for the same health planning district, or same health planning region for projects reviewed on a regional basis, and are in the same batch review cycle.

"Complex therapeutic cardiac catheterization" means the performance of cardiac catheterization for the purpose of correcting or improving certain conditions that have been determined to exist in the heart or great arteries or veins of the heart, specifically catheter-based procedures for structural treatment to correct congenital or acquired structural or valvular abnormalities.

"Computed tomography" or "CT" means a noninvasive diagnostic technology that uses computer analysis of a series of cross-sectional scans made along a single axis of a bodily structure or tissue to construct an image of that structure.

"Continuing care retirement community" or "CCRC" means a retirement community consistent with the requirements of Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of the Code of Virginia.

"COPN" means a Medical Care Facilities Certificate of Public Need for a project as required in Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia.

"COPN program" means the Medical Care Facilities Certificate of Public Need Program implementing Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia.

"DEP" means diagnostic equivalent procedure, a method for weighing the relative value of various cardiac catheterization procedures as follows: a diagnostic ~~procedure~~ cardiac catheterization equals 1 DEP, a simple therapeutic ~~procedure~~ cardiac catheterization equals 2 DEPs, a same session procedure (diagnostic and simple therapeutic) equals 3 DEPs, and a ~~pediatric procedure~~ complex therapeutic cardiac catheterization equals ~~2~~ 5 DEPs. A multiplier of 2 will be applied for a pediatric procedure (i.e., a pediatric diagnostic cardiac catheterization equals 2 DEPs, a pediatric simple therapeutic cardiac catheterization equals 4 DEPs, and a pediatric complex therapeutic cardiac catheterization equals 10 DEPs.)

"Diagnostic cardiac catheterization" means the performance of cardiac catheterization for the purpose of detecting and identifying defects in the great arteries or veins of the heart or abnormalities in the heart structure, whether congenital or acquired.

"Direction" means guidance, supervision, or management of a function or activity.

"Gamma knife®" means the name of a specific instrument used in stereotactic radiosurgery.

"Health planning district" means the same contiguous areas designated as planning districts by the Virginia Department of Housing and Community Development or its successor.

"Health planning region" means a contiguous geographic area of the Commonwealth as designated by the State Board of Health with a population base of at least 500,000 persons, characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Health system" means an organization of two or more medical care facilities, including ~~but not limited to~~ hospitals, that are under common ownership or control and are located within the same health planning district, or health planning region for projects reviewed on a regional basis.

"Hospital" means a medical care facility licensed as an inpatient hospital or outpatient surgical center by the Department of Health or as a psychiatric hospital by the Department of ~~Mental~~ Behavioral Health~~, Mental Retardation,~~ and ~~Substance Abuse~~ Developmental Services.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Indigent" means any person whose gross family income is equal to or less than 200% of the federal Nonfarm Poverty Level or income levels A through E of 12VAC5-200-10 and who is uninsured.

"Inpatient" means a patient who is hospitalized longer than 24 hours for health or health related services.

"Intensive care beds" or "ICU" means inpatient beds located in the following units or categories:

1. General intensive care units are those units where patients are concentrated by reason of serious illness or injury regardless of diagnosis. Special lifesaving techniques and equipment are immediately available and patients are under continuous observation by nursing staff;

2. Cardiac care units, also known as Coronary Care Units or CCUs, are units staffed and equipped solely for the intensive care of cardiac patients; and

3. Specialized intensive care units are any units with specialized staff and equipment for the purpose of providing care to seriously ill or injured patients based on age selected categories of diagnoses, including units established for burn care, trauma care, neurological care, pediatric care, and cardiac surgery recovery~~,~~ but does not include bassinets in neonatal special care units.

"Lithotripsy" means a noninvasive therapeutic procedure to (i) crush renal and biliary stones using shock waves~~,~~ (i.e., renal lithotripsy) or (ii) treat certain musculoskeletal conditions and ~~to~~ relieve the pain associated with tendonitis~~,~~ (i.e., orthopedic lithotripsy).

"Long-term acute care hospital" or "LTACH" means an inpatient hospital that provides care for patients who require a length of stay greater than 25 days and is, or proposes to be, certified by the Centers for Medicare and Medicaid Services as a long-term care inpatient hospital pursuant to 42 CFR Part 412. An LTACH may be either a ~~free-standing~~ freestanding facility or located within an existing or host hospital.

"Magnetic resonance imaging" or "MRI" means a noninvasive diagnostic technology using a nuclear spectrometer to produce electronic images of specific atoms and molecular structures in solids, especially human cells, tissues and organs.

"Medical rehabilitation" means those services provided consistent with 42 CFR 412.23 ~~and 412.24~~.

"Medical/surgical" means those services available for the care and treatment of patients not requiring specialized services.

"Minimum survival rates" means the base percentage of transplant recipients who survive at least one year or for such other period of time as specified by the United Network for Organ Sharing (UNOS).

"Neonatal special care" means care for infants in one or more of the higher service levels designated in 12VAC5-410-443 ~~of the Rules and Regulations for the Licensure of Hospitals~~.

"Nursing facility" means those facilities or components thereof licensed to provide long-term nursing care.

"Obstetrical services" means the distinct organized program, equipment and care related to pregnancy and the delivery of newborns in inpatient facilities.

"Off-site replacement" means the relocation of existing beds or services from an existing medical care facility site to another location within the same health planning district.

"Open heart surgery" means a surgical procedure requiring the use or immediate availability of a heart-lung bypass machine or "pump." The use of the pump during the procedure distinguishes "open heart" from "closed heart" surgery.

"Operating room" means a room used solely or principally for the provision of surgical procedures involving the administration of anesthesia, multiple personnel, recovery room access, and a fully controlled environment.

"Operating room use" means the amount of time a patient occupies an operating room and includes room preparation and cleanup time.

"Operating room visit" means one session in one operating room in an inpatient hospital or outpatient surgical center, which may involve several procedures. Operating room visit may be used interchangeably with "operation" or "case."

"Outpatient" means a patient who visits a hospital, clinic, or associated medical care facility for diagnosis or treatment, but is not hospitalized 24 hours or longer.

"Pediatric" means patients younger than 18 years of age. Newborns in nurseries are excluded from this definition.

"Perinatal services" means those resources and capabilities that all hospitals offering general level newborn services as described in 12VAC5-410-443 ~~of the Rules and Regulations for the Licensure of Hospitals~~ must provide routinely to newborns.

"PET/CT scanner" means a single machine capable of producing a PET image with a concurrently produced CT image overlay to provide anatomic definition to the PET image. For the purpose of granting a COPN, the State Board of Health pursuant to § 32.1-102.2 A 6 of the Code of Virginia has designated PET/CT as a specialty clinical service. A PET/CT scanner shall be reviewed under the PET criteria as an enhanced PET scanner unless the CT unit will be used independently. In such cases, a PET/CT scanner that will be used to take independent PET and CT images will be reviewed under the applicable PET and CT services criteria.

"Planning horizon year" means the particular year for which bed or service needs are projected.

"Population" means the census figures shown in the most current series of projections published by a demographic entity as determined by the commissioner.

"Positron emission tomography" or "PET" means a noninvasive diagnostic or imaging modality using the computer-generated image of local metabolic and physiological functions in tissues produced through the detection of gamma rays emitted when introduced ~~radio-nuclids~~ radionuclides decay and release positrons. A PET device or scanner may include an integrated CT to provide anatomic structure definition.

"Primary service area" means the geographic territory from which 75% of the patients of an existing medical care facility originate with respect to a particular service being sought in an application.

"Procedure" means a study or treatment or a combination of studies and treatments identified by a distinct ~~ICD-9~~ ICD-10 or CPT code performed in a single session on a single patient.

"Qualified" means meeting current legal requirements of licensure, registration, or certification in Virginia or having appropriate training, including competency testing, and experience commensurate with assigned responsibilities.

"Radiation therapy" means treatment using ionizing radiation to destroy diseased cells and for the relief of symptoms. Radiation therapy may be used alone or in combination with surgery or chemotherapy.

"Relevant reporting period" means the most recent 12-month period, prior to the beginning of the applicable batch review cycle, for which data is available from VHI or a demographic entity as determined by the commissioner.

"Rural" means territory, population, and housing units that are classified as "rural" by the Bureau of the Census of the ~~United States~~ U.S. Department of Commerce, Economic and Statistics Administration.

"Simple therapeutic cardiac catheterization" means the performance of cardiac catheterization for the purpose of correcting or improving certain conditions that have been determined to exist in the heart, specifically catheter-based treatment procedures for relieving coronary artery narrowing.

"SMFP" means the state medical facilities plan as contained in Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia used to make medical care facilities and services needs decisions.

"Stereotactic radiosurgery" or "SRS" means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume. SRS may be delivered in a single session or in a fractionated course of treatment up to five sessions.

"Stereotactic radiotherapy" or "SRT" means more than one session of stereotactic radiosurgery.

"Substance abuse disorder treatment services" means services provided to individuals for the prevention, diagnosis, treatment, or palliation of chemical dependency, which may include attendant medical and psychiatric complications of chemical dependency. Substance abuse disorder treatment services are licensed by the Department of ~~Mental~~ Behavioral Health~~, Mental Retardation,~~ and ~~Substance Abuse~~ Developmental Services.

"Supervision" means to direct and watch over the work and performance of others.

"Use rate" means the rate at which an age cohort or the population uses medical facilities and services. The rates are determined from periodic patient origin surveys conducted for the department by the regional health planning agencies~~,~~ or other health statistical reports authorized by Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia.

"VHI" means the health data organization defined in § 32.1-276.4 of the Code of Virginia and under contract with the Virginia Department of Health.

12VAC5-230-420. Nonemergent cardiac catheterization.

~~Proposals to provide elective interventional cardiac procedures such as PTCA, transseptal puncture, transthoracic left ventricle puncture, myocardial biopsy or any valvuoplasty procedures, diagnostic pericardiocentesis or therapeutic procedures should be approved only when open heart surgery~~

~~services are available on site in the same hospital in which the proposed non-emergent cardiac service will be located.~~

A. Simple therapeutic cardiac catheterization. Proposals to provide simple therapeutic cardiac catheterization are not required to offer open heart surgery service available on-site in the same hospital in which the proposed simple therapeutic service will be located. However, these programs shall adhere to the requirements described in subdivisions 1 through 9 of this subsection.

The programs shall:

1. Participate in the Virginia Heart Attack Coalition, the Virginia Cardiac Services Quality Initiative, and the Action Registry-Get with the Guidelines or National Cardiovascular Data Registry to monitor quality and outcomes;

2. Adhere to strict patient-selection criteria;

3. Perform annual institutional volumes of 300 cardiac catheterization procedures, of which at least 75 should be PCI or as dictated by American College of Cardiology (ACC)/American Heart Association (AHA) Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories effective 1991;

4. Use only AHA/ACC-qualified operators who meet the standards for training and competency;

5. Demonstrate appropriate planning for program development and complete both a primary PCI development program and an elective PCI development program that includes routine care process and case selection review;

6. Develop and maintain a quality and error management program;

7. Provide PCI 24 hours a day, seven days a week;

8. Develop and maintain necessary agreements with a tertiary facility that must agree to accept emergent and nonemergent transfers for additional medical care, cardiac surgery, or intervention; and

9. Develop and maintain agreements with an ambulance service capable of advanced life support and intra-aortic balloon pump transfer that guarantees a 30-minute or less response time.

B. Complex therapeutic cardiac catheterization. Proposals to provide complex therapeutic cardiac catheterization should be approved only when open heart surgery services are available on-site in the same hospital in which the proposed complex therapeutic service will be located. Additionally, these complex therapeutic cardiac catheterization programs will be required to participate in the Virginia Cardiac Services Quality Initiative and the Virginia Heart Attack Coalition.

12VAC5-230-610. Need for new service.

A. A health planning district should be considered to have a need for additional nursing facility beds when:

1. The bed need forecast exceeds the current inventory of existing and authorized beds for the health planning district; and

2. The ~~average~~ median annual occupancy of all existing and authorized Medicaid-certified nursing facility beds in the health planning district was at least 93%, and the average annual occupancy of all existing and authorized Medicaid-certified nursing facility beds in the health planning district was at least 90%, excluding the bed inventory and utilization of the Virginia Veterans Care Centers.

Exception: When there are facilities that have been in operation less than ~~three years~~ one year in the health planning district, their occupancy ~~can~~ shall be excluded from the calculation of average occupancy ~~if the facilities had an annual occupancy of at least 93% in one of its first three years of operation~~.

B. No health planning district should be considered in need of additional beds if there are unconstructed beds designated as Medicaid certified. This presumption of "no need" for additional beds extends for three years from the issuance date of the certificate.

C. The bed need forecast will be computed as follows:

PDBN = (UR64 x PP64) + (UR69 x PP69) + (UR74 x PP74) + (UR79 x PP79) + (UR84 x PP84) + (UR85 x PP85)

Where:

PDBN = Planning district bed need.

UR64 = The nursing home bed use rate of the population aged 0 to 64 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.

PP64 = The population aged 0 to 64 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.

UR69 = The nursing home bed use rate of the population aged 65 to 69 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.

PP69 = The population aged 65 to 69 projected for the health planning district three years from the current year as most recently published by ~~the~~ a demographic program as determined by the commissioner.

UR74 = The nursing home bed use rate of the population aged 70 to 74 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.

PP74 = The population aged 70 to 74 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.

UR79 = The nursing home bed use rate of the population aged 75 to 79 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.

PP79 = The population aged 75 to 79 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.

UR84 = The nursing home bed use rate of the population aged 80 to 84 in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.

PP84 = The population aged 80 to 84 projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.

UR85+ = The nursing home bed use rate of the population aged 85 and older in the health planning district as determined in the most recent nursing home patient origin study authorized by VHI.

PP85+ = The population aged 85 and older projected for the health planning district three years from the current year as most recently published by a demographic program as determined by the commissioner.

Health planning district bed need forecasts will be rounded as follows:

Health Planning District Bed Need	Rounded Bed Need
1–29	0
30–44	30
45–84	60
85–104	90
105–134	120
135–164	150
165–194	180
195–224	210
225+	240

Exception: When a health planning district has:

1. Two or more nursing facilities;

2. Had ~~an average~~ a median annual occupancy rate ~~in excess~~ of 93% of all existing and authorized Medicaid-certified nursing facility beds and an annual average occupancy rate of at least 90% of all existing and authorized Medicaid-certified nursing facility beds for each of the most recent two years for which bed utilization has been reported to VHI; and

3. Has a forecasted bed need of 15 to 29 beds, then the bed need for this health planning district will be rounded to 30.

D. No new freestanding nursing facilities of less than 90 beds should be authorized. However, consideration may be given to a new freestanding facility with fewer than 90 nursing facility beds when the applicant can demonstrate that such a facility is justified based on a locality's preference for such smaller facility and there is a documented poor distribution of nursing facility beds within the health planning district.

E. When evaluating the capital cost of a project, consideration may be given to projects that use the current methodology as determined by the Department of Medical Assistance Services.

F. Preference may be given to projects that replace outdated and functionally obsolete facilities with modern facilities that result in the more cost-efficient resident services in a more aesthetically pleasing and comfortable environment.

12VAC5-230-620. Expansion of services.

Proposals to increase an existing nursing ~~facility~~ facility's bed capacity should not be approved unless the facility has operated for at least two years and the average annual occupancy of the facility's existing beds was at least ~~93%~~ 90% in the relevant reporting period as reported to VHI.

Note: Exceptions will be considered for facilities that operated at less than ~~93%~~ 90% average annual occupancy in the most recent year for which bed utilization has been reported when the facility offers short stay services causing an average annual occupancy lower than ~~93%~~ 90% for the facility.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-230)

ACC/AHA Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories, American College of Cardiology/American Heart Association Ad Hoc Task Force on Cardiac Catheterization, JACC Vol. 18 No. 5, November 1, 1991: 1149-82

VA.R. Doc. No. R15-4417; Filed December 19, 2017, 11:10 a.m.

BOARD OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Titles of Regulations: **12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-5030).**

12VAC30-135. Demonstration Waiver Services (adding 12VAC30-135-400 through 12VAC30-135-498).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1315 and 42 USC § 1396 et seq.

Effective Date: February 7, 2018.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Summary:

This action establishes the Governor's Access Plan (GAP) Demonstration Waiver for Individuals with Serious Mental Illness to provide individuals who have diagnoses of serious mental illness access to certain basic medical and behavioral health services. Under this regulation, an individual must meet the GAP serious mental illness, financial, and nonfinancial criteria to qualify for the program. The serious mental illness criteria include specific diagnoses, for example, schizophrenia, bipolar disorders, post-traumatic stress disorder; specific duration of illnesses; specific levels of impairment; and consistent need for help in accessing health care services. Other criteria include that an eligible individual (i) is an adult between the ages of 21 years and 64 years; (ii) is a United States citizen or lawfully residing alien; (iii) is a resident of the Commonwealth; (iv) is uninsured; (v) is ineligible for any state or federal health insurance programs; (vi) is not a current resident of a nursing facility, a mental health facility, or a penal institution; and (vii) has a household income, as determined by the Department of Medical Assistance Services (DMAS) current modified adjusted gross income methodology, of less than or equal to 80% of the federal poverty level until September 30, 2017, and beginning October 1, 2017, the program's household income level is modified to 100% of the federal poverty level.

The regulation contains the following benefits: (i) primary care office visits including diagnostic and treatment services performed in the physician's office; (ii) outpatient specialty care, consultation, and treatment; (iii) outpatient hospital, including observation and ambulatory diagnostic procedures; (iv) outpatient laboratory; (v) outpatient pharmacy; (vi) outpatient telemedicine; (vii) medical equipment and supplies for diabetic treatment; (viii) outpatient psychiatric treatment; (ix) GAP case management; (x) psychosocial rehabilitation assessment and psychosocial rehabilitation services; (xi) mental health crisis intervention; (xii) mental health crisis stabilization; (xiii) therapeutic or diagnostic injection; (xiv) telemedicine; (xv) outpatient substance abuse treatment services; (xvi) intensive outpatient substance abuse treatment services; and (xvii) opioid treatment. Care coordination, recovery navigation (peer supports), crisis line, and prior authorization for services are provided through the DMAS behavioral health services administrator. Peer support services are added to the GAP program effective July 1, 2017.

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.

[12VAC30-130-5030. Eligible individuals.

Children and adults who participate in Medicaid managed care plans and Medicaid fee for service and meet ASAM medical necessity criteria shall be eligible for ARTS. Notwithstanding the coverage limitations set forth in the Governor's Access Plan for the Seriously Mental Ill (GAP SMI), GAP-SMI enrollees who meet ASAM medical necessity criteria shall be eligible for ARTS with the exception of inpatient detoxification services (ASAM Level 4.0) ~~substance use residential treatment (ASAM Levels 3.1 through 3.7)~~ and substance use ~~partial hospitalization (ASAM Level 2.5)~~ case management.]

Part III
Governor's Access Plan Demonstration Waiver for Individuals with Serious Mental Illness

12VAC30-135-400. Definitions.

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

"Action" means an action by DMAS, Cover Virginia, the service authorization contractor, or the BHSA that constitutes (i) a denial in whole or in part of payment of a covered service; or (ii) a termination or denial of eligibility or services or limited authorization of a service authorization request including (a) type or level of service; (b) reduction, suspension, or termination of a previously authorized service; (c) failure to act on a service request; (d) denial in whole or in part of coverage for a service; or (e) failure by Cover Virginia, the service authorization contractor, or the BHSA to render a decision within the required timeframes.

"Agency" means DMAS.

"Alternative home care" means mental health services more intensive than outpatient services provided (i) in the individual's home or (ii) in a therapeutic living setting that provides intensive mental health services such as residential

crisis stabilization if the individual is temporarily (less than two weeks) placed in that setting.

"Appellant" means an applicant for or recipient of GAP benefits who seeks to challenge an action regarding eligibility, services, or coverage determinations.

"Behavioral health" means mental health and substance use disorder services.

"BHSA" means the same as defined in 12VAC30-50-226.

"Care coordination" means the collaboration and sharing of information among health care providers who are involved with an individual's health care to (i) improve the health and wellness of an individual with complex and special care needs and (ii) integrate services around the needs of such individual at the local level by working collaboratively with all partners, including the individual, his family, and providers.

"Care coordinator" means an individual or entity that provides care coordination services.

"Case manager" means the person or entity that provides GAP case management as defined in this section.

"CAT" means [~~computer aided~~ computerized axial] tomography.

"Certified prescreener" means an employee of the local community services board or behavioral health authority or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by DBHDS.

"Client" means an applicant for, or recipient of, GAP benefits.

"Client appeal" means an individual's request for review of an eligibility or coverage determination and is an individual's challenge to the actions regarding benefits, services, and coverage determinations provided by the department, its service authorization contractor, Cover Virginia, or the BHSA.

"Cover Virginia" or "Cover VA" means a department contractor that receives applications for the GAP Demonstration Waiver for Individuals with SMI, determines eligibility, and attends and defends its eligibility decisions at appeal hearings.

"CSB" means the local community services board or behavioral health authority agency, which is the entry point for citizens into behavioral health services as established in Chapter 5 (§ 37.2-500 et seq.) and Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia.

"DBHDS" means the Department of Behavioral Health and Developmental Services consistent with Chapter 3 (§ 37.2-300 et seq.) of Title 37.2 of the Code of Virginia.

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

"Direct services" means the provision of direct behavioral health and medical treatment, counseling, or other supportive services not included in the definition of care coordination or case management services.

"DSM-IV-TR" means the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision, copyright 2000, American Psychiatric Association.

"DSM-5" means the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, copyright 2013, American Psychiatric Association.

"Duration of illness" means the individual (i) is expected to require treatment and supportive services for the next 12 months; (ii) has undergone psychiatric treatment more intensive than outpatient care such as crisis response services, alternative home care, partial hospitalization, or inpatient hospitalization more than once in his lifetime; or (iii) has experienced an episode of continuous, supportive residential care, other than hospitalization, for a period long enough to have significantly disrupted his normal living situation. A significant disruption of a normal living situation means the individual has been unable to maintain his housing or has had difficulty maintaining his housing due to being in a supportive residential facility or program that was not a hospital. This includes group home placement as an adolescent and assisted living facilities but does not include living situations through the Department of Social Services.

"Eight dimensions of wellness" means the same as found on the website for the Substance Abuse and Mental Health Services Administration at [~~http://www.promoteacceptance.samhsa.gov/~~ https://www.samhsa.gov/wellness-initiative/eight-dimensions-wellness].

"Enrollee" means an individual who has applied for the GAP SMI program, was determined eligible, and was enrolled in the GAP SMI program.

"Ex parte renewal" means the same as set forth in 42 CFR 435.916(a)(2).

"Expedited appeal" means an appeal that must have a decision issued within a shortened timeframe when the treating provider indicates that taking the time for a standard resolution could seriously jeopardize the individual's life, physical health, mental health, or ability to attain, maintain, or regain maximum function.

"Final decision" means a written determination pertaining to client appeals by a department hearing officer that is binding on the department.

"FPL" means the federal poverty level.

"FQHC" means a federally qualified health center.

"GAP" means Governor's Access Plan.

"GAP case management" means services to assist individuals in solving problems, if any, in accessing needed medical, behavioral health, social, educational, vocational, and other supports essential to meeting basic needs, including (i) assessment and planning services, including developing an individual service plan (does not include performing medical and psychiatric assessment but does include referral for such assessment); (ii) linking the individual to services and supports specified in the individual service plan; (iii) assisting the individual for the purpose of locating, developing, or obtaining needed services and resources; (iv) coordinating services and service planning with other agencies and providers involved with the individual; (v) enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services; (vi) making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment; (vii) follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and (viii) education and counseling that guides the individual and develops a supportive relationship that promotes the service plan.

"GAP screening entity" means the entity that conducts the SMI screening for the GAP SMI program and shall be a CSB, participating FQHC, participating free clinic, inpatient psychiatric hospital, general hospital with an inpatient psychiatric unit, local or regional jail, or the Department of Corrections and shall be conducted for the purpose of determining eligibility for participation in the GAP SMI program.

"GAP SMI program" means the program within the Governor's Access Plan Demonstration Waiver for individuals with serious mental illness.

"Good cause" means to provide sufficient cause or reason for failing to file a timely appeal or for missing a scheduled appeal hearing. The existence of good cause shall be determined by the hearing officer.

"Grievance" means an expression of dissatisfaction about any matter other than an action. A grievance shall be filed and resolved at Cover Virginia, the service authorization contractor, or the BHSA. Possible subjects for grievances include the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect an enrollee's rights.

"Hearing" means an informal evidentiary proceeding conducted by a hearing officer during which an individual has the opportunity to present his concerns with or objections to an action taken by Cover Virginia, the service authorization contractor, or the BHSA.

"Hearing officer" means an impartial decision maker who conducts evidentiary hearings on behalf of the department.

"High intensity case management" means the same as GAP case management and is reimbursed for months in which a face-to-face contact with the individual takes place in a community setting outside of the GAP case management office.

"Individual" means the client, enrollee, or recipient of services described in this section, and these terms are used interchangeably.

"Individual service plan" or "ISP" means the same as defined in 12VAC30-50-226.

"Intensive outpatient services" means the same as set forth in [~~12VAC30-50-228 A 2 b~~ 12VAC30-130-5090 A].

"Licensed mental health professional" or "LMHP" means the same as defined in 12VAC35-105-20.

"LMHP-resident" or "LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance use disorder treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling. For purposes of Medicaid reimbursement to their supervisors for services provided by such residents, they shall use the title "Resident" in connection with the applicable profession after their signatures to indicate such status.

"LMHP-resident in psychology" or "LMHP-RP" means the same as an individual in a residency program as defined in 18VAC125-20-10 for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology. For purposes of Medicaid reimbursement by supervisors for services provided by such residents, they shall use the title "Resident in Psychology" after their signatures to indicate such status.

"LMHP-supervisee in social work" or "LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in

18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work. For purposes of Medicaid reimbursement to their supervisors for services provided by supervisees, these persons shall use the title "Supervisee in Social Work" after their signatures to indicate such status.

"MAGI" means modified adjusted gross income and is an eligibility methodology for how income is counted and how household composition and family size are determined. MAGI is based on federal tax rules for determining adjusted gross income.

"MRI" means magnetic resonance imaging.

[~~"Peer support services" or "peer support" means supportive services provided by adults who self-disclose as living with or having lived with a behavioral health condition and includes (i) planning for engaging in natural community support resources as part of the recovery process, (ii) helping to initiate rapport with therapists, and (iii) increasing teaching and modeling of positive communication skills with individuals to help them self-advocate for individualized services to promote successful community integration strategies.~~]

"PSN" means a peer support navigator [employed by the BHSA] who has self-declared that he is living with or has lived with a behavioral health condition. PSNs assist individuals to successfully remain in or transition back into their communities from inpatient hospital stays, help them avoid future inpatient stays, and increase community tenure by providing an array of linkages to peer run services, natural supports, and other recovery oriented resources.

"Qualified mental health professional-adult" or "QMHP-A" means the same as defined in 12VAC35-105-20.

"Qualified mental health professional-eligible" or "QMHP-E" means the same as defined in 12VAC35-105-20.

"Register" or "registration" means notifying DMAS or its designee that an individual will be receiving services that do not require service authorization.

"Regular case management" means the same as GAP case management and is reimbursed for months in which the minimum requirements are met for GAP case management.

"Remand" means the return of a case by the hearing officer to Cover Virginia, the service authorization contractor, or the BHSA for further review, evaluation, and action.

"Representative" means an attorney or other individual who has been authorized to represent an applicant or enrollee pursuant to this part.

"Reverse" means to overturn the action of Cover Virginia, the service authorization contractor, or the BHSA and direct that eligibility or requested services be fully approved for the amount, duration, and scope of requested services.

"Serious mental illness" or "SMI" means, for the purpose of this part, a diagnosis of (i) schizophrenia spectrum disorders and other psychotic disorders but not substance/medication induced psychotic disorder; (ii) major depressive disorder; (iii) bipolar and related disorders but not cyclothymic disorder; (iv) post-traumatic stress disorder; (v) obsessive-compulsive disorder; (vi) agoraphobia; (vii) panic disorder; (viii) anorexia nervosa; or (ix) bulimia nervosa.

"Service authorization" means the same as defined in 12VAC30-50-226.

"Service-specific provider intake" means the same as defined in 12VAC30-50-130.

"State fair hearing" means the DMAS evidentiary hearing process as administered by the DMAS Appeals Division.

"State Plan" or "the Plan" means the document required by § 1902(a) of the Act.

["Substance use disorder" or "SUD" means a disorder, as defined in the DSM-5, marked by a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues to use alcohol, tobacco, or other drugs despite significant related problems.]

"Sustain" means to uphold the action of Cover Virginia, the service authorization contractor, or the BHSA.

"Title XIX of the Social Security Act" or "the Act" means the United States Code beginning at 42 USC § 1396.

[~~"Virtual engagement" means electronic and telephonic communications between a peer support navigator and GAP enrolled individual to discuss and promote engagement with resources that may be available to the individual to promote his recovery.~~]

"Warm line" means a peer-support telephone line [operated by the BHSA] that provides peer support for adult individuals who are living with or have lived with behavioral health conditions. The peer support navigators shall have specific training to provide telephonic support, and such systems may operate regionally or statewide and beyond traditional business hours.

"Withdrawal" means a written request from the applicant or enrollee or his representative for the department to terminate the appeal process without a final decision on the merits.

12VAC30-135-410. Administration; authority; waived provisions.

A. DMAS shall cover a targeted set of services as set forth in 12VAC30-135-440 for currently uninsured individuals who have diagnoses of serious mental illnesses with incomes less than or equal to 80% of the federal poverty level (FPL) using the MAGI eligibility methodology [until September

30, 2017. Beginning October 1, 2017, the income limit will increase to incomes less than or equal to 100% FPL using the MAGI eligibility methodology]. [~~All individuals already enrolled in the GAP SMI program with incomes between 61% and 100% of the FPL as of May 15, 2015, who continue to meet other program eligibility rules shall maintain enrollment in the GAP SMI program until their next eligibility renewal period or July 1, 2016, whichever comes first.~~]

B. Consistent with § 1115 of the Social Security Act (42 USC § 1315), the department covers certain limited services specified in 12VAC30-135-440 for certain targeted individuals specified in 12VAC30-135-420.

C. The Secretary of the U.S. Department of Health and Human Resources has waived compliance for the department with the following for the purpose of the GAP SMI program:

1. Consistent with § 1902(a)(10)(B) of the Act, the amount, duration, and scope of services covered in the State Plan for Medical Assistance shall be waived. The department shall cover a specified set of benefits for the individuals who are determined to be eligible for the GAP SMI program.

2. Consistent with § 1902(a)(23)(A) of the Act, the participating individual's freedom of choice of providers of services shall be waived for [~~peer supports and~~] GAP case management.

3. Consistent with § 1902(a)(23) of the Act, the services shall be provided by a different delivery system than otherwise used for full State Plan services for [~~peer supports and~~] GAP case management.

4. Consistent with § 1902(a)(4) of the Act, insofar as it incorporates 42 CFR 431.53 permitting the Commonwealth to waive providing nonemergency transportation to and from participating providers for eligible, participating individuals.

5. Consistent with § 1902(a)(35) of the Act, permitting the Commonwealth to waive offering eligible, participating individuals retroactive eligibility for the GAP SMI program.

D. The GAP SMI program shall operate statewide.

E. The GAP SMI program shall operate for at least two years beginning January 2015 and continuing through January 2017 or until the Commonwealth implements an alternative plan to provide health care coverage to all individuals having incomes less than or equal to 80% of the FPL using the MAGI eligibility methodology [until September 30, 2017. Beginning October 1, 2017, the income limit will increase to incomes less than or equal to 100% FPL using the MAGI eligibility methodology].

F. The GAP SMI program shall not affect or modify components of the Commonwealth's existing medical assistance or children's health insurance programs.

12VAC30-135-420. Individual eligibility; limitations; referrals; eligibility determination process.

A. The GAP SMI program eligibility determination process shall have two parts: (i) a determination of whether the applicant meets the GAP nonfinancial eligibility criteria including a diagnosed SMI and (ii) a determination of whether the applicant meets the GAP SMI Program financial eligibility criteria.

1. A person may apply through Cover Virginia for GAP by phone or through a provider-assisted web portal.

2. If an applicant is found not to meet GAP eligibility criteria, either the GAP financial eligibility criteria or the GAP SMI program nonfinancial eligibility criteria, then the applicant shall be sent a letter with appeal rights. Such applicants shall be assessed and referred for eligibility through Medicaid, FAMIS MOMS, or the federal marketplace for private health insurance as appropriate.

B. Applicants shall have a screening conducted by a DMAS-approved GAP screening entity for the determination of SMI.

C. To be eligible for the GAP SMI program, applicants shall be assessed to determine whether their diagnosed condition is a serious mental illness. The serious mental illness shall be diagnosed according to criteria defined in the DSM-IV-TR or DSM-5. LMHPs, including LMHP-supervisees, LMHP-residents, [~~and~~] LMHP-residents in psychology, [and those exempt from licensure as described in § 54.1-3601 of the Code of Virginia,] shall conduct the clinical screening required to determine the applicant's diagnosis if one has not already been made. At least one of the following diagnoses shall be documented for the applicant to be approved for GAP SMI program services:

1. Schizophrenia spectrum disorders and other psychotic disorders with the exception of substance/medication induced psychotic disorders;

2. Major depressive disorder;

3. Bipolar and related disorders with the exception of cyclothymic disorder;

4. Post-traumatic stress disorder; or

5. Obsessive compulsive disorder, panic disorder, agoraphobia, anorexia nervosa, or bulimia nervosa.

D. To be eligible for this program, applicants shall meet at least one of the following criteria to reflect the duration of illness:

1. The applicant is expected to require treatment and supportive services for the next 12 months;

2. The applicant has undergone psychiatric treatment more intensive than outpatient care, such as crisis response services, alternative home care, partial hospitalization, or inpatient hospitalization for a psychiatric condition, more than once in his lifetime; or

3. The applicant has experienced an episode of continuous, supportive residential care, other than hospitalization, for a period long enough to have significantly disrupted the normal living situation. A significant disruption of a normal living situation means the applicant has been unable to maintain his housing or had difficulty maintaining his housing due to being in a supportive residential facility or program that was not a hospital. This includes group home placement as an adolescent and assisted living facilities but does not include living situations through the Department of Social Services.

E. To be eligible for this program, applicants shall demonstrate a significant level of impairment on a continuing or intermittent basis. Evidence of severe and recurrent impairment resulting from mental illness shall exist. The impairment shall result in functional limitation in major life activities. Due to the mental illness, the applicant shall meet at least two of the following:

1. The applicant is either unemployed or employed in a sheltered setting or a supportive work situation, has markedly limited or reduced employment skills, or has a poor employment history;

2. The applicant requires public and family financial assistance to remain in his community;

3. The applicant has difficulty establishing or maintaining a personal social support system;

4. The applicant requires assistance in basic living skills such as personal hygiene, food preparation, or money management; or

5. The applicant exhibits inappropriate behavior that often results in intervention by the mental health or judicial system.

F. The applicant shall require assistance to consistently access or to utilize needed medical or behavioral, or both, health services and supports due to the mental illness.

G. In addition, the applicant shall:

1. Be an adult 21 years through 64 years of age;

2. Be a United States citizen or lawfully residing immigrant;

3. Be a resident of the Commonwealth;

4. Be uninsured;

5. Be ineligible for any state or federal benefits health insurance program including Medicaid, Children's Health Insurance Program (CHIP/FAMIS), Medicare, or TriCare Federal Military benefits;

6. Have household incomes less than or equal to 80% of the federal poverty level using the MAGI eligibility methodology [until September 30, 2017. Beginning October 1, 2017, the income limit will increase to incomes less than or equal to 100% FPL using the MAGI eligibility methodology]. Reported income shall be verified via reliable electronic sources or if not available electronically, by pay stubs or other income documents accepted under Medicaid policy. All individuals enrolled in the GAP SMI program with incomes between 61% and 100% of the FPL using the MAGI eligibility methodology as of May 15, 2015, who continue to meet other program eligibility rules shall maintain enrollment in the GAP SMI program until their next eligibility renewal period or July 1, 2016, whichever comes first. Pursuant to federal authority under the § 1115 waiver, should expenditures for the GAP SMI program compromise the program's budget neutrality, DMAS may amend the waiver to maintain budget neutrality by reducing income eligibility levels to below 80% of the FPL [until September 30, 2017, and below 100% FPL beginning October 1, 2017]; and

7. Not be a current resident of a long-term care facility, mental health facility, or penal institution.

H. GAP enrollees shall have 12 months of continuous coverage regardless of household or income changes unless the individual becomes 65 years of age, becomes eligible for Medicare or full Medicaid benefits, moves out of the Commonwealth, dies, or is unable to be located.

I. Individuals who are enrolled in the GAP SMI program who require hospitalization shall not be disenrolled from the GAP SMI program during their hospitalization.

J. If a GAP enrollee secures Medicare or Medicaid/FAMIS MOMS coverage, his GAP enrollment shall be canceled to align with the effective date of the Medicare or Medicaid coverage. Enrollees who gain other sources of health insurance, other than Medicare or Medicaid/FAMIS MOMS, shall not be disenrolled from the GAP SMI program during their 12-month enrollment period; however, in such instances, the GAP SMI program shall be the payer of last resort.

K. DMAS or its designee shall verify income data via existing electronic data sources, such as Virginia Employment Commission and TALX. Citizenship and identity shall be verified through the monthly file exchange between DMAS and the Social Security Administration. The applicant's age, residency, and insurance status shall be verified through self-attestation. Applicants shall be permitted 90 days to resolve any citizenship discrepancies resulting from the Social Security Administration matching process, in any of the information provided, and in the verification process findings of DMAS or its designee.

12VAC30-135-430. Individual screening requirements; enrollment process.

A. All applicants shall be screened by a GAP screening entity using the screening tool, DMAS P603, and shall meet the requirements identified in the screening tool to meet the SMI criteria. Screenings shall be provided to persons without regard to whether they have serious mental illness. Screenings may be either limited or a full screening depending on the applicant's prior history of serious mental illness.

B. Two types of screenings shall be conducted:

1. Limited screenings shall be conducted for those applicants who have had a diagnostic evaluation within the past 12 months, and this evaluation is available to the screener. These limited screenings may be conducted by [~~either~~] an LMHP, a QMHP-A, [~~or~~ a] QMHP-E [, or those exempt from licensure as described in § 54.1-3601 of the Code of Virginia].

2. Full screenings shall be conducted for those applicants who have not had a diagnostic evaluation within the past 12 months or for whom the evaluation is not available to the screener. These full screenings shall be conducted by an LMHP.

C. All SMI screenings shall be submitted to the BHSA. The diagnostic evaluation shall be signed and contemporaneously dated by the LMHP who completed it.

D. Once an applicant's eligibility has been determined consistent with all of the requirements set out in 12VAC30-135-420, his coverage shall become effective on the first day of the same month in which his signed application was received. No retroactive eligibility shall be permitted in the GAP SMI program. No service coverage shall begin prior to the first day of the month that the applicant's signed and dated application for the GAP SMI program is received.

E. Once an applicant is determined to be eligible for the GAP SMI program, his eligibility shall remain effective for 12 continuous months except if the individual becomes 65 years of age, becomes eligible for Medicare or Medicaid, moves out of the Commonwealth, dies, or is unable to be located.

F. The renewal of an enrollee's eligibility for this GAP SMI program shall be redetermined prior to the end of the 12-month coverage period. No additional determination of serious mental illness shall be required to complete a renewal for program eligibility.

G. GAP SMI program enrollees shall not be required to report changes in their financial circumstances during their 12-month coverage period but only at the time of their renewal application.

1. If an ex parte renewal cannot be completed for the GAP SMI program enrollee, a [~~pre-filled~~ prefilled] paper renewal application will be generated, and the enrollee shall be given 30 days to return the completed renewal with the requested verification documentation. If the enrollee fails to provide the completed renewal and documentation in the designated timeframe, his GAP enrollment shall be canceled for failure to complete his renewal process.

2. Such an individual shall be permitted a three-month grace period in which to supply the required documentation to have his GAP enrollment reinstated at the first of the month following cancellation.

H. The new application determination process shall be completed within 45 days except in cases of unusual circumstances as described in this subsection:

1. Unusual circumstances include administrative or other emergency beyond the control of DMAS or its designee. In such case, DMAS or its designee shall document in the applicant's record the reasons for delay. DMAS or its designee shall not use the time standards as a waiting period before determining eligibility or as a reason for denying eligibility because it has not determined eligibility within the time standards.

2. Incomplete new applications shall be held open for a period of 45 calendar days to enable applicants to provide outstanding information needed for an eligibility determination. Any applicant who fails to provide within 45 calendar days of the receipt of the initial application information or verifications necessary to determine eligibility shall have his application for GAP SMI program denied.

I. Cover Virginia shall mail a notice to the applicant following the eligibility determination. An approval notice shall include the applicant's identification number, enrollment periods, and a member handbook. A denial notice shall include information about appeal rights.

J. Following an approval notice, the BHSA shall mail the enrollee's GAP identification card to the address provided on the application.

12VAC30-135-440. Covered services; limitations; restrictions.

A. GAP SMI program coverage shall be limited to [certain] outpatient medical, behavioral health, pharmacy, GAP case management, and care coordination services for individuals determined to meet the GAP SMI program eligibility criteria. This program intends that such services will significantly decrease the severity of the serious mental illnesses of these individuals so that they can recover, work, parent, learn, and participate more fully in their communities.

B. These services are intended to be delivered in a person-centered manner. The individuals who are receiving these services shall be included in all service planning activities.

C. Medical services including outpatient physician and clinic services, telemedicine services, specialists services, diagnostic procedures, laboratory procedures, and pharmacy services shall be covered as follows:

1. Outpatient physician services and medical office visits, which include (i) evaluation and management, (ii) diagnostic and treatment procedures performed in the physician's office, and (iii) therapeutic or diagnostic injections. The requirements of 12VAC30-50-140 shall be met in order for these services to be reimbursed by DMAS.

2. Outpatient clinic services, which include (i) evaluation and management, (ii) treatment and procedures performed in the clinic's office, and (iii) medically necessary therapeutic and diagnostic injections. The requirements of 12VAC30-50-180 shall be met in order for this service to be reimbursed by DMAS.

3. Outpatient specialty care, consultation, management, and treatment, which include (i) evaluation and treatment, (ii) procedures performed in the physician's office, and (iii) medically necessary therapeutic or diagnostic injections consistent with 12VAC30-50-140.

4. Outpatient diagnostic services, which include ultrasounds, electrocardiogram, service-authorized CAT and MRI scans, and diagnostic services that can be performed in a physician's office with the exception of colonoscopy procedures and other services listed as not covered in 12VAC30-135-450. The requirements of 12VAC30-50-140 O shall be met as they pertain to GAP services for these services to be reimbursed by DMAS. CAT and MRI scans shall be covered if the service is authorized by either DMAS or the service authorization contractor.

5. Outpatient laboratory services consistent with 12VAC30-50-120.

6. Outpatient pharmacy services consistent with 12VAC30-50-210.

7. Outpatient family planning consistent with 12VAC30-50-130 D; sterilization procedures and abortions shall not be covered.

8. Outpatient telemedicine, which is covered the same as Medicaid for services that are not otherwise excluded from GAP coverage.

9. Outpatient durable medical equipment and supplies coverage shall be limited to diabetic equipment and supplies consistent with 12VAC30-50-165.

10. Outpatient hospital procedures shall be limited to (i) diagnostic ultrasound procedures; (ii) electrocardiogram (EKG/ECG) including stress tests; and (iii) radiology procedures except for positron emission tomography (PET) scans, colonoscopy, and radiation treatment procedures.

D. Behavioral health services shall be covered as follows:

1. Behavioral health services shall be subject to service authorization or registration as specified 12VAC30-50-226.

2. GAP case management as defined in 12VAC30-135-400.

a. GAP case management shall be provided by CSB case managers with consultation and support from BHSA care coordinators. This service shall be targeted to individuals who are expected to benefit from assistance with medication management and appropriate use of community resources. The CSB GAP case managers shall have the same knowledge, skills, and abilities as set out in 12VAC30-50-420 E 2 e and the CSB shall maintain all licenses required by DBHDS in 12VAC35-105. GAP case management shall not include the provision of direct treatment services and shall have two levels of service intensity: regular and high intensity case management, as defined in 12VAC30-135-400. GAP [~~care~~ case] management shall be focused on assisting individuals to access needed medical, behavioral health (psychiatric and substance use disorder services), social, education, vocational, and other support services.

b. Reimbursement shall be provided only for active case management individuals. An active individual for GAP case management purposes means an individual for whom there is a current ISP that requires regular direct or client-related contacts or activity or communication with the individuals or families, significant others, service providers, or others. Billing may be submitted only for months in which direct or individual-related contacts, activity, or communications occur. Regular case management shall be reimbursed for months in which the minimum requirements as described in 12VAC30-135-410, are met for case management. High intensity case management shall be reimbursed for months in which a face-to-face contact with the individual takes place in a community setting outside of the case management office.

c. Case management shall not be billed for enrollees while they are in institutions for mental disease.

d. The case management entity shall collaborate monthly with the BHSA for care coordination efforts.

3. Crisis intervention shall be covered consistent with the limits and requirements set out in 12VAC30-50-226 B 3 and 12VAC30-60-143.

4. Crisis stabilization shall be covered consistent with the limits and requirements set out in 12VAC30-50-226 B and 12VAC30-60-143 except that service authorization shall be required in place of registration.

5. Psychosocial rehabilitation service-specific provider intake and services shall be covered consistent with the limits and requirements set out in 12VAC30-50-226 B 4.

[6. Peer support services for GAP members shall be covered consistent with the limits and requirements set out in 12VAC30-50-226.]

E. Outpatient psychotherapy services shall be covered consistent with 12VAC30-50-140 D [~~2~~ 1] through D [~~5~~ 4].

F. [~~Community~~ Effective October 1, 2017,] substance use disorder services shall be covered as [~~follows:~~ described in 12VAC30-130-5030. Peer support services for GAP members with SUD shall be covered consistent with the limits and requirements set out in 12VAC30-130-5160 through 12VAC30-130-5210.]

[~~1. Services shall include intensive outpatient services and opioid treatment services. These services shall be rendered to individuals consistent with the criteria for these two services specified in 12VAC30-50-228 A 2.~~

~~2. Evaluations required. Prior to initiation of intensive outpatient or opioid treatment services, an evaluation shall be conducted consistent with 12VAC30-60-180 C.~~]

G. Care coordination, crisis phone line, and peer [~~supports~~ support navigation services] shall be administered through the BHSA as follows:

1. Care coordination shall be provided by the BHSA care coordinators. BHSA-LMHP care coordinators shall work closely with behavioral health providers including local CSB staff to provide information to the enrollee in accessing covered services, provider selection, and how to access all services including noncovered services.

2. The BHSA shall provide crisis phone lines 24 hours per day and seven days per week including access to a licensed care coordinator during a crisis.

[3. Before July 1, 2017, peer support navigation services shall only be provided by peer support navigators through the BHSA. On and after July 1, 2017, peer support services will be a state plan service and, therefore, shall be provided by peer recovery specialists employed by or contracted with licensed and enrolled providers consistent with the limits and requirements set out in 12VAC30-50-226 for adults with mental illness and in 12VAC30-130-5160 through 12VAC30-130-5210 for adults with substance use disorders. However, the BHSA or its designee may continue to provide peer support navigation services to GAP enrollees during a transition period described in subdivision 4 of this subsection.]

[~~3.~~ 4.] The BHSA or its designee shall provide peer support [navigation] services seven days per week. A telephonic support shall be staffed by peer support navigators who have been trained specifically in telephonic support operations and resources. The telephonic support associated with the peer support services shall offer extended hours, toll-free access, and dedicated data collection capabilities. The BHSA shall provide trained peer navigators as part of its care coordination team or may contract with other entities to do so. The BHSA shall utilize community-based peer navigators to work in provider settings, community settings, and peer-run organizations. The scope of peer support [navigation] services shall include:

a. Visiting enrollees in inpatient settings to develop the peer relationship.

b. Describing and developing a plan for engaging in peer and natural community support resources as part of the recovery process.

c. Initiating rapport, teaching, and modeling positive communication skills with enrollees to help them self-advocate for an individualized services plan and assisting the enrollee with the coordination of services to promote successful community integration strategies.

d. Assisting in developing strategies to decrease or avoid the need for future hospitalizations by offering social and emotional support and an array of individualized services.

e. Providing social, emotional, and other supports framed around the eight dimensions of wellness as defined in 12VAC30-135-400.

[f. Assisting with the transition from BHSA-provided peer support navigation if a GAP enrollee elects to receive peer support services as defined in 12VAC30-50-226 B 7 or 12VAC30-130-5170 B. The transition period may last up to 30 consecutive calendar days and address discharging from recovery navigator services and engagement in peer support services.]

12VAC30-135-450. Noncovered medical and behavioral health services.

A. Noncovered medical services shall include:

1. Inpatient hospital treatment including psychiatric facilities and psychiatric facility partial hospitalization programs;

2. Emergency room treatment;

3. Ambulatory surgical centers;

4. Military treatment facilities;

5. Outpatient hospital procedures other than diagnostic procedures;

6. Positron emission tomography (PET) scans;

7. Home health;

8. Skilled and intermediate nursing facilities;

9. Long-term care including home and community-based care waiver services, custodial care facilities, and intermediate care facilities for individuals with intellectual disabilities;

[~~10. Residential substance use disorder treatment facilities;~~

~~11.~~ 10.] Psychiatric residential treatment centers;

[~~12.~~ 11.] Comprehensive inpatient/outpatient rehabilitation facilities;

[~~13.~~ 12.] End-stage renal disease treatment facilities;

[~~14.~~ 13.] Hospice;

[~~15.~~ 14.] Ambulance (including land, air, and water);

[~~16.~~ 15.] Early and periodic screening diagnosis and treatment (EPSDT) services;

[~~17.~~ 16.] Dental services;

[~~18.~~ 17.] Nonemergency transportation;

[~~19.~~ 18.] Physical therapy (PT), occupational therapy (OT), and speech therapies;

[~~20.~~ 19.] Obstetrics/maternity care including birthing centers (gynecology services are covered);

[~~21.~~ 20.] Routine eye exams;

[~~22.~~ 21.] Abortions, sterilization (vasectomy or tubal ligation);

[~~23.~~ 22.] Chemotherapy, radiation therapy;

[~~24.~~ 23.] Colonoscopy;

[~~25.~~ 24.] Dialysis;

[~~26.~~ 25.] Durable medical equipment (DME) and supply items (other than those required to treat diabetes); orthotics; prosthetics; home IV therapy; nutritional supplements;

[~~27.~~ 26.] Cosmetic procedures;

[~~28.~~ 27.] Eyeglasses, contact lenses, hearing aids;

[~~29.~~ 28.] Private duty nursing;

[~~30.~~ 29.] Assisted living;

[~~31.~~ 30.] Other unspecified facilities;

[~~32.~~ 31.] Services specifically excluded under Virginia Medicaid;

[~~33.~~ 32.] Services not deemed medically necessary;

[~~34.~~ 33.] Services that are considered experimental or investigational;

[~~35.~~ 34.] Services from non-Medicaid-enrolled providers; and

[~~36.~~ 35.] Any medical services not otherwise defined as covered.

B. Noncovered traditional [~~behavioral~~ mental] health services shall include:

1. Inpatient hospital or partial hospital services, hospital observation services, emergency room services;

2. Electroconvulsive therapy and related services (e.g., anesthesia and hospital charges);

3. Residential treatment services;

4. Psychological and neuropsychological testing;

5. Smoking and tobacco cessation and counseling;

6. Transportation;

7. Services specifically excluded under Virginia Medicaid;

8. Services not deemed medically necessary;

9. Services that are considered experimental or investigational;

10. Services from non-Medicaid-enrolled providers; and

11. Any [~~behavioral~~ mental] health [~~or substance use disorder~~] services not otherwise defined as covered.

C. Noncovered nontraditional [~~behavioral~~ mental] health services shall include:

[~~1. Substance use disorder case management, substance use disorder day treatment for pregnant women, substance use disorder residential treatment for pregnant women, substance use disorder day treatment, and substance use disorder crisis intervention;~~

~~2.~~ 1.] Day treatment partial hospitalization, mental health skill building services, and intensive community treatment;

[~~3.~~ 2.] Treatment foster care case management;

[3. Mental health family support partners;]

[~~4. Virginia Independent Clinical Assessment Program assessments;~~]

[~~5.~~ 4.] Transportation;

[~~6.~~ 5.] Services specifically excluded under Virginia Medicaid;

[~~7.~~ 6.] Services not deemed medically necessary;

[~~8.~~ 7.] Services that are considered experimental or investigational;

[~~9.~~ 8.] Services from non-Medicaid-enrolled providers; and

[~~10.~~ 9.] Any [~~behavioral~~ mental] health [~~or substance use disorder treatment~~] services not otherwise defined as covered.

[D. Noncovered substance use disorder services are as described in 12VAC3-130-5030. ARTS family support partners is a noncovered service.]

12VAC30-135-460. (Reserved.)

12VAC30-135-470. Provider qualifications; requirements.

The provider qualifications and requirements for GAP-covered services shall be the same as those set forth for each service in 12VAC30-50 [and 12VAC30-130].

12VAC30-135-475. Individual service plan requirements.

A. Individual service plans shall contain all of the elements as set out in 12VAC30-50-226. ISPs that do not contain the specified elements shall be considered by DMAS to be incomplete and not adequate to support service reimbursement.

B. Prior to the development of an ISP:

1. A service-specific provider intake shall be completed for the following services: (i) psychosocial rehabilitation, (ii) crisis intervention, and (iii) crisis stabilization.

2. An evaluation consistent with [~~12VAC30-60-180 C~~ 12VAC30-60-181] shall be completed for substance use disorder intensive outpatient and opioid treatment services.

3. DBHDS licensure requirements for assessment and planning as defined in 12VAC35-105-650 shall be completed for GAP case management.

12VAC30-135-480. Utilization review.

A. The utilization requirements of this section shall apply to all GAP covered services unless otherwise specified.

B. DMAS, or its designee, shall perform reviews of the utilization of all GAP-covered services in accordance with 42 CFR 440.260 and 42 CFR Part 456.

C. DMAS shall recover expenditures made for covered services when provider documentation does not comport with standards specified in state and federal Medicaid requirements.

D. The utilization review requirements for GAP-covered services shall be the same as those set forth for each service in 12VAC30-60.

12VAC30-135-485. Reimbursement.

A. All services covered in the GAP SMI program shall be billed and reimbursed through the existing Medicaid/CHIP fee-for-service methodology and claims process.

B. Reimbursement for substance use disorder services shall be consistent with [~~subdivisions 1 through 6 of~~] 12VAC30-80-32 [A 1 through A 6].

C. Service authorization shall not guarantee payment for the service.

12VAC30-135-487. Client appeals.

A. Notwithstanding the provisions of 12VAC30-110-10 through 12VAC30-110-370, the regulations for client appeals described in this section through 12VAC30-135-495 govern state fair hearings for GAP SMI program applicants and enrolled individuals. Appeal procedures for GAP SMI providers are set out in 12VAC30-135-496.

B. GAP SMI program applicants and enrollees shall have the right to a hearing pursuant to 42 CFR 431.220.

C. Applicants shall be notified in writing of the appeals process at the time of the request for enrollment by Cover Virginia. Enrollees shall be notified in writing of the appeals process upon receipt of an adverse decision in a notice of action from the BHSA or the service authorization contractor.

D. An appellant shall have the right to representation by an attorney or other individual of his choice at all stages of an appeal at the administrative agency level.

1. For those appellants who wish to have a representative, a representative shall be designated in a written statement that is signed by the appellant whose GAP SMI program benefits were adversely affected. If the appellant is physically unable to sign a written statement, the DMAS Appeals Division shall allow a family member or other person acting on the appellant's behalf to be the representative. If the appellant is mentally unable to sign a written statement, the DMAS Appeals Division shall require written documentation that a family member or other person has been appointed or designated as his legal representative.

2. If the representative is an attorney or a paralegal working under the supervision of an attorney, a signed statement by such attorney or paralegal that he is authorized to represent the appellant, prepared on the attorney's letterhead, shall be accepted as a designation of representation.

3. A member of the same law firm as the designated representative shall have the same rights as the designated representative.

4. An appellant may revoke representation by another person at any time. The revocation is effective when the DMAS Appeals Division receives written notice from the appellant.

E. Any written communication from an applicant or enrollee or his representative that clearly expresses that he wants to

present his case to a reviewing authority shall constitute an appeal request.

1. The written communication should explain the basis for the appeal of the action taken by Cover Virginia, the BHSA, or the service authorization contractor.

2. The appellant or his representative may examine witnesses or documents, or both, provide testimony, submit evidence, and advance arguments during the hearing.

F. Appeals to the state fair hearing process shall be made to the DMAS Appeals Division in writing, with the exception of requests for expedited appeals, and may be made via U.S. mail, fax transmission, hand-delivery, or electronic transmission.

G. Cover Virginia, the BHSA, or the service authorization contractor shall attend and defend its decisions at all appeal hearings or conferences, whether in person or by telephone, as deemed necessary by the DMAS Appeals Division.

H. Requests for expedited appeals referenced in subsection K of this section may be filed by telephone or by any of the methods set forth in subsection F in this section.

I. The agency shall continue benefits while the appeal is pending when all of the following criteria are met:

1. The enrollee or his representative files the appeal within 10 calendar days, plus five mail days, of the date the notice of action was sent by the agency;

2. The appeal involves the termination, suspension, or reduction of eligibility or a previously authorized course of treatment;

3. In the case of services, the services were ordered by an authorized provider, and the original period covered by the initial authorization has not expired; and

4. The enrollee or his representative requests continuation of benefits.

J. After the final resolution and if the final resolution of the appeal is adverse to the enrollee (e.g., the agency's action is upheld), the department may recover the costs of services furnished to the enrollee while the appeal was pending to the extent they were furnished solely because of the pending appeal.

K. The department shall maintain an expedited process for appeals when the treating provider of an appellant certifies in writing that taking the time for a standard resolution could seriously jeopardize the appellant's life, physical health, mental health, or ability to attain, maintain, or regain maximum function. DMAS will make every effort to facilitate an expedited hearing and appeal decision process to accommodate the serious health condition of the appellant.

1. For eligibility matters, the hearing officer shall render appeal decisions within a reasonable amount of time. In setting timeframes, the hearing officer shall consider the need for expedited appeals that meet criteria described in this subsection.

2. For health services matters, the hearing officer shall ensure that appeals that meet the criteria for expedited resolution are completed no later than 72 hours after the agency receives a fair hearing request. The hearing officer may extend the timeframes for resolution of an expedited appeal by up to 14 calendar days if the appellant or the appellant's representative requests the extension, or if the hearing officer:

a. Shows that there is a need for additional information and how the delay is in the appellant's best interest;

b. Promptly notifies the appellant of the reason for an extension and provides the date the extension expires; and

c. Resolves the appeal as expeditiously as the appellant's health condition requires and no later than the date the extension expires.

12VAC30-135-489. Appeal timeframes.

A. Appeals to the Medicaid state fair hearing process shall be filed with the DMAS Appeals Division within 30 days of the date the notice of action was sent by the agency, unless the time period is extended by DMAS upon a finding of good cause in accordance with subsection G of this section.

B. It is presumed that applicants or enrollees will receive the notice of action five days after the agency or its designee mails it, unless the applicant or enrollee shows that he did not receive the notice within the five-day period. For purposes of calculating the five-day period, it is presumed that the notice was mailed by the agency on the date that is indicated on the notice.

C. A request for appeal on the grounds that the agency or its designee has not acted with reasonable promptness in response to an eligibility or service request may be filed at any time until the agency or its designee has acted.

D. The date of filing shall be (i) the date the request is postmarked if by U.S. mail or (ii) the date the request is received by the department if delivered other than by U.S. mail.

E. Documents postmarked on or before a time limit's expiration shall be accepted as timely.

F. In computing any time period under 12VAC30-135-487 through 12VAC30-135-495, the day of the act or event from which the designated period of time begins to run shall be excluded and the last day included. If a time limit would expire on a Saturday, Sunday, or state or federal holiday, it shall be extended until the next regular business day.

G. An extension of the 30-day period for filing a request for appeal may be granted for good cause shown. Examples of good cause include the following situations:

1. The appellant was seriously ill and was prevented by illness from contacting the department;

2. The notice of action completed by the agency was not sent to the appellant. The agency may rebut this claim by evidence that the decision was mailed to the appellant's last known address or that the notice was received by the appellant;

3. The appellant sent the request for appeal to another government agency in good faith within the time limit; or

4. Unusual or unavoidable circumstances prevented a timely filing of the appeal request.

H. Appeals shall be heard and decisions issued within 90 days of (i) the postmark date if delivered by U.S. mail or (ii) the receipt date if delivered by any method other than U.S. mail.

I. Exceptions to standard appeal resolution timeframes. Decisions may be issued beyond the standard timeframe when the appellant or his representative requests or causes a delay. Decisions may also be issued beyond the standard appeal resolution timeframe when any of the following circumstances exist:

1. The appellant or representative requests to reschedule or continue the hearing;

2. The appellant or representative provides good cause for failing to keep a scheduled hearing appointment and the DMAS Appeals Division reschedules the hearing;

3. Inclement weather, unanticipated system outage, or the department's closure that prevents the hearing officer's ability to work;

4. Following a hearing, the hearing officer orders an independent medical assessment as described in 12VAC30-110-200;

5. The hearing officer leaves the hearing record open after the hearing to receive additional evidence or argument from the appellant or representative;

6. The hearing officer receives additional evidence from a person other than the appellant or his representative, and the appellant or representative requests to comment on such evidence in writing or to have the hearing reconvened to respond to such evidence; or

7. The hearing officer determines that a need for additional information exists and documents how the delay is in the appellant's interest.

J. For delays requested or caused by an appellant or his representative, the delay date for the decision will be calculated as follows:

1. If an appellant or representative requests or causes a delay within 30 days of the request for a hearing, the 90-day time limit will be extended by the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

2. If an appellant or representative requests or causes a delay within 31 to 60 days of the request for a hearing, the 90-day time limit will be extended by 1.5 times the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

3. If an appellant or representative requests or causes a delay within 61 to 90 days of the request for a hearing, the 90-day time limit will be extended by two times the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

K. Post-hearing delays requested or caused by an appellant or representative (e.g., requests for the record to be left open) will result in a day-to-day delay for the decision date. The hearing officer shall provide the appellant and representative with written notice of the reason for the decision delay and the delayed decision date, if applicable.

12VAC30-135-491. Prehearing decisions.

A. If the DMAS Appeals Division determines that any of the conditions as described in this subsection exist, a hearing will not be held and the client appeal process shall be terminated.

1. A request for appeal may be invalidated if:

a. The request was not filed within the time limit imposed by 12VAC30-135-489 A or extended pursuant to 12VAC30-135-489 G, and the hearing officer sends a letter to the appellant for an explanation as to why the appeal request was not filed timely, and:

(1) The appellant or his representative did not reply to the request within 10 calendar days for an explanation of why good cause criteria were met for the untimely filing; or

(2) The appellant or his representative replied within 10 calendar days of the request and the DMAS Appeals Division had sufficient facts to determine that the reply did not meet good cause criteria pursuant to 12VAC30-135-489 G.

b. The individual who filed the appeal ("filer") is not the appellant or parent of a minor appellant and the DMAS Appeals Division sends a letter to the filer requesting proof of his authority to appeal on behalf of the appellant, and:

(1) The filer did not reply to the request for authorization to represent the appellant within 10 calendar days; or

(2) The filer replied within 10 calendar days of the request and the hearing officer determined that the authorization submitted was insufficient to allow the filer to represent the appellant under the provisions of 12VAC30-135-487 D.

2. A request for appeal may be administratively dismissed if:

a. The action being appealed was not taken by Cover Virginia, BHSA, or the service authorization contractor; or

b. The sole issue is a federal or state law requiring an automatic change adversely affecting some or all GAP SMI program applicants or enrollees.

3. An appeal case may be closed if:

a. The hearing officer schedules a hearing and sends a written schedule letter notifying the appellant or his representative of the date, time, and location of the hearing, the appellant or his representative failed to appear at the scheduled hearing, and the hearing officer sends a letter to the appellant for an explanation as to why he failed to appear, and:

(1) The appellant or his representative did not reply to the request within 10 calendar days with an explanation that met good cause criteria; or

(2) The appellant or his representative replied within 10 calendar days of the request and the DMAS Appeals Division determined that the reply did not meet good cause criteria.

b. The hearing officer sends a written schedule letter requesting that the appellant or his representative provide a telephone number at which he can be reached for a telephonic hearing and the appellant or his representative failed to respond within 10 calendar days to the request for a telephone number at which he could be reached for a telephonic hearing.

c. The appellant or his representative withdraws the appeal request in writing.

d. Cover Virginia, the BHSA, or the service authorization contractor approves the full amount, duration, and scope of services requested.

e. Evidence in the record shows that the decision made by Cover Virginia, the BHSA, or the service authorization contractor was clearly in error and that the case should be fully resolved in the appellant's favor.

B. Remand to Cover Virginia, the BHSA, or the service authorization contractor. If the hearing officer determines from the record, without conducting a hearing, that the case might be resolved in the appellant's favor if Cover Virginia, the BHSA, or the service authorization contractor obtains and develops additional information, documentation, or verification, the hearing officer may remand the case to Cover Virginia, the BHSA, or the service authorization contractor for action consistent with the hearing officer's written instructions pursuant to 12VAC30-135-494.

C. The appellant shall have no opportunity to seek judicial review except in cases where the hearing officer receives and analyzes a response from the appellant or representative as described in subdivisions A 1 a (2), A 1 b (2), A 3 a (2), and subsection B of this section.

D. A letter shall be sent to the appellant or his representative that explains the determination made on his appeal.

12VAC30-135-494. Evidentiary hearings and final decisions.

A. All hearings shall be scheduled at a reasonable time, date, and place, and the appellant and his representative shall be notified in writing at least 15 days before the hearing.

1. The hearing location shall be determined by the DMAS Appeals Division.

2. A hearing shall be rescheduled at the appellant's request no more than twice unless compelling reasons exist.

3. Rescheduling the hearing at the appellant's or his representative's request will result in automatic waiver of the 90-day deadline for resolution of the appeal. The delay date for the decision will be calculated as set forth in 12VAC30-135-489 J.

B. The hearing shall be conducted by a department hearing officer. The hearing officer shall review the complete record for all Cover Virginia, BHSA, or service authorization contractor actions that are properly appealed; conduct informal, fact-gathering hearings; evaluate evidence presented; research the issues; and render a written final decision.

C. Subject to the requirements of all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information, the appeal record shall be made accessible to the appellant and his representative at a convenient place and time at least five working days before the date of the hearing and during the hearing. The appellant and his representative may examine the content of the appellant's case file and all documents and records the department will rely on at the hearing except those records excluded by law.

D. Appellants or their representatives who require the attendance of witnesses or the production of records, memoranda, papers, and other documents at the hearing may request in writing the issuance of a subpoena. The request must be received by the hearing officer at least 10 working

days before the scheduled hearing. Such request shall include (i) the witness or respondent's name, home and work addresses, and county or city of work and residence if the subpoena is for witnesses, (ii) a description of the specific records requested if the subpoena is for records, and (iii) the name and address of the sheriff's office that will serve the subpoena.

E. The hearing officer shall conduct the hearing; decide on questions of evidence, procedure, and law; question witnesses; and assure that the hearing remains relevant to the issue or issues being appealed. The hearing officer shall control the conduct of the hearing and decide who may participate in the hearing.

F. Hearings shall be conducted in an informal, nonadversarial manner. The appellant or his representative shall have the right to bring witnesses, establish all pertinent facts and circumstances, present an argument without undue interference, and question or refute the testimony or evidence, including the opportunity to confront and cross-examine agency representatives.

G. The rules of evidence shall not strictly apply. All relevant, nonrepetitive evidence may be admitted, but the probative weight of the evidence will be evaluated by the hearing officer.

H. The hearing officer may leave the hearing record open for a specified period of time after the hearing to receive additional evidence or argument from the appellant or his representative.

1. The hearing officer may order an independent medical assessment when the appeal involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision, and the hearing officer determines that it is necessary to have an assessment by someone other than the person or team who made the original decision (e.g., to obtain more detailed medical findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence). A medical assessment ordered pursuant to this subsection shall be at the department's expense and shall become part of the record.

2. The hearing officer may receive evidence that was not presented by either party if the record indicates that such evidence exists, and the appellant or his representative requests to submit it or requests that the hearing officer secure it.

3. If the hearing officer receives additional evidence from an entity other than the appellant or his representative, the hearing officer shall (i) send a copy of such evidence to the appellant and his representative and to Cover Virginia, the BHSA, or the service authorization contractor and (ii) provide each party the opportunity to comment on such evidence in writing or to have the hearing reconvened to respond to such evidence.

4. Any additional evidence received will become a part of the hearing record, but the hearing officer must determine whether it will be used in making the decision.

I. After conducting the hearing, reviewing the record, and deciding questions of law, the hearing officer shall issue a written final decision that either (i) sustains or reverses, in whole or in part, the action of Cover Virginia, the BHSA, or the service authorization contractor or (ii) remands the case for further evaluation consistent with the hearing officer's written instructions. Some decisions may be a combination of these dispositions. The hearing officer's final decision shall be considered as the department's final administrative action pursuant to 42 CFR 431.244(f). The final decision shall include:

1. Identification of the issue or issues;

2. Relevant facts, to include a description of the procedural development of the case;

3. Conclusions of law, regulations, and policy that relate to the issue or issues;

4. Discussions, analysis of the accuracy of the agency's action, conclusions, and the hearing officer's decision;

5. Further action, if any, to be taken by the agency to implement the decision;

6. The deadline date by which further action must be taken; and

7. A cover letter informing the appellant and representative of the hearing officer's decision. The letter must indicate that the hearing officer's decision is final and that the final decision may be appealed directly to circuit court.

J. A copy of the hearing record shall be forwarded to the appellant and his representative with the final decision.

K. An appellant who disagrees with the hearing officer's final decision as defined in this section may seek judicial review pursuant to [Article 5 (§ 2.2-4025 et seq.) of] the Administrative Process Act [~~(§ 2.2-4026 of the Code of Virginia)~~] and Rules of the Supreme Court of Virginia, Part Two A. Written instructions for requesting judicial review must be provided to the appellant or representative with the hearing officer's decision, and upon request by the appellant or representative.

12VAC30-135-495. Department of Medical Assistance Services Appeals Division appeal records.

A. No person shall take from the DMAS Appeals Division's custody any original record, paper, document, or exhibit that has been certified to the division except as the division's director or his designee authorizes, or as may be necessary to furnish or transmit copies for other official purposes.

B. Information in the appellant's record can be released only to the appellant or the appellant's authorized representative; Cover Virginia, the BHSA, or the service authorization contractor; and other persons named in a release of information authorization signed by an appellant or his representative.

C. The fees to be charged and collected for any copies of DMAS Appeals Division records will be in accordance with Virginia's Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) or other controlling law.

D. When copies are requested from records in the division's custody, the required fee shall be waived if the copies are requested in connection with an appellant's own appeal.

12VAC30-135-496. Provider appeals.

A. GAP SMI program provider appeals shall be conducted in accordance with the department's provider appeal regulations in Part XII (12VAC30-20-500 et seq.) of 12VAC30-20, § 32.1-325 et seq. of the Code of Virginia, and the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The department's appeal decision shall be binding on and shall not be subject to further appeal by Cover Virginia, the BHSA, and the service authorization contractor.

12VAC30-135-498. Individual rights.

A. Individuals who have been found eligible for and have been enrolled in the GAP SMI program shall have the right to be treated with respect and dignity by health care provider staff and to have their personal health information kept in confidence per the Health Insurance Portability and Accountability Act.

B. No premiums, copayments, coinsurance, or deductibles shall be charged to individuals who have been found to be eligible for and are enrolled in the GAP SMI program.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the form with a hyperlink to access it. The form is 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 (12VAC30-135)

Governor's Access Plan (GAP) Serious Mental Illness (SMI) Screening Tool, DMAS-P603 (eff. 11/2014)

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-135)

~~Child Adolescent Functional Assessment Scale (Uniform Assessment Instrument), Functional Assessment Systems, 2000.~~

Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR), Fourth Edition, Text Revision, copyright 2000, American Psychiatric Association, 1000 Wilson Boulevard, Suite 1825, Arlington, Virginia 22209, http://www.psychiatry.org/

Diagnostic and Statistical Manual of Mental Disorders (DSM-5®), Fifth Edition, copyright 2013, American Psychiatric Association, 1000 Wilson Boulevard, Suite 1825, Arlington, Virginia 22209, http://www.psychiatry.org/dsm5

VA.R. Doc. No. R15-4171; Filed December 19, 2017, 10:42 a.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Emergency Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-590, 12VAC35-105-1370).**

Statutory Authority: § 37.2-203 of the Code of Virginia.

Effective Dates: December 18, 2017, through June 17, 2019.

Agency Contact: Cleopatra L. Booker, Psy.D., Director, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-1747, FAX (804) 692-0066, TTY (804) 371-8977, or email cleopatra.booker@dbhds.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

Chapter 136 of the 2017 Acts of Assembly requires the Board of Behavioral Health and Developmental Services to amend regulations to include (i) occupational therapists in the definitions of "qualified mental health professional-adult," "qualified mental health professional-child," and "qualified developmental disability professional" and (ii) occupational therapy assistants in the definition of "qualified paraprofessional in mental health." In addition, the board is required to establish educational and clinical experience for occupational therapists and occupational therapy assistants that is substantially equivalent to comparable professionals listed in the current licensing

regulations. Chapters 418 and 426 of the 2017 Acts of Assembly establish the definition of "qualified mental health professional" in § 54.1-2400 of the Code of Virginia. The acts direct the board to enact regulations to be effective within 280 days. The emergency regulations implement the requirements of Chapters 136, 418, and 426.

Article 2
Definitions

12VAC35-105-20. Definitions.

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

"Abuse" (§ 37.2-100 of the Code of Virginia) means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders). Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the person;

4. Misuse or misappropriation of the person's assets, goods, or property;

5. Use of excessive force when placing a person in physical or mechanical restraint;

6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or the person's individualized services plan;

7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods must be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care" or "treatment" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" means services that can include assistance to individuals and their family members in assessing needed services that are responsive to the person's individual needs. Case management services include: identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience

may include supervised internships, practicums, and field experience.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Community intermediate care facility/mental retardation (ICF/MR)" means a residential facility in which care is provided to individuals who have mental retardation (intellectual disability) or a developmental disability who need more intensive training and supervision than may be available in an assisted living facility or group home. Such facilities shall comply with Title XIX of the Social Security Act standards and federal certification requirements, provide health or rehabilitative services, and provide active treatment to individuals receiving services toward the achievement of a more independent level of functioning or an improved quality of life.

"Complaint" means an allegation of a violation of these regulations or a provider's policies and procedures related to these regulations.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders); brain injury; or developmental disability.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority. A corrective action plan must be completed within a specified time.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress; or any situation or circumstance in which the individual perceives or experiences a sudden loss of his ability to use effective problem-solving and coping skills.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of activity or training services for adults with an intellectual disability or a developmental disability, generally in clusters of two or more continuous hours per day provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

"Department" means the Virginia Department of Behavioral Health and Developmental Services.

"Developmental disabilities" means autism or a severe, chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. Attributable to cerebral palsy, epilepsy, or any other condition, other than mental illness, that is found to be closely related to mental retardation (intellectual disability) because this condition results in impairment of general intellectual functioning or adaptive behavior similar to behavior of individuals with mental retardation (intellectual disability) and requires treatment or services similar to those required for these individuals;

2. Manifested before the individual reaches age 18;

3. Likely to continue indefinitely; and

4. Results in substantial functional limitations in three or more of the following areas of major life activity:

a. Self-care;

b. Understanding and use of language;

c. Learning;

d. Mobility;

e. Self-direction; or

f. Capacity for independent living.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual , or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. (§ 54.1-3400 et seq. of the Code of Virginia.)

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process .

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"Individual" or "individual receiving services" means a person receiving services that are licensed under this chapter whether that person is referred to as a patient, consumer, client, resident, student, individual, recipient, family member, relative, or other term. When the term is used, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intensive Community Treatment (ICT) service" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of mental retardation (intellectual disability). Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services

regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional (LMHP)" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

"Location" means a place where services are or could be provided.

"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment (Opioid treatment service)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service (MHCSS)" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Mental retardation (intellectual disability)" means a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills (§ 37.2-100 of the Code of Virginia).

"Neglect" means the failure by an individual or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders).

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services,

medical services, and medication services. "Outpatient service" specifically includes:

1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Program of Assertive Community Treatment (PACT) service" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full- or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders), (ii) services to individuals who receive day support, in-home support, or crisis stabilization services funded through the IFDDS Waiver, or (iii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601 and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of DBHDS or a provider licensed by DBHDS.

"Qualified Mental Health Professional-Adult ~~(QMHP-A)~~" or "QMHP-A" means a person ~~in the human services field who is trained and experienced in providing psychiatric or mental health services to individuals who have a mental illness; including (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia; (iii) an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience; (iv) a social worker: an individual with at least a bachelor's degree in human services or related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling or other degree deemed equivalent to those described) from an accredited college and with at least one year of clinical experience providing direct services to individuals with a diagnosis of~~

~~mental illness; (v) a person with at least a bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits (or equivalent) in a human services field and who has at least three years of clinical experience; (vi) a Certified Psychiatric Rehabilitation Provider (CPRP) registered with the United States Psychiatric Rehabilitation Association (USPRA); (vii) a registered nurse licensed in Virginia with at least one year of clinical experience; or (viii) any other licensed mental health professional~~ who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A shall provide such services as an employee or independent contractor of DBHDS or a provider licensed by DBHDS. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified Mental Health Professional-Child ~~(QMHP-C)~~" or "QMHP-C" means a person ~~in the human services field who is trained and experienced in providing psychiatric or mental health services to children who have a mental illness. To qualify as a QMHP-C, the individual must have the designated clinical experience and must either (i) be a doctor of medicine or osteopathy licensed in Virginia; (ii) have a master's degree in psychology from an accredited college or university with at least one year of clinical experience with children and adolescents; (iii) have a social work bachelor's or master's degree from an accredited college or university with at least one year of documented clinical experience with children or adolescents; (iv) be a registered nurse with at least one year of clinical experience with children and adolescents; (v) have at least a bachelor's degree in a human services field or in special education from an accredited college with at least one year of clinical experience with children and adolescents, or (vi) be a licensed mental health professional~~ who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C shall provide such services as an employee or independent contractor of DBHDS or a provider licensed by DBHDS. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified Mental Health Professional-Eligible ~~(QMHP-E)~~" or "QMHP-E" means a person ~~who has: (i) at least a bachelor's degree in a human service field or special education from an accredited college without one year of clinical experience or (ii) at least a bachelor's degree in a nonrelated field and is enrolled in a master's or doctoral clinical program, taking the equivalent of at least three credit hours per semester and is employed by a provider that has a triennial license issued by the department and has a department and DMAS approved supervision training program~~ receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified ~~Mental Retardation~~ Developmental Disability Professional ~~(QMRP)~~" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have ~~mental retardation (intellectual disability) or other developmental disabilities~~ a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, ~~or~~ (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including~~, but not limited to~~ social work, special education, rehabilitation counseling, or psychology.

"Qualified Paraprofessional in Mental Health ~~(QPPMH)~~" or "QPPMH" means a person who must~~, at a minimum,~~ meet at least one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; ~~or~~ (iii) licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a ~~QMHP-Adult~~ QMHO-A providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with mental retardation (intellectual disability), the concept of recovery does not apply in the sense that individuals with mental retardation (intellectual disability) will need supports throughout their entire lives although these may change over time. With supports, individuals with mental retardation (intellectual disability) are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group or community homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, community intermediate care facility-MR, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner while the individual is supervised by or involved in services, such as attempted suicides, medication overdoses, or reactions from medications administered or prescribed by the service.

"Service" or "services" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, mental retardation (intellectual disability), or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical

services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, halfway house, and other residential services; (ii) day support, in-home support, and crisis stabilization services provided to individuals under the IFDDS Waiver; and (iii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports or in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means treatment provided in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through age 17 and under certain circumstances up to 21 with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through age seven who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until

the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12VAC35-105-590. Provider staffing plan.

A. The provider shall implement a written staffing plan that includes the types, roles, and numbers of employees and contractors that are required to provide the service. This staffing plan shall reflect the:

1. Needs of the individuals served;

2. Types of services offered;

3. The service description; and

4. Number of people to be served at a given time.

B. The provider shall develop a written transition staffing plan for new services, added locations, and changes in capacity.

C. The provider shall meet the following staffing requirements related to supervision.

1. The provider shall describe how employees, volunteers, contractors, and student interns will be supervised in the staffing plan and how that supervision will be documented.

2. Supervision of employees, volunteers, contractors, and student interns shall be provided by persons who have experience in working with individuals receiving services and in providing the services outlined in the service description.

3. Supervision shall be appropriate to the services provided and the needs of the individual. Supervision shall be documented.

4. Supervision shall include responsibility for approving assessments and individualized services plans, as appropriate. This responsibility may be delegated to an employee or contractor who meets the qualification for supervision as defined in this section.

5. Supervision of mental health, substance abuse, or co-occurring services that are of an acute or clinical nature such as outpatient, inpatient, intensive in-home, or day treatment shall be provided by a licensed mental health professional or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions.

6. Supervision of mental health, substance abuse, or co-occurring services that are of a supportive or maintenance nature, such as psychosocial rehabilitation, mental health supports shall be provided by a QMHP-A, a licensed mental health professional, or a mental health professional who is license-eligible and registered with a board of the Department of Health Professions. An individual who is a QMHP-E may not provide this type of supervision.

7. Supervision of mental retardation (intellectual disability) services shall be provided by a person with at least one year of documented experience working directly with individuals who have mental retardation (intellectual disability) or other developmental disabilities and holds at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, nursing, or psychology. Experience may be substituted for the education requirement.

8. Supervision of individual and family developmental disabilities support (IFDDS) services shall be provided by a person possessing at least one year of documented experience working directly with individuals who have developmental disabilities and is one of the following: a doctor of medicine or osteopathy licensed in Virginia; a registered nurse licensed in Virginia; or a person holding at least a bachelor's degree in a human services field such as sociology, social work, special education, rehabilitation counseling, or psychology. Experience may be substituted for the education requirement.

9. Supervision of brain injury services shall be provided at a minimum by a clinician in the health professions field who is trained and experienced in providing brain injury services to individuals who have a brain injury diagnosis including: (i) a doctor of medicine or osteopathy licensed in Virginia; (ii) a psychiatrist who is a doctor of medicine or osteopathy specializing in psychiatry and licensed in Virginia; (iii) a psychologist who has a master's degree in psychology from a college or university with at least one year of clinical experience; (iv) a social worker who has a bachelor's degree in human services or a related field (social work, psychology, psychiatric evaluation, sociology, counseling, vocational rehabilitation, human services counseling, or other degree deemed equivalent to those described) from an accredited college or university with at least two years of clinical experience providing direct services to individuals with a diagnosis of brain injury; (v) a Certified Brain Injury Specialist; (vi) a registered nurse licensed in Virginia with at least one year of clinical experience; or (vii) any other licensed rehabilitation professional with one year of clinical experience.

D. The provider shall employ or contract with persons with appropriate training, as necessary, to meet the specialized needs of and to ensure the safety of individuals being served in residential services with medical or nursing needs; speech, language, or hearing problems; or other needs where specialized training is necessary.

E. Providers of brain injury services shall employ or contract with a neuropsychologist or licensed clinical psychologist specializing in brain injury to assist, as appropriate, with

initial assessments, development of individualized services plans, crises, staff training, and service design.

F. Direct care staff who provide brain injury services shall have at least a high school diploma and two years of experience working with individuals with disabilities or shall have successfully completed an approved training curriculum on brain injuries within six months of employment.

12VAC35-105-1370. Treatment team and staffing plan.

A. Services are delivered by interdisciplinary teams.

1. PACT and ICT teams shall include the following positions:

a. Team Leader - one full time QMHP-Adult with at least three years experience in the provision of mental health services to adults with serious mental illness. The team leader shall oversee all aspects of team operations and shall routinely provide direct services to individuals in the community.

b. Nurses - PACT and ICT nurses shall be full-time employees or contractors with the following minimum qualifications: A registered nurse (RN) shall have one year of experience in the provision of mental health services to adults with serious mental illness. A licensed practical nurse (LPN) shall have three years of experience in the provision of mental health services to adults with serious mental illness. ICT teams shall have at least one qualified full-time nurse. PACT teams shall have at least three qualified full-time nurses at least one of whom shall be a qualified RN.

c. One full-time vocational specialist and one full-time substance abuse specialist. These staff members shall provide direct services to individuals in their area of specialty and provide leadership to other team members to also assist individuals with their self identified employment or substance abuse recovery goals.

d. Peer specialists - one or more full-time equivalent QPPMH or QMHP-Adult who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting individuals' recovery goals.

e. Program assistant - one full-time person with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and provide receptionist activities.

f. Psychiatrist - one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia. An equivalent ratio to 20 minutes (.008 FTE) of psychiatric time for each individual served must be maintained. The psychiatrist shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

2. QMHP-Adult and mental health professional standards:

a. At least 80% of the clinical employees or contractors, not including the program assistant or psychiatrist, shall ~~meet QMHP-Adult standards and shall~~ be QMHP-As qualified to provide the services described in 12VAC35-105-1410.

b. Mental health professionals - At least half of the clinical employees or contractors, not including the team leader or nurses and including the peer specialist if that person holds such a degree, shall hold a master's degree in a human service field.

3. Staffing capacity:

a. An ICT team shall have at least five full-time equivalent clinical employees or contractors. A PACT team shall have at least 10 full-time equivalent clinical employees or contractors.

b. ICT and PACT teams shall include a minimum number of employees (counting contractors but not counting the psychiatrist and program assistant) to maintain an employee to individual ratio of at least 1:10.

c. ICT teams may serve no more than 80 individuals. PACT teams may serve no more than 120 individuals.

d. A transition plan shall be required of PACT teams that will allow for "start-up" when newly forming teams are not in full compliance with the PACT model relative to staffing patterns and individuals receiving services capacity.

B. ICT and PACT teams shall meet daily Monday through Friday or at least four days per week to review and plan routine services and to address or prevent emergency and crisis situations.

C. ICT teams shall operate a minimum of 8 hours per day, 5 days per week and shall provide services on a case-by-case basis in the evenings and on weekends. PACT teams shall be available to individuals 24 hours per day and shall operate a minimum of 12 hours each weekday and 8 hours each weekend day and each holiday.

D. The ICT or PACT team shall make crisis services directly available 24 hours a day but may arrange coverage through another crisis services provider if the team coordinates with the crisis services provider daily. The PACT team shall operate an after-hours on-call system and be available to individuals by telephone or in person.

VA.R. Doc. No. R18-5245; Filed December 18, 2017, 9:19 a.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES 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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-85. Recording and Reporting Occupational Injuries and Illnesses (amending 16VAC25-85-1904.41).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: February 15, 2018.

Agency Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, or email regina.cobb@doli.virginia.gov.

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) delayed the initial submission deadline for calendar year 2016 data on Form 300A. In this regulatory action, the board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1904 (Recording and Reporting Occupational Injuries and Illnesses) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On November 30, 2017, the Safety and Health Codes Board adopted federal OSHA's Improve Tracking of Workplace Injuries and Illnesses: Delay of Compliance Date, as published in 82 FR 55761 through 82 FR 55766 on November 24, 2017, with an effective date of February 15, 2018.

Federal Terms and State Equivalents: When the regulation as set forth in the revised final rule for Recording and Reporting Occupational Injuries and Illnesses is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
December 15, 2017	February 15, 2018

VA.R. Doc. No. R18-5370; Filed December 13, 2017, 10:57 a.m.

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 Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.1427).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: February 15, 2018.

Agency Contact: John J. Crisanti, Policy and Planning Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email john.crisanti@doli.virginia.gov.

Summary:

In a final rule, federal Occupational Safety and Health Administration (OSHA) adopted a delay to further extend by one year the employer duty to ensure the competency of crane operators involved in construction work. Previously, this duty was scheduled to terminate on November 10, 2017, but now continues for an additional year until November 10, 2018. OSHA also further delayed the deadline for crane operator certification for one year from November 10, 2017, to November 10, 2018.

In this regulatory action, the board is adopting this final rule.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1926 (Construction Industry Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, the document will not be printed in

the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Statement of Final Agency Action: On November 30, 2017, the Safety and Health Codes Board adopted federal OSHA's Cranes and Derricks in Construction: Operator Certification Extension, as published in 82 FR 51986 through 82 FR 51998 on November 9, 2017, with an effective date of February 15, 2018.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Construction Industry Standards are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
November 10, 2017	February 15, 2018

VA.R. Doc. No. R18-5374; Filed December 13, 2017, 10:58 a.m.

◆ ◆

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Proposed Regulation

Title of Regulation: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-151).**

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

Public Hearing Information:

January 16, 2018 - 10:10 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Henrico, VA 23233-1463

Public Comment Deadline: March 9, 2018.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email fanbd@dhp.virginia.gov.

Basis: Regulations of the Board of Funeral Directors and Embalmers are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the board with authority to promulgate regulations to administer the regulatory system. Specific regulations for continuing education requirements are found in § 54.1-2816.1 of the Code of Virginia.

Purpose: At a recent meeting of the International Conference of Funeral Service Examining Boards, it was reported that other states have adopted such a regulation and found it to be beneficial to practitioners. Attendance at board meetings or disciplinary hearings gives a licensee the perspective of issues facing funeral service and actions that may be deemed unethical or unprofessional. Ultimately, the additional education has the benefit of protecting the public health, safety, and welfare by encouraging practice in accordance with law and regulation.

Substance: The board amended 18VAC65-20-151 by offering one hour of continuing education credit every other year for attendance at a meeting of the board or a committee of the board or at an informal conference or formal hearing. In the year the one hour of credit would be granted, it could meet the statutory requirement for "one hour per year covering compliance with federal or state laws and regulations governing the profession" as required in § 54.1-2816.1 of the Code of Virginia.

Issues: The primary advantage of the amendments to the public is assurance that funeral service licensees are aware of their ethical and legal responsibilities. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Funeral Directors and Embalmers (Board) proposes to allow attendance at a meeting of the Board or a committee of the Board or at an informal conference or formal hearing to satisfy part of funeral service licensees, funeral directors and funeral embalmers license renewal requirements every other year.

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

Estimated Economic Impact. The Regulations of the Board of Funeral Directors and Embalmers require that funeral service licensees, funeral directors and funeral embalmers complete a minimum of five hours per year of continuing education offered by a board-approved sponsor for license renewal in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or federal or state laws and regulations governing the profession of funeral service. One hour per year must cover compliance with laws and regulations governing the profession. The Board proposes to

allow that the one-hour requirement on compliance with laws and regulations be met once every two years by attendance at a meeting of the Board or a committee of the Board or at an informal conference or formal hearing.

According to the Department of Health Professions, at a recent meeting of the International Conference of Funeral Service Examining Boards it was reported that other states have adopted such a regulation and found it to be beneficial to practitioners. Attendance at board meetings or disciplinary hearings gives a licensee the perspective of issues facing funeral service and actions that may be deemed unethical or unprofessional.

Businesses and Entities Affected. The proposed amendment directly applies to the 1,616 funeral service licensees, 2 licensed embalmers, and 49 licensed funeral directors in the Commonwealth,[1] and indirectly affects the 349 funeral homes in Virginia.[2] All funeral homes would qualify as small businesses.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed amendment does not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment does not significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendment does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendment does not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts.

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

Other Entities. The proposed amendment does not adversely affect other entities.

[1]Licensure data source: Department of Health Professions

[2]Firm data source: Virginia Employment Commission

Agency's Response to Economic Impact Analysis: The Board of Funeral Directors and Embalmers concurs with the analysis of the Department of Planning and Budget.

Summary:

The proposed amendment allows for one hour of continuing education (CE) credit every other year for attending a meeting of the board or a committee of the board or an informal conference or formal hearing to fulfill the requirement for one hour of CE covering compliance with federal or state laws and regulations governing the profession.

18VAC65-20-151. Continued competency requirements for renewal of an active license.

A. Funeral service licensees, funeral directors or funeral embalmers shall be required to have completed a minimum of five hours per year of continuing education offered by a board-approved sponsor for licensure renewal in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or federal or state laws and regulations governing the profession of funeral service.

1. One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements. The one-hour requirement on compliance with laws and regulations may be met once every two years by attendance at a meeting of the board or at a committee of the board or an informal conference or formal hearing.

2. One hour of the five hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic. For the purposes of continuing education credit for volunteer service, an approved sponsor shall be a local health department or free clinic.

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell or offer goods, products or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due

to circumstances determined by the board to be beyond the control of the licensee.

VA.R. Doc. No. R17-5113; Filed December 19, 2017, 11:42 a.m.

BOARD OF MEDICINE

Proposed Regulation

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (adding 18VAC85-20-141).**

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

Public Hearing Information:

February 15, 2018 - 8:35 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233-1463

Public Comment Deadline: March 9, 2018.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. Section 54.1-103 of the Code of Virginia relates to authority to issue licenses by endorsement.

Purpose: The Board of Medicine has reviewed elements of licensure by endorsement that would provide assurance of competency to practice but also considered potential disqualifiers, including disciplinary actions by another state board, malpractice claims, and certain criminal convictions. While the board may be able to license physicians who have had discipline, malpractice claims, or criminal convictions, it may determine that such an applicant requires a full review and would not qualify for an expedited license by endorsement. The intent is to facilitate licensure for physicians who have a demonstrated history of competent, safe practice in order to protect the health and safety of citizens of the Commonwealth who may become their patients.

Substance: The board has proposed regulations for licensure by endorsement for physicians who hold licenses in other states and who meet certain requirements established in regulation. To be licensed by endorsement, a doctor would need to have held one current, unrestricted license in another United States jurisdiction or in Canada for five years, actively practiced during that time, have all licenses in good standing, hold current board certification, submit a report from the National Practitioner Data Bank, and have no grounds for denial of licensure.

Issues: The primary advantage to the public is the potential to encourage highly qualified doctors to come to Virginia for practice since the application process would be somewhat expedited by licensure by endorsement. There are no disadvantages to the public; there would be ample evidence of competency to practice safely. There are no advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (the Board) proposes to establish licensure by endorsement for physicians.

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

Estimated Economic Impact. The Board proposes a regulation for licensure by endorsement for physicians who hold licenses in other states and who meet certain requirements established in regulation. To be licensed by endorsement, a doctor would need to have held one current, unrestricted license in another U. S. jurisdiction or Canada for five years, actively practiced during that time, have all licenses in good standing, hold current board certification, submit a report from the National Practitioner Data Bank, and have no grounds for denial of licensure. The Department of Health Professions (DHP) reports licensure by endorsement is common among other states.

Currently, the only pathway available for physicians to practice in Virginia is licensure by examination which requires submission of transcripts, exam scores, and documentation of postgraduate experience. For doctors licensed in another state, the proposed licensure by endorsement is less onerous than the current path to licensure in that it would be faster (e.g. no delays in obtaining transcripts), less burdensome (e.g. less documentation is needed), and less expensive (e.g. no need to pay fees for reproduction of transcripts, prior exam scores, etc.). Also, it is worth noting the proposed regulation provides an additional option for licensure, but does not mandate it. Thus, the proposed regulation would benefit physicians licensed in another state who are seeking licensure in the Commonwealth. Additionally, making it less onerous to obtain licensure may encourage more doctors to come to Virginia to practice.

The Board reviewed elements of licensure by endorsement that would provide assurance of competency to practice, but also considered potential disqualifiers including disciplinary actions by another state board, malpractice claims, and/or certain criminal convictions. While the Board may be able to license physicians who have had discipline, malpractice claims, or criminal convictions, it determined that such an applicant requires a full review and would not qualify for an expedited license by endorsement.

The proposed regulation introduces no new costs or risks of unqualified applicants becoming licensed, as it requires that ample evidence of competency to practice safely be demonstrated. Thus, the proposed licensure by endorsement should produce net benefits.

Businesses and Entities Affected. The proposed regulation applies to doctors of medicine, osteopathic medicine, and podiatry. DHP receives approximately 2,500 applications for licensure per year and expects 25% of those applications to be for licensure by endorsement under the proposed regulation.

Localities Particularly Affected. The proposed regulation will not affect any particular locality more than others.

Projected Impact on Employment. The proposed regulation may encourage doctors licensed in other states to come to Virginia to practice and increase the supply of physicians. However, the magnitude of any such effect is not known.

Effects on the Use and Value of Private Property. No effect on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses.

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation does not directly apply to small businesses. However, if a physician works for a small business it may be indirectly beneficial to that small business as the proposed regulation allows a less onerous pathway to physician licensure.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not introduce an adverse impact on small businesses.

Adverse Impacts.

Businesses. The proposed regulation does not have an adverse impact on businesses.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed regulation will not adversely affect other entities.

Agency's Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC85-20.

Summary:

The proposed regulation provides for licensure by endorsement for physicians who hold licenses in other states and who meet certain requirements. To be licensed by endorsement, a doctor would need to have held one current, unrestricted license in another United States jurisdiction or in Canada for five years, actively practiced during that time, have all licenses in good standing, hold current board certification, submit a report from the National Practitioner Data Bank, and have no grounds for denial of licensure.

18VAC85-20-141. Licensure by endorsement.

To be licensed by endorsement, an applicant shall:

1. Hold at least one current, unrestricted license in a United States jurisdiction or Canada for the five years immediately preceding application to the board;

2. Have been engaged in active practice, defined as an average of 20 hours per week or 640 hours per year, for five years after postgraduate training and immediately preceding application;

3. Verify that all licenses held in another United States jurisdiction or in Canada are in good standing, defined as not currently under investigation and if lapsed, eligible for renewal or reinstatement;

4. Hold current certification by one of the following:

a. American Board of Medical Specialties;

b. Bureau of Osteopathic Specialists;

c. American Board of Foot and Ankle Surgery;

d. Fellowship of Royal College of Physicians of Canada;

e. Fellowship of the Royal College of Surgeons of Canada; or

f. College of Family Physicians of Canada;

5. Submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank; and

6. Have no grounds for denial based on provisions of § 54.1-2915 of the Code of Virginia or regulations of the board.

VA.R. Doc. No. R17-4970; Filed December 19, 2017, 11:45 a.m.

BOARD OF NURSING

Final Regulation

Title of Regulation: **18VAC90-27. Regulations for Nursing Education Programs (amending 18VAC90-27-10, 18VAC90-27-220, 18VAC90-27-230).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Date: February 7, 2018.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

The amendments (i) require all prelicensure registered nursing education programs in Virginia to have accreditation or candidacy status with a national accrediting agency recognized by the U.S. Department of Education by three years after the effective date of the regulation and (ii) add the Commission for Nursing Education Accreditation as an approved accrediting organization.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I
General Provisions

18VAC90-27-10. Definitions.

In addition to words and terms defined in § 54.1-3000 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 an agency recognized by the U.S. Department of Education to include the Accreditation Commission for Education in Nursing, the Commission on Collegiate Nursing Education, the Commission for Nursing Education Accreditation, or a national nursing accrediting organization recognized by the board.

"Advisory committee" means a group of persons from a nursing education program and the health care community who meets regularly to advise the nursing education program on the quality of its graduates and the needs of the community.

"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 SCHEV.

"Baccalaureate degree nursing program" or "prelicensure graduate degree 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 or a graduate degree with a major in nursing, provided that the institution is authorized to confer such degree by SCHEV.

"Board" means the Board of Nursing.

"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 that results when an approved nursing education program has failed to maintain requirements as set forth in this chapter.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide clinical or observational 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.

"Initial approval" means the status granted to a nursing education program that allows the admission of students.

"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.

"NCLEX" means the National Council Licensure Examination.

"NCSBN" means the National Council of State Boards of Nursing.

"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 Department of Education or by an accrediting agency recognized by the U.S. Department of Education.

"Preceptor" means a licensed nurse 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, providing clinical supervision.

"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.

"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 or maintain approval.

"SCHEV" means the State Council of Higher Education for Virginia.

"Site visit" means a focused onsite review of the nursing program by board staff, usually completed within one day for the purpose of evaluating program components such as the physical location (skills lab, classrooms, learning resources) for obtaining initial program approval, in response to a complaint, compliance with NCLEX plan of correction, change of location, or verification of noncompliance with this chapter.

"Survey visit" means a comprehensive onsite review of the nursing program by board staff, usually completed within two days (depending on the number of programs or campuses being reviewed) for the purpose of obtaining and maintaining full program approval. The survey visit includes the program's completion of a self-evaluation report prior to the visit, as well as a board staff review of all program resources, including skills lab, classrooms, learning resources, and clinical facilities, and other components to ensure compliance with this chapter. Meetings with faculty, administration, students, and clinical facility staff will occur.

18VAC90-27-220. Maintaining an approved nursing education program.

A. The program director of each nursing education program shall submit an annual report to the board.

B. ~~Each~~ Prior to [~~(insert three years from the effective date of this regulation)~~ February 7, 2021], each registered nursing education program shall be reevaluated as follows:

1. Every registered nursing education program that has not achieved accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every five years by submission of a comprehensive self-evaluation report based on Parts II (18VAC90-27-30 et seq.) and III (18VAC90-27-150 et seq.) of this chapter and a survey visit by a representative or representatives of the board on dates mutually acceptable to the institution and the board.

2. A registered nursing education program that has maintained accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the board. As evidence of compliance with specific requirements of this chapter, the board may accept the most recent study report, site visit report, and final decision letter from the accrediting body. The board may require additional information or a site visit to ensure compliance with requirements of this chapter. If accreditation has been withdrawn or a program has been placed on probation by the accrediting body, the board may require a survey visit. If a program fails to submit the documentation required in this subdivision, the requirements of subdivision 1 of this subsection shall apply.

After [~~(insert three years from the effective date of this regulation)~~ February 7, 2021], each registered nursing education program shall have accreditation or candidacy status and shall be reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the board. As evidence of compliance with specific requirements of this chapter, the board may accept the most recent study report, site visit report, and final decision letter from the accrediting body. The board may require additional information or a site visit to ensure compliance with requirements of this chapter. If a program has been placed on probation by the accrediting body, the board may require a survey visit. If a program fails to submit the documentation required in this subdivision, the requirements of subdivision 1 of this subsection shall apply.

C. Each practical nursing education program shall be reevaluated as follows:

1. Every practical nursing education program that has not achieved accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every five years by submission of a comprehensive self-evaluation report based on Parts II (18VAC90-27-30 et seq.) and III (18VAC90-27-150 et seq.) of this chapter and a survey visit by a representative or representatives of the board on dates mutually acceptable to the institution and the board.

2. A practical nursing education program that has maintained accreditation as defined in 18VAC90-27-10 shall be reevaluated at least every 10 years by submission of a comprehensive self-evaluation report as provided by the board. As evidence of compliance with specific requirements of this chapter, the board may accept the most recent study report, site visit report, and final decision letter from the accrediting body. The board may require additional information or a site visit to ensure compliance with requirements of this chapter. If accreditation has been withdrawn or a program has been placed on probation by the accrediting body, the board may require a survey visit. If a program fails to submit the documentation required in this subdivision, the requirements of subdivision 1 of this subsection shall apply.

D. Interim site or survey visits shall be made to the institution by board representatives at any time within the initial approval period or full approval period as deemed necessary by the board. Prior to the conduct of such a visit, the program shall submit the fee for a survey visit as required by 18VAC90-27-20.

~~D.~~ E. Failure to submit the required fee for a survey or site visit may subject an education program to board action or withdrawal of board approval.

18VAC90-27-230. Continuing and withdrawal of full approval.

A. The board shall receive and review the self-evaluation and survey reports required in 18VAC90-27-220 B or C or complaints relating to program compliance. Following review, the board may continue the program on full approval so long as it remains in compliance with all requirements in Parts II (18VAC90-27-30 et seq.), III (18VAC90-27-150 et seq.), and IV (18VAC90-27-210 et seq.) of this chapter.

B. If the board determines that a program is not maintaining the requirements of Parts II, III, and IV of this chapter or for causes enumerated in 18VAC90-27-140, the board may:

1. Place the program on conditional approval with terms and conditions to be met within the timeframe specified by the board; or

2. Withdraw program approval.

C. If the board either places a program on conditional approval with terms and conditions to be met within a timeframe specified by the board or withdraws approval, the following shall apply:

1. No further action will be required of the board unless the program requests an informal conference pursuant to §§ 2.2-4019 and 54.1-109 of the Code of Virginia.

2. If withdrawal or continued program approval with terms and conditions is recommended following the informal conference, the recommendation shall be presented to the board or a panel thereof for review and action.

3. If the recommendation of the informal conference committee is accepted by the board or a panel thereof, the decision shall be reflected in a board order and no further action by the board is required unless the program requests a formal hearing within 30 days from entry of the order in accordance with § 2.2-4020 of the Code of Virginia.

4. If the decision of the board or a panel thereof following a formal hearing is to withdraw approval or continue on conditional approval with terms or conditions, the program shall be advised of the right to appeal the decision to the appropriate circuit court in accordance with § 2.2-4026 of the Code of Virginia and Part 2A of the Rules of the Supreme Court of Virginia.

D. If a program approval is withdrawn, no additional students may be admitted into the program effective upon the date of entry of the board's final order to withdraw approval. Further, the program shall submit quarterly reports until the program is closed, and the program must comply with board requirements regarding closure of a program as stated in 18VAC90-27-240.

VA.R. Doc. No. R17-4925; Filed December 19, 2017, 11:48 a.m.

BOARD OF PHYSICAL THERAPY

Final Regulation

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-65, 18VAC112-20-131, 18VAC112-20-135, 18VAC112-20-136).**

Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.

Effective Date: February 7, 2018.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Summary:

The amendments replace references to an obsolete assessment tool provided by the Federation of State Boards of Physical Therapy (FSBPT) with references to the current assessment tool offered by FSBPT titled "oPTion." The amendments require achievement of Level 2 or higher on the oPTion assessment tool to (i) use participation in the assessment tool for continuing education credit or (ii) replace hours in a supervised traineeship for applicants for licensure by endorsement, reinstatement of license, or reactivation of license if the physical therapist has not been engaged in active practice for the two years immediately preceding application for an active license.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I
General Provisions

18VAC112-20-10. Definitions.

In addition to the words and terms defined in § 54.1-3473 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:

"Active practice" means a minimum of 160 hours of professional practice as a physical therapist or physical therapist assistant within the 24-month period immediately preceding renewal. Active practice may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

"Assessment tool" means oPTion or any other self-directed assessment tool approved by FSBPT.

"CLEP" means the College Level Examination Program.

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals or vendor exhibits.

"Direct supervision" means a physical therapist or a physical therapist assistant is physically present and immediately available and is fully responsible for the physical therapy tasks or activities being performed.

"Discharge" means the discontinuation of interventions in an episode of care that have been provided in an unbroken sequence in a single practice setting and related to the physical therapy interventions for a given condition or problem.

"Evaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to plan and implement a treatment intervention, provide preventive care, reduce risks of injury and impairment, or provide for consultation.

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

"FSBPT" means the Federation of State Boards of Physical Therapy.

"General supervision" means a physical therapist shall be available for consultation.

"National examination" means the examinations developed and administered by the Federation of State Boards of Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.

~~"PRT" means the Practice Review Tool for competency assessment developed and administered by FSBPT.~~

"Reevaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to determine a patient's response to the treatment plan and care provided.

"Support personnel" means a person who is performing designated routine tasks related to physical therapy under the direction and supervision of a physical therapist or physical therapist assistant within the scope of this chapter.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person seeking licensure as a physical therapist or physical therapist assistant who is undergoing a traineeship.

"Traineeship" means a period of active clinical practice during which an applicant for licensure as a physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"TSE" means the Test of Spoken English.

"Type 1" means continuing learning activities offered by an approved organization as specified in 18VAC112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning.

18VAC112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or 18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice consisting of at least 2,500 hours of patient care during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another U.S. jurisdiction;

2. The required application, fees, and credentials to the board;

3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB);

4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another U.S. jurisdiction, or 60 hours obtained within the past four years;

5. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state; and

6. Documentation of active practice in physical therapy in another U.S. jurisdiction for at least 320 hours within the four years immediately preceding his application for licensure. A physical therapist who does not meet the active practice requirement shall:

a. Successfully complete 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140; or

b. Document that he ~~meets the standard of the PRT~~ attained at least Level 2 on the FSBPT assessment tool within the two years preceding application for licensure in Virginia and successfully complete 160 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

C. A physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy

for at least 320 hours within the four years immediately preceding his application for licensure shall successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

18VAC112-20-131. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of 20 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants shall be in Type 1 courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

a. The Virginia Physical Therapy Association;

b. The American Physical Therapy Association;

c. Local, state or federal government agencies;

d. Regionally accredited colleges and universities;

e. Health care organizations accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation;

f. The American Medical Association - Category I Continuing Medical Education course; and

g. The National Athletic Trainers' Association.

2. No more than 10 of the contact hours required for physical therapists and 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice. Up to two of the Type 2 continuing education hours may be satisfied through delivery of physical therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

5. A physical therapist who can document that he ~~has taken the PRT~~ attained at least Level 2 on the FSBPT assessment tool may receive ~~10~~ five hours of Type 1 credit for the biennium in which the assessment tool was taken. A physical therapist who can document that he ~~has met the standard of the PRT~~ attained at least Level 3 or 4 on the FSBPT assessment tool may receive ~~20~~ 10 hours of Type 1 credit for the biennium in which the assessment tool was taken. Continuing competency credit shall only be granted for the FSBPT assessment tool once every four years.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

18VAC112-20-135. Inactive license.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in Virginia shall, upon a

request on the renewal application and submission of the required renewal fee, be issued an inactive license.

1. The holder of an inactive license shall not be required to meet active practice requirements.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice physical therapy in Virginia.

B. A physical therapist or physical therapist assistant who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the biennium in which the license is being reactivated;

2. Providing proof of 320 active practice hours in another jurisdiction within the four years immediately preceding application for reactivation.

a. If the inactive physical therapist licensee does not meet the requirement for active practice, the license may be reactivated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting that he has ~~met the standard of the PRT~~ attained at least Level 2 on the FSBPT assessment tool within the two years preceding application for reactivation of licensure in Virginia and successfully completing 160 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If the inactive physical therapist assistant licensee does not meet the requirement for active practice, the license may be reactivated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140; and

3. Completing the number of continuing competency hours required for the period in which the license has been inactive, not to exceed four years.

18VAC112-20-136. Reinstatement requirements.

A. A physical therapist or physical therapist assistant whose Virginia license is lapsed for two years or less may reinstate his license by payment of the renewal and late fees as set forth in 18VAC112-20-27 and completion of continued competency requirements as set forth in 18VAC112-20-131.

B. A physical therapist or physical therapist assistant whose Virginia license is lapsed for more than two years and who is seeking reinstatement shall:

1. Apply for reinstatement and pay the fee specified in 18VAC112-20-27;

2. Complete the number of continuing competency hours required for the period in which the license has been lapsed, not to exceed four years; and

3. Have actively practiced physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement.

a. If a physical therapist licensee does not meet the requirement for active practice, the license may be reinstated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting that he has ~~met the standard of the PRT~~ attained at least Level 2 on the FSBPT assessment tool within the two years preceding application for licensure in Virginia and successfully completing 160 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If a physical therapist assistant licensee does not meet the requirement for active practice, the license may be reinstated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140.

VA.R. Doc. No. R17-4983; Filed December 19, 2017, 11:51 a.m.

BOARD OF COUNSELING

Emergency Regulation

Title of Regulation: **18VAC115-70. Regulations Governing the Registration of Peer Recovery Specialists (adding 18VAC115-70-10 through 18VAC115-70-90).**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Effective Dates: December 18, 2017, through June 17, 2019.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Chapters 418 and 426 of the 2017 Acts of Assembly authorize the registration of peer recovery specialists by the Board of Counseling and direct the board to promulgate regulations to implement the provisions of the acts within 280 days of enactment.

The emergency regulations establish the qualifications for registration, continuing education requirements, standards of practice, and fees for registration as a peer recovery specialist.

CHAPTER 70
REGULATIONS GOVERNING THE REGISTRATION OF PEER RECOVERY SPECIALISTS

Part I
General Provisions

18VAC115-70-10. Definitions.

"Applicant" means a person applying for registration as a peer recovery specialist.

"Board" means the Virginia Board of Counseling.

"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health and development.

"Peer recovery specialist" means a person who by education and experience is professionally qualified in accordance with 12VAC35-250 to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both.

"Registered peer recovery specialist" or "registrant" means a person who by education and experience is professionally qualified in accordance with 12VAC35-250 and registered by the board to provide collaborative services to assist individuals in achieving sustained recovery from the effects of mental illness, addiction, or both. A registered peer recovery specialist shall provide such services as an employee or independent contractor of DBHDS, a provider licensed by the DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Department of Health.

18VAC115-70-20. Fees required by the board.

A. The board has established the following fees applicable to the registration of peer recovery specialists:

Registration	$30
Renewal of registration	$30
Late renewal	$20
Reinstatement of a lapsed registration	$60
Duplicate certificate of registration	$10
Returned check	$35
Reinstatement following revocation or suspension	$500

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC115-70-30. Current name and address.

Each registrant shall furnish the board his current name and address of record. Any change of name or address of record or public address if different from the address of record, shall be furnished to the board within 60 days of such change. It shall be the duty and responsibility of each registrant to inform the board of his current address.

Part II
Requirements for Registration and Renewal

18VAC115-70-40. Requirements for registration as a peer recovery specialist.

A. An applicant for registration shall submit a completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-70-20.

B. An applicant for registration as a peer recovery specialist shall provide evidence of meeting all requirements for peer recovery specialists set by DBHDS in 12VAC35-250-30.

18VAC115-70-50. Annual renewal of registration.

All registrants shall renew their registration on or before June 30 of each year. Along with the renewal form, the registrant shall submit the renewal fee as prescribed in 18VAC115-70-20.

18VAC115-70-60. Continued competency requirements for renewal of peer recovery specialist registration.

A. Registered peer recovery specialists shall be required to have completed a minimum of eight contact hours of continuing education for each annual registration renewal. A minimum of one of these hours shall be in courses that emphasize ethics.

Registered peer recovery specialists shall complete continuing competency activities that focus on increasing knowledge or skills in one or more of the following areas:

1. Current body of mental health/substance abuse knowledge;

2. Promoting services, supports, and strategies for the recovery process;

3. Crisis intervention;

4. Values for role of peer recovery specialist;

5. Basic principles related to health and wellness;

6. Stage appropriate pathways in recovery support;

7. Ethics and boundaries;

8. Cultural sensitivity and practice;

9. Trauma and impact on recovery;

10. Community resources; or

11. Delivering peer services within agencies and organizations.

B. The following organizations, associations, or institutions are approved by the board to provide continuing education:

1. Federal, state, or local governmental agencies, public school systems, or licensed health facilities.

2. The American Association for Marriage and Family Therapy and its state affiliates.

3. The American Association of State Counseling Boards.

4. The American Counseling Association and its state and local affiliates.

5. The American Psychological Association and its state affiliates.

6. The Commission on Rehabilitation Counselor Certification.

7. NAADAC, the Association for Addiction Professionals and its state and local affiliates.

8. National Association of Social Workers.

9. National Board for Certified Counselors.

10. A national behavioral health organization or certification body recognized by the board.

11. Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.

12. An agency or organization approved by DBHDS.

C. Attestation of completion of continuing education is not required for the first renewal following initial registration in Virginia.

D. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the registrant prior to the renewal date. Such extension shall not relieve the registrant of the continuing education requirement.

E. The board may grant an exemption for all or part of the continuing education requirement due to circumstances beyond the control of the registrant such as temporary disability, mandatory military service, or officially declared disasters upon written request from the registrant prior to the renewal date.

F. All registrants shall maintain original documentation of official transcripts showing credit hours earned or certificates of participation for a period of three years following renewal.

G. The board may conduct an audit of registrants to verify compliance with the requirement for a renewal period. Upon request, a registrant shall provide documentation as follows:

1. Official transcripts showing credit hours earned; or

2. Certificates of participation.

H. Continuing education hours required by a disciplinary order shall not be used to satisfy renewal requirements.

Part III
Standards of Practice; Disciplinary Actions; Reinstatement

18VAC115-70-70. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons registered by the board shall:

1. Practice in a manner that is the best interest of the public and does not endanger the public health, safety, or welfare.

2. Be able to justify all services rendered to clients as necessary.

3. Practice only within the competency area for which they are qualified by training or experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of registered peer recovery specialists.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services and make appropriate consultations and referrals based on the best interest of clients.

6. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

7. Document the need for and steps taken to terminate services when it becomes clear that the client is not benefiting from the relationship.

C. In regard to confidentiality and client records, persons registered by the board shall:

1. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

2. Disclose client records to others only in accordance with applicable law.

3. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the

destruction of records that are no longer useful in a manner that ensures client confidentiality.

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include dates of service and identifying information to substantiate treatment plan, client progress, and termination.

D. In regard to dual relationships, persons registered by the board shall:

1. Not engage in dual relationships with clients or former clients that are harmful to the client's well-being, that would impair the practitioner's objectivity and professional judgment, or that would increase the risk of client exploitation. This prohibition includes such activities as providing services to close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

2. Not engage in sexual intimacies or romantic relationships with current clients. For at least five years after cessation or termination of professional services, practitioners shall not engage in sexual intimacies or romantic relationships with a client or those included in collateral therapeutic services. Because sexual or romantic relationships are potentially exploitative, the practitioner shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.

3. Recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

E. Upon learning of evidence that indicates a reasonable probability that another mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons registered by the board shall advise their clients of the client's right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC115-70-80. Grounds for revocation, suspension, restriction, or denial of registration.

In accordance with subdivision 7 of § 54.1-2400 of the Code of Virginia, the board may revoke, suspend, restrict, or decline to issue or renew a registration based upon the following conduct:

1. Conviction of a felony or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of registered peer recovery specialists, or any provision of this chapter;

2. Procuring or maintaining a registration, including submission of an application or applicable board forms, by fraud or misrepresentation;

3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice with reasonable skill and safety to clients by reason of illness or abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

4. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of peer recovery specialists or qualified mental health professionals or any regulation in this chapter;

5. Performance of functions outside the board-registered area of competency;

6. Performance of an act likely to deceive, defraud, or harm the public;

7. Intentional or negligent conduct that causes or is likely to cause injury to a client;

8. Action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction;

9. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; or

10. Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia.

18VAC115-70-90. Late renewal and reinstatement.

A. A person whose registration has expired may renew it within one year after its expiration date by paying the late renewal fee and the registration fee as prescribed in 18VAC115-70-20 for the year in which the registration was not renewed and by providing documentation of completion of continuing education as prescribed in 18VAC115-70-60.

B. A person who fails to renew registration after one year or more shall:

1. Apply for reinstatement;

2. Pay the reinstatement fee for a lapsed registration; and

3. Submit evidence of current certification as a peer recovery specialist as prescribed by DBHDS in 12VAC35-250-30.

C. A person whose registration has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-70-

20. Any person whose registration has been revoked by the board may, three years subsequent to such board action, submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-70-20. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in this subsection.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is 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 form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC115-70)

Registered Peer Recovery Specialists Application and Instructions (rev. 11/2017)

VA.R. Doc. No. R18-5240; Filed December 18, 2017, 8:06 a.m.

Emergency Regulation

Title of Regulation: **18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals (adding 18VAC115-80-10 through 18VAC115-80-110).**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Effective Dates: December 18, 2017, through June 17, 2019.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which 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, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Chapters 418 and 426 of the 2017 Acts of Assembly authorize the registration of qualified mental health professionals by the Board of Counseling and direct the board to promulgate regulations to implement the provisions of the acts within 280 days of enactment.

The regulations establish the qualifications for registration, continuing education requirements, standards of practice, and fees for registration as a qualified mental health professional.

CHAPTER 80
REGULATIONS GOVERNING THE REGISTRATION OF QUALIFIED MENTAL HEALTH PROFESSIONALS

Part I
General Provisions

18VAC115-80-10. Definitions.

"Accredited" means a school that is listed as accredited on the U.S. Department of Education College Accreditation database found on the U.S. Department of Education website.

"Applicant" means a person applying for registration as a qualified mental health professional.

"Board" means the Virginia Board of Counseling.

"Collaborative mental health services" means those rehabilitative supportive services that are provided by a qualified mental health professional, as set forth in a service plan under the direction of and in collaboration with either a mental health professional licensed in Virginia or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure.

"DBHDS" means the Virginia Department of Behavioral Health and Developmental Services.

"Face-to-face" means the physical presence of the individuals involved in the supervisory relationship or the use of technology that provides real-time, visual, and audio contact among the individuals involved.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses that interfere with mental health and development.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the board to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.

"Qualified mental health professional-adult" or "QMHP-A" means a registered QMHP who is trained and experienced in providing mental health services to adults who have a mental illness. A QMHP-A shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.

"Qualified mental health professional-child" or "QMHP-C" means a registered QMHP who is trained and experienced in

providing mental health services to children or adolescents who have a mental illness. A QMHP-C shall provide such services as an employee or independent contractor of the DBHDS or a provider licensed by the DBHDS.

"Registrant" means a QMHP registered with the board.

18VAC115-80-20. Fees required by the board.

A. The board has established the following fees applicable to the registration of qualified mental health professionals:

Registration	$50
Renewal of registration	$30
Late renewal	$20
Reinstatement of a lapsed registration	$75
Duplicate certificate of registration	$10
Returned check	$35
Reinstatement following revocation or suspension	$500

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC115-80-30. Current name and address.

Each registrant shall furnish the board his current name and address of record. Any change of name or address of record or public address if different from the address of record, shall be furnished to the board within 60 days of such change. It shall be the duty and responsibility of each registrant to inform the board of his current address.

Part II
Requirements for Registration

18VAC115-80-40. Requirements for registration as a qualified mental health professional-adult.

A. An applicant for registration shall submit a completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20.

B. An applicant for registration as a QMHP-A shall provide evidence of:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family therapy from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;

2. A master's or bachelor's degree in human services or a related field from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

3. A bachelor's degree from an accredited college in an unrelated field that includes at least 15 semester credits or 22 quarter hours in a human services field and with no less than 3,000 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

4. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section; or

5. A licensed occupational therapist with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section.

C. Experience required for registration.

1. To be registered as a QMHP-A, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of experience in providing direct services to individuals as part of a population of adults with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP-A and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure.

2. Supervision shall consist of face-to-face training in the services of a QMHP-A until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either on-site or immediately available for consultation with the person being trained.

3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.

4. A person receiving supervised training to qualify as a QMHP-A may register with the board.

18VAC115-80-50. Requirements for registration as a qualified mental health professional-child.

A. An applicant for registration shall submit a completed application on forms provided by the board and any applicable fee as prescribed in 18VAC115-80-20.

B. An applicant for registration as a QMHP-C shall provide evidence of:

1. A master's degree in psychology, social work, counseling, substance abuse, or marriage and family

therapy from an accredited college or university with an internship or practicum of at least 500 hours of experience with persons who have mental illness;

2. A master's or bachelor's degree in a human services field or in special education from an accredited college with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section;

3. A registered nurse licensed in Virginia with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section; or

4. A licensed occupational therapist with no less than 1,500 hours of supervised experience to be obtained within a five-year period immediately preceding application for registration and as specified in subsection C of this section.

C. Experience required for registration.

1. To be registered as a QMHP-C, an applicant who does not have a master's degree as set forth in subdivision B 1 of this section shall provide documentation of 1,500 hours of experience in providing direct services to individuals as part of a population of children or adolescents with mental illness in a setting where mental health treatment, practice, observation, or diagnosis occurs. The services provided shall be appropriate to the practice of a QMHP-C and under the supervision of a licensed mental health professional or a person under supervision that has been approved by the Board of Counseling, Board of Psychology, or Board of Social Work as a prerequisite for licensure.

2. Supervision shall consist of face-to-face training in the services of a QMHP-C until the supervisor determines competency in the provision of such services, after which supervision may be indirect in which the supervisor is either on-site or immediately available for consultation with the person being trained.

3. Hours obtained in a bachelor's or master's level internship or practicum in a human services field may be counted toward completion of the required hours of experience.

4. A person receiving supervised training to qualify as a QMHP-C may register with the board.

18VAC115-80-60. Registration of qualified mental health professionals with prior experience.

Until December 31, 2018, persons who have been employed as QMHPs prior to December 31, 2017, may be registered with the board by submission of a completed application, payment of the application fee, and submission of an attestation from an employer that they met the qualifications for a QMHP-A or a QMHP-C during the time of employment. Such persons may continue to renew their registration without meeting current requirements for registration provided they do not allow their registration to lapse or have board action to revoke or suspend, in which case they shall meet the requirements for reinstatement.

Part III
Renewal of Registration

18VAC115-80-70. Annual renewal of registration.

All registrants shall renew their registrations on or before June 30 of each year. Along with the renewal form, the registrant shall submit the renewal fee as prescribed in 18VAC115-80-20.

18VAC115-80-80. Continued competency requirements for renewal of registration.

A. Qualified mental health professionals shall be required to have completed a minimum of eight contact hours of continuing education for each annual registration renewal. A minimum of one of these hours shall be in a course that emphasizes ethics.

B. Qualified mental health professionals shall complete continuing competency activities that focus on increasing knowledge or skills in areas directly related to the services provided by a QMHP.

C. The following organizations, associations, or institutions are approved by the board to provide continuing education, provided the hours are directly related to the provision of mental health services:

1. Federal, state, or local governmental agencies, public school systems, or licensed health facilities; and

2. Entities approved for continuing education by a health regulatory board within the Department of Health Professions.

D. Attestation of completion of continuing education is not required for the first renewal following initial registration in Virginia.

E. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the registrant prior to the renewal date. Such extension shall not relieve the registrant of the continuing education requirement.

F. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the registrant, such as temporary disability, mandatory military service, or officially declared disasters, upon written request from the registrant prior to the renewal date.

G. All registrants shall maintain original documentation of official transcripts showing credit hours earned or certificates of participation for a period of three years following renewal.

H. The board may conduct an audit of registrants to verify compliance with the requirement for a renewal period. Upon request, a registrant shall provide documentation as follows:

1. Official transcripts showing credit hours earned; or

2. Certificates of participation.

I. Continuing education hours required by a disciplinary order shall not be used to satisfy renewal requirements.

Part IV
Standards of Practice, Disciplinary Action, and Reinstatement

18VAC115-80-90. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Practice only within the competency area for which they are qualified by training or experience and shall not provide clinical mental health services for which a license is required pursuant to Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of the Code of Virginia.

3. Report to the board known or suspected violations of the laws and regulations governing the practice of qualified mental health professionals.

4. Neither accept nor give commissions, rebates, or other forms of remuneration for the referral of clients for professional services and make appropriate consultations and referrals based on the interest of patients or clients.

5. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

C. In regard to confidentiality and client records, persons registered by the board shall:

1. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

2. Disclose client records to others only in accordance with applicable law.

3. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include dates of service and identifying information to substantiate treatment plan, client progress, and termination.

D. In regard to dual relationships, persons registered by the board shall:

1. Not engage in dual relationships with clients or former clients that are harmful to the client's well-being, that would impair the practitioner's objectivity and professional judgment, or that would increase the risk of client exploitation. This prohibition includes such activities as providing services to close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

2. Not engage in sexual intimacies or romantic relationships with current clients. For at least five years after cessation or termination of professional services, practitioners shall not engage in sexual intimacies or romantic relationships with a client or those included in collateral therapeutic services. Because sexual or romantic relationships are potentially exploitative, the practitioner shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a practitioner does not change the nature of the conduct nor lift the regulatory prohibition.

3. Recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

E. Upon learning of evidence that indicates a reasonable probability that another mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons registered by the board shall advise their clients of the client's right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC115-80-100. Grounds for revocation, suspension, restriction, or denial of registration.

In accordance with subdivision 7 of § 54.1-2400 of the Code of Virginia, the board may revoke, suspend, restrict, or decline to issue or renew a registration based upon the following conduct:

1. Conviction of a felony, or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute

applicable to the practice of qualified mental health professionals, or any provision of this chapter;

2. Procuring or maintaining a registration, including submission of an application or applicable board forms, by fraud or misrepresentation;

3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public, or if one is unable to practice with reasonable skill and safety to clients by reason of illness or abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

4. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of qualified mental health professionals or any regulation in this chapter;

5. Performance of functions outside the board-registered area of competency;

6. Performance of an act likely to deceive, defraud, or harm the public;

7. Intentional or negligent conduct that causes or is likely to cause injury to a client;

8. Action taken against a health or mental health license, certification, registration, or application in Virginia or other jurisdiction;

9. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation; or

10. Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia.

18VAC115-80-110. Late renewal and reinstatement.

A. A person whose registration has expired may renew it within one year after its expiration date by paying the late renewal fee and the registration fee as prescribed in 18VAC115-80-20 for the year in which the registration was not renewed and by providing documentation of completion of continuing education as prescribed in 18VAC115-80-80.

B. A person who fails to renew registration after one year or more shall:

1. Apply for reinstatement;

2. Pay the reinstatement fee for a lapsed registration; and

3. Submit evidence of completion of 20 hours of continuing education consistent with requirements of 18VAC115-80-80.

C. A person whose registration has been suspended or who has been denied reinstatement by board order, having met the terms of the order, may submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. Any person whose registration has been revoked by the board may, three years subsequent to such board action, submit a new application and fee for reinstatement of registration as prescribed in 18VAC115-80-20. The board in its discretion may, after an administrative proceeding, grant the reinstatement sought in this subsection.

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (18VAC115-80)

Qualified Mental Health Profession-Adult, Application and Instructions (rev. 11/2017)

Qualified Mental Health Profession-Child, Application and Instructions (rev. 11/2017)

Qualified Mental Health Profession-Adult, Grandfathering Application and Instructions (rev. 11/2017)

Qualified Mental Health Profession-Child, Grandfathering Application and Instructions (rev. 11/2017)

Supervised Trainee, Application and Instructions (rev. 11/2017)

VA.R. Doc. No. R18-5242; Filed December 18, 2017, 8:06 a.m.

BOARD OF SOCIAL WORK

Final Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-110).**

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

Effective Date: February 7, 2018.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Summary:

The amendments (i) change the definition of clinical social work services to include psychosocial interventions, (ii) require applicants for reinstatement to provide verification of licensure in another state, if applicable, and a report from the U.S. Department of Health and Human Services

National Practitioner Data Bank, and (iii) specify the amount of supervision required for a person who has not actively practiced for 10 or more years and who applies to reinstate or reactivate his license.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Part I
General Provisions

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Board

Casework

Casework management and supportive services

Clinical social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Clinical course of study" means graduate course work that includes specialized advanced courses in human behavior and the social environment, social justice and policy, psychopathology and diversity issues; research; clinical practice with individuals, families, and groups; and a clinical practicum that focuses on diagnostic, prevention and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services, and treatment services, including ~~but not limited to~~ psychosocial interventions, psychotherapy, and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision or the use of technology that provides real-time, visual contact among the individuals involved.

"Nonexempt practice" is that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

18VAC140-20-110. Late renewal; reinstatement; reactivation.

A. A social worker or clinical social worker whose license has expired may renew that license within one year after its expiration date by:

1. Providing evidence of having met all applicable continuing education requirements.

2. Paying the penalty for late renewal and the renewal fee as prescribed in 18VAC140-20-30.

B. A social worker or clinical social worker who fails to renew the license after one year and who wishes to resume practice shall apply for reinstatement and pay the reinstatement fee, which shall consist of the application processing fee and the penalty fee for late renewal, as set forth in 18VAC140-20-30. An applicant for reinstatement shall also provide ~~documentation~~:

1. Documentation of having completed all applicable continued competency hours equal to the number of years the license has lapsed, not to exceed four years;

2. Documentation of any other health or mental health licensure or certification held in another United States jurisdiction, if applicable; and

3. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank.

~~An~~ C. In addition to requirements set forth in subsection B of this section, an applicant for reinstatement whose license

has been lapsed for 10 or more years shall also provide evidence of competency to practice by documenting:

1. Active practice in another United States jurisdiction for at least 24 out of the past 60 months immediately preceding application;

2. Active practice in an exempt setting for at least 24 out of the past 60 months immediately preceding application; or

3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding reinstatement of licensure in Virginia. The supervised practice shall include a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision.

~~C.~~ D. A social worker or clinical social worker wishing to reactivate an inactive license shall submit the difference between the renewal fee for active licensure ~~minus any fee already paid~~ and the fee for inactive licensure renewal and document completion of continued competency hours equal to the number of years the license has been inactive, not to exceed four years. An applicant for reactivation who has been inactive for ~~four~~ 10 or more years shall also provide evidence of competency to practice by documenting:

1. Active practice in another United States jurisdiction for at least 24 out of the past 60 months immediately preceding application;

2. Active practice in an exempt setting for at least 24 out of the past 60 months immediately preceding application; or

3. Practice as a supervisee under supervision for at least 360 hours in the 12 months immediately preceding reactivation of licensure in Virginia. The supervised practice shall include a minimum of 60 hours of face-to-face direct client contact and nine hours of face-to-face supervision.

VA.R. Doc. No. R17-4943; Filed December 19, 2017, 11:51 a.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Guidance for Citizen Nomination of State Surface Waters for Inclusion in Annual Water Quality Monitoring Plan

Purpose of guidance document: This document provides detailed guidance on implementation of § 62.1-44.19:5 F, a section of the State Water Control Law that provides for requests from the public regarding specific segments that should be included in the Virginia Department of Environmental Quality's (DEQ) annual water quality monitoring plan.

Background on the guidance document: A provision of the State Water Control Law (§ 62.1-44.19:5 F of the Code of Virginia) directs DEQ to provide a procedure for citizens of the Commonwealth to nominate portions of lakes, streams, and rivers of Virginia for water quality monitoring by DEQ. Citizens can send their nominations to DEQ via the procedures described below. Nominations received by April 30, 2018, will be considered for inclusion in DEQ's annual monitoring plan for the 2019 calendar year. The monitoring plan will be finalized after considering the citizen nominations for inclusion. DEQ will respond to each request in writing, stating the reasons for accepting or denying each nomination. DEQ's response is due by August 31 for nominations received between January 1, 2018, and April 30, 2018.

Process to request additional monitoring: Any person may request that a specific body of water be included in DEQ's annual water quality monitoring plan. Each request received between January 1 and April 30 shall be reviewed when DEQ develops or updates the annual water quality monitoring plan. Such requests shall include, at a minimum (i) a geographical description of the water body recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled. See the nominating form, Request to Include a Water Segment in DEQ's Annual Monitoring Plan, at the end of this notice.

Note: The monitoring program covered by this process is directed at the surface waters of the state. Private ponds, privately owned lakes, and any other body of water not deemed to be "state waters" are ineligible.

Nominations can be submitted by mail, fax, email, or hand delivered to the receptionist's desk at the Department of Environmental Quality, Central Office, 1111 East Main Street, Suite 1400, Richmond, VA. Mailing Address: Stuart Torbeck, Virginia Department of Environmental Quality, P.O. 1105, Richmond, VA 23218. Street Address (FedEx): Stuart Torbeck, Virginia Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219. FAX: Attention Stuart Torbeck, Virginia Department of Environmental Quality, telephone (804) 698-4032, or email charles.torbeck@deq.virginia.gov.

Use of the nomination form provided at the end of this notice is preferred. All nominations with the minimum of information as outlined in this notice will be accepted for review.

Timeline: Nominations received between January 1, 2018, and April 30, 2018, will be considered for inclusion in DEQ's water quality monitoring plan for the 2019 calendar year. DEQ will respond in writing on its approval or denial of each nomination by August 31, 2018. The DEQ 2019 monitoring plan will be made available for public inspection. A notice of availability of the annual monitoring plan will be placed in the Virginia Register and on DEQ's website at http://www.deq.virginia.gov/Programs/Water.aspx.

REQUEST TO INCLUDE A WATER SEGMENT IN DEQ'S ANNUAL MONITORING PLAN

Name: Date:

Mailing Address:

Street:

City: State: Zip:

Email address:

Telephone: Home: Business: Fax:

Geographic description of the water body:

(1) Name of the water body or segment proposed for monitoring:

(2) Description of the upstream and downstream boundaries of the water body proposed for monitoring. Attach a map (preferably a photocopy of a 7.5 minute quad USGS topographic map) which delineates the boundaries:

(3) Reason for requesting that this water body be monitored:

(4) Attach any water quality data that you have collected or compiled. Include the name of the organization/entity that generated the data.

Submit to mailing address: Stuart Torbeck, Virginia Department of Environmental Quality, P.O. 1105, Richmond, VA 23218. Street Address (FedEx): Stuart Torbeck, Virginia Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219. FAX: Attention Stuart Torbeck, Virginia Department of Environmental

Quality, telephone (804) 698-4032, or email charles.torbeck@deq.virginia.gov.

Contact Information: Stuart Torbeck, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4461, FAX (804) 698-4032, or email charles.torbeck@deq.virginia.gov.

Church View Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Middlesex County

Church View Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable solar energy project. Church View Solar LLC is proposing to develop a 20-megawatt solar farm to be located in Middlesex County. The project will be located on 535 acres across multiple parcels, north of Wares Bridge Road, west of Tidewater Trail, east of Dragon Road, and south of Briery Swamp Road. The solar project conceptually consists of approximately 85,000 335-watt panels plus eight 2.7-megawatt inverters.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

STATE BOARD OF HEALTH

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Health is conducting a periodic review and small business impact review of **12VAC5-80, Regulations for Administration of the Virginia Hearing Impairment Identification and Monitoring System**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

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 January, 8, 2018, and ends January 29, 2018.

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 Janice Hicks, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7686, FAX (804) 864-7652, or email janice.hicks@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.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Housing and Community Development is conducting a periodic review and small business impact review of **13VAC5-112, Enterprise Zone Grant Program Regulation**. The review of this regulation will be guided by the principles in Executive Order 17 (2014).

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 on January 8, 2018, and ends February 7, 2018.

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 Kyle Flanders, Senior Policy Analyst, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, or email kyle.flanders@dhcd.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.

BOARD OF MEDICAL ASSISTANCE SERVICES

Draft Chapter I (General Information) Provider Manual for Stakeholder Input

The draft version of Chapter I (General Information) is posted on the Department of Medical Assistance Services website at http://www.dmas.virginia.gov/Content_pgs/pd-pmnl.aspx for public comment through January 17, 2018. For convenience, the updates are marked in red and can be found on Page 9. Please see the overview below for more details.

Overview of changes: Chapter I in all DMAS provider manuals has been changed to reflect member copays for inpatient hospital services from $100 to $75.

Chapter I will be finalized and officially posted by January 24, 2018, at https://www.virginiamedicaid.dmas.virginia.gov /wps/portal/ProviderManuals.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

Draft Hospital and Physician-Practitioner (Appendix D) Provider Manuals for Stakeholder Input

The draft versions of Appendix D of the Hospital and Physician-Practitioner Manuals are posted on the Department of Medical Assistance Services website for public comment through January 6, 2018. For convenience, only the revised sections have been posted. Please see the overview below for more details.

Overview of changes: Provides information on updated coverage of stem cell transplants for members older than 21 years of age.

Please click the following link: http://www.dmas.virginia.gov/Content_pgs/pd-pmnl.aspx to view the draft manuals. The finalized version will be officially posted by January 6, 2018, on the DMAS web portal at https://www.virginiamedicaid.dmas.virginia.gov /wps/myportal/providermanual.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

SAFETY AND HEALTH CODES BOARD

Occupational Exposure to Beryllium

On November 30, 2017, the Safety and Health Codes Board adopted a delay until August 1, 2018, of the compliance obligations of the Occupational Exposure to Beryllium regulation for the shipyard and construction industries, 16VAC25-100-1915.1024 and 16VAC25-175-1926.1124. These regulations are identical to federal regulations 29 CFR 1915.1024 and 29 CFR 1926.1124, which have been subjected to an administrative stay of enforcement by the Occupational Safety and Health Administration. The compliance date for general industry remains unchanged.

Contact Information: Ron Graham, VOSH Health Compliance Director, Virginia Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 786-0574, or email ron.graham@doli.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Colonial Pipeline Company

An enforcement action has been proposed for Colonial Pipeline Company for violations of State Water Control Law that occurred in Fairfax County, Virginia. A description of the proposed action is available online at www.deq.virginia.gov. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23219, from January 8, 2018, through February 7, 2018.

Proposed Consent Special Order for FDP Virginia Inc.

An enforcement action has been proposed for FDP Virginia Inc. for violations at FDP Brakes located at 1076 Airport Road, Tappahannock, Virginia. The State Water Control Board proposes to issue a special order by consent to FDP Virginia Inc. to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Kristen Sadtler will accept comments by email at kristen.sadtler@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from January 8, 2018, to February 8, 2018.

Proposed Enforcement Action for John C. Holland Enterprise Inc.

An enforcement action has been proposed for John C. Holland Enterprise Inc. for violations of the State Water Control Law in Suffolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern

Boulevard, Virginia Beach, VA 23462, from January 8, 2018, to February 7, 2018.

Total Maximum Daily Load for New River and its Tributaries

Description of technical advisory committee and public meetings: The Virginia Department of Environmental Quality will host the fourth technical advisory committee meeting and final public meeting for the New River polychlorinated biphenyls (PCB) total maximum daily load (TMDL) project on Thursday, January 25, 2018. The technical advisory committee (TAC) meeting will be held from 1:30 p.m. until 3:30 p.m. at the Radford Public Library, 30 West Main Street, Radford, VA 24141. The final public meeting will be held from 6 p.m. until 8 p.m. at the Radford Public Library, 30 West Main Street, Radford, VA 24141. In the case of inclement weather, the meetings will be held on January 31, 2018, at the same times and location. The technical advisory committee consists of representatives from local governments, Virginia pollutant discharge elimination system permittees, riparian landowners, and recreational and conservation groups in the watershed. Technical advisory committee meetings are open to the public, and interested citizens are welcome to observe and ask questions during the designated time at the meeting. All are welcome at the public meeting.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors will discuss the results and draft document from the polychlorinated biphenyls (PCBs) water quality study known as a total maximum daily load (TMDL) for the New River and its tributaries. Additional TAC discussion topics include but are not limited to the TMDL development approach, TMDL implementation strategies, and project next steps. The TMDL draft document will be presented and discussed at both the TAC and public meetings. The draft document can be found on the New River PCB webpage at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/PCBTMDLs/NewRiverTMDLPCB.aspx. A 30-day public comment period will follow the meeting and expire on February 26, 2018.

Description of study: In Virginia, portions of the mainstem New River, Stony Creek, Walker Creek, Reed Creek, and Claytor Lake are listed as impaired for PCBs based on a Virginia Department of Health (VDH) fish consumption advisory and violations of Virginia's Water Quality Standards. The PCB impairment begins at the I-77 bridge across the New River and extends downstream of the Virginia/West Virginia state line and includes Peak Creek, Reed Creek, Stony Creek, Walker Creek, and Claytor Lake. This water quality study will report on the sources of PCBs and recommend reductions to meet TMDLs for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. Reductions and a TMDL designed to reinstate the fish consumption use will be developed. Virginia agencies have worked cooperatively to identify sources of PCBs.

Stream	County	Impairment
New River	Montgomery	PCBs in fish tissue
New River, Stony Creek	Giles	PCBs in fish tissue
Walker Creek	Giles	PCBs in water column
New River, Peak Creek	Pulaski	PCBs in fish tissue
New River, Reed Creek	Wythe	PCBs in fish tissue

How to comment and participate: The meetings of the TMDL process are open to the public, and all interested parties are welcome. A technical advisory committee or TAC was formed to assist in the development of this TMDL. Written comments will be accepted through February 26, 2018, and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit comments, please contact Mark Richards, Department of Environmental Quality, Office of Watershed Programs, telephone (804) 698-4392, or email mark.richards@deq.virginia.gov; Lucy Baker, Department of Environmental Quality, Blue Ridge Regional Office, telephone (540) 562-6718, or email lucy.baker@deq.virginia.gov; or Martha Chapman, Department of Environmental Quality, Southwest Regional Office, telephone (276) 676-4800, FAX (276) 676-4899, or email martha.chapman@deq.virginia.gov. To submit comments via traditional mail, please use the following address: Mark Richards, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *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 https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the

regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/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.