



VIRGINIA

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TABLE OF CONTENTS

Register Information Page	1977
Publication Schedule and Deadlines	1978
Petitions for Rulemaking	1979
Regulations	1981
4VAC20-490. Pertaining to Sharks (Final)	1981
4VAC20-752. Pertaining to Blue Crab Sanctuaries (Final)	1983
4VAC20-1120. Pertaining to Tilefish and Grouper (Final)	1983
9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (Final)	1985
9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (Final)	1985
9VAC25-210. Virginia Water Protection Permit Program Regulation (Final)	1985
9VAC25-590. Petroleum Underground Storage Tank Financial Responsibility Requirements (Final)	1985
9VAC25-610. Groundwater Withdrawal Regulations (Final)	1985
9VAC25-790. Sewage Collection and Treatment Regulations (Final)	1985
9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (Final)	1985
9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities (Proposed)	1997
9VAC25-720. Water Quality Management Planning Regulation (Final)	2019
9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (Final)	2021
11VAC10-60. Participants (Final)	2023
12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (Final)	2027
12VAC30-110. Eligibility and Appeals (Final)	2027
18VAC5-22. Board of Accountancy Regulations (Final)	2031
18VAC110-20. Regulations Governing the Practice of Pharmacy (Final)	2033
20VAC5-425. Rules Governing Enhanced 911 (E-911) Service (Proposed)	2036
Governor	2040
General Notices/Errata	2043

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.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **Gregory D. Habeeb**; **Jay Leftwich**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Rita Davis**; **Leslie L. Lilley**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Charles S. Sharp**; **Samuel T. Towell**; **Mark J. Vucci**.

Staff of the Virginia Register: **Karen Perrine**, Acting Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **Alexandra Stewart**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

May 2018 through April 2019

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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	September 17, 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
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February 18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Initial Agency Notice

Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology.

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

Name of Petitioner: Andrew Byrnes.

Nature of Petitioner's Request: To amend 18VAC125-20-43 to allow an Employment Verification Form from a third party employer contracting to provide psychological services to a local school system.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Registrar of Regulations for publication on May 14, 2018, with a request for comment to be received until June 13, 2018. The petition will also be posted for comment on the Virginia Regulatory Town Hall at www.townhall.virginia.gov. At the next meeting after the comment period, which is scheduled for July 9, 2018, the board will consider the petition and any comment received to decide whether or not to initiate the rulemaking process.

Public Comment Deadline: June 13, 2018.

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

VA.R. Doc. No. R18-30; Filed April 13, 2018, 3:41 p.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Initial Agency Notice

Title of Regulation: 24VAC35-60. Ignition Interlock Program Regulations.

Statutory Authority: § 18.2-270.2 of the Code of Virginia.

Name of Petitioner: David Hites.

Nature of Petitioner's Request: On April 15, 2018, citing § 2.2-4007 of the Code of Virginia, David Hites submitted the below petition to the Commission on the Virginia Alcohol Safety Action Program (VASAP). The petition is in regard to the definition of "alcohol" in 24VAC35-60-20 as it relates to "alcohol specific" ignition interlock devices.

"Under § 2.2-4007 of the Code of Virginia, I David Hites submit the following petition to the Commission on VASAP: Suspend all future ignition interlock device installations in Virginia until a 100% ethanol specific device can be developed as is required by law. The current technology being used is NOT specific to ethanol as required by 24VAC35-60-70. The Commission on VASAP cannot allow electrochemical fuel cells to be used on breath alcohol ignition interlock devices as they are not specific to ethanol, but the problem is that the law requires only this technology which impedes development of newer (lawful) and better technology. I suggest that someone propose an amendment to the legislation allowing use of any technology that is specific to ethanol. Until then, all new installations must be suspended as they are ILLEGAL! The vendors cannot meet the terms of their contracts. They are subject to the paradox the law has created. At the March 2018 commission meeting, one interlock vendor, Alcolock, was under scrutiny for using a non-ethanol-specific device to which Alcohol Countermeasure Systems CEO Felix Comeaux admitted, as evidenced in the March 2018 commission quarterly meeting minutes, that his devices do detect other alcohols. Since it is now known and acknowledged that breath alcohol ignition interlock devices, due to the nature of their technology being an electrochemical fuel cell, can and do detect other substances to a degree that would cause an interlock user to fail a breath test, the vendors are not following Virginia law, which means the vendors are all in breach of contract with the state. Virginia law states: 24VAC35-60-20 "Alcohol" means ethyl alcohol, also called ethanol (C₂H₅OH). 24VAC35-60-70 "F. Except where otherwise required in this chapter, all ignition interlock devices shall meet the model specifications for Breath Alcohol Ignition Interlock Devices as set forth in the most current model specifications published in the Federal Register by the National Highway Traffic Safety Administration and operate reliably over the range of motor vehicle environments or motor vehicle manufacturing standards. At a minimum, the following specifications shall be met: Paragraph 3. The ignition interlock device shall be alcohol specific, using an electrochemical fuel cell that reacts to and measures alcohol, minimizing positive results from other substances. Since alcohol is defined as ethanol and interlock devices must be ALCOHOL specific, that would mean that ignition interlocks must measure ethanol ONLY and no other substance, including other alcohols. Since vendors' contracts stipulate that they will obey all Virginia laws, they have all violated the above statutes and have therefore violated their contracts. I am requesting that all ignition interlock vendors be suspended from taking on new clients until an ethanol specific device is developed."

Agency Plan for Disposition of Request: The petitioner's request will be considered at the next meeting of the Commission on VASAP on June 8, 2018.

Public Comment Deadline: June 3, 2018.

Petitions for Rulemaking

Agency Contact: Richard Foy, Field Services Specialist,
Commission on the Virginia Alcohol Safety Action Program,
701 East Franklin Street, Suite 1110, Richmond, VA 23219,
telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

V.A.R. Doc. No. R18-31; Filed April 16, 2018, 1:52 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

<p><u>REGISTRAR'S NOTICE:</u> 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.</p>

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-40, 4VAC20-490-41, 4VAC20-490-42, 4VAC20-490-48).**

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

Effective Date: May 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 the May 1, 2018, through April 30, 2019, commercial spiny dogfish harvest quota as 4,123,239 pounds and modify harvest limits.

4VAC20-490-40. Recreational ~~catch~~ harvest limitations.

A. Recreational fishing vessels are allowed a maximum possession limit of one recreationally permitted shark, excluding smooth dogfish, per trip, regardless of the number of people on board the vessel. In addition, each recreational vessel angler may possess one bonnethead and one Atlantic sharpnose per trip. The possession aboard a vessel of more than one recreationally permitted shark, excluding smooth dogfish, or the possession of more than one Atlantic sharpnose shark or one bonnethead shark, per person, shall constitute a violation of this regulation. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limits for Atlantic sharpnose shark or bonnethead shark shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish, plus one additional recreationally permitted shark. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limits.

B. A recreational shore angler is allowed a maximum possession limit of one recreationally permitted shark,

excluding smooth dogfish, per calendar day. In addition a recreational shore angler may harvest one additional bonnethead and one additional Atlantic sharpnose per calendar day. The possession of more than one recreationally permitted shark, excluding smooth dogfish, or the possession of more than one bonnethead and one Atlantic sharpnose, by any person, shall constitute a violation of this regulation.

C. It shall be unlawful for any person to possess any recreationally prohibited shark.

D. It shall be unlawful for any person to possess any recreationally permitted shark landed under the recreational ~~catch~~ harvest limitations described in this section that is less than 54 inches in fork length except as described in subdivisions 1 and 2 of this subsection:

1. It shall be unlawful for any person to possess any recreationally caught great hammerhead, scalloped hammerhead, or smooth hammerhead shark that is less than 78 inches in fork length.

2. Atlantic sharpnose, bonnethead, finetooth, blacknose, and smooth dogfish sharks are exempt from the recreational size limit described in this subsection.

E. It shall be unlawful for any person to take, harvest, land, or possess any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, smooth hammerhead, spinner or tiger shark from May 15 through July 15 of any calendar year.

F. All sharks must have heads, tails and fins attached naturally to the carcass. Anglers may gut and bleed the carcass as long as the head and tail are not removed. Filleting any shark is prohibited until that shark is offloaded at the dock or on shore.

4VAC20-490-41. Commercial ~~catch~~ harvest limitations.

A. Beginning January 1 of any given year it shall be unlawful for any person to possess on board a vessel or to land in Virginia more than a combined total of 36 commercially permitted aggregated large coastal sharks and commercially permitted hammerhead sharks in one 24-hour period, unless the Marine Resources Commission has posted notice of any change to possession limits on its website at <http://mrc.virginia.gov/Regulations/VA-commercial-shark-possession-limits.shtm>. The person who owns or operates the vessel is responsible for compliance with the provisions of this subsection.

B. It shall be unlawful for any person to fillet a shark until that shark is offloaded at the dock or on shore, except smooth

Regulations

dogfish as provided in subsection C of this section. A licensed commercial fisherman may eviscerate and remove the head of any shark, but the tail and all fins of any shark, except smooth dogfish as provided in subsection C of this section, shall remain naturally attached to the carcass through landing. The fins of any shark, except smooth dogfish, may be partially cut but some portion of the fin shall remain attached, until the shark is landed.

C. Virginia licensed commercial fishermen may completely process smooth dogfish at sea prior to landing when the harvest of smooth dogfish comprises at least 25% by weight of the total retained harvest, except that it shall be unlawful for anyone to land or possess on board any vessel any amount of processed smooth dogfish whereby the total weight of fins exceeds 12% of the total dressed weight of any smooth dogfish.

D. It shall be unlawful to possess, on board a vessel, or to land in Virginia any species of shark, after the National Oceanic and Atmospheric Administration (NOAA) Fisheries has closed the fishery for that species in federal waters.

E. There are no commercial trip limits or possession limits for smooth dogfish or sharks on the lists of commercially permitted pelagic species or commercially permitted nonblacknose species.

F. Except as described in this section, it shall be unlawful for any person to take, harvest, land, or possess in Virginia any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, silky, smooth hammerhead, spinner, or tiger shark from May 15 through July 15. These sharks may be transported by vessel, in Virginia waters, during the closed season provided the sharks were caught in a legal manner consistent with federal regulations outside Virginia waters and:

1. The vessel does not engage in fishing in Virginia waters while possessing the species listed in this subsection; and
2. All fishing gear aboard the vessel is stowed and not available for immediate use.

G. It shall be unlawful for any person to retain, possess, or purchase any commercially prohibited shark or any research only shark, except as provided in subsection I of this section.

H. All sharks harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted shark dealer.

I. The commissioner may grant exemptions from the seasonal closure, quota, possession limit, size limit, gear restrictions, and prohibited species restrictions. Exemptions shall be granted only for display or research purposes. Any person granted an exemption for the harvest of any shark for research or display shall report the species, weight, location caught, and gear used for each shark collected within 30 days. Any person granted a permit to possess any shark for research

or display shall provide the commissioner on an annual basis information on the location and status of the shark throughout the life of the shark.

4VAC20-490-42. Spiny dogfish commercial quota and ~~catch~~ harvest limitations.

A. From May 1 of the current calendar year through April 30 of the following calendar year, the commercial spiny dogfish landings quota shall be limited to ~~4,220,814~~ 4,123,239 pounds.

B. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia any spiny dogfish harvested from federal waters for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

C. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia more than ~~5,250 6,000~~ pounds of spiny dogfish per day for commercial purposes. ~~However, if landings are less than 80% of the quota specified in subsection A of this section, by February 15, 2017, it shall be unlawful to take, harvest, or possess aboard any vessel or to land in Virginia more than 6,000 pounds of spiny dogfish per day for commercial purposes.~~

D. It shall be unlawful for any person to harvest or to land in Virginia any spiny dogfish for commercial purposes after the quota specified in subsection A of this section has been landed and announced as such.

E. Any spiny dogfish harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted dealer.

F. It shall be unlawful for any buyer of seafood to receive any spiny dogfish after any commercial harvest or landing quota described in this section has been attained and announced as such.

4VAC20-490-48. Smooth dogfish commercial quota and ~~catch~~ harvest limitations.

A. The annual commercial quota for smooth dogfish shall be 922,030 pounds in dressed weight.

B. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia any smooth dogfish harvested from federal waters once the National Oceanic and Atmospheric Administration (NOAA) Fisheries has determined and announced that 80% of the smooth dogfish coastwide quota has been harvested.

C. It shall be unlawful for any person to harvest or to land in Virginia any smooth dogfish for commercial purposes after the quota specified in subsection A of this section has been landed and announced as such.

D. Any smooth dogfish harvested from state waters or federal waters for commercial purposes shall only be sold to a federally permitted dealer.

E. It shall be unlawful for any buyer of seafood to receive any smooth dogfish harvested from federal waters once NOAA Fisheries has determined and announced that 80% of the smooth dogfish coastwide quota has been harvested.

F. It shall be unlawful for any buyer of seafood to receive any smooth dogfish after the commercial quota specified in subsection A of this section has been attained and announced as such.

VA.R. Doc. No. R18-5482; Filed April 25, 2018, 10:32 a.m.

Final Regulation

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

Title of Regulation: 4VAC20-752. **Pertaining to Blue Crab Sanctuaries (amending 4VAC20-752-30).**

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

Effective Date: May 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 change the start of the season closure to crab harvesting in Areas 2, 3, and 4 of the Blue Crab Sanctuary to May 16.

4VAC20-752-30. Harvest restrictions.

A. It shall be unlawful for any person to conduct commercial or recreational crabbing within Virginia Blue Crab Sanctuary Area 1A from June 1 through September 15.

B. It shall be unlawful for any person to conduct commercial or recreational crabbing within Virginia Blue Crab Sanctuary Area 1B and 3 from May 16 through September 15.

~~C. It shall be unlawful for any person to conduct commercial or recreational crabbing within Virginia Blue Crab Sanctuary Area 3 from May 9 through September 15.~~

~~D. C.~~ It shall be unlawful for any person to take, harvest, or possess crabs for commercial purposes from Virginia Blue Crab Sanctuary Areas 2 and 4 from May 9 16 through September 15.

VA.R. Doc. No. R18-5483; Filed April 25, 2018, 10:37 a.m.

Final Regulation

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

Title of Regulation: 4VAC20-1120. **Pertaining to Tilefish and Grouper (amending 4VAC20-1120-20, 4VAC20-1120-30, 4VAC20-1120-35, 4VAC20-1120-40).**

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

Effective Date: May 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 the 2018 open recreational season from May 1 through October 31 and adopt a recreational possession limit of (i) three blueline tilefish per person per trip aboard a private vessel, (ii) five blueline tilefish per person per trip aboard a for-hire vessel that has been issued a valid Tilefish Charter/Party Permit but does not have a current U.S. Coast Guard certificate of inspection, and (iii) seven blueline tilefish per person per trip aboard a for-hire vessel that has both a valid Tilefish Charter/Party Permit and a current U.S. Coast Guard certificate of inspection.

4VAC20-1120-20. Definitions.

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

"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.

"Grouper" means any of the following species:

- Black grouper, *Mycteroperca bonaci*
- Coney, *Cephalopholis fulva*
- Gag grouper, *Mycteroperca microlepis*
- Goliath grouper, *Epinephelus itajara*
- Graysby, *Cephalopholis cruentata*
- Misty grouper, *Epinephelus mystacinus*
- Nassau grouper, *Epinephelus striatus*
- Red grouper, *Epinephelus morio*
- Red Hind, *Epinephelus guttatus*

Regulations

- Rock Hind, *Epinephelus adscensionis*
- Scamp, *Mycteroperca phenax*
- Snowy grouper, *Epinephelus niveatus*
- Speckled Hind, *Epinephelus drummondhayi*
- Tiger grouper, *Mycteroperca tigris*
- Warsaw grouper, *Epinephelus nigritus*
- Wreckfish, *Polyprion americanus*
- Yellowedge grouper, *Epinephelus flavolimbatus*
- Yellowfin grouper, *Mycteroperca venenosa*
- Yellowmouth grouper, *Mycteroperca interstitialis*

"Recreational fishing" or "fishing recreationally" or "recreationally fishing" 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.

"Recreational vessel" means any private or rental vessel, ~~kayak~~, charter vessel, or headboat participating in the recreational tilefish and grouper fishery.

"Tilefish" means any of the following species:

- Blueline tilefish, *Caulolatilus microps*
- Golden tilefish, *Lopholatilus chamaeleonticeps*
- Sand tilefish, *Malacanthus plumieri*

4VAC20-1120-30. Recreational harvest and possession limit.

A. It shall be unlawful for any person fishing recreationally to possess or land more than eight golden tilefish in Virginia tidal waters.

B. The recreational harvest, landing, and possession limit for blueline tilefish for any person fishing from a private or rental vessel shall be three fish. The recreational harvest, landing, and possession limit for blueline tilefish for any person fishing from a for-hire vessel that has been issued a valid Tilefish Charter/Party Permit but does not have a current U.S. Coast Guard certificate of inspection shall be five blueline tilefish per person per trip. The recreational harvest, landing, and possession limit for blueline tilefish for any person fishing from a for-hire vessel that has both a valid Tilefish Charter/Party Permit and a current U.S. Coast Guard certificate of inspection shall be seven blueline tilefish per person per trip.

C. The recreational harvest, landing, and possession limit for grouper, as described in 4VAC20-1120-20, shall be one fish. It shall be unlawful for any person to recreationally harvest, land, or possess more than one grouper within or without Virginia tidal waters.

~~C.~~ D. When fishing recreationally from any boat or vessel, where the entire catch is held in a common hold or container, the boat or vessel possession limit for any species described in subsection A or B of this section shall be equal to the sum of the personal possession limits, as described in subsection A or B of this section, of those persons on board legally eligible to fish. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limits.

4VAC20-1120-35. Recreational blueline tilefish season.

It shall be unlawful for any person fishing recreationally to harvest or possess any blueline tilefish ~~after October 31, 2017~~ from January 1 through April 30 and from November 1 through December 31.

4VAC20-1120-40. Commercial limitations.

A. It shall be unlawful for any person harvesting tilefish when commercial fishing, as described in 4VAC20-1120-20, to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of tilefish species in excess of 500 pounds whole weight or 455 pounds gutted weight, except as described in subdivision 2 of this subsection.
2. Possess aboard any vessel in Virginia waters any amount of blueline tilefish in excess of 300 pounds whole weight or 273 pounds gutted weight.
3. Possess aboard any vessel any amount of golden tilefish during any in-season closure announced by the National Marine Fisheries Service.

B. It shall be unlawful for any vessel to land in Virginia more than 175 pounds of grouper, as described in 4VAC20-1120-20, per day when commercial fishing.

C. It shall be unlawful for any person to transfer at sea to another person or vessel any harvest of tilefish or grouper.

VA.R. Doc. No. R18-5481; Filed April 25, 2018, 10:19 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

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 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors.

The following regulatory action is also exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of

federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-25, 9VAC25-31-30).**

9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-60, 9VAC25-32-80, 9VAC25-32-317, 9VAC25-32-450; adding 9VAC25-32-25).

9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-90).

9VAC25-590. Petroleum Underground Storage Tank Financial Responsibility Requirements (amending 9VAC25-590-15).

9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-130).

9VAC25-790. Sewage Collection and Treatment Regulations (amending 9VAC25-790-210).

9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (amending 9VAC25-870-15).

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

Effective Date: June 13, 2018.

Agency Contact: Debra Harris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, FAX (804) 698-4019, or email debra.harris@deq.virginia.gov.

Summary:

The amendments bring references to U.S. Environmental Protection Agency's (EPA) regulations under Title 40 of the Code of Federal Regulations (CFR) in State Water Control Board regulations up to date with the 40 CFR published on July 1, 2017, and incorporate by reference into board regulations EPA's dental effluent guidelines under 40 CFR Part 441 and EPA's Methods Update Rule amendments to 40 CFR Part 136.

9VAC25-31-25. 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 and incorporated in this chapter that regulation shall be as it exists and has been published in the July 1, ~~2016~~ 2017, update. The final rules published in the Federal Register on July 5, 2017 (82 FR 30997), which corrects 40 CFR 441.30, and on August 28,

2017 (82 FR 40836), which amends 40 CFR Part 136, are also incorporated by reference in this chapter.

9VAC25-31-30. Federal effluent guidelines.

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

- Airport Deicing Operations - 40 CFR Part 449
- Aluminum Forming - 40 CFR Part 467
- Asbestos Manufacturing - 40 CFR Part 427
- Battery Manufacturing - 40 CFR Part 461
- Canned and Preserved Fruits and Vegetables - 40 CFR Part 407
- Canned and Preserved Seafood - 40 CFR Part 408
- Carbon Black Manufacturing - 40 CFR Part 458
- Cement Manufacturing - 40 CFR Part 411
- Centralized Waste Treatment - 40 CFR Part 437
- Coal Mining - 40 CFR Part 434
- Coil Coating - 40 CFR Part 465
- Concentrated Aquatic Animal Production - 40 CFR Part 451
- Copper Forming - 40 CFR Part 468
- Dairy Products - 40 CFR Part 405
- Dental Offices - 40 CFR Part 441
- Electrical and Electronic Components - 40 CFR Part 469
- Electroplating - 40 CFR Part 413
- Explosives Manufacturing - 40 CFR Part 457
- Feedlots - 40 CFR Part 412
- Ferroalloy Manufacturing - 40 CFR Part 424
- Fertilizer Manufacturing - 40 CFR Part 418
- Glass Manufacturing - 40 CFR Part 426
- Grain Mills - 40 CFR Part 406
- Gum and Wood Chemicals Manufacturing - 40 CFR Part 454
- Hospitals - 40 CFR Part 460
- Ink Formulating - 40 CFR Part 447
- Inorganic Chemicals Manufacturing - 40 CFR Part 415
- Iron and Steel Manufacturing - 40 CFR Part 420
- Landfills - 40 CFR Part 445
- Leather Tanning and Finishing - 40 CFR Part 425

Regulations

Meat Products - 40 CFR Part 432
Metal Finishing - 40 CFR Part 433
Metal Molding and Casting - 40 CFR Part 464
Metal Products and Machinery - 40 CFR Part 438
Mineral Mining and Processing - 40 CFR Part 436
Nonferrous Metals - 40 CFR Part 421
Nonferrous Metal Forming - 40 CFR Part 471
Oil and Gas Extraction - 40 CFR Part 435
Ore Mining and Dressing - 40 CFR Part 440
Organic Chemicals, Plastics and Synthetic Fibers - 40 CFR Part 414
Paint Formulating - 40 CFR Part 446
Paving and Roofing Materials - 40 CFR Part 443
Pesticide Chemicals - 40 CFR Part 455
Petroleum Refining - 40 CFR Part 419
Pharmaceutical Manufacturing - 40 CFR Part 439
Phosphate Manufacturing - 40 CFR Part 422
Photographic Processing - 40 CFR Part 459
Plastics Molding and Forming - 40 CFR Part 463
Porcelain Enameling - 40 CFR Part 466
Pulp, Paper and Paperboard - 40 CFR Part 430
Rubber Processing - 40 CFR Part 428
Secondary Treatment - 40 CFR Part 133
Soaps and Detergents - 40 CFR Part 417
Steam Electric Power Generation - 40 CFR Part 423
Sugar Processing - 40 CFR Part 409
Textile Mills - 40 CFR Part 410
Timber Products - 40 CFR Part 429
Toxic Pollutant Effluent Standards - 40 CFR Part 129
Transportation Equipment Cleaning - 40 CFR Part 442
Waste Combustors - 40 CFR Part 444

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

9VAC25-32-25. 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 and incorporated in this chapter that regulation shall be as it exists and has been published in the July 1, 2017, update. The final rule published in the Federal Register on August 28, 2017 (82 FR 40836), which amends 40 CFR Part 136, is also incorporated by reference in this chapter.

Part II

Permit Application and Issuance

9VAC25-32-60. Application for a VPA permit.

A. Duty to apply. Any owner of a pollutant management activity who does not have an effective VPA permit, except persons covered by general VPA permits or excluded under 9VAC25-32-40, shall submit a complete application to the department in accordance with this section.

B. Time to apply.

1. Any owner proposing a new pollutant management activity shall submit an application for a VPA permit 180 days prior to the date planned for commencing erection, construction or expansion or employment of new processes at any site. There shall be no operation of said facilities prior to the issuance of a VPA permit.

2. Any owner with an existing pollutant management activity that has not been permitted shall submit an application within 60 days upon being requested to by the board. The board, after determining there is pollution occurring, may allow the construction of treatment works prior to permit issuance. There shall be no operation of said treatment works prior to permit issuance.

3. Owners currently managing pollutants who have effective VPA permits shall submit a new application 180 days prior to proposed facility expansions, production increases, or process modification which will:

a. Result in significantly new or substantially increased amounts of pollutants being managed or a significant change in the nature of the pollutant management activity that was not anticipated and accounted for on the application for the effective VPA permit; or

b. Violate or lead to violation of the terms and conditions of the effective VPA permit.

C. Duty to reapply. Any permittee with an effective VPA permit shall submit a new application at least 180 days before the expiration date of the effective VPA permit unless permission for a later date has been granted by the board. Permission shall not be granted to submit an application later than the expiration date of the existing VPA permit.

D. Completeness.

1. A complete VPA permit application shall be submitted by the owner of the pollutant management activity before a VPA permit can be issued. The permit application may be submitted as a hard copy or electronically with a hard copy signature page. This item does not apply where general VPA permits are applicable.

2. The board may require the submission of additional information after an application has been filed, and may suspend processing of any application until such time as the owner has supplied missing or deficient information and the board considers the application complete. Further, when the owner becomes aware that he omitted one or more relevant facts from a VPA permit application, or submitted incorrect information in a VPA permit application or in any report to the department, he shall promptly submit such facts or the correct information.

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

4. No application for a permit to land apply biosolids in accordance with Part IX (9VAC25-32-303 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

5. Pursuant to § 62.1-44.15:3 of the Code of Virginia, no application for a VPA permit from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

E. Information requirements. All applicants for VPA permits shall provide information to the department using the most current application forms provided by the board.

F. Application for the authorization to land apply biosolids. All persons applying to land apply biosolids must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has

access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit.

1. General information.

a. Legal name and address.

b. Owner contact information including:

(1) Name;

(2) Mailing address;

(3) Telephone number; and

(4) Email address.

c. A general description of the proposed activity including:

(1) Name and location of generators involved and their owners;

(2) Biosolids quality and the generator's biosolids treatment and handling processes;

(3) Generator's odor control plan, that contains at minimum:

(a) Methods used to minimize odor in producing biosolids;

(b) Methods used to identify malodorous biosolids before land application (at the generating facility);

(c) Methods used to identify and abate malodorous biosolids if delivered to the field, prior to land application; and

(d) Methods used to abate malodor from biosolids if land applied;

(4) Means of biosolids transport or conveyance;

(5) Location and volume of storage proposed;

(6) A description of field staging methods;

(7) General location of sites proposed for application, and

(8) Methods of biosolids application proposed.

d. Written permission of landowners on the most current form approved by the board and pertinent lease agreements as may be necessary for operation of the treatment works.

e. Methods for notification of local government and obtaining compliance with local government zoning and applicable ordinances.

f. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation if required in subdivision 3 b of this subsection.

Regulations

2. Design information.

a. Biosolids characterization. For each source of biosolids that the applicant proposes to land apply, the applicant must submit biosolids monitoring data for the pollutants for which limits in biosolids have been established in Part IX (9VAC25-32-303 et seq.) of this chapter, for the applicant's use or disposal practices on the date of permit application with the following conditions:

(1) When applying for authorization to land apply a biosolids source not previously included in a VPDES or VPA permit, the biosolids shall be sampled and analyzed for PCBs. The sample results shall be submitted with the permit application or request to add the source;

(2) The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis;

(3) Applicants must provide:

(a) Biosolids analytical data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the biosolids and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application. The department may reduce the number of samples collected based on site specific conditions;

(b) The total dry tons per 365-day period of biosolids subject to this subsection that is applied to the land; and

(c) A statement that the biosolids is nonhazardous; a documentation statement for treatment and quality; and a description of how treated biosolids meets other standards in accordance with this regulation;

(4) Samples shall be collected and analyzed in accordance with analytical methods specified in 40 CFR Part 503 (~~March 26, 2007~~) and 40 CFR Part 136 (~~March 26, 2007~~); and

(5) The monitoring data provided must include at least the following information for each parameter:

(a) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(b) Analytical method used; and

(c) Method detection level.

b. Storage facilities. Plans and specifications for storage facilities of all biosolids to be handled, including routine and on-site storage, shall be submitted for the issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and shall depict the following information:

(1) Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map;

(2) Location of any required soil, geologic, and hydrologic test holes or borings;

(3) Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distance from the site boundary:

(a) Water wells (operating or abandoned);

(b) Surface waters;

(c) Springs;

(d) Public water supplies;

(e) Sinkholes;

(f) Underground and surface mines;

(g) Mine pool (or other) surface water discharge points;

(h) Mining spoil piles and mine dumps;

(i) Quarries;

(j) Sand and gravel pits;

(k) Gas and oil wells;

(l) Diversion ditches;

(m) Occupied dwellings, including industrial and commercial establishments;

(n) Landfills and dumps;

(o) Other unlined impoundments;

(p) Septic tanks and drainfields; and

(q) Injection wells;

(4) Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:

(a) Maximum and minimum percent slopes;

(b) Depressions on the site that may collect water;

(c) Drainage ways that may attribute to rainfall run-on to or runoff from the site; and

(d) Portions of the site (if any) that are located within the 100-year floodplain;

(5) Data and specifications for the liner proposed for seepage control;

(6) Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances;

(7) Calculations justifying impoundment capacity; and

(8) Groundwater monitoring plans for facilities if required by the department. The groundwater monitoring plan shall include pertinent geohydrological data to justify upgradient and downgradient well location and depth.

c. Staging. Generic plans for staging of biosolids.

d. Land application sites:

(1) DEQ control number, if previously assigned, identifying each land application field. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location;

(2) The site's latitude and longitude in decimal degrees to three decimal places and the method of determination;

(3) A legible topographic map and aerial photograph, including legend, of proposed application areas to scale as needed to depict the following features:

(a) Property boundaries;

(b) Surface water courses;

(c) Water supply wells and springs;

(d) Roadways;

(e) Rock outcrops;

(f) Slopes;

(g) Frequently flooded areas (National Resources Conservation Service (NRCS) designation);

(h) Occupied dwellings within 400 feet of the property boundaries and all existing dwelling and property line setback distances;

(i) Publicly accessible properties and occupied buildings within 400 feet of the property boundaries and the associated extended setback distances; and

(j) The gross acreage of the fields where biosolids will be applied;

(4) County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant;

(5) County tax maps labeled with Tax Parcel ID or IDs for each farm to be included in the permit, which may include multiple fields to depict properties within 400 feet of the field boundaries;

(6) A USDA soil survey map, if available, of proposed sites for land application of biosolids;

(7) The name, mailing address, and telephone number of each site owner, if different from the applicant;

(8) The name, mailing address, and telephone number of the person who applies biosolids to the site, if different from the applicant;

(9) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-32-10;

(10) Description of agricultural practices including a list of proposed crops to be grown;

(11) The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 to the site:

(a) Whether the applicant has contacted the permitting authority in the state where the bulk biosolids subject to 9VAC25-32-356 Table 3 will be applied, to ascertain whether bulk biosolids subject to 9VAC25-32-356 Table 3 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority; and

(b) Identification of facilities other than the applicant's facility that have sent, or are sending, biosolids subject to the cumulative pollutant loading rates in 9VAC25-32-356 Table 3 to the site since July 20, 1993, if, based on the inquiry in subdivision ~~8-d-1~~ 2 d (11) (a) of this subsection, bulk biosolids subject to cumulative pollutant loading rates in 9VAC25-32-356 Table 3 has been applied to the site since July 20, 1993.

3. A biosolids management plan shall be provided that includes the following minimum site specific information at the time of permit application.

a. Description of operation: A comprehensive, general description of the operation as required by ~~9VAC25-32-60~~ this section.

b. A nutrient management plan approved by the Department of Conservation and Recreation as required for application sites prior to board authorization under the following conditions:

(1) Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

(2) Sites where land application more frequently than once every three years at greater than 50% of the annual agronomic rate is proposed;

(3) Mined or disturbed land sites where land application is proposed at greater than agronomic rates; or

Regulations

(4) Other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

4. Biosolids transport.

a. General description of transport vehicles to be used.

b. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup (including vehicle cleaning); field reclamation and emergency spill notification and cleanup measures.

c. Voucher system used for documentation and recordkeeping.

5. Field operations.

a. Storage.

(1) Routine storage - supernatant handling and disposal, biosolids handling and loading of transport vehicles, equipment cleaning, freeboard maintenance, and inspections for structural integrity.

(2) On-site storage - procedures for department or board approval and implementation.

(3) Staging - procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner or cover requirements and the time limit assigned for such use.

(4) Reestablishment of offloading and staging areas.

b. Application methodology.

(1) Description and specifications on spreader vehicles.

(2) Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis.

(3) Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture or hay fields, crops for direct human consumption and saturated or ice-covered or snow-covered ground; establishment of setback distances; slopes; prohibited access for beef and dairy animals, and soil pH requirements; and proper site specific biosolids loading rates on a field-by-field basis.

c. Odor control plan for land applier. Include at a minimum:

(1) Methods used to identify and abate malodorous biosolids in the field prior to land application, and

(2) Methods used to abate malodorous biosolids if land applied.

6. An applicant for a permit authorizing the land application of biosolids shall provide to the department, and to each locality in which the applicant proposes to land apply biosolids, written evidence of financial responsibility. Evidence of financial responsibility shall be provided in accordance with the requirements specified under Article 6 (9VAC25-32-770 et seq.) of Part IX of this chapter.

9VAC25-32-80. Conditions applicable to all VPA permits.

A. Duty to comply. The permittee shall comply with all conditions of the VPA permit. Any permit noncompliance is a violation of the law, and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit renewal application.

B. Duty to halt or reduce activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the VPA permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize, correct, or prevent any pollutant management activity in violation of the VPA permit which has a reasonable likelihood of adversely affecting human health or the environment.

D. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems, and controls which are installed or used to achieve compliance with permit conditions. Proper operation and maintenance includes effective plant performance, adequate funding, adequate licensed operator staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

E. Permit action.

1. A VPA permit may be modified, revoked and reissued, or terminated as set forth in this chapter.

2. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

3. VPA permits may be modified, revoked and reissued or terminated upon the request of the permittee or interested persons, or upon the board's initiative, to reflect the requirements of any changes in the statutes or regulations.

4. VPA permits continued under 9VAC25-32-130 remain effective and enforceable.

F. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to records required by the VPA permit;
2. Have access to, inspect, and copy any records that must be kept as part of VPA permit conditions;
3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the VPA permit; and
4. Sample or monitor any substances or parameters at any locations for the purpose of assuring VPA permit compliance or as otherwise authorized by law.

G. Duty to provide information.

1. 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, terminating the VPA permit, or to determine compliance with the VPA permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the board prior to commencing construction.

H. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the VPA permit, and records of all data used to complete the application for the VPA permit, for a period of at least three years or in the case of activities regulated under Part IX (~~9VAC25-32-310~~ 9VAC25-32-303 et seq.) of this chapter, at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the board at any time.
3. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;
 - b. The name of the ~~individual~~ or individuals who performed the sampling or measurements;
 - c. The date or dates analyses were performed;
 - d. The name of the ~~individual~~ or individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used; and

f. The results of such analyses.

4. Monitoring shall be conducted according to analytical methods promulgated pursuant to § 304(h) of the Clean Water Act (33 USC § 1251 et seq.) and listed in the Code of Federal Regulations at 40 CFR Part 136 (~~1995~~). Any other acceptable test procedure not listed in 40 CFR Part 136 (~~1995~~) shall be specified in the VPA permit.

5. Records related to biosolids data and information specified in agreements between generator, owner, agents, landowners, and farmers shall be described and maintained for a minimum period of five years or the duration of the permit or subsequent revisions if longer than five years.

I. Reporting requirements.

1. The permittee shall give prompt notice to the department of any planned changes to the design or operation of the pollutant management activity.

2. 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 owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 6 of this subsection. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

- a. Unusual spillage of materials resulting directly or indirectly from processing operations;
- b. Breakdown of processing or accessory equipment;
- c. Failure or taking out of service of some or all of the treatment works; and
- d. Flooding or other acts of nature.

3. The permittee shall give at least 10 days advance notice to the department of any planned changes to the facility or activity which may result in noncompliance.

4. Monitoring results shall be reported at the intervals specified in the applicable VPA permit.

- a. Monitoring results shall be reported in a format acceptable to the board.
- b. If a permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant more frequently than required

Regulations

by the VPA permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

c. If the permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant that is not required to be monitored by the VPA permit, and uses approved analytical methods the permittee shall report the results with the monitoring report.

d. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the VPA permit.

5. Reports of compliance or noncompliance with or any progress report on interim and final requirements contained in any compliance schedule in the VPA permit shall be submitted no later than 14 days following each scheduled date.

6. 24-hour reporting.

a. The permittee shall report any noncompliance ~~which~~ that may adversely affect state waters or may endanger public health. An oral report must be provided to the department as soon as possible, but in no case later than 24 hours from the time the permittee becomes aware of the circumstances. A written report shall be submitted within five days and shall contain a description of the noncompliance and its cause; the period of noncompliance including exact dates and times, and, if the noncompliance has not been corrected, how long it is expected to continue, steps planned or taken to reduce, eliminate, and prevent a recurrence of the noncompliance. The board may waive the written report requirements on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported. All other noncompliance reports which may not adversely affect state waters shall be submitted with the monitoring report. Reports shall include overflows.

b. The following shall be included as information which must be reported within 24 hours under this subdivision:

- (1) Any unanticipated bypass; and
- (2) Any upset which causes a discharge to surface waters.

J. Bypass.

1. A bypass of the treatment works is prohibited except as provided herein.

2. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage ("severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision 2 of this subsection and in light of the information reasonably available to the owner at the time of the bypass.

K. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. That the 24-hour reporting requirements to the department were met; and
4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the VPA permit.

L. Signature requirements. All applications, reports, or information submitted to the department shall be signed and certified as required in 9VAC25-32-70.

M. Transfers. A VPA permit is not transferable to any person except after notice to the department according to ~~9VAC24-32-230~~ 9VAC25-32-230. The board may require modification or revocation and reissuance of the VPA permit

to change the name of the permittee and incorporate such other requirements as may be necessary.

9VAC25-32-317. Exclusions.

A. Treatment processes. This part does not establish requirements for processes to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in 9VAC25-32-675 and 9VAC25-32-685.

B. Selection of a use or a disposal practice. This part does not dictate the selection of a specific biosolids use or sewage sludge disposal practice by the owner of the wastewater treatment works.

C. Incineration of sewage sludge. This part does not establish requirements for sewage sludge fired in a sewage sludge incinerator or co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge or other waste are co-fired.

D. Hazardous sewage sludge. This part does not establish requirements for the use or disposal of sewage sludge determined to be hazardous in accordance with 40 CFR Part 261 ~~(2000)~~ as adopted by reference in 9VAC20-60-261 or the Code of Virginia.

E. Sewage sludge with high PCB concentration. This part does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

F. Incinerator ash. This part does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

G. Grit and screenings. This part does not establish requirements for the use or disposal of grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity) or screenings (e.g., relatively large materials such as rags) generated during preliminary treatment of domestic sewage in a treatment works.

9VAC25-32-450. Sampling, analysis, and preservation.

A. Representative samples of biosolids that is applied to the land or placed on a surface disposal site shall be collected and analyzed.

1. Raw sewage or sludge samples are to be collected prior to the treatment process unit operations.
2. Final treated samples are to be taken at a point following appropriate unit operations in the treatment process. An evaluation of biosolids treatment may require monitoring of fecal coliform levels in treated biosolids.
3. Composite samples shall be collected in accordance with the treatment works operation and maintenance manual.

B. Liquid biosolids. In the case of digesters and liquid storage holding tanks, a representative sample shall be composed of at least four grab samples obtained during daily operations at the facility or land application site. Samples of liquid biosolids obtained under pressure or vacuum should be obtained shortly after the beginning, during and at the end of the time period that the biosolids are produced at the sampling point.

C. Biosolids storage facilities. Equal volumes of biosolids shall be withdrawn from random locations across the width and throughout the length of the storage facility at the surface, mid-depth and near the bottom of the lagoon at each grab sample location. These grab samples shall be added to form a composite mix. A range of the minimum number of grab samples that should be obtained from various sizes of biosolids storage facilities in order to obtain a representative composite sample is presented in Table 1 of this section:

TABLE 1 MINIMUM NUMBER OF GRAB SAMPLES FROM STORAGE FACILITIES		
Surface Area (Acres)	Minimum Number of Grab Samples	
	Depth less than 4 feet	Depth greater than 4 feet
1 to 9.99	4 to 5	6 to 8
10 or more	6 to 8	9 to 11

D. Dewatered biosolids. Small, equally sized grab samples of the dewatered sludge stream may be taken at equally spaced intervals over the period of operation of the dewatering unit. Centrifuged biosolids samples may be taken from a belt conveyor or receiving hopper. Filter cake biosolids samples may be taken from a belt conveyor or a portion of the cake may be removed as it leaves the unit. The smaller grab samples should be combined to form a representative composite sample. A composite sample can be obtained over the daily operational period at the land application site.

E. Compost sampling. Collect composite samples composed of at least three grab samples of \pm one kilogram or more so that a representative average level of compost characteristics can be obtained from analytical testing. This mixture should be used for analytical testing or for combination with other composites to obtain a total composite sample representing a fixed period of operation. Compost samples may be taken with a scoop or shovel and placed in flexible bags that can be thoroughly shaken to mix grab samples.

F. Biosolids samples shall be preserved and analyzed in accordance with methods listed in 40 CFR Part 136 ~~(2007)~~ and methods identified in 9VAC25-31-490. Calculation procedures in the methods shall be used to calculate the percent volatile solids reduction for biosolids. Any other

Regulations

acceptable test procedure not listed in 40 CFR Part 136 (2007) shall be specified in the VPA permit.

9VAC25-210-90. Conditions applicable to all VWP permits.

A. Duty to comply. The permittee shall comply with all conditions and limitations of the VWP permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, toxic standards, and prohibitions. Any VWP permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for enforcement action, VWP permit termination, VWP permit revocation, VWP permit modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the VWP permit that may have a reasonable likelihood of adversely affecting human health or the environment.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board or any duly authorized agent of the board, at reasonable times and under reasonable circumstances, to conduct the actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. Enter upon permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;

2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit; and

3. Sample or monitor any substance, parameter, or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

E. Duty to provide information. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the board prior to commencing construction.

F. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000); ~~Guidelines Establishing Test Procedures for the Analysis~~

~~of Pollutants~~ as published in the 40 CFR July 1, 2017, update and 82 FR 40836 (August 28, 2017).

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of permit expiration. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include as appropriate:

a. The date, exact place and time of sampling or measurements;

b. The name of the individuals who performed the sampling or measurements;

c. The date and time the analyses were performed;

d. The name of the individuals who performed the analyses;

e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;

f. The results of such analyses; and

g. Chain of custody documentation.

G. Duty to reapply. Any permittee desiring to continue a previously permitted activity after the expiration date of the VWP permit shall apply for and obtain a new permit or, if applicable, shall request an extension in accordance with 9VAC25-210-180.

9VAC25-590-15. 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 in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, ~~2016~~ 2017.

9VAC25-610-130. Conditions applicable to all groundwater permits.

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this chapter shall be construed to relieve the groundwater withdrawal permit holder of the duty to comply with all applicable federal and state statutes and prohibitions. At a minimum, a person must obtain a well construction permit or a well site approval letter

from the Virginia Department of Health prior to the construction of any well for any withdrawal authorized by the Department of Environmental Quality. Any permit violation is a violation of the law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit application.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to:

1. Avoid all adverse impacts to lawful groundwater users which could result from the withdrawal; and
2. Where impacts cannot be avoided, provide mitigation of the adverse impact as described in 9VAC25-610-110 D 3 g.

D. Inspection and entry. Upon presentation of credentials, the permittee shall allow the board or any duly authorized agent of the board, at reasonable times and under reasonable circumstances, to conduct actions listed in this section. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

1. Entry upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the permit; and
3. Sample or monitor any substance, parameter or activity for the purpose of assuring compliance with the conditions of the permit or as otherwise authorized by law.

E. Duty to provide information. The permittee shall furnish to the board, within a reasonable time, any information that the board may request to determine whether cause exists for modifying or revoking, reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

F. Monitoring and records requirements.

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 ~~(2000)~~, Guidelines Establishing Test Procedures for the Analysis of Pollutants as published in the 40 CFR July 1, 2017, update and 82 FR 40836 (August 28, 2017).

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the expiration of a granted permit. This period may be extended by request of the board at any time.

4. Records of monitoring information shall include as appropriate:

- a. The date, exact place and time of sampling or measurements;
- b. The name of the individuals who performed the sampling or measurements;
- c. The date the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

G. Permit action.

1. A permit may be modified or revoked as set forth in Part VI (9VAC25-610-290 et seq.) of this chapter.
2. If a permittee files a request for permit modification or revocation, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the board makes a final case decision. This provision shall not be used to extend the expiration date of the effective permit.
3. Permits may be modified or revoked upon the request of the permittee, or upon board initiative, to reflect the requirements of any changes in the statutes or regulations.

9VAC25-790-210. Nonconventional methods, processes or equipment.

A. Policy. The policy of the department is to encourage the development of any new or nonconventional methods, processes, and equipment that appear to have application for the treatment or conveyance of sewage. Sewage treatment methods, processes, and equipment may be subject to a special permit application procedure if (i) they are not covered by the Manual of Practice (Part III (9VAC25-790-

Regulations

310 et seq.) of this chapter) and (ii) they are in principle, or application, deemed to be nonconventional.

B. Provisional CTO. The performance reliability of nonconventional processes and equipment shall have been thoroughly demonstrated through an approved testing program for similar installations (loadings of 75% or more of design level) before they may be considered for conventional approval and use. Where the department approves such a testing program, a provisional CTO will be issued for treatment works in which new or nonconventional processes and equipment are to be evaluated. The provisional CTO will specify conditions related to the testing requirements and agreements necessary for issuance of a final CTO. The owner of the facility shall submit the required test results to the department according to an approved schedule for approval prior to issuance of a final CTO. It is the owner's responsibility to operate in compliance with requirements imposed by permits issued for the sewerage system or treatment works.

C. Assurance resources. As a prerequisite to the issuance of a provisional CTO, the owner must furnish assurance of financial ability or resources available to modify, convert, or replace, the new or nonconventional processes or equipment in the event the performance reliability cannot be established over the period of time specified by the provisional CTO. These assurances may be in the form of funds placed in escrow, letters of credit, performance bonds, etc., which would revert to the facility owner if performance reliability cannot be established.

D. Performance reliability testing. All procedures used in testing of the performance reliability shall be conducted under the supervision of a licensed professional engineer who shall attest to the accuracy of sampling and testing procedures. The required samples shall be tested through a qualified laboratory. The testing program shall provide as a minimum the following:

1. Samples shall be collected at designated locations at a stated frequency and analyzed in accordance with provisions of the provisional CTO. The minimum testing period shall be 12 months under the comparable environmental and operational conditions for which the process and equipment will receive conventional approvals for any additional installations.

2. All analyses shall be made in accordance with the 19th Edition of Standard Methods for the Examination of Water and Wastewater (1995) and 40 CFR Part 136 (~~July 1, 2003~~) as published in the 40 CFR July 1, 2017, update and 82 FR 40836 (August 28, 2017), or other approved analytical methods.

E. CTC. After the area engineer evaluates the plans and testing data, the director can issue a CTC if the performance data verifies that the method, process, or equipment can

perform reliably in accordance with the design specifications and the operation standards of Part II, and that the method, process, or equipment may be installed as conventional for similar site specific operation.

F. Provisional CTO. Upon completion of construction or modification, a provisional CTO for a definite period of time will be issued for the operation of the nonconventional methods, processes, and equipment. Not more than one provisional CTO will be granted for a similar installation during the evaluation period. The provisional CTO shall require that:

1. The evaluation period shall be a minimum of 12 months and no longer than 18 months,
2. The holder of a provisional CTO must submit reports on operation during the evaluation period. The reports shall be prepared by either a licensed professional engineer experienced in the field of environmental engineering, the owner's operating or engineering staff, or a qualified testing firm.

G. Final CTO. The director will issue a final CTO upon lapse of the provisional CTO, if, on the basis of testing during that period, the new or nonconventional method, process, or equipment demonstrates reliable performance in accordance with permit requirements and the operation standards of Part II. If the standards are not met, then the owner shall provide for modification of the sewerage systems or treatment works, in a manner that will enable those standards to be met in accordance with this chapter.

9VAC25-870-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated in this chapter, that regulation shall be as it exists and has been published in the July 1, ~~2016~~ 2017, update. The final rules published in the Federal Register on July 5, 2017 (82 FR 30997), which corrects 40 CFR 441.30, and on August 28, 2017 (82 FR 40836), which amends 40 CFR Part 136, are also incorporated by reference in this chapter.

V.A.R. Doc. No. R18-5424; Filed April 23, 2018, 1:17 p.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. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities (amending 9VAC25-193-10, 9VAC25-193-15, 9VAC25-193-20, 9VAC25-193-40 through 9VAC25-193-70).

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

Public Hearing Information:

June 14, 2018 - 9:30 a.m. - 1111 East Main Street, Bank of America Building, 3rd Floor Conference Room, Richmond, VA 23219

Public Comment Deadline: July 13, 2018.

Agency Contact: Eleanore M. Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, or email eleanore.daub@deq.virginia.gov.

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

Summary:

The proposed action amends and reissues the existing Virginia Pollutant Discharge Elimination System general permit that expires on September 30, 2018. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from concrete products facilities to surface waters. The permit also contains stormwater management requirements. The general permit regulation is being reissued to continue making discharge available for these facilities.

Substantive changes to the existing regulation include:

- *Requiring municipal separate storm sewer owner notification with the registration statement;*
- *Requiring State Corporation Commission identification number to attain the proper legal owner name of the company for permitting and enforcement purposes;*

- *Removing the limits and requirements for noncontact cooling water as this industry does not use these systems;*
- *Clarifying that any waste concrete and any dredged solids from the settling basins are two different types of waste, and any associated wastewater or stormwater must be collected for recycle or treated prior to discharge;*
- *Simplifying the one-foot freeboard log reporting requirement for the settling basins per technical advisory committee (TAC) discussions;*
- *Requiring reports of an unusual or extraordinary discharge for facilities designed to operate as "no discharge" when or if they discharge during 25-year, 24-hour storm events and reporting of unauthorized discharge if a discharge occurs outside of a 25-year, 24-hour storm event. This provides some type of notification for discharge since discharge monitoring reports are not required for these systems. The same requirement is in the nonmetallic mineral mining permit since that industry also often operates in a no discharge mode;*
- *Adding that dust suppression spraying shall not occur during measureable rain events as it is unnecessary and more likely to result in a discharge from the site;*
- *Removing sampling waivers for benchmark monitoring as it was generally agreed upon in the TAC that one annual stormwater sample can easily be collected during a calendar year with proper planning. The sampling waivers for quarterly visual examinations were moved to the next section. Deleting this waiver also removes the requirement for a substitute sample the following period;*
- *Clarifying that when visual assessments indicate stormwater pollution, stormwater controls must be updated. This follow-up for corrective action was missing from this requirement;*
- *Adding documentation of routine facility inspections as this was missing from this requirement;*
- *Where appropriate, changing language to match the Environmental Protection Agency Multi-sector General Permit for Stormwater Discharges Associated with Industrial Activity; and*
- *Throughout the regulation, where appropriate, making due dates for various requirements 60 days (registration, outfall changes, and stormwater plan updates and corrections) for consistency.*

Regulations

CHAPTER 193

GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT FOR CONCRETE PRODUCTS FACILITIES

9VAC25-193-10. Definitions.

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

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

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

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

1. North American Industry Classification System (NAICS) Code 327331 - Concrete Block and Brick Manufacturing, (Executive Office of the President, Office of Management and Budget, United States, 2017) and Standard Industrial Classification (SIC) Code 3271 - Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);
2. NAICS Code 327332 Concrete Pipe Manufacturing, NAICS Code 327390 Other Concrete Product Manufacturing, NAICS Code 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing (dry mix concrete manufacturing only) and SIC Code 3272 - Concrete Products, Except Block and Brick; or
3. NAICS Code 327320 Ready-Mix Concrete Manufacturing and SIC Code 3273 - Ready-Mixed Concrete, including both permanent and portable plants.

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

~~"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including~~

~~special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act (CWA) (33 USC § 1251 et seq.) that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).~~

"Minimize" means reduce or eliminate to the extent achievable using control measures, including best management practices, that are technologically available and economically practicable and achievable in light of best industry practice.

"No discharge system" means process, commingled, or stormwater systems designed to operate so that there is no discharge of wastewater or pollutants, except in storm events greater than a 25-year, 24-hour storm event.

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

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

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

"25-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

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

9VAC25-193-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted ~~herein~~ in this chapter and incorporated by reference, that regulation

shall be as it exists and has been published as of July 1, ~~2012~~ 2017.

9VAC25-193-20. Purpose.

This general permit regulation governs the discharge of process ~~waste water, noncontact cooling water, wastewater and storm water~~ stormwater associated with industrial activity from concrete products facilities classified as NAICS Codes 327331, 327332, 327390, 327320, 327999 (dry mix concrete manufacturing only) and Standard Industrial Classification Codes 3271, 3272 and 3273, provided that the discharge is through a point source to surface waters.

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

This general VPDES permit will become effective on October 1, ~~2013~~ 2018, and it will expire on September 30, ~~2018~~ 2023. This general permit is effective for any covered owner upon compliance with all the provisions of 9VAC25-193-50.

9VAC25-193-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge process water, ~~storm water~~ stormwater associated with this industrial activity, cooling water, or commingled discharges of these types to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement in accordance with 9VAC25-193-60 and that registration statement is accepted by the board;
2. The owner submits the required permit fee;
3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-193-70; and
4. The board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

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

1. The owner 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 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. Compliance with this general permit constitutes compliance, for purposes of enforcement, with §§ 301, 302, 306, 307, 318, 403, and 405(a) through 405(b) of the federal Clean Water Act (33 USC § 1251 et seq.) and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. ~~Any owner that was authorized to discharge under the concrete products general permit issued in 2008 and that submits a complete registration statement on or before October 1, 2013, is authorized to continue to discharge under the terms of the 2008 general permit until such time as the board either~~ 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 established by the board, which cannot extend beyond the expiration date of the 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 reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued coverage under the terms of the general permit or be subject to enforcement action for discharging without a permit;
- c. Issue an individual permit with appropriate conditions; or
- d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-193-60. Registration statement.

A. Deadlines for submitting registration statement. ~~The~~ Any owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for concrete products facilities.

Regulations

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least ~~30~~ 60 days prior to the date planned for commencement of the ~~new discharge or a later submittal established by the board.~~

2. Existing facilities.

a. Any owner covered by an individual VPDES permit ~~who that~~ is proposing to be covered by this general permit shall submit a complete registration statement at least ~~210~~ 240 days prior to the expiration date of the individual VPDES permit.

b. Any owner that was authorized to discharge under the ~~expiring or expired~~ general VPDES permit ~~that became effective on October 1, 2008,~~ and who intends to continue coverage under this general permit shall submit a complete registration statement to the board ~~on or before July 1, 2013~~ at least 60 days prior to the expiration date of the existing permit or a later submittal established by the board.

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

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

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

4. Nature of business at facility;

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

~~6. 5. Description of the wastewater treatment or reuse/recycle system(s); reuse or recycle systems;~~

~~indicate~~ 6. Indicate if there are any system(s) which process wastewater systems, which may be commingled with stormwater, or stormwater designed to operate in a "no discharge" mode;

~~7. If settling basins are used for treatment and control of process wastewater and commingled storm water, which may be commingled with stormwater systems, indicate the original date of construction, and whether these basins are lined with concrete or any other impermeable materials describe the materials lining the process or commingled settling basins;~~

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

~~9. Indicate if a noncontact cooling water system is in use and if this facility discharges noncontact cooling water from a geothermal unit or other system. If yes, provide the following:~~

~~a. Describe the source of noncontact cooling water; and~~

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

~~10. 9. Description of any measures employed to reclaim, reuse, or disposal of the residual concrete materials;~~

~~11. 10. A schematic drawing which that shows the source(s) sources of water used on the property, the industrial operations contributing to or using water, the conceptual design of the methods of treatment and disposal of wastewater and solids, and the storm water stormwater pollution prevention plan site map (see 9VAC25-193-70 Part II G F 6 c);~~

~~12. 11. A USGS 7.5 minute topographic map or equivalent computer generated map, extending to at least one mile beyond property boundary, which shows the property boundary, the location of each of its existing and proposed intake and discharge points, and the locations of any wells, springs, and other surface water bodies;~~

~~13. 12. Discharge outfall information, including outfall number(s) numbers, description of wastewater discharged from each outfall, estimated flow (gallons per day), receiving water bodies, duration and frequency of each discharge (hours per day and days per week), and latitude and longitude of outfall location;~~

~~14. 13. Indicate which storm water stormwater outfalls will be representative outfalls (if any). For storm water stormwater outfalls that are to be represented by other outfall discharges, provide the following:~~

~~a. The locations of the outfalls;~~

- b. Why the outfalls are expected to discharge substantially identical effluents including, where available, evaluation of monitoring data;
- c. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and
- d. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%);

~~14.~~ 14. Indicate if a ~~Storm Water~~ Stormwater Pollution Prevention Plan has been prepared;

~~15.~~ 15. Whether the facility will discharge to a municipal separate storm sewer system (MS4). If so, ~~provide the name of the MS4 owner. The~~ "yes," the facility 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 at the time of registration under this permit and include that notification with the registration statement.~~ The notification shall include the following information: the name of the facility, a contact person and ~~phone number~~ contact information, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number;

~~16.~~ 16. For portable concrete products operations, submit a closure plan and include the requirements specified by the operation and maintenance manual in ~~9VAC25-193 Part I B 9 a (4)~~ 9VAC25-193-70 Part I B 8 a (4) of the permit;

17. For applicants other than a sole proprietor, the State Corporation Commission entity identification number; and

18. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

D. The registration statement shall be signed in accordance with the requirements of 9VAC25-31-110 of the VPDES Permit Regulation.

E. Where to submit. 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.

9VAC25-193-70. General permit.

Any owner whose registration statement is accepted by the board will receive coverage under the following general permit and shall comply with the requirements ~~contained therein~~ in the general permit and be subject to all requirements of ~~9VAC25-31~~ 9VAC25-31-170 of the VPDES Permit Regulation.

General Permit No: VAG11

Effective Date: October 1, ~~2013~~ 2018

Expiration Date: September 30, ~~2018~~ 2023

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of concrete products facilities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations ~~which that~~ that 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, Monitoring Requirements, and Special Conditions, ~~Part II Storm Water~~ Part II-Stormwater Management, and Part III-Conditions Applicable to All VPDES Permits, as set forth ~~herein~~ in this permit.

Part I

Effluent Limitations, Monitoring Requirements, and Special Conditions.

A. Effluent limitations and monitoring requirements.

1. Process wastewater.

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 process wastewater ~~which that~~ that may contain input from vehicle wash water, or vehicle or equipment degreasing activities, and may be commingled with ~~noncontact cooling water, storm water~~ stormwater associated with industrial activity, or both. Samples taken in compliance with the monitoring requirements specified below shall be taken at ~~outfall(s)~~ outfalls.

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

Regulations

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

NL = No limitation, monitoring required

NA = Not applicable

⁽¹⁾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.

⁽²⁾Total Petroleum Hydrocarbons limitation and monitoring are only required where a discharge contains process wastewater generated from the vehicle or equipment degreasing activities. Total Petroleum Hydrocarbons shall be analyzed using EPA SW-846 Method 8015 B (1996), 8015C (2000), 8015C (2007), 8015 D (2003) for diesel range organics or EPA 40 CFR Part 136.

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

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

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

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

Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.

⁽⁶⁾ (3) 1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.

2. Noncontact cooling water.

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 noncontact cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s).

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency ⁽⁴⁾	Sample Type
Flow (MGD)	NL	NL	NA	1/3 Months	Estimate
pH (standard units)	NA	9.0 ⁽⁴⁾	6.0 ⁽⁴⁾	1/3 Months	Grab
Total Residual Chlorine ⁽²⁾ (mg/l)	0.016	0.016	NA	1/3 Months	Grab

Ammonia N ⁽²⁾ (mg/l)	NA	NL	NA	1/3 Months	Grab
Temperature (°C)	NA	(3)	NA	1/3 Months	Immersion Stabilization

NL = No limitation, monitoring required

NA = Not applicable

⁽¹⁾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.

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

⁽³⁾The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. No maximum temperature limit applies to discharges to estuarine waters. For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.

⁽⁴⁾1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.

3. Storm water 2. Stormwater associated with industrial activity—storm event benchmark monitoring industrial activity from concrete products facilities.

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 ~~storm water~~ stormwater associated with industrial activity ~~which that~~ does not combine with other process wastewaters ~~or noneontact cooling water~~ prior to discharge. Samples taken in compliance with the monitoring requirements specified below shall be taken at ~~outfall(s)~~ outfalls.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS BENCHMARK MONITORING		MONITORING REQUIREMENTS ^{(3), (5)}	
	Maximum	Minimum	Frequency ⁽⁴⁾	Sample Type
Flow (MG)	NL	NA	1/Year	Estimate ⁽¹⁾
Total Suspended Solids (mg/l)	NL ⁽²⁾	NA	1/Year	Grab ⁽²⁾
pH (standard units)	NL ⁽²⁾	NL ⁽²⁾	1/Year	Grab ⁽²⁾

NL = No limitation, monitoring required

NA = Not applicable

⁽¹⁾Estimate of the total volume of the discharge during the storm event in accordance with the ~~Operation~~ operation and Maintenance Manual maintenance manual.

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

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

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

⁽⁵⁾Quarterly visual monitoring shall be performed and recorded in accordance with Part II ~~D~~ C.

Regulations

B. Special conditions.

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

2. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, byproduct or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to surface waters.

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

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

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

6. Wastewater should be reused or recycled whenever feasible.

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

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

~~a. The chemical additive to be employed and its purpose;~~

~~b. The proposed schedule and quantity of chemical usage, and the estimated concentration in the discharge;~~

~~c. The wastewater treatment or retention (if any) to be provided during the use of the additive; and~~

~~d. A (Material) Safety Data Sheet (SDS) and any of the manufacturer's aquatic toxicity information for each additive proposed for use.~~

~~9. Operations~~ 8. Operation and Maintenance ~~maintenance~~ manual ~~manual~~.

a. Within 180 days after the date of coverage under this general permit, the permittee shall develop or review and update, as appropriate, an Operations and Maintenance ~~operation and maintenance~~ operation and maintenance (O&M) ~~Manual~~ manual for the permitted facility. The O&M ~~Manual~~ manual shall include procedures and practices for the mitigation of pollutant discharges for the protection of state waters from the facility's operations and to ensure compliance with the requirements of the permit. The manual shall address, at a minimum:

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

(2) Methods for estimating process wastewater flows;

(3) Solids management and disposal procedures;

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

(5) Testing requirements and procedures;

(6) Recordkeeping and reporting requirements; and

(7) Duties and roles of responsible officials.

b. The permittee shall operate the treatment works in accordance with the O&M manual. The O&M manual shall be reviewed and updated at least annually and shall be signed and certified in accordance with Part III K of this permit. The O&M manual shall be made available for review by department personnel upon request.

~~10. 9.~~ If the concrete products facility discharges through a municipal separate storm sewer system to surface waters, the permittee shall, ~~within 30 days of coverage under this general permit,~~ notify the owner of the municipal separate storm sewer system of the existence of the discharge ~~and provide~~ and include that notification with the registration statement. The notification shall include the following

information: the name of the facility, a contact person and ~~phone number~~ contact information, the ~~nature~~ location of the discharge, the ~~location~~ nature of the discharge, and the facility's VPDES general permit number. ~~A copy of such notification shall be provided to the department.~~

~~11. 10.~~ The permittee shall ensure that all basins and lagoons maintain a minimum freeboard of one foot at all times except during a 72-hour transition period after a measurable rainfall event. During the 72-hour transition period, no discharge from the basins and lagoons shall occur unless it is in accordance with this permit. Within 72 hours after a measurable rainfall event, the freeboard in all basins and lagoons shall be returned to the minimum freeboard of one foot. Where basins are operated in a series mode of operation, the one-foot freeboard requirement for the upper basins may be waived provided the final basin will maintain the freeboard requirements of this special condition. Should the one-foot freeboard not be maintained, the permittee shall ~~immediately notify the DEQ Regional Office, describe the problem and corrective measures taken~~ take measures to correct the problem ~~before the next rain event. Within five days of notification, the permittee shall submit a written statement to the DEQ Regional Office with an explanation of the problem and corrective measures taken.~~ In order to demonstrate compliance with this special condition, the permittee shall conduct daily inspections ~~while~~ when the facility is in operation during normal operating hours and maintain an inspection log. The inspection log shall include at least the date and time of inspection, the weather data including the occurrence of a measurable rainfall event, ~~the printed name and the handwritten signature~~ the initials of the inspector, ~~the if one-foot minimum freeboard measurement in inches, a notation of observation made, was maintained,~~ and any corrective measures, ~~if appropriate,~~ taken. The log shall be kept onsite and be made available to the department upon request.

~~12. For 11.~~ Process wastewater, which may be commingled with stormwater, treatment systems which or stormwater systems designed to operate only in a as "no discharge" mode, there shall be have no discharge of wastewater or pollutants to surface waters from these systems except in the case of a storm event which is greater than a 25-year 24-hour storm events greater than a 25-year, 24-hour storm event. In the event of such a discharge, the permittee shall report an unusual or extraordinary discharge per Part III H of this permit. No sampling or DMR is required for these discharges as they are considered to be discharging in emergency discharge conditions. All other conditions in Part I B, Part II, and Part III apply. Any other discharge from this type of system is prohibited and shall be reported as an unauthorized discharge per Part III G of this permit. The operation of these systems shall not contravene the Water Quality Standards (9VAC25-260), as adopted and

amended by the board, or any provision of the State Water Control Law.

~~13. 12.~~ The permittee shall notify the department as soon as he knows or has reason to believe:

a. That any activity has occurred or will occur ~~which that~~ which that would result in the discharge, on a routine or frequent basis, of any toxic pollutant ~~which that~~ which 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 (100 µg/l) of the toxic pollutant;
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) Five times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board in accordance with 9VAC25-31-220 F.

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) of the toxic pollutant;
- (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.

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

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

Regulations

practice but not as a wastewater disposal method provided that ponding or direct run-off from the site does not occur during or immediately following its application. Dust suppression shall not occur during a "measurable" rain event (a storm event that results in an actual discharge from the site).

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

a. The quantification levels (QL) shall be ~~as follows~~ less than or equal to the following concentrations:

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

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Reporting.

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

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

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

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

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

~~17.~~ 16. Discharges to waters with an approved total maximum daily load (TMDL). Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

~~18.~~ 17. Adding or deleting outfalls. The permittee may add new or delete existing outfalls at the facility as necessary and appropriate. The permittee shall update the O&M manual and ~~storm water pollution prevention plan (SWPPP)~~ SWPPP and notify the department of all outfall changes within ~~30~~ 60 days of the change. ~~New outfalls require a new or~~ The permittee shall submit an updated registration statement including an updated SWPPP site map.

~~19.~~ 18. 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 discharges of process wastewater, ~~noncontact cooling water, or storm water~~ stormwater associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility (~~NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted~~) submitted;

(3) All discharges associated with this facility have been covered by an individual VPDES permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

- (1) Owner's name, mailing address, telephone number, and email address (if available);
- (2) Facility name and location;
- (3) VPDES general permit registration number for the facility; and
- (4) The basis for submitting the notice of termination, including:
 - (a) A statement indicating that a new owner has assumed responsibility for the facility;
 - (b) A statement indicating that operations have ceased at the facility, a closure plan has been implemented according to the O&M manual, and there are no longer discharges from the facility;
 - (c) A statement indicating that all discharges have been covered by an individual VPDES permit; or
 - (d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification: "I certify under penalty of law that all concrete products waste water and ~~storm water~~ stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge concrete products waste water or ~~storm water~~ stormwater in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be ~~submitted to the department and~~ signed in accordance with Part III K.

e. The notice of termination shall be submitted to the DEQ regional office serving the area where the concrete products facility discharge is located.

~~20.~~ 19. Temporary closure at inactive and unstaffed sites waiver.

a. When the permittee is unable to conduct effluent monitoring, benchmark monitoring, or ~~storm water~~ stormwater management requirements at an inactive and unstaffed site, a waiver of these requirements may be exercised by the board as long as the facility remains inactive and unstaffed, and there are no industrial materials or activities exposed to ~~storm water~~ stormwater. The waiver request shall be submitted to the

board for approval and shall include the information in the temporary closure plan specified in Part I B ~~9~~ 8 a (4), the facility's VPDES general permit registration number; a contact person, telephone number, and email address (if available); the reason for the request; the date the facility became or will become inactive and unstaffed; and the date the closure plan will be completed. The waiver shall be signed and certified in accordance with Part III K. If this waiver is granted, the permittee must retain a copy of the request and the board's written approval of the waiver ~~in accordance with Part III B~~ the SWPPP.

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

c. The board retains the right to revoke this waiver when it is determined that the discharge is causing, has a reasonable potential to cause, or contributes to a water quality standards violation.

~~21.~~ 20. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

~~22.~~ 21. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

Part II
~~Storm Water~~ Stormwater Management.

A. Monitoring instructions.

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

2. When and how to sample. A minimum of one grab sample shall be taken resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document with the ~~discharge monitoring report (DMR)~~ DMR that less than a 72-hour interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30

Regulations

minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first ~~hour~~ three hours of discharge provided that the permittee explains with the ~~DMR SWPPP~~ why a grab sample during the first 30 minutes was impractical.

3. Recording of results. For each discharge measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall record and report with the ~~Discharge Monitoring Reports (DMRs)~~ DMR the following information:

- a. Date and duration (in hours) of the storm ~~event(s)~~ events sampled;
- b. Rainfall measurements or estimates (in inches) of the storm event ~~which that~~ generated the sampled discharge; and
- c. Duration between the storm event sampled and the end of the previous measurable storm event.

B. Representative ~~discharge outfalls - substantially identical outfalls~~. If a facility has two or more exclusively ~~storm water stormwater~~ outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and ~~storm water stormwater~~ management practices occurring within the drainage areas of the outfalls, the permittee may monitor the effluent of just one of the outfalls and report that the observations also apply to the substantially identical outfall. Representative outfalls must be identified in the registration statement submitted for coverage under this permit. Substantially identical ~~outfalls~~ outfall monitoring can apply to quarterly visual and benchmark monitoring. The permittee must include the following information in the ~~storm water pollution prevention plan (SWPPP)~~ SWPPP:

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

C. Sampling waivers.

~~1. When a permittee is unable to conduct benchmark monitoring or visual examinations within the specified sampling period due to no "measurable" storm event or adverse weather conditions, the permittee shall collect a substitute sample from the next separate qualifying event and submit these data along with documentation explaining a facility's inability to conduct benchmark monitoring or~~

~~visual examinations (including dates and times the outfalls were viewed and sampling was attempted) of no "measurable" storm event or of adverse weather conditions with the DMR to the DEQ. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). Acceptable documentation includes, but is not limited to National Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data. All documentation shall also be maintained with the SWPPP.~~

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

~~D. C. Quarterly visual examination of storm water stormwater quality. The permittee shall perform and document a visual examination of a storm water stormwater discharge associated with industrial activity from each outfall, except discharges waived in subdivision D-1 and subsection C-4 of this section subsection. The visual examination(s) examinations must be made during daylight hours (e.g., normal working hours) hours, at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.~~

~~1. Examinations shall be made of samples~~ Samples will be in a clean, colorless glass or plastic container and examined in a well-lit area;

~~2. Samples will be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) three hours, provided that the permittee explains in the SWPPP why an examination during the first 30 minutes was impractical) of when the runoff or snowmelt begins discharging. All such samples shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.~~

~~3. The examination shall document observations of observe color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water stormwater pollution. The examination must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the~~

~~discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.~~

~~4. If no qualifying storm event resulted in discharge from the facility during a monitoring period, or adverse weather conditions create dangerous conditions for personnel during each measurable storm event during a monitoring period, visual monitoring is exempted provided that the permittee documents that no qualifying storm event occurred that resulted in a storm water discharge during that quarter. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term this is documented in the SWPPP.~~

~~2. 5. Visual examination reports must shall be maintained onsite with the SWPPP. The report shall include the outfall location, the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water stormwater discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water stormwater pollution), visual quality of the receiving stream (including observations of solids deposition and oil sheen from the industrial activity) in the vicinity of the outfall (including ditches and conveyances), and probable sources of any observed storm water stormwater contamination.~~

~~6. Whenever the visual assessment shows obvious indicators of stormwater pollution, the SWPPP and stormwater controls shall be updated per Part II F.~~

~~E. D. Allowable nonstorm water nonstormwater discharges.~~

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

- ~~a. Discharges from fire fighting firefighting activities;~~
- ~~b. Fire hydrant flushings;~~
- ~~c. Potable water including water line flushings;~~
- ~~d. Uncontaminated air conditioning or compressor condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;~~

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

2. Except for flows from ~~fire fighting~~ firefighting activities, the SWPPP must include:

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

3. If mist blown from cooling towers is included as one of the allowable ~~nonstorm water~~ nonstormwater discharges, the permittee shall specifically evaluate the discharge for the presence of chemicals used in the cooling tower. This evaluation shall be included in the SWPPP.

~~F. E.~~ Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the ~~storm water discharge(s)~~ stormwater discharges from this facility shall be prevented or minimized in accordance with the SWPPP for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an onsite spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period;

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

Regulations

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

3. The SWPPP required by this permit shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

~~G. Storm water~~ F. Stormwater pollution prevention plans (SWPPP). A SWPPP shall be developed and implemented for the facility. The plan shall include BMPs that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained in accordance with good engineering practices to eliminate or reduce the pollutants in all ~~storm water~~ stormwater discharges from the facility. The SWPPP shall also include any control measures necessary for the ~~storm water~~ stormwater discharges to meet applicable water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of Part II ~~G F~~ 6 (Contents of ~~Plan plan~~). All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all the requirements of Part II ~~G F~~ 6, the permittee shall develop the missing SWPPP elements and include them in the required plan.

1. Deadlines for plan preparation and compliance.

a. Owners of facilities that were covered under the ~~2008~~ 2013 Concrete Products General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP ~~not later than January 1, 2014~~ within 60 days of the board granting coverage under this permit.

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

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

d. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

2. Signature and plan review.

a. The SWPPP shall be signed in accordance with Part III K; and be retained on-site at the facility covered by this permit in accordance with Part III B. For inactive sites, the plan may be kept at the nearest office of the permittee.

b. The permittee shall make the SWPPP, annual site compliance inspection report, or other information available to the department upon request.

c. The director, or his designee, may notify the permittee in writing at any time that the SWPPP, BMPs, or other components of the facility's ~~storm water~~ stormwater program do not meet one or more of the requirements of this part. Such notification shall identify specific provisions of the permit that are not being met and may include required modifications to the ~~storm water~~ stormwater program, additional monitoring requirements, and special reporting requirements. Within 60 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

3. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP as appropriate whenever:

a. There is construction or a change in design, operation, or maintenance that has a significant effect on the discharge or the potential for the discharge of pollutants to surface waters;

b. Routine inspections or ~~compliance evaluations~~ visual examinations determine that there are deficiencies in the BMPs;

c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

d. There is a spill, leak, or other release at the facility; or

e. There is an unauthorized discharge from the facility.

4. SWPPP modifications shall be made within ~~30~~ 60 calendar days after discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II ~~G F~~ 7) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

5. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release,

actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

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

a. Pollution prevention team. Each plan shall identify the staff individuals by name or title that comprise the facility's ~~storm-water~~ stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

b. Summary of potential pollutant sources. The plan shall identify where industrial materials or activities at the facility are exposed to ~~storm-water~~ stormwater. Industrial materials or activities include, ~~but are not limited to:~~ material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities include, ~~but are not limited to:~~ the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product. The description shall include:

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

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

c. Site map. The site map shall document:

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

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

(3) Surface water bodies;

(4) Locations where materials are exposed to precipitation;

(5) Locations where major spills or leaks identified under Part II ~~G F~~ 6 d have occurred;

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

(7) Locations used for the storage or disposal of wastes; liquid storage tanks; processing areas; and storage areas;

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

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

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

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

e. Sampling data. The plan shall include a summary of existing ~~storm-water~~ stormwater discharge sampling data taken at the facility. The summary shall include, at a minimum, any data collected during the previous three years.

f. ~~Storm-water~~ Stormwater controls.

(1) BMPs shall be implemented for all areas identified in Part II ~~G F~~ 6 b to prevent or control pollutants in ~~storm water~~ stormwater discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to ~~storm-water~~ stormwater.

Regulations

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

(3) Preventive maintenance. A preventive maintenance program shall involve regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures that could result in leaks, spills and other releases. This program is

in addition to the specific BMP maintenance required under Part II ~~G~~ F 7 (Maintenance of BMPs).

(4) Spill prevention and response procedures. The plan shall describe the procedures that will be followed for preventing and responding to spills and leaks.

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

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

(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," "fertilizers and pesticides," etc.) to encourage proper handling and facilitate rapid response if spills or leaks occur; and

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

(5) Routine facility inspections.

~~Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility and who can also evaluate the effectiveness of BMPs shall regularly inspect designated equipment and areas of the facility. Inspections shall be conducted while the facility is in operation and include, but are not limited to, the following areas exposed to storm water: (a) During normal facility operating hours inspections of areas of the facility covered by the requirements in this permit must be conducted and shall include observations of the following:~~

(i) Areas where industrial materials or activities are exposed to stormwater, including material handling areas, above ground storage tanks, hoppers or silos, ~~dust collection/containment systems~~ dust collection or containment systems, and ~~truck wash down/equipment~~ truck wash down or equipment cleaning areas;

(ii) Discharge points; and

(iii) Best management practices.

~~The inspection frequency~~ (b) Inspections shall be specified in the plan based on a consideration of the level of industrial activity at the facility, but it shall be a minimum of be conducted at least quarterly unless more frequent intervals are specified elsewhere in the permit. When practical, At least once each calendar year, the routine facility inspection should be conducted once each calendar year during a period when a storm water stormwater discharge is occurring.

(c) Inspections shall be performed by personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of BMPs. At least one member of the stormwater pollution prevention team shall participate.

(d) Routine facility inspections shall be documented and maintained with the SWPPP. Document all findings including:

(i) Inspection date and time;

(ii) Name and initials of inspector; and

(iii) Observations of any discharges; the physical condition of and around all outfalls (e.g., concrete product in the stream or turbidity); leaks or spills from industrial equipment, drums, tanks or other containers; offsite tracking of industrial materials or sediment; any additional best management practices that need to be repaired, maintained, or added; any incidents of noncompliance; and a signed certification.

(e) ~~A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the pollution prevention plan SWPPP. These inspections are in addition to, or as part of, the comprehensive site compliance evaluation required under Part II G 8. At least one member of the pollution prevention team shall participate in the routine facility inspections. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the date(s) dates and description(s) descriptions of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.~~

(6) Employee training. The permittee shall implement a storm water stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training; and shall document all training sessions and the employees who received the training. Training shall be provided for all employees

who work in areas where industrial materials or activities are exposed to ~~storm water~~ stormwater and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

(7) Sediment and erosion control. The plan shall identify areas that, due to topography, land disturbance (e.g., construction, landscaping, sit grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, and/or or stabilization BMPs to prevent or control on-site and off-site erosion and sedimentation.

(8) Management of runoff. The plan shall describe the storm water stormwater run-off management practices (i.e., permanent structural BMPs) for the facility. These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in storm water stormwater discharges from the site. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water stormwater (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, wet detention/retention devices; or other equivalent measures. Some structural BMPs may require a separate permit under § 404 of the Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

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

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

If site inspections required by Part II ~~G~~ F 6 f (5) (Routine facility inspections) or Part II ~~G~~ F 8 (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If

Regulations

maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the ~~date(s)~~ dates of regular maintenance, ~~date(s)~~ dates of discovery of areas in need of repair or replacement, and for repairs, ~~date(s)~~ dates that the ~~BMP(s)~~ BMPs returned to full function, and the justification for any extended maintenance or repair schedules.

8. Comprehensive site compliance evaluation. The permittee shall conduct comprehensive site compliance evaluations at least once a year. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact ~~storm-water~~ stormwater quality at the facility and who can also evaluate the effectiveness of BMPs. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility. Such evaluations shall include the following:

- a. Industrial materials, residue, or trash that may have or could come into contact with ~~storm-water~~ stormwater;
- b. Leaks or spills from industrial equipment, drums, barrels, tanks, or other containers that have occurred within the past three years;
- c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;
- d. Evidence of or the potential for pollutants entering the drainage system;
- e. Evidence of pollutants discharging to surface waters at all facility outfalls and the condition of and around the outfall, including flow dissipation measures to prevent scouring;
- f. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs;
- g. Documentation that all outfalls have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than ~~storm-water~~ stormwater; the authorized ~~nonstorm-water~~ nonstormwater discharges described in Part II ~~E D~~; or discharges covered under a separate VPDES permit, other than this permit). The documentation shall include:
 - (1) The date of the evaluation;
 - (2) A description of the evaluation criteria used;
 - (3) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;

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

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

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

i. Based on the results of the evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the site map required by Part II ~~G F~~ 6 c; revise the description of ~~storm-water~~ stormwater controls required by Part II ~~G F~~ 6 f to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within ~~30~~ 60 days following the evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department;

j. Compliance evaluation report. A report shall be written summarizing the scope of the evaluation, ~~names(s)~~ names of personnel making the evaluation, the date of the evaluation, and all observations relating to the implementation of the SWPPP, including elements stipulated in Part II ~~G F~~ 8 a through e ~~above~~. Observations shall include such things as: the ~~location(s)~~ locations of discharges of pollutants from the site; ~~location(s)~~ locations of previously unidentified sources of pollutants; ~~location(s)~~ locations of BMPs that need to be maintained or repaired; ~~location(s)~~ locations of failed BMPs that need replacement; and ~~location(s)~~ locations where additional BMPs are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part III K and maintained with the SWPPP; and

k. Where compliance evaluation schedules overlap with routine inspections required under Part II ~~G F~~ 6 f (5), the annual compliance evaluation may be used as one of the routine inspections.

Part III

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 individuals who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain (i) records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, (ii) copies of all reports required by this permit, and (iii) records of all data used to complete the registration statement for this permit for a period of at least three years from the date that coverage under this permit expires or is terminated. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another

reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.
4. Calculations for all limitations ~~which~~ 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~~ that 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 its discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F; or who discharges or causes or allows a discharge that may

Regulations

reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse 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 III I 2. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance ~~which that~~ may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as

information ~~which that~~ shall be reported within 24 hours under this 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 may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

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

NOTE: The immediate (within 24 hours) reports required in ~~Parts Part~~ Part III G, H and I may be made to the department's regional office by telephone, FAX, or online at <http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24 hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of Clean Water Act ~~which that~~ are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of Clean Water Act ~~which 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 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; 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~~ that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statements. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-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 III K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under ~~Parts~~ 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 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~~

Regulations

~~modification~~; or denial of a permit renewal ~~application~~ registration.

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 application at least ~~90~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

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

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "~~bypassing~~" "bypass" (Part III U), and "upset" (Part III V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) ~~which that~~ 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 ~~Parts~~ Part III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass ~~which that~~ occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed ~~above~~ in Part III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- a. An upset occurred and that the permittee can identify the causes of the upset;
- b. The permitted facility was at the time being properly operated;
- c. The permittee submitted notice of the upset as required in Part III I; and
- d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or his designee, upon presentation of credentials and other documents as may be required by law, to:

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

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

X. Permit actions. ~~Permits~~ 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~~ termination, or a notification of

planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of ~~permits~~ permit coverage.

Permits are not transferable to any person except after notice to the department.

~~This Coverage under this~~ permit may be automatically transferred to a new permittee if:

- 1. The current permittee notifies the department ~~at least within~~ 30 days ~~in advance~~ of the ~~proposed~~ transfer of the title to the facility or property unless permission for a later date has been granted by the board;
- 2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- 3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2.

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.

VA.R. Doc. No. R17-5019; Filed April 23, 2018, 10:36 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 14 of the Code of Virginia, which exempts adoption, amendment, or repeal of wasteload allocations by the State Water Control Board pursuant to State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) if the board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

Effective Date: June 13, 2018.

Regulations

Agency Contact: William Isenberg, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4228, or email william.isenberg@deq.virginia.gov.

Summary:

The amendments to the state's Water Quality Management Planning Regulation (9VAC25-720) include adding six new total maximum daily load wasteload allocations in the Potomac-Shenandoah River Basin.

9VAC25-720-50. Potomac-Shenandoah River Basin.

A. Total maximum daily loads (TMDLs).

EDITOR'S NOTE: Rows numbered 1 through 212 in this TMDL table in subsection A of 9VAC25-720-50 are not amended; therefore, the text of those rows is not set out.

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA ¹	Units
<u>213.</u>	<u>Upper Accotink Creek</u>	<u>Sediment TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia</u>	<u>Fairfax, Fairfax City</u>	<u>A15</u>	<u>Sediment</u>	<u>2,338</u>	<u>tons/year</u>
<u>214.</u>	<u>Lower Accotink Creek</u>	<u>Sediment TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia</u>	<u>Fairfax, Fairfax City</u>	<u>A15</u>	<u>Sediment</u>	<u>3,073</u>	<u>tons/year</u>
<u>215.</u>	<u>Long Branch (central)</u>	<u>Sediment TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia</u>	<u>Fairfax, Fairfax City</u>	<u>A15</u>	<u>Sediment</u>	<u>936</u>	<u>tons/year</u>
<u>216.</u>	<u>Upper Accotink Creek</u>	<u>Chloride TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia</u>	<u>Fairfax, Fairfax City</u>	<u>A15</u>	<u>Chloride</u>	<u>5,444,279</u>	<u>lbs/year</u>
<u>217.</u>	<u>Lower Accotink Creek</u>	<u>Chloride TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia</u>	<u>Fairfax, Fairfax City</u>	<u>A15</u>	<u>Chloride</u>	<u>3,723,479</u>	<u>lbs/year</u>

218.	<u>Long Branch (central)</u>	<u>Chloride TMDLs for the Accotink Creek Watershed, Fairfax County, Virginia</u>	<u>Fairfax, Fairfax City</u>	<u>A15</u>	<u>Chloride</u>	<u>873,049</u>	<u>lbs/year</u>
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Notes:

¹The total WLA can be increased prior to modification provided that DEQ tracks these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

²There were no point source dischargers in the modeled TMDL area.

EDITOR'S NOTE: Subsections B and C of 9VAC25-720-50 are not amended; therefore, the text of those subsections is not set out.

VA.R. Doc. No. R18-5475; Filed April 24, 2018, 9:00 a.m.

Final Regulation

9VAC25-870-55. Stormwater management plans.

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act in accordance with the second enactment of Chapters 10 and 163 of the 2017 Acts of Assembly, which exempts the actions of the board relating to the adoption of regulations necessary to implement the provisions of the act; however, the board is required to (i) provide a Notice of Intended Regulatory Action and (ii) provide for a 60-day public comment period prior to the board's adoption of the regulations.

A. A stormwater management plan shall be developed and submitted to the VSMP authority. The stormwater management plan shall be implemented as approved or modified by the VSMP authority and shall be developed in accordance with the following:

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.

2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

B. A complete stormwater management plan shall include the following elements:

1. Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and postdevelopment drainage areas;

2. Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;

3. A narrative that includes a description of current site conditions and final site conditions or if allowed by the VSMP authority, the information provided and documented during the review process that addresses the current and final site conditions;

4. A general description of the proposed stormwater management facilities and the mechanism through which

Title of Regulation: **9VAC25-870. Virginia Stormwater Management Program (VSMP) Regulation (amending 9VAC25-870-55, 9VAC25-870-160).**

Statutory Authority: §§ 62.1-44.15:25 and 62.1-44.15:28 of the Code of Virginia.

Effective Date: June 13, 2018.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4019, or email william.norris@deq.virginia.gov.

Summary:

Pursuant to Chapters 10 and 163 of the 2017 Acts of Assembly, the amendments require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia.

Regulations

the facilities will be operated and maintained after construction is complete;

5. Information on the proposed stormwater management facilities, including (i) the type of facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) the surface waters or karst features into which the facility will discharge;

6. Hydrologic and hydraulic computations, including runoff characteristics;

7. Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;

8. A map ~~or maps~~ of the site that depicts the topography of the site and includes:

- a. All contributing drainage areas;
- b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
- c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
- d. Current land use including existing structures, roads, and locations of known utilities and easements;
- e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- f. The limits of clearing and grading, and the proposed drainage patterns on the site;
- g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including ~~but not limited to~~ planned locations of utilities, roads, and easements;

9. If an operator intends to meet the requirements established in 9VAC25-870-63 or 9VAC25-870-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and

10. If payment of a fee is required with the stormwater management plan submission by the VSMP authority, the fee and the required fee form in accordance with Part XIII (9VAC25-870-700 et seq.) must have been submitted.

~~C. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia. All final plan elements, specifications, or~~

calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

D. A construction record drawing for permanent stormwater management facilities shall be submitted to the VSMP authority in accordance with 9VAC25-870-108 and 9VAC25-870-112. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

Part IV

Technical Criteria and State Permit Application Requirements for State Projects

9VAC25-870-160. Technical criteria and requirements for state projects.

A. This part specifies technical criteria and administrative procedures for all state projects.

B. Stormwater management state permit applications prepared for state projects shall comply with the technical criteria outlined in Part II (9VAC25-870-40 et seq.) of this chapter and, to the largest extent practicable, any locality's VSMP authority's technical requirements adopted pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the locality's VSMP authority's technical requirements are not practicable for the project under consideration.

C. The department may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria.

D. As a minimum, a stormwater management state permit application shall contain the following:

1. The location and the design of the proposed stormwater management facilities.
2. Overall site plan with pre-developed and post-developed condition drainage area maps.
3. Comprehensive hydrologic and hydraulic computations of the ~~pre-development~~ predevelopment and ~~post-development~~ postdevelopment runoff conditions for the required design storms, considered individually.
4. Calculations verifying compliance with the water quality requirements.

5. A description of the requirements for maintenance of the stormwater management facilities and a recommended schedule of inspection and maintenance.

6. The identification of a person or persons who will be responsible for maintenance.

~~7. All stormwater management and erosion and sediment control plans associated with a state permit application shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations. All final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.~~

VA.R. Doc. No. R17-5128; Filed April 23, 2018, 1:09 p.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from (i) the Administrative Process Act in accordance with § 2.2-4002 B 13 of the Code of Virginia, which excludes agency actions relating to content of, or rules for the conduct of, any examination required by law and (ii) Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act in accordance with § 2.2-4006 A 2 of the Code of Virginia, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. The Virginia Racing Commission will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **11VAC10-60. Participants (amending 11VAC10-60-10).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: June 14, 2018.

Agency Contact: Kimberly Mackey, Business Manager, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Summary:

The amendments eliminate some licensees of having to submit fingerprints every five years and allow for the payment of license fees by credit card.

11VAC10-60-10. Generally.

No person shall participate in any horse racing subject to the jurisdiction of the commission or in the conduct of a race meeting or pari-mutuel wagering of the race meeting unless the person possesses a permit from the commission and complies with the provisions of the Act and the regulations of the commission. Permits issued by the commission are not transferable.

A. Application for permit. A person desiring to obtain a permit to participate in horse racing with pari-mutuel wagering shall make an application for a permit on a form prescribed by the commission. The application shall be accompanied by a fee prescribed by the commission and the cost of fingerprinting. The applicant shall be photographed. The application shall be verified by the oath or affirmation of the applicant.

B. Fee schedule. Before submitting an application for a permit as a participant, the applicant shall consult the fee schedule (11VAC10-60-15) of the Virginia Racing Commission to ascertain the applicable fee, make out a check or money order payable to the Virginia Racing Commission or pay in cash or with a credit card the full amount of the fee, and submit the fee with the application.

C. Reciprocity. The commission shall conduct a review of the statutes of other jurisdictions pertaining to horse racing with pari-mutuel wagering to ascertain which jurisdictions have substantially the same standards as those of Virginia. Upon submission of an application and payment of the prescribed fee by a holder of a permit, license or other similar document from those jurisdictions whose standards for permits, licenses or similar documents are substantially the same, the commission may, in its discretion, grant reciprocity to the applicant provided that the applicant has not been convicted of a misdemeanor or felony.

D. Fingerprinting. The applicant shall be fingerprinted upon making his initial application in the Commonwealth ~~and at least once every five years thereafter~~. The commission may waive this requirement in connection with an application for a permit by reciprocity with another jurisdiction provided that the applicant was fingerprinted and was subjected to a criminal history record information check in a jurisdiction whose laws governing fingerprinting and background investigations are substantially the same as required by Virginia and that he has not been convicted of a misdemeanor or a felony. However, the commission, in its discretion, may require fingerprints from any applicant or holder of a permit at any time.

Regulations

E. Consideration of application. The commission, acting through its executive secretary or other designee, shall promptly consider any application for a permit and issue the permit based on the information contained in the application and all other information before it, including any investigation it deems appropriate. If an application for a permit is approved, the commission shall issue the permit.

F. Denial of application. If from the face of the application, an applicant appears ineligible because of the requirements specified in § 59.1-389 B of the Code of Virginia, his application shall be denied by the commission, acting through its executive secretary or other designee. The commission may deny an application for a permit for the reason specified in § 59.1-389 C of the Code of Virginia. Absent mitigating circumstances, the application for a permit shall be denied if the applicant has three or more misdemeanor convictions, regardless of offense, within five years preceding the application date. If the applicant has multiple convictions of the same offense on the same day, it shall not constitute three or more misdemeanor convictions for purposes of this regulation. The applicant may withdraw his application prior to denial.

G. Ineligible applicant. If it appears that the applicant may be ineligible because he has committed a felony or misdemeanor that may be detrimental to horse racing in the Commonwealth, he shall be afforded the opportunity to withdraw his application or request a hearing before a steward regarding his application. However, the commission, in its discretion, may issue a permit to an applicant providing the felony or misdemeanor is not one of those listed in § 59.1-389 C of the Code of Virginia.

H. Felonies considered detrimental. In the absence of mitigating circumstances, the following felonies are considered detrimental to horse racing in Virginia and the commission, acting through its executive secretary or other designee, shall deny the application and refuse to issue the permit if the applicant has been convicted of any of them:

1. For horsemen participants:

- a. Serious violent offenses, including ~~but not limited to~~ murder, rape, forcible sodomy, crimes against nature, and aggravated ~~assault/maiming~~ assault or maiming;
- b. Burglary offenses; and
- c. Arson offenses.

2. For employees of a licensee:

- a. ~~Larceny/theft~~ Larceny or theft offenses, including ~~but not limited to~~ robbery, embezzlement, and credit card theft;
- b. Fraud offenses, including ~~but not limited to~~ forgery, uttering, and credit card fraud;
- c. Arson offenses; and

d. Serious violent offenses, including ~~but not limited to~~ murder, rape, forcible sodomy, crimes against nature, and aggravated ~~assault/maiming~~ assault or maiming.

I. Renewal of permit. A holder of a currently valid permit may renew the permit annually by making application for a renewal on a form prescribed by the commission. The application for a renewal of a permit shall be accompanied by a fee prescribed by the commission. The applicant may be photographed with each application for a renewal.

J. Knowledge of regulations. A holder of a permit shall be familiar with and knowledgeable of the regulations of the commission. Every holder of a permit is presumed to know the regulations.

K. Reporting violations. A holder of a permit shall report immediately to the commission every observed violation of these regulations as well as all violations of state and federal laws during the race meeting.

L. Multiple participation. A holder of a permit may participate in horse racing in more than one capacity, with the exception of those capacities specifically prohibited by these regulations. A holder of a permit shall submit, in writing on a form prescribed by the commission, a request for approval of his multiple participation in horse racing. The stewards shall deny a request for multiple participation where it would, in their discretion, pose a potential conflict of interest. Where approval is granted to a holder of a valid permit, all applicable fees shall be paid by the participant.

M. Employment of unauthorized participants. A holder of a permit shall not employ for participation within the enclosure any person who does not possess the appropriate permit issued by the commission or has not made application for the appropriate permit.

N. Financial responsibility. A holder of a permit who obtains food, shelter, medicine, transportation, veterinary services or other goods and services for himself or for others shall be responsible for paying for those goods and services. The stewards shall neither be obligated to collect debts nor intervene where there is a dispute over a debt, unless in receipt of a judgment from a duly constituted court in the Commonwealth.

O. Possession of permit. A holder of a permit shall have in his possession at all times his permit issued by the commission and shall be responsible for its safekeeping. The holder shall display his permit to gain entry to the enclosure or upon the request of appropriate racing officials, commission personnel, or security personnel.

P. Duplicate permit. A holder of a permit shall report immediately to the stewards the loss of his permit and immediately make application for a duplicate. The stewards shall notify the appropriate security personnel of the loss of the permit.

Q. Misuse of permit. A holder of a permit shall not allow another person to use his permit for the purpose of obtaining any benefits or privileges pertaining to the permit.

R. Search and seizure. A holder of a permit shall consent upon application and for the duration of the permit to personal inspections (searches) of the holder, inspections (searches) of the holder's personal property, and inspections (searches) of the premises and property located within the enclosure of the racetrack related to his participation in a race meeting by persons authorized by the commission, and to seizure of such property as is determined by the commission's designee conducting the search to be in violation of Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia or this chapter. The following provisions shall apply to searches and seizures:

1. Any drug, stimulant, narcotic, controlled substance, drug paraphernalia, hypodermic needle, hypodermic syringe, battery or other electrical or mechanical appliance or any other device or substance which could be used to affect the speed or action of a horse, or any other device prohibited by this chapter that is in the possession of a holder of a permit may be seized.

2. Commission personnel have the right to enter into or upon buildings, stables, rooms (other than residences), private vehicles or other places within the enclosure, and may examine them, and inspect and examine personal property and effects of a holder of a permit for the purpose of determining that the items listed in subdivision 1 of this subsection are not in the possession of a permit holder unless authorized by Chapter 29 of Title 59.1 of the Code of Virginia or this chapter.

3. In addition, commission personnel shall visit, investigate, and have free access to the office, track, facilities, or other places of business of any licensee or permit holder and may compel the production of any of the books, documents, records, or memoranda of any licensee or permit holder for the purpose of satisfying themselves that Chapter 29 of Title 59.1 of the Code of Virginia and this chapter are being strictly complied with.

4. Failure to submit to any inspection or search described above in this subsection or to any production of documents or seizure of property resulting therefrom may subject a licensee or a holder of a permit to disciplinary action. In the event that such licensee or permit holder refuses to submit, the following procedure shall apply:

Such refusal shall be immediately reported to the stewards by the person attempting to conduct the search. Such refusal, and the basis therefor, shall be provided in writing to the stewards by the permit holder and shall state the date, time and circumstances of the attempted search and his ~~reason(s)~~ reasons for refusing to submit to it. Upon receipt of such report, the stewards may take appropriate

disciplinary action, which may include the revocation or suspension of the permit or referral to the appropriate law-enforcement authorities, but neither the search nor any seizure of the property shall proceed.

5. The foregoing shall not preclude commission personnel from conducting searches and seizures when they have reasonable suspicion that a permit holder is in the act of violating a regulation or evidence of a violation of a regulation may be destroyed, in which event the provisions of these regulations dealing with consent, refusal to consent, scope of search, and disciplinary action shall apply.

S. Workers' compensation. An applicant for a permit who is subject to the compensation provisions of the Virginia Workers' Compensation Act (§ 65.2-100 et seq. of the Code of Virginia) shall comply with the provisions of the Virginia Workers' Compensation Act regarding insurance and self-insurance and shall submit proof of his compliance with his application for a permit. Failure to remain in compliance with the insurance and self-insurance provisions of the Virginia Workers' Compensation Act throughout the duration of the permit shall constitute grounds for its revocation or suspension.

T. Supervision of employees. A holder of a permit who is an employer shall supervise his employees so that their participation in horse racing is in accordance with these regulations, and shall be held jointly responsible for the actions of his employees as they relate to racing matters.

U. Human drug testing. The use, possession, or transportation of any controlled substance or drug as those terms are defined in the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) is prohibited within the enclosure of the racetrack unless the controlled substance or drug was obtained pursuant to a valid prescription or order from a duly licensed physician who is acting in the course of his professional practice or is otherwise authorized by these regulations. It shall be the responsibility of the holder of a permit to provide proof that he is using, possessing, or transporting the controlled substance or drug pursuant to a valid prescription or order from a duly licensed physician or that such use, possession, or transportation is otherwise authorized by these regulations.

In addition, the following provisions shall apply to the use or possession of controlled substances or drugs:

1. Any apprentice jockey, assistant starter, assistant trainer, clerk of scales, driver of Standardbreds, driver of starting gate, exercise rider, farrier, groom, hotwalker, identifier, jockey, outrider, paddock judge, patrol judge, placing judge, pony rider, starter, steward, trainer, valet, veterinarian, or veterinarian's assistant at any horse racing facility licensed by the commission may be subjected by the commission or its designee to a urine test or other fluid

Regulations

test, including a blood test, for the purpose of detection of the presence of controlled substances, in the following manner:

a. At least once per week during the course of every unlimited race meeting, the executive secretary of the commission, or his designee, may direct that the ~~above-described~~ testing as described in this subsection be conducted. The day of each such testing shall be selected by the executive secretary or his designee at random and shall not be announced to the persons affected until the day so selected shall have arrived; and

b. Each sample shall be provided in the presence of the licensee's physician or other representative appointed by the executive secretary or his designee and in sufficient quantity to provide a split sample whenever possible. Such ~~sample(s)~~ samples shall be immediately sealed and tagged. Evidence of such sealing shall be indicated by the signature of the tested permit holder, but the portion of the form which is provided to the laboratory for analysis shall not identify the individual permit holder by name. Only laboratories approved by the commission may be used in obtaining analysis reports or urine or other specimens. The commission and the stewards shall receive reports directly from the laboratory. If the permit holder so requests in writing to the stewards within 48 hours of notice of a positive lab report on the test sample submitted, the second portion shall be sent for further testing to a drug testing laboratory designated and approved by the commission. All costs for the transportation and testing of the second sample portion shall be the financial responsibility of the requesting permit holder, and payment shall be due from the requesting permit holder within 30 days of receipt of notice of the costs. The licensee's physician or other representative appointed by the executive secretary or his designee shall have overall responsibility for the preservation, storage and safeguarding of the second sample portion.

2. ~~Notwithstanding the foregoing, any~~ The steward, acting with reasonable suspicion, may direct any holder of a permit, whether or not listed in the categories ~~above~~ in this subsection, to submit a specimen of urine, or to submit to any other fluid test including a blood test for the detection of controlled substances or drugs, in which event the provisions of these regulations dealing with collection of ~~sample(s)~~ samples, failure to provide a sample, positive sample ~~test(s)~~ tests, and disciplinary action shall apply.

3. The presence in a sample of metabolites of opioid, barbiturate, cannabis, cocaine, amphetamine, hallucinogen, phencyclidine-type drugs, volatile solvents or volatile nitrates, or other mood-altering or dependency-causing controlled substances or drugs will be considered a positive test. A positive test result shall be reported, in writing, to

the executive secretary or his designee, who shall notify the permit holder involved in writing as quickly as possible.

4. In the event of a positive test, the following shall also apply:

a. For an initial positive test, a holder of a permit shall undergo a professional evaluation, at his own expense, by a physician approved by the stewards. If the evaluation indicates that the person's condition is nonaddictive and not detrimental to the best interests of horse racing, the person shall be allowed to participate in horse racing after producing a negative test and agreeing to undergo random testing for a period of not greater than six months at the discretion of the stewards;

b. If the evaluation indicates the person's condition is addictive or detrimental to the best interests of horse racing, the person shall not be allowed to participate in horse racing until he can produce a negative test, has successfully completed a drug rehabilitation program acceptable to the commission, and agrees to undergo random testing for a period of not greater than six months at the discretion of the stewards; and

c. For a second positive test, a holder of a permit shall be suspended indefinitely by the stewards and may only apply for reinstatement after having successfully completed a drug rehabilitation program acceptable to the commission and agreeing to undergo random testing for a period of not greater than one year at the discretion of the stewards.

5. ~~Notwithstanding the foregoing, a~~ A holder of a permit whose sample is positive may be subject to disciplinary action including ~~but not limited to~~ revocation or suspension of his permit.

V. Human alcohol testing. On any racing day, any holder of a permit may not have present within his system an amount of alcohol which would constitute being under the influence of alcohol, defined as .08% alcohol content or more, or being impaired, defined as between .079% and .04% alcohol content. In addition, the following provisions shall apply to the consumption of alcoholic beverages:

1. The commission hereby adopts breath testing as its approved method of testing for the presence of alcohol in humans and adopts the following procedure for such testing:

a. Any apprentice jockey, assistant starter, assistant trainer, clerk of scales, driver of Standardbreds, driver of a starting gate, exercise rider, farrier, groom, hotwalker, identifier, jockey, outrider, paddock judge, patrol judge, placing judge, pony rider, starter, steward, trainer, valet, veterinarian or veterinarian's assistant at any horse racing facility licensed by the commission may be required to

take a breath alcohol test prior to his participation in horse racing;

b. Testing devices shall be selected by the commission from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published in the Federal Register from time to time by the National Highway Traffic Safety Administration (NHTSA), United States Department of Transportation;

c. Each device shall be properly maintained and shall be calibrated by the use of calibrating unit listed on the NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers (as amended) with sufficient frequency to ensure the accuracy of the device (within plus or minus .01%), but not less frequently than provided in the manufacturer's instructions;

d. Tests shall be conducted by a trained and qualified operator. The operator shall have received training on the operational principles of the particular instrument employed and practical experience in the operation of the device and use of the breath alcohol calibrating unit; and

e. Tests shall be conducted in accordance with procedures specified by the manufacturer of the testing device, consistent with sound technical judgment, and shall include appropriate restrictions on ambient air temperature.

2. ~~Notwithstanding the foregoing, any~~ The steward, acting with reasonable suspicion, may direct any holder of a permit, whether or not listed in the categories ~~above~~ in this subsection, to submit to a breath alcohol test, in which event the provisions of subdivision 4 of this subsection shall apply.

3. A holder of a permit listed in subdivision 1 a of this subsection who is impaired shall not participate in horse racing on that day, but for the first occurrence, shall not be subject to further disciplinary action; a second or subsequent occurrence shall subject such permit holder to disciplinary action.

4. A holder of a permit who is under the influence of alcohol or refuses to take a breath alcohol test at the direction of the stewards is subject to disciplinary action.

W. Reciprocity of rulings. Any holder of a permit whose permit or license to engage in any activity related to horse racing in any other jurisdiction has been denied, suspended, or revoked for just cause in that jurisdiction shall not be permitted to participate in horse racing with pari-mutuel wagering in the Commonwealth of Virginia if such denial, suspension, or revocation is still in effect.

X. Official address. All notices required by law and by regulations of the commission to be mailed by the commission to any holder of a permit shall be validly given when mailed to the latest address on file with the

commission. Each holder of a permit shall maintain a record of his current mailing address with the commission. Any change of address by a holder of a permit shall be submitted in writing to the commission within 30 days of such change.

Y. Disorderly conduct. A holder of a permit shall not engage in disorderly conduct, which shall include ~~but not be limited to~~ using profane, abusive or insulting language, or assaulting or threatening to assault other participants, racing officials, commission employees or the public.

Z. Unwarranted objection. A holder of a permit may be subject to disciplinary action by the stewards if they determine that an objection or protest is unwarranted and without merit.

VA.R. Doc. No. R18-5407; Filed April 23, 2018, 2:36 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

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 Department of Medical Assistance Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-10).**

12VAC30-110. Eligibility and Appeals (amending 12VAC30-110-1620).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396.

Effective Date: June 15, 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:

The amendments relocate provisions regarding coverage for former out-of-state foster care youth from the State Plan for Medical Assistance, where it was established, into

Regulations

the state only regulations at 12VAC30-110-1260 because of a determination by the Centers for Medicare and Medicaid Services that this coverage is permitted under a § 1115 waiver. This action does not represent a change in coverage, and former out-of-state foster care youth will continue to be eligible for Medicaid coverage as they have been since July 1, 2014.

12VAC30-30-10. Mandatory coverage: categorically needy and other required special groups.

The Title IV-A agency or the Department of Medical Assistance Services Central Processing Unit determines eligibility for Title XIX services. The following groups shall be eligible for medical assistance as specified:

1. Parents and other caretaker relatives of dependent children with household income at or below a standard established by the state in 12VAC30-40-100 consistent with 42 CFR 435.110 and §§ 1902(a)(10)(A)(i)(I) and 1931(b) of the Social Security Act. Individuals qualifying under this eligibility group shall meet the following criteria:

a. Parents, other caretaker relatives (defined at 42 CFR 435.4) including pregnant women, or dependent children (defined at 42 CFR 435.4) younger than the age of 18 years. This group includes individuals who are parents or other caretaker relatives of children who are 18 years of age provided the children are full-time students in a secondary school or the equivalent level of vocational or technical training and are expected to complete such school or training before their 19th birthday.

b. Spouses of parents and other caretaker relatives shall include other relatives of the child based on blood (including those of half-blood), adoption, or marriage. Other relatives of a specified degree of the dependent child shall include any blood relative (including those of half-blood) and including (i) first cousins; (ii) nephews or nieces; (iii) persons of preceding generations as denoted by prefixes of grand, great, or great-great; (iv) stepbrother; (v) stepsister; (vi) a relative by adoption following entry of the interlocutory or final order, whichever is first; (vii) the same relatives by adoption as listed in this subdivision 1 b; and (viii) spouses of any persons named in this subdivision 1 b even after the marriage is terminated by death or divorce.

MAGI-based income methodologies in 12VAC30-40-100 shall be used in calculating household income.

2. Women who are pregnant or postpartum with household income at or below a standard established by the Commonwealth in 12VAC30-40-100, consistent with 42 CFR 435.116 and §§ 1902(a)(10)(A)(i)(III) and (IV), 1902(a)(10)(A)(ii)(I) and (IX), and 1931(b) of the Act. Individuals qualifying under this eligibility group shall be pregnant or postpartum as defined in 42 CFR 435.4.

a. A woman who, while pregnant, was eligible for, applied for, and received Medicaid under the approved state plan on the day her pregnancy ends. The woman continues to be eligible, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan for a 60-day period, beginning on the last day of her pregnancy, and for any remaining days in the month in which the 60th day falls.

b. A pregnant woman who would otherwise lose eligibility because of an increase in income of the family in which she is a member during the pregnancy or the postpartum period that extends through the end of the month in which the 60-day period, beginning on the last day of pregnancy, ends.

MAGI-based income methodologies in 12VAC30-40-100 shall be used in calculating household income.

3. Infants and children younger than the age of 19 years with household income at or below standards based on this age group, consistent with 42 CFR 435.118 and §§ 1902(a)(10)(A)(i)(III), (IV) and (VIII); 1902(a)(10)(A)(ii)(IV) and (IX); and 1931(b) of the Act. Children qualifying under this eligibility group shall meet the following criteria:

- a. They are younger than the age of 19 years; and
- b. They have a household income at or below the standard established by the Commonwealth.

MAGI-based income methodologies in 12VAC30-40-100 shall be used in calculating household income.

4. Former foster care children younger than the age of 26 years who are not otherwise mandatorily eligible in another Medicaid classification, who were on Medicaid and in foster care when they turned age 18 years, or who aged out of foster care. Individuals qualifying under this eligibility group shall meet the following criteria:

- a. They shall be younger than the age of 26 years;
- b. They shall not be otherwise eligible for and enrolled for mandatory coverage under the state plan; and
- c. They were in foster care under the responsibility of ~~any~~ the state of Virginia or a federally recognized tribe and were enrolled in Virginia Medicaid under the state plan ~~of that state~~ when they turned age 18 years or at the time of aging out of the foster care program.

5. Families terminated from coverage under § 1931 of the Act solely because of earnings or hours of employment shall be entitled to up to 12 months of extended benefits in accordance with § 1925 of the Act.

6. A child born to a woman who is eligible for and receiving Medicaid on the date of the child's birth. The child is deemed to have applied and been found eligible for

Medicaid on the date of birth and remains eligible for one year from birth, as long as he remains a resident of the Commonwealth. A redetermination of eligibility must be completed on behalf of the deemed child at age one year and annually thereafter so long as he remains eligible.

7. Aged, blind, and disabled individuals receiving cash assistance.

a. Individuals who meet more restrictive requirements for Medicaid than the SSI requirements. (This includes persons who qualify for benefits under § 1619(a) of the Act or who meet the eligibility requirements for SSI status under § 1619(b)(1) of the Act and who met the state's more restrictive requirements for Medicaid in the month before the month they qualified for SSI under § 1619(a) or met the requirements under § 1619(b)(1) of the Act. Medicaid eligibility for these individuals continues as long as they continue to meet the § 1619(a) eligibility standard or the requirements of § 1619(b) of the Act.)

b. These persons include the aged, the blind, and the disabled.

c. Protected SSI children (pursuant to § 1902(a)(10)(A)(i)(II) of the Act) (P.L. 105-33 § 4913). Children who meet the pre-welfare reform definition of childhood disability who lost their SSI coverage solely as a result of the change in the definition of childhood disability, and who also meet the more restrictive requirements for Medicaid than the SSI requirements.

d. The more restrictive categorical eligibility criteria are described in 12VAC30-30-40.

Financial criteria are described in 12VAC30-40-10.

8. Qualified severely impaired blind and disabled individuals under age 65 years who:

a. For the month preceding the first month of eligibility under the requirements of § 1905(q)(2) of the Act, received SSI, a state supplementary payment (SSP) under § 1616 of the Act or under § 212 of P.L. 93-66 or benefits under § 1619(a) of the Act and were eligible for Medicaid; or

b. For the month of June 1987, were considered to be receiving SSI under § 1619(b) of the Act and were eligible for Medicaid. These individuals must:

(1) Continue to meet the criteria for blindness or have the disabling physical or mental impairment under which the individual was found to be disabled;

(2) Except for earnings, continue to meet all nondisability-related requirements for eligibility for SSI benefits;

(3) Have unearned income in amounts that would not cause them to be ineligible for a payment under § 1611(b) of the Act;

(4) Be seriously inhibited by the lack of Medicaid coverage in their ability to continue to work or obtain employment; and

(5) Have earnings that are not sufficient to provide for himself a reasonable equivalent of the Medicaid, SSI (including any federally administered SSP), or public funded attendant care services that would be available if he did have such earnings.

The state applies more restrictive eligibility requirements for Medicaid than under SSI and under 42 CFR 435.121. Individuals who qualify for benefits under § 1619(a) of the Act or individuals described above who meet the eligibility requirements for SSI benefits under § 1619(b)(1) of the Act and who met the state's more restrictive requirements in the month before the month they qualified for SSI under § 1619(a) or met the requirements of § 1619(b)(1) of the Act are covered. Eligibility for these individuals continues as long as they continue to qualify for benefits under § 1619(a) of the Act or meet the SSI requirements under § 1619(b)(1) of the Act.

9. Except in states that apply more restrictive requirements for Medicaid than under SSI, blind or disabled individuals who:

a. Are at least 18 years of age; and

b. Lose SSI eligibility because they become entitled to Old Age, Survivor, and Disability Insurance (OASDI) child's benefits under § 202(d) of the Act or an increase in these benefits based on their disability. Medicaid eligibility for these individuals continues for as long as they would be eligible for SSI, absent their OASDI eligibility.

The state does not apply more restrictive income eligibility requirements than those under SSI.

10. Except in states that apply more restrictive eligibility requirements for Medicaid than under SSI, individuals who are ineligible for SSI or optional state supplements (if the agency provides Medicaid under § 435.230 of the Act), because of requirements that do not apply under Title XIX of the Act.

11. Individuals receiving mandatory state supplements.

12. Individuals who in December 1973 were eligible for Medicaid as an essential spouse and who have continued, as a spouse, to live with and be essential to the well-being of a recipient of cash assistance. The recipient with whom the essential spouse is living continues to meet the December 1973 eligibility requirements of the state's approved plan for Old Age Assistance, Aid to the Blind,

Regulations

Aid to the Permanently and Totally Disabled, or Aid to the Aged, Blind, and Disabled and the spouse continues to meet the December 1973 requirements for have his needs included in computing the cash payment. In December 1973, Medicaid coverage of the essential spouse was limited to the aged, the blind, and the disabled.

13. Institutionalized individuals who were eligible for Medicaid in December 1973 as inpatients of Title XIX medical institutions or residents of Title XIX intermediate care facilities, if, for each consecutive month after December 1973, they:

- a. Continue to meet the December 1973 Medicaid State Plan eligibility requirements;
- b. Remain institutionalized; and
- c. Continue to need institutional care.

14. Blind and disabled individuals who:

- a. Meet all current requirements for Medicaid eligibility except the blindness or disability criteria;
- b. Were eligible for Medicaid in December 1973 as blind or disabled; and
- c. For each consecutive month after December 1973 continue to meet December 1973 eligibility criteria.

15. Individuals who would be SSI/SSP eligible except for the increase in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972, and who were receiving cash assistance in August 1972. This includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in this state's August 1972 plan), and persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

16. Individuals who:

- a. Are receiving OASDI and were receiving SSI/SSP but became ineligible for SSI/SSP after April 1977; and
- b. Would still be eligible for SSI or SSP if cost-of-living increases in OASDI paid under § 215(i) of the Act received after the last month for which the individual was eligible for and received SSI/SSP and OASDI, concurrently, were deducted from income.

The state applies more restrictive eligibility requirements than those under SSI and the amount of increase that caused SSI/SSP ineligibility and subsequent increases are deducted when determining the amount of countable income for categorically needy eligibility.

17. Disabled widows and widowers who would be eligible for SSI or SSP except for the increase in their OASDI

benefits as a result of the elimination of the reduction factor required by § 134 of P.L. 98-21 and who are deemed, for purposes of Title XIX, to be SSI beneficiaries or SSP beneficiaries for individuals who would be eligible for SSP only, under § 1634(b) of the Act.

The state does not apply more restrictive income eligibility standards than those under SSI.

18. Disabled widows, disabled widowers, and disabled unmarried divorced spouses who had been married to the insured individual for a period of at least 10 years before the divorce became effective, who have attained the age of 50, who are receiving Title II payments, and who because of the receipt of Title II income lost eligibility for SSI or SSP which they received in the month prior to the month in which they began to receive Title II payments, who would be eligible for SSI or SSP if the amount of the Title II benefit were not counted as income, and who are not entitled to Medicare Part A.

The state applies more restrictive eligibility requirements for its blind or disabled than those of the SSI program.

19. Qualified Medicare beneficiaries:

- a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818 of the Act);
- b. Whose income does not exceed 100% of the federal level; and
- c. Whose resources do not exceed twice the maximum standard under SSI or, effective January 1, 2010, the resource limit set for the Medicare Part D Low Income Subsidy Program.

Medical assistance for this group is limited to Medicare cost sharing as defined in item 3.2 of this plan.

20. Qualified disabled and working individuals:

- a. Who are entitled to hospital insurance benefits under Medicare Part A under § 1818A of the Act;
- b. Whose income does not exceed 200% of the federal poverty level;
- c. Whose resources do not exceed twice the maximum standard under SSI; and
- d. Who are not otherwise eligible for medical assistance under Title XIX of the Act.

Medical assistance for this group is limited to Medicare Part A premiums under §§ 1818 and 1818A of the Act.

21. Specified low-income Medicare beneficiaries:

- a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818A of the Act);

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Final Regulation

b. Whose income for calendar years 1993 and 1994 exceeds the income level in subdivision 25 b of this section, but is less than 110% of the federal poverty level, and whose income for calendar years beginning 1995 is less than 120% of the federal poverty level; and

c. Whose resources do not exceed twice the maximum standard under SSI or, effective January 1, 2010, the resource limit set for the Medicare Part D Low Income Subsidy Program.

Medical assistance for this group is limited to Medicare Part B premiums under § 1839 of the Act.

22. a. Each person to whom SSI benefits by reason of disability are not payable for any month solely by reason of clause (i) or (v) of § 1611(e)(3)(A) shall be treated, for purposes of Title XIX, as receiving SSI benefits for the month.

b. The state applies more restrictive eligibility standards than those under SSI. Individuals whose eligibility for SSI benefits are based solely on disability who are not payable for any months solely by reason of clause (i) or (v) of § 1611(e)(3)(A) and who continue to meet the more restrictive requirements for Medicaid eligibility under the state plan, are eligible for Medicaid as categorically needy.

12VAC30-110-1620. (~~Reserved~~) Coverage of former foster care youth.

A. The Title IV-A agency or the Department of Medical Assistance Services Central Processing Unit determines eligibility for Title XIX services.

B. Former foster care children younger than the age of 26 years who are not otherwise mandatorily eligible in another Medicaid classification and who were on Medicaid and in foster care when they turned age 18 years or aged out of foster care are eligible for medical assistance as specified. Individuals qualifying under this eligibility group shall meet the following criteria:

1. They shall be younger than the age of 26 years;
2. They shall not be otherwise eligible for or enrolled in mandatory coverage under the state plan; and
3. They were in foster care in a state other than Virginia and were enrolled in Medicaid under the state plan of that state when they turned age 18 years or at the time of aging out of the foster care program.

VA.R. Doc. No. R18-5377; Filed April 12, 2018, 11:20 a.m.



REGISTRAR'S NOTICE: The Board of Accountancy is claiming an exemption from the Administrative Process Act in accordance with the second enactment of Chapters 45 and 82 of the 2018 Acts of Assembly, which exempts the actions of the board relating to the adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide an opportunity for public comment on regulations prior to their adoption.

Title of Regulation: **18VAC5-22. Board of Accountancy Regulations (amending 18VAC5-22-20; adding 18VAC5-22-180).**

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Effective Date: June 13, 2018.

Agency Contact: Rebekah E. Allen, Enforcement Director, Board of Accountancy, 9960 Mayland Drive, Suite 402, Henrico, VA 23233, telephone (804) 367-2006, FAX (804) 527-4207, or email rebekah.allen@boa.virginia.gov.

Summary:

Pursuant to Chapters 45 and 82 of the 2018 Acts of Assembly, the amendments (i) change the term of licensure from 12 months to a term defined by the Virginia Board of Accountancy and set the expiration date for all licenses as June 30; (ii) provide for the transition of existing licenses to the new expiration date, including proration of fees during the transition; and (iii) change the existing fee schedule to reflect this transitional period.

18VAC5-22-20. Fees.

A. The board shall charge the following fees for services it provides:

Processing an initial application to take one or more sections of the CPA examination	\$120
Processing additional applications to take one or more sections of the CPA examination	\$20
Preliminary evaluation of whether a person has met the requirements to take the CPA examination	\$25
Processing an application for issuance of a Virginia license to a person	\$75

Regulations

Processing an application for issuance of a Virginia license to a firm \$100

Processing an application for the timely renewal of a person's Virginia license except as provided in subsection B of 18VAC5-22-180 \$60

Processing an application for the timely renewal of a firm's Virginia license except as provided in subsection B of 18VAC5-22-180 \$75

Additional fee for processing an application for the renewal of a person's Virginia license that is not timely \$100

Additional fee for processing an application for the renewal of a firm's Virginia license that is not timely \$100

Processing an application for reinstatement of a person's Virginia license \$350

Processing an application for reinstatement of a firm's Virginia license \$500

Processing an application for lifting the suspension of the privilege of using the CPA title in Virginia \$350

Processing an application for lifting the suspension of the privilege of providing attest services or compilation services for persons or entities located in Virginia \$500

Providing or obtaining information about a person's grades on sections of the CPA examination \$25

Processing requests for verification that a person or firm holds a Virginia license:

1. Online request \$25

2. Manual request \$50

Providing an additional wall certificate \$25

Additional fee for not responding within 30 calendar days to any request for information by the board under subsection A of 18VAC5-22-170 \$100

Additional fee for not using the online payment option for any service provided by the board \$25

B. All fees for services the board provides are due when the service is requested and are nonrefundable.

18VAC5-22-180. Issuance, renewal, and reinstatement of licenses.

A. Any Virginia license issued, renewed, or reinstated on or after February 26, 2018, and on or before June 30, 2018, shall expire on June 30, 2019, and its holder shall pay the fee prescribed in 18VAC5-22-20 upon submission of a completed license application.

B. Any Virginia license expiring between July 31, 2018, and on or before March 31, 2019, that is renewed pursuant to this subsection shall expire on June 30, 2019. Any Virginia license expiring between April 30, 2019, and on or before May 31, 2019, that is renewed pursuant to this subsection shall expire on June 30, 2020.

1. A person who holds a Virginia license that expires between July 31, 2018, and May 31, 2019, shall pay a prorated renewal fee as prescribed in this subdivision upon submission of a completed license renewal application.

<u>Current Expiration Date</u>	<u>Renewal Fee</u>	<u>Expiration Date Following Renewal</u>
<u>July 31, 2018</u>	<u>\$55</u>	<u>June 30, 2019</u>
<u>August 31, 2018</u>	<u>\$50</u>	<u>June 30, 2019</u>
<u>September 30, 2018</u>	<u>\$45</u>	<u>June 30, 2019</u>
<u>October 31, 2018</u>	<u>\$40</u>	<u>June 30, 2019</u>
<u>November 30, 2018</u>	<u>\$35</u>	<u>June 30, 2019</u>
<u>December 31, 2018</u>	<u>\$30</u>	<u>June 30, 2019</u>
<u>January 31, 2019</u>	<u>\$25</u>	<u>June 30, 2019</u>
<u>February 28, 2019</u>	<u>\$20</u>	<u>June 30, 2019</u>
<u>March 31, 2019</u>	<u>\$15</u>	<u>June 30, 2019</u>
<u>April 30, 2019</u>	<u>\$60</u>	<u>June 30, 2020</u>
<u>May 31, 2019</u>	<u>\$60</u>	<u>June 30, 2020</u>

2. A firm that holds a Virginia license that expires between July 31, 2018, and May 31, 2019, shall pay a prorated renewal fee as prescribed in this subdivision upon submission of a completed license renewal application.

<u>Current Expiration Date</u>	<u>Renewal Fee</u>	<u>Expiration Date Following Renewal</u>
<u>July 31, 2018</u>	<u>\$68</u>	<u>June 30, 2019</u>
<u>August 31, 2018</u>	<u>\$62</u>	<u>June 30, 2019</u>
<u>September 30, 2018</u>	<u>\$56</u>	<u>June 30, 2019</u>

<u>October 31, 2018</u>	<u>\$50</u>	<u>June 30, 2019</u>
<u>November 30, 2018</u>	<u>\$43</u>	<u>June 30, 2019</u>
<u>December 31, 2018</u>	<u>\$37</u>	<u>June 30, 2019</u>
<u>January 31, 2019</u>	<u>\$31</u>	<u>June 30, 2019</u>
<u>February 28, 2019</u>	<u>\$25</u>	<u>June 30, 2019</u>
<u>March 31, 2019</u>	<u>\$18</u>	<u>June 30, 2019</u>
<u>April 30, 2019</u>	<u>\$75</u>	<u>June 30, 2020</u>
<u>May 31, 2019</u>	<u>\$75</u>	<u>June 30, 2020</u>

C. Any Virginia license issued or reinstated from July 1, 2018, to on or before March 31, 2019, shall expire on June 30, 2019, and its holder shall pay the fee prescribed in 18VAC5-22-20 upon submission of a completed license application. Beginning April 1, 2019, any Virginia license issued or reinstated during the months of April, May, or June shall expire on June 30 of the succeeding calendar year, and its holder shall pay the fee prescribed in 18VAC5-22-20 upon submission of a completed license application.

D. For Virginia licenses expiring on June 30, 2019, or later, the holder of a Virginia license shall annually renew his license on or before June 30 of each calendar year by submitting a completed license renewal application and paying to the board a renewal fee as prescribed in 18VAC5-22-20.

VA.R. Doc. No. R18-5411; Filed April 23, 2018, 12:39 p.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: June 13, 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.

Summary:

The amendments add seven compounds into Schedule I of the Drug Control Act as recommended by the Virginia Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia. The compounds added by this regulatory action will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

- 1-(1,3-benzodioxol-5-yl)-2-(dimethylamino)-1-pentanone (other names: N,N-Dimethylpentylone, Dipentylone);
- 4-chloro-alpha-Pyrrolidinovalerophenone (other name: 4-chloro-alpha-PVP);
- 4-methyl-alpha-Pyrrolidinoheptophenone (other name: MPHP);
- 4-fluoro-alpha-Pyrrolidinoheptophenone (other name: 4-fluoro-PV8);
- 1-(4-methoxyphenyl)-2-(pyrrolidin-1-yl)octan-1-one (other name: 4-methoxy-PV9);
- 4-allyloxy-3,5-dimethoxyphenethylamine (other name: Allylescaline);
- 4-methyl-alpha-ethylaminopentiophenone; and
- N-(4-fluorophenyl)-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: para-fluoroisobutryl fentanyl).

The placement of drugs listed in this subsection shall remain in effect until August 22, 2018, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

- 6-ethyl-6-nor-lysergic acid diethylamide (other name: ETH-LAD), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;
- 6-allyl-6-nor-lysergic acid diethylamide (other name: AL-LAD), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation;

Regulations

3. Synthetic opioids:

a. N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide (other name: beta-hydroxythiofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation;

b. N-(2-fluorophenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other names: 2-fluorofentanyl, ortho-fluorofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation; and

c. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-2-propenamide (other name: Acryl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation;

4. Cannabimimetic agents:

a. 1-pentyl-N-(phenylmethyl)-1H-indole-3-carboxamide (other name: SDB-006), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

b. Quinolin-8-yl 1-(4-fluorobenzyl)-1H-indole-3-carboxylate (other name: FUB-PB-22), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation; and

5. Benzodiazepine: flubromazepam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until December 13, 2018, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 4-Bromo-2,5-dimethoxy-N-[(2-hydroxyphenyl)methyl]-benzeneethanamine (25B-NBOH), its optical, position, and geometric isomers, salts and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Methyl N-[1-(cyclohexylmethyl)-1H-indole-3-carbonyl]valinate (MMB-CHMICA), its salts, isomers, and salts of isomers whenever the existence of such salts,

isomers, and salts of isomers is possible within the specific chemical designation.

3. N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide (Tetrahydrofuran fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until February 18, 2019, unless enacted into law in the Drug Control Act.

D. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. 5-methoxy-N-ethyl-N-isopropyltryptamine (5-MeO-EIPT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. 4-hydroxy-N,N-diisopropyltryptamine (4-OH-DIPT), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. (N-methyl aminopropyl)-2,3-dihydrobenzofuran (MAPDB), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

5. 3,4-tetramethylene-alpha-pyrrolidinovalerophenone (TH-PVP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6. 4-chloro-alpha-methylamino-valerophenone (4-chloropentedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

7. Synthetic opioids:

a. 2-methoxy-N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-acetamide (Methoxyacetyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the

existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide (Cyclopropyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

8. Cannabimimetic agent: N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide (5-fluoro-ADB-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until June 12, 2019, unless enacted into law in the Drug Control Act.

E. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 2-(methylamino)-2-phenyl-cyclohexanone (other name: Deschloroketamine), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. 2-methyl-1-(4-(methylthio)phenyl)-2-morpholinopropiophenone (other name: MMMP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Alpha-ethylaminohexanophenone (other name: N-ethylhexedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. N-ethyl-1-(3-methoxyphenyl)cyclohexylamine (other name: 3-methoxy-PCE), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

5. 4-fluoro-alpha-pyrrolidinohexiophenone (other name: 4-fluoro-alpha-PHP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6. N-ethyl-1,2-diphenylethylamine (other name: Ephedrine), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

7. Synthetic opioids:

a. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-1,3-benzodioxole-5-carboxamide (other name: Benzodioxole fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methylbenzamide (other name: U-49900), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. 2-(2,4-dichlorophenyl)-N-[2-(dimethylamino)cyclohexyl]-N-methylacetamide (other name: U-48800), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

8. Central nervous system stimulants:

a. Methyl 2-(4-fluorophenyl)-2-(2-piperidinyl)acetate (other name: 4-fluoromethylphenidate), including its salts, isomers, and salts of isomers.

b. Isopropyl-2-phenyl-2-(2-piperidinyl)acetate (other name: Isopropylphenidate), including its salts, isomers, and salts of isomers.

The placement of drugs listed in this subsection shall remain in effect until August 21, 2019, unless enacted into law in the Drug Control Act.

F. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Research chemicals:

a. 2-(ethylamino)-2-phenyl-cyclohexanone (other name: deschloro-N-ethyl-ketamine), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 3,4-methylenedioxy-N-tert-butylcathinone, its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 4-fluoro-N-ethylamphetamine, its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

Regulations

d. Beta-keto-4-bromo-2,5-dimethoxyphenethylamine (other name: bk-2C-B), its optical, position, and geometric isomers, salts, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Synthetic opioids:

a. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-2-butenamide (other name: Crotonyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 2-(3,4-dichlorophenyl)-N-[2-(dimethylamino)cyclohexyl]-N-methylacetamide (other name: U-51754), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. N-phenyl-N-[4-phenyl-1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: 4-phenylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until December 12, 2019, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R18-5437; Filed April 13, 2018, 3:10 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20VAC5-425. Rules Governing Enhanced 911 (E-911) Service (amending 20VAC5-425-10 through 20VAC5-425-50; adding 20VAC5-425-45).

Statutory Authority: § 12.1-13 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: May 30, 2018.

Agency Contact: Sheree King, Manager, Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9707, FAX (804) 371-9350, or email sheree.king@scc.virginia.gov.

Summary:

The proposed amendments include (i) adding and updating definitions; (ii) providing that written communications include emails, texts, and facsimiles; (iii) reducing the time for updating contact information from five business days to 24 hours; (iv) adding details regarding the information to be included in any semiannual verification of 911 billing information provided to a public safety answer point (PSAP); (v) expanding the duties of a local exchange carrier (LEC) to include priority restoration to a PSAP by the LEC; (vi) requiring local LECs to provide the Division of Public Utility Regulation with a copy of the annual reliability certification required by the Federal Communications Commission, 911 outage information during a recognized disaster in Virginia, and related service outage information, which information shall be afforded confidential treatment; and (vii) making minor updates and revisions.

AT RICHMOND, APRIL 17, 2018

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2017-00076

Ex Parte: In the matter of revising the Commission's Rules Governing Enhanced 911 (E-911) Service

ORDER FOR NOTICE AND COMMENT

On June 23, 2004, the State Corporation Commission ("Commission") adopted Rules Governing Enhanced 911 (E-911) Service, 20 VAC 5-425-10 et seq. ("E-911 Rules") in Case No. PUC-2003-00103.¹ The Commission initiated the E-911 rulemaking in response to complaints received from Public Safety Answering Point ("PSAP")² administrators and local governments regarding the quality of E-911 service and billing issues associated therewith.³ At that time, the Commission noted that the reliability and accuracy of the E-911 service was essential to protecting the public safety and health of many Virginia citizens.⁴ Given the passage of time since the Commission established the E-911 Rules in 2004, the Commission concluded that it was appropriate to revisit the E-911 Rules and to make modifications, if necessary, due to changes in applicable laws and technological changes in the telecommunications industry.

On June 8, 2017, the Commission entered an Order Initiating Rulemaking Proceeding to determine whether, and the extent to which, any of the Commission's E-911 Rules

should be revised. In this regard, the Commission directed the Commission's Staff ("Staff") to solicit comments from, and schedule a meeting or meetings (as necessary) with, stakeholders and persons having an interest in the Commission's E-911 Rules and the provision of E-911 service in the Commonwealth of Virginia, and to develop, with appropriate input from stakeholders and interested persons, a proposal for any revisions, if necessary, to the current E-911 Rules.

On March 30, 2018, the Staff filed a report ("Staff Report") detailing the Staff's efforts in this undertaking. The Staff Report included proposed revisions to the current E-911 Rules.

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the Staff's proposed revisions, as appended hereto ("Proposed Rules"), should be considered for adoption, and that interested persons should have an opportunity to comment on the Proposed Rules, to request a hearing thereon, or to suggest modifications or supplements to the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment ("Order"), including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(2) A downloadable version of this Order and the Proposed Rules shall be available for access by the public on the Commission's website: <http://www.scc.virginia.gov/case>. A copy of this Order and the Proposed Rules shall be available for public inspection in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. A copy of the Proposed Rules may be requested from the Commission's Division of Public Utility Regulation by telephone, regular mail, or e-mail request, and can be found at the Division's website: <http://www.scc.virginia.gov/pur/e911rules.aspx>.

(3) On or before May 30, 2018, any interested person or entity may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing comments, proposals, or hearing requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission

may consider the matter and enter an order based upon the papers filed herein. Any interested person desiring to submit comments electronically may do so by following the instructions on the Commission's website: <http://www.scc.virginia.gov/case>. Compact disks or any other form of electronic storage medium may not be filed with such comments. All correspondence shall refer to Case No. PUR-2017-00076.

(4) All documents filed with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10 et seq.

(5) On or before June 20, 2018, the Staff may file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(6) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all local exchange carriers certificated in Virginia as set out in Appendix A; and C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424. A copy also shall be provided to the Commission's Office of General Counsel and Division of Public Utility Regulation.

¹ Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules governing the provision of enhanced 911 service by local exchange carriers, Case No. PUC-2003-00103, 2004 S.C.C. Ann. Rept. 201, Order Adopting Rules (June 23, 2004).

² A PSAP is a communications operation or facility operated by or on behalf of a governmental entity that is equipped and staffed on a 24-hour basis to receive and process telephone calls for emergency assistance from an individual who dials the digits 9-1-1. See, e.g., §§ 56-484.12 and 56-484.19 of the Code of Virginia.

³ See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing rules governing the provision of enhanced 911 service by local exchange carriers, Case No. PUC-2003-00103, Order for Notice and Comment or Requests for Hearing (Aug. 1, 2003).

⁴ See Id.

20VAC5-425-10. Definitions.

The words and terms in § 56-484.12 of the Code of Virginia shall have application to this chapter. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Automatic location identification-~~(ALI)~~ or "ALI" means the feature by which the name, service address, and supplemental emergency service information associated with the calling party's telephone number are forwarded to the

Regulations

~~Public Safety Answering Point~~ public safety awareness point (PSAP) for automatic display on the PSAP terminal equipment.

"Automatic number identification-~~(ANI)~~" or "ANI" means a feature by which the telephone number associated with a network access line is initially generated and forwarded to a PSAP for display on a 911 terminal.

"Average busy hour" means the one-hour period during the week statistically shown over time to be the hour in which the most telephone calls are received.

"Commission" means the Virginia State Corporation Commission.

"Competitive local exchange carrier-~~(CLEC)~~" or "CLEC" means an entity, other than a locality, authorized to provide local exchange telecommunications services in Virginia pursuant to § 56-265.4:4 of the Code of Virginia and 20VAC5-417.

"Competitive telephone company" or "CTC" means any ILEC or CLEC that has elected to be regulated as a competitive telephone company in accordance with Chapter 2.1 (§ 56-54.2 et seq.) of Title 56 of the Code of Virginia.

"Database error" means an error in ALI address information caused by a ~~Local Exchange Carrier (LEC)~~ an LEC that affects the ability of a PSAP to route emergency services correctly.

"E-911 ALI database" means the set of ALI records residing on a computer system that is used with ANI to associate a physical location with a telephone number, including information such as name, telephone number, address, nearest cross street, and special preexisting conditions.

"E-911 services" means the ~~tariffed~~ services purchased by a jurisdiction for the purpose of processing ~~wireline~~ E-911 calls.

"Foreign central office service" means local exchange telecommunications service that is furnished from one central office to a location typically served by another central office.

"Foreign exchange service" means local exchange telecommunications service that is furnished from one exchange to a location typically served by another exchange.

"Incumbent local exchange carrier-~~(ILEC)~~," "ILEC," or "incumbent" means a public service company providing local exchange telecommunications services in Virginia on December 31, 1995, pursuant to a certificate of public convenience and necessity, or the successors to any such company.

"Local exchange carrier-~~(LEC)~~" or "LEC" means a certificated provider of local exchange telecommunications services, ~~whether an incumbent or a new entrant~~

encompassing ILECs, CLECs, and MLECs, including ILECs and CLECs regulated as CTCs.

"Local exchange telecommunications services" means local exchange telephone service as defined by § 56-1 of the Code of Virginia.

"Locality" means a city, town, or county that operates an electric distribution system in Virginia.

"Municipal local exchange carrier-~~(MLEC)~~" or "MLEC" means a locality certificated to provide local exchange telecommunications services pursuant to § 56-265.4:4 of the Code of Virginia and 20VAC5-417.

"Network access line-~~(NAL)~~" or "NAL" means a wireline line, trunk, or equivalent.

"New entrant" means a CLEC or an MLEC.

"P.01 grade of service" means a standard of service quality reflecting the probability that no more than one call out of 100 during the average busy hour will be blocked.

"Public safety answering point-~~(PSAP)~~" or "PSAP" means a facility equipped and staffed to receive and process 911 calls and route them to emergency services personnel.

"Staff" means the commission's Division of ~~Communications~~ Public Utility Regulation and associated personnel.

20VAC5-425-20. General provisions.

A LEC shall:

1. Provide to its end-user customers access to E-911 service on all NALs ~~where applicable~~;
2. Provide each relevant PSAP with a means for immediate access to LEC personnel ~~to assist in PSAPs, while processing an emergency related 911 call, obtaining E-911 record related information~~ that are capable of providing information related to the PSAP's E-911 services. Such LEC contact shall be available on a 24-hour basis, 365 days a year. Any changes to this contact information shall be communicated in writing, including email, text, or facsimile, to affected PSAPs within ~~five business days~~ 24 hours;
3. Provide LEC company identification codes on each ALI record submitted to the E-911 ALI database provider;
4. Provide ALI record information such that its E-911 database error rate, for a given PSAP, is no greater than 1.0%. The ALI database error rate shall be the number of a LEC's incorrect ALI address records divided by the total number of a LEC's ALI records queried during a calendar quarter;
5. Submit, or cause to be submitted, no less than 95% of all E-911 ALI database affecting changes (including nonpublished and nonlisted telephone numbers) to the E-

911 ALI database provider within 48 hours of the LEC's receipt of notice of the change and 100% within 72 hours, excluding holidays and weekends;

6. Correct, or cause to be corrected, any ALI record within 48 hours of receiving written notification, including ~~but not limited to electronic mail ("e-mail")~~ email, text, and facsimile, excluding holidays and weekends;

7. Exclude, or cause to be excluded, from the ALI database, ALI records that contain telephone numbers that cannot convey ANI;

8. Provide ALI record information relating to an E-911 emergency immediately upon the ~~verbal~~ request of a verified authorized agent of the PSAP;

9. Advise customers applying for foreign exchange, foreign central office service, or any other wireline service, when there is the potential for problems in reaching the appropriate PSAP;

10. Render to a requesting PSAP, where the LEC provides ALI database services, detail sufficient to verify the accuracy of ALI database telephone number, name, and address information and company identification codes for each ANI. Such information shall be provided to the PSAP by the LEC on no more than a semi-annual basis and at a reasonable cost;

11. Render to a PSAP, upon request, on no more than a semi-annual basis, at no charge, detail sufficient to verify the accuracy of its E-911 services billing. This shall include (i) the total number of LEC ANI records of customers within the PSAP's jurisdiction served at each LEC end office, and (ii) the names of the other PSAPs served by each LEC end office where it serves more than one jurisdiction; and

12. Notify each relevant PSAP at least 30 days prior to the commencement or discontinuance of local exchange telecommunications services.

20VAC5-425-30. Rates, ~~and~~ tariffs, and product guides.

A. A new entrant's rates for any E-911 services shall be no higher than the lowest applicable rates established by the largest ILEC, as measured by the number of its NALs, serving the geographic area of the relevant PSAP.

B. A LEC, if it provides and charges for E-911 services, shall structure its E-911 services so that it charges PSAPs only for those services that it renders.

20VAC5-425-40. Provisioning.

A LEC providing E-911 services shall:

1. Design, construct, maintain, and operate its facilities to minimize interruptions to E-911 services;

2. Determine E-911 service requirements in consultation with the relevant PSAP. These requirements shall be communicated to the PSAP prior to implementation and shall include detail sufficient to allow the PSAP to order E-911 service consistent with a minimum of a P.01 grade of service; ~~and~~

3. Provide priority restoration to the PSAP in the event of an outage of the LEC provided services or facilities; and

4. Provide E-911 service consistent with the level of service ordered by a PSAP.

20VAC5-425-45. Reporting.

A. An LEC shall inform the staff of an E-911 service outage in Virginia by providing all reports required by the Federal Communications Commission (FCC) under 47 CFR Part 4 as such FCC reports relate to 911 service. An LEC shall comply with all provisions of 47 CFR Part 4 related to report content, processing, and delivery.

B. Upon request, an LEC shall provide to the commission or staff additional information related to 911 service outages not included in FCC reports as necessary to perform their oversight responsibility.

C. An LEC shall provide the staff a copy of the annual reliability certification and any information submitted with or in addition to such certification required by the FCC under 47 CFR 12.4 that impact the reliability of 911 service in Virginia. Upon request, an LEC shall provide to the commission or staff additional information as deemed necessary to perform their oversight responsibility.

D. An LEC that participates in the FCC's voluntary Disaster Information Reporting System (DIRS) shall, contemporaneously with providing information to the FCC, provide the staff with all comparable information related to 911 service outages to PSAPs located in Virginia as provided to the DIRS. This requirement shall remain in place until DIRS is deactivated.

E. Any information provided to the staff in accordance with this section which the LEC designates as confidential shall be afforded confidential treatment in accordance with 5VAC5-20-170 of the Commission's Rules of Practice and Procedure. Staff, until otherwise ordered by the commission, shall maintain such confidential information in strict confidence and shall not disclose its contents to members of the public.

20VAC5-425-50. Waiver Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter.

VA.R. Doc. No. R18-5466; Filed April 17, 2018, 2:53 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER SEVEN (2018)

Declaration of a State of Emergency for the Commonwealth of Virginia Due to Severe Weather

Importance of the Issue

On April 16, 2018, I declared a state of emergency to exist for the Commonwealth of Virginia based on the severe storms and tornadoes that impacted the Commonwealth on April 15, 2018.

The health and general welfare of the citizens require state action to help alleviate the conditions caused by this situation. The effects of this situation constitute a disaster wherein human life and public and private property are, or are likely to be, imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby proclaim a state of emergency. Accordingly, I direct state and local government agencies to render appropriate assistance, to prepare for potential severe weather impacts, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority in § 44-146.17 of the Code of Virginia, I hereby order the following:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST), as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to local governments and emergency services assignments of other agencies as necessary and determined by the State Coordinator of Emergency Management and other agencies as appropriate.

C. Evacuation of areas threatened or stricken by effects of the severe weather, as appropriate. Pursuant to § 44-146.17(1) of the Code of Virginia, I reserve the right to direct and compel the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in

coordination with the VEOC, acting on behalf of the State Coordinator of Emergency Management, shall determine. I authorize the control of ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein upon such timetable as the local governing body, in coordination with the State Coordinator of Emergency Management and the VEOC, shall determine. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

D. Activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

E. This Emergency Declaration implements limited relief from the provisions of 49 CFR §§ 390.23 and 395.3 for purpose of providing direct relief or assistance as a result of this disaster.

F. Authorization of appropriate oversight boards, commissions, and agencies to waive and/or ease building code restrictions, permitting requirements, and to allow for emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting, and other operations and activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. All appropriate executive branch agencies are to exercise their discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this emergency event.

G. Authorizing of the heads of executive branch agencies, acting when appropriate on behalf of their regulatory boards, to waive any state requirements or regulation for which the federal government has issued a waiver of the corresponding federal or state regulation based on the impact of events related to this situation.

H. Provision of appropriate assistance, including temporary assignments of non-essential state employees to the Adjunct Emergency Workforce, be rendered by agencies of state government to respond to this situation.

I. Activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging.

J. Authorization of a maximum of \$600,000 in state sum sufficient funds for state and local government's mission

assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act, 42 USC § 5121 et seq. This funding is also available for state response and recovery operations and incident documentation.

K. Implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP, without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

L. During this declared emergency, any person who holds a license, certificate, or other permit issued by any U.S. territory, state, or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, may render aid involving that skill in the Commonwealth during a disaster, without compensation other than reimbursement for actual and necessary expenses, and such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service as set forth in Code of Virginia § 44-146.23(C). Additionally, members and personnel of volunteer, professional, auxiliary, and reserve groups identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of §§ 44-146.23(A) and (F) of the Code of Virginia, shall not be liable for the death of, or injury to, persons or damage to property as a result of the performance of their specific disaster-related mission assignments.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, in performing these missions shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective April 16, 2018, and shall remain in full force and in effect until June 30, 2018, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 17th day of April, 2018.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER EIGHT (2018)

Designation of Executive Branch Officers and Employees Required to File Financial Disclosure Statements

Importance of the Issue

The State and Local Government Conflict of Interest Act reflects the Commonwealth's steadfast commitment to ensuring that public officers and employees maintain the highest standards of ethical behavior when conducting the business of the Commonwealth, avoiding even the appearance of impropriety arising out of personal economic interests.

Directive

In furtherance of the purposes of the State and Local Government Conflict of Interests Act, Section 2.2-3100 et seq. of the Code of Virginia (hereinafter, "the Act"), and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, I hereby delegate to the Secretary of the Commonwealth the power and duty to implement the Act with respect to Executive Branch agencies, institutions, boards, commissions, councils, and authorities through the following policies and procedures:

1. Each of the Governor's Secretaries and the head of each agency, institution, board, commission, council, and authority within the Executive Branch shall submit to the Office of the Secretary of the Commonwealth on or before October 1, 2018 a report identifying by name and job title the positions that are required to file a Statement of Economic Interests.

By issuance of this Executive Order, the following Executive Branch officers and employees shall file a disclosure form, prescribed in § 2.2-3117:

Office of the Governor

- Secretaries, Deputy Secretaries, and Assistant Secretaries
- Chief Workforce Development Advisor and the Executive Director of the Virginia Workforce Development Board
- Chief of Staff and Deputy Chief of Staff
- Counsel and Deputy Counsel
- Legislative Director and Deputy Legislative Director
- Policy Director and Deputy Policy Director
- Communications Office
- Scheduling Office
- Policy Analysts

Governor

- Designated Special Assistants

Executive Branch Agencies

- Agency Heads, Chief Deputies, and Deputies
- Chief Administrative Officers and Deputies
- Chief Financial Officers and Deputies
- Chief Procurement Officers and Deputies
- Chief Technology Officers and Deputies
- Chief Human Resources Officer
- Legislative Liaisons

Institutions of Higher Education

- Presidents/Vice Presidents/Provosts/Deans
- Any other persons as designated by the institution including those persons with approval authority over contracts or audits

Executive Branch Authorities

- Authorities established within the Executive Branch
- All persons within this group will file the form prescribed in § 2.2-3118, unless required by law to file the form prescribed in § 2.2-3117

Executive Branch Appointees

- All non-salaried citizen members of Executive Branch advisory boards, commissions, councils, and authorities are hereby designated to file the financial disclosure form prescribed in § 2.2-3118
- Appointees to boards or commissions who are salaried, such as the Parole Board, shall file the form prescribed in § 2.2-3117

In addition to the above-mentioned positions that are required to file, the agency's report shall include a list of other senior-level positions with responsibility affecting legislative policies and rule-making authority or substantive authorization and decision-making regarding 1) policy, 2) contracts and procurement, 3) audits, 4) licensure, 5) inspections and investigations, and 6) investments or other financial matters.

2. From the reports submitted, the Secretary of the Commonwealth shall maintain a comprehensive list of officers and employees, including their position titles, who shall be designated to file the statement of economic interests. The Secretary of the Commonwealth may add or delete positions on the list.

3. The head of each agency, institution, board, commission, council, and authority within the Executive Branch shall be responsible for ensuring that designated officers and employees file their statements of economic interests in

accordance with § 2.2-3114 of the Code of Virginia. This includes obtaining a statement of economic interests from each new officer or employee so long as the officer or employee is hired for a position previously designated and ensuring that appropriate additions to and deletions from the list of those designated to file are recommended to the Secretary in a timely fashion. Agency heads shall also be responsible for ensuring that appropriate employees receive the necessary orientation on the State and Local Government Conflict of Interests Act in accordance with the provisions of § 2.2-3128 of the Code of Virginia.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2022, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 25th day of April, 2018.

/s/ Ralph S. Northam
Governor

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

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 Environmental Quality on behalf of the Air Pollution Control Board is conducting a periodic review and small business impact review of portions of **9VAC5-50, New and Modified Stationary Sources**. 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 specific regulations being reviewed are as follows:

9VAC5-50, New and Modified Stationary Sources

Part I, Special Provisions (9VAC5-50-10 et seq.)

Part II, Emission Standards:

Article 1, Standards of Performance for Visible Emissions and Fugitive Dust/Emissions (Rule 5-1) (9VAC5-50-60 et seq.)

Article 2, Standards of Performance for Odorous Emissions (Rule 5-2) (9VAC5-50-130 et seq.)

Article 4, Standards of Performance for Stationary Sources (Rule 5-4) (9VAC5-50-240 et seq.)

The regulations may be viewed on the DEQ air regulation webpage at <http://www.deq.virginia.gov/Programs/Air/Laws,Regulations,Guidance.aspx>.

The comment period begins May 14, 2018, and ends June 4, 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 Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the

public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Proposed Air State Implementation Plan Revision - Ozone Infrastructure

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to assure necessary authorities are contained in the state implementation plan (SIP) for the 2008 ozone National Ambient Air Quality Standard (NAAQS) supporting the infrastructure requirements of the federal Clean Air Act (the Act). The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia SIP in accordance with the requirements of § 110(a) of the Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comment on the issue of whether the plan demonstrates the Commonwealth's compliance with federal Clean Air Act requirements related to general state plan infrastructure for controlling the interstate transport of air pollution for the 2008 ozone NAAQS.

Public comment period: May 14, 2018, through June 13, 2018.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed at the end of this notice. In order to be considered, the request must include the full name and address of the person requesting the hearing and be received by DEQ on the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Description of proposal: The proposed revision consists of a demonstration that Virginia meets the obligations of § 110(a)(2)(D)(i)(I) of the Act with respect to the 2008 ozone NAAQS. Section 110(a)(2)(D)(i)(I) prohibits states from significantly contributing to nonattainment or interfering with maintenance of a specific NAAQS in any downwind area: "Each such plan shall contain adequate provisions prohibiting, consistent with the provisions of this title, any source or other type of emissions activity within the State from emitting any air pollution in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard."

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a

General Notices/Errata

revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ on the last day of the comment period. All information received is part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website at <http://www.deq.virginia.gov/Programs/Air/PublicNotices/airplansandprograms.aspx>. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

- 1) Main Street Office, 1111 East Main Street, Suite 1400, Richmond, VA, telephone (804) 698-4070,
- 2) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800.

Contact Information: Doris A. McLeod, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4319, or email doris.mcleod@deq.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Fort Powhatan Solar LLC Notice of Intent for a Small Renewable Energy Project (Solar) Permit by Rule - Disputanta, Virginia

Fort Powhatan 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 energy project (solar) pursuant to 9VAC15-60. The project will be located in Disputanta and is approximately 150 megawatts alternating current with ground-mounted solar photovoltaic facility utilizing a single-axis tracking system. The site is located approximately at the intersection of Fort Powhatan Road and Wards Creek Road, Disputanta, Virginia, GPS point 37.244717 and -77.097899 in Prince George County.

Contact Information: Mary E. Major, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, 23218, telephone (804) 698-4423, FAX (804) 698-4319, or email mary.major@deq.virginia.gov.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

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 Funeral Directors and Embalmers is currently reviewing each of the regulations listed below to determine whether the regulation should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014). Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

18VAC65-20, Regulations of the Board of Funeral Directors and Embalmers

18VAC65-30, Regulations for Preneed Funeral Planning

18VAC65-40, Regulations for the Funeral Service Internship Program

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

The comment period begins May 14, 2018, and ends June 13, 2018.

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 Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

STATE BOARD OF HEALTH

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health conducted a small business impact review of **12VAC5-191, State Plan for the Children with Special Health Care Needs Program**, and determined that this regulation should be retained in its current form. The State Board of Health is publishing its report of findings dated April 3, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for the regulation, as it is essential to outline program services for children with special health

care needs. Program services are provided through available appropriations under federal Title V funds to eligible Virginia residents. No public comments were received. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with any known federal or state law or regulation.

Regulations are evaluated on an ongoing basis and this regulation was last amended in January 2014. Retaining the regulation in its current form does not appear to cause an adverse economic impact on small businesses in the Commonwealth of Virginia.

Contact Information: Marcus Allen, Children and Youth with Special Health Care Needs Program Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23221, telephone (804) 864-7716, FAX (804) 864-7771, or email marcus.allen@vdh.virginia.gov.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on April 25, 2018. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number Forty-Seven (18)

Virginia Lottery's "Mega Grocery Shopping Dash Promotion" Final Rules for Operation (effective June 1, 2018)

Director's Order Number Fifty (18)

Virginia Lottery's "Circle K Free Gas For A Year" Final Rules for Operation (effective May 1, 2018)

Director's Order Number Fifty-One (18)

Certain Virginia Instant Game Lotteries: End of Games - amended.

The following Virginia Lottery instant games will officially end at midnight on April 20, 2018, and has been amended to include game 1467 \$100 Million Cash Extravaganza:

Game 1847	2018
Game 1845	Winter Winnings
Game 1819	Double Your Cash
Game 1813	X The Money Bingo (TOP)
Game 1809	\$3,000,000 Cash Payout
Game 1803	Cash Splash
Game 1787	Fast Cash Crossword (TOP)
Game 1775	Pirate's Loot

Game 1732	20 Years of Cash
Game 1709	Extreme Green
Game 1703	Big Bills
Game 1670	Jumbo Bucks
Game 1573	Hot Dice
Game 1467	\$100 Million Cash Extravaganza

The last day for lottery retailers to return for credit unsold tickets from any of these games will be June 4, 2018. The last day to redeem winning tickets for any of these games will be October 17, 2018, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation October 17, 2018, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games. (effective on April 16, 2018)

BOARD OF MEDICINE AND BOARD OF NURSING

Regulations to Implement HB793

The Board of Medicine and the Board of Nursing are seeking public comment on promulgation of regulations to implement HB793 (Chapter 776 of 2018 General Assembly), legislation to authorize nurse practitioners who meet certain qualifications to practice without a practice agreement with a patient care team physician.

In order to comply with the second enactment on the bill requiring regulations to be in effective within 280 days, the boards will be adopting emergency regulations. The Committee of the Joint Boards of Nursing and Medicine and its Advisory Committee will meet on May 17, 2018, and will serve as the Regulatory Advisory Panel to develop recommended amendments to nurse practitioner regulations to implement the provisions of HB793. Public comment will be accepted at the meeting.

Topics for consideration in adoption of regulations to amend 18VAC90-30 (Regulations Governing the Licensure of Nurse Practitioners) and 18VAC90-40 (Regulations for Prescriptive Authority for Nurse Practitioners) will be:

- Equivalent of at least five years of full-time clinical experience
- Routine practice in a practice area included within the category for which the nurse practitioner was certified and licensed
- Requirements of an attestation of practice
- Fee associated with submission of attestation and issuance of autonomous designation

General Notices/Errata

- Acceptance of "other evidence" demonstrating that the applicant met the requirements
- Endorsement of experience in other states
- Unprofessional conduct - falsification of attestation

Comment may be sent to elaine.yeatts@dhp.virginia.gov. Comments sent by mail should be directed to Elaine Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Richmond, VA 23233.

Contact Information: 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.

BOARD OF PHARMACY

Application for Pharmaceutical Processor Permits

A pharmaceutical processor is a facility that has obtained a permit from the Board of Pharmacy pursuant to § 54.1-3408.3 of the Code of Virginia to cultivate Cannabis plants for the production of cannabidiol oil or THC-A oil and dispense the oil to patients registered by the Board of Pharmacy for treatment or to alleviate the symptoms of any diagnosed condition or disease determined by the physician to benefit from such use. As set forth in § 54.1-3442.6 of the Code of Virginia, the board may issue or renew in any year a maximum of five permits, one for each health service area established by the State Board of Health. The application process for pharmaceutical processor permits occurs in three stages: submission of initial application, awarding of conditional approval, and granting of a pharmaceutical processor permit.

As of April 16, 2018, a request for application (RFA) process has opened for obtaining conditional approval for a pharmaceutical processor permit. For consideration, a complete application, required documentation, and the nonrefundable application fee of \$10,000 must be received no later than 2 p.m. on June 8, 2018. The RFA is available at <https://www.dhp.virginia.gov/Pharmacy/PharmaceuticalProcessors.htm>.

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

Placement of Chemicals in Schedule I

Public comment period: April 25, 2018, through June 7, 2018.

Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act. The public hearing will be conducted at 9 a.m. on June 21, 2018, at the Perimeter Center, 9960 Mayland

Drive, Suite 201, Richmond, VA 23233. Public comment may also be submitted electronically or in writing prior to June 7, 2018, to Caroline Juran, Executive Director of the Board of Pharmacy at caroline.juran@dhp.virginia.gov.

The Virginia Department of Forensic Science has identified eight chemical compounds for recommended inclusion into the Code of Virginia. A brief description and chemical name for each compound follows.

The following compound is classified as a research chemical. Compounds of this type have been placed in Schedule I (subdivision 3 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

1. 2,5-dimethoxy-4-chloroamphetamine (other name: DOC), its optical, position, and geometric isomers; salts; and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The following compounds are powerful synthetic opioids. Compounds of this type have been placed in Schedule I (subdivision 1 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

2. N-(2-fluorophenyl)-2-methoxy-N-[1-(2-phenylethyl)-4-piperidinyl]-acetamide (other name: Ocfentanil), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

3. N-(4-methoxyphenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (other name: 4-methoxybutyrylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

4. N-phenyl-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: Isobutyryl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

5. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-cyclopentanecarboxamide (other name: Cyclopentyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

6. N-phenyl-N-(1-methyl-4-piperidinyl)-propanamide (other name: N-methyl norfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

The following compound is classified as a cannabimimetic agent. Compounds of this type have been placed in Schedule I (subdivision 6 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

7. 1-(4-cyanobutyl)-N-(1-methyl-1-phenylethyl)-1H-indazole-3-carboxamide (other name: 4-cyano CUMYL-BUTINACA), its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The following compound is classified as a benzodiazepine, which is a central nervous system depressant. Flualprazolam has no accepted medical use in the United States. Other compounds of this type have been placed in Schedule I (subdivision 4 of § 54.1-3446 of the Code of Virginia).

8. Flualprazolam, its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

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

Scheduling and Descheduling to Conform to Drug Enforcement Administration Schedules

Pursuant to subsection E of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider scheduling or descheduling certain drugs in the Virginia Drug Control Act. The public hearing will be conducted at 9 a.m. on June 21, 2018, at the Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233.

In order to conform the Drug Control Act to recent scheduling changes enacted by the Drug Enforcement Administration, the board will:

1. Add MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine) to Schedule I;
2. Add Dronabinol [(-)-delta-9-trans tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration to Schedule II; and
3. Remove naldemedine from Schedule II.

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

STATE WATER CONTROL BOARD Proposed Enforcement Action for Circle K Stores Inc.

An enforcement action has been proposed for Circle K Stores Inc. for violations of the State Water Control Law in Chesapeake, 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. Jennifer Coleman, Esq. will accept comments by email at jennifer.coleman@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 May 14, 2018, to June 13, 2018.

Public Meeting and Notice of Public Comment for Watershed Plan (Total Maximum Daily Load) for the North Fork Catoctin Creek in Loudoun County, Virginia

Public meeting: A public meeting for development of a sediment total maximum daily load (TMDL) and implementation strategies to address the general standard (benthics) impairment on North Fork Catoctin Creek will be held on Wednesday, June 13, 2018, from 6:30 p.m. until 8 p.m. in the Robey Meeting Room at the Purcellville Library, 220 East Main Street, Purcellville, VA 20132.

Purpose of notice: The Department of Environmental Quality (DEQ) will discuss a watershed plan to develop a TMDL and strategies for its implementation for North Fork Catoctin Creek in Loudoun County. This stream segment is listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of Virginia's water quality standards for the general standard (benthics). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. This meeting is an opportunity for local residents to learn about the water quality of North Fork Catoctin Creek and the approach proposed to improve its water quality, share information about the area, and become involved in the process of local water quality improvement.

Description of study: North Fork Catoctin Creek, in Loudoun County, is impaired for the general standard (benthics) in the two segments identified in the table below. North Fork Catoctin Creek does not have a healthy and diverse community of macroinvertebrates and subsequently does not meet the "aquatic life" water quality standard. A TMDL is the total amount of a pollutant a waterbody can contain and still meet water quality standards. To restore water quality, pollutant levels need to be reduced to the TMDL amount. This study will identify sources of sediment (the pollutant identified as the most probable stressor), recommend reductions to meet a TMDL for the impaired water, and

General Notices/Errata

identify strategies to meet those reductions, with the goal of restoring the aquatic community of the stream.

Stream Name	Location	Length (miles)	Upstream Limit	Downstream Limit
North Fork Catoctin Creek	Loudoun County	4.42	Unnamed tributary, located ~ 0.15 mile downstream of Route 287	Catoctin Creek
North Fork Catoctin Creek	Loudoun County	2.54	Unnamed tributary, located ~ 0.75 mile upstream of Route 719	Impoundment (Godfrey Pond)

How to comment and participate: This meeting is open to the public, and all interested parties are welcome. A public comment period will begin June 14, 2018, and end July 13, 2018. Comments will be accepted on the watershed plan approach discussed during the meeting and on participating on a technical advisory committee (TAC) to assist in the development of the TMDL and strategies to reduce the pollutant. Persons interested in participating as a TAC member should contact the DEQ contact person, Sarah Sivers, by the end of the comment period and provide their name, telephone number, email address, and the organization they represent (if any). All comments must be written and submitted via email or traditional mail by the end of July 13, 2018. They must include the name, address, and telephone number of the person submitting the comments. DEQ will notify all applicants of the composition of the TAC after the close of the comment period. For more information or to submit written comments, please contact Sarah Sivers, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3898, or email sarah.sivers@deq.virginia.gov.

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.

ERRATA

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: **13VAC5-63. Virginia Uniform Statewide Building Code.**

Publication: 34:18 VA.R. 1744-1961 April 30, 2018

Correction to Final Regulation:

Page 1939, second column, before third line, which states "~~Change the referenced standards in~~" insert "**13VAC5-63-443. Chapter 16 Referenced standards.**"

VA.R. Doc. No. R16-4664; Filed April 26, 2018.