



VIRGINIA

REGISTER OF REGULATIONS

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Virginia Code Commission

<http://register.dls.virginia.gov>

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virginia.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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; Marcus B. Simon, Vice Chair; Ward L. Armstrong; Nicole Cheuk; Rita Davis; Leslie L. Lilley; Jennifer L. McClellan; Christopher R. Nolen; Don L. Scott, Jr.; Charles S. Sharp; Samuel T. Towell; Malfourd W. Trumbo.

Staff of the Virginia Register: Karen Perrine, Registrar of Regulations; Anne Bloomsburg, Assistant Registrar; Nikki Clemons, Regulations Analyst; Rhonda Dyer, Publications Assistant; Terri Edwards, Senior Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

September 2021 through September 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
38:2	August 25, 2021	September 13, 2021
38:3	September 8, 2021	September 27, 2021
38:4	September 22, 2021	October 11, 2021
38:5	October 6, 2021	October 25, 2021
38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 15, 2021 (Monday)	December 6, 2021
38:9	December 1, 2021	December 20, 2021
38:10	December 15, 2021	January 3, 2022
38:11	December 29, 2021	January 17, 2022
38:12	January 12, 2022	January 31, 2022
38:13	January 26, 2022	February 14, 2022
38:14	February 9, 2022	February 28, 2022
38:15	February 23, 2022	March 14, 2022
38:16	March 9, 2022	March 28, 2022
38:17	March 23, 2022	April 11, 2022
38:18	April 6, 2022	April 25, 2022
38:19	April 20, 2022	May 9, 2022
38:20	May 4, 2022	May 23, 2022
38:21	May 18, 2022	June 6, 2022
38:22	June 1, 2022	June 20, 2022
38:23	June 15, 2022	July 4, 2022
38:24	June 29, 2022	July 18, 2022
38:25	July 13, 2022	August 1, 2022
38:26	July 27, 2022	August 15, 2022
39:1	August 10, 2022	August 29, 2022
39:2	August 24, 2022	September 12, 2022
39:3	September 7, 2022	September 26, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Agency Decision

Title of Regulation: 2VAC5 - a regulation regarding home service contract providers currently does not exist.

Statutory Authority: § 59.1-434.4 of the Code of Virginia.

Name of Petitioner: David Sacks.

Nature of Petitioner's Request: Petitioner requests that the Board of Agriculture and Consumer Services promulgate regulations governing the issuance and provision of home service contracts to protect the Virginia consumers who purchase these contracts.

Agency Decision: Request denied.

Statement of Reason for Decision: The Board of Agriculture and Consumer Services voted to deny the petitioner's request for rulemaking. The petitioner requested that the board promulgate regulations governing the issuance and provision of home service contracts to protect the Virginia consumers who purchase these contracts by providing a recourse to consumers when the home service contract provider fails to comply with the provisions of the contract, fails to honor legitimate claims, and fails to respond to consumer inquiries in a timely manner. The petitioner also requested the regulations address requiring home service contract providers to provide a process to appeal a decision for a denial of a claim.

The Home Service Contract Providers Act (§ 59.1-434.1 et seq. of the Code of Virginia) only allows the board to adopt regulations to effectuate the provisions of the Act and to further define services that may be covered by a home service contract. The Act requires a home service contract provider to register with the Virginia Department of Agriculture and Consumer Services (VDACS) prior to offering a home service contract in Virginia. The Act does not provide authority to the board or VDACS to intervene in a contractual relationship between the consumer and the provider or to require the provider to offer an appeal process for consumers.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA, 23218, telephone (804) 786-3983, or email michael.menefee@vdacs.virginia.gov.

VA.R. Doc. No. PFR21-31; Filed July 29, 2021, 12:46 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF VETERINARY MEDICINE

Initial Agency Notice

Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.

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

Name of Petitioner: James Penrod for the American Association of Veterinary State Boards.

Nature of Petitioner's Request: To amend 18VAC150-20-115 to accept verification of fulfillment of requirements of the Program for the Assessment of Veterinary Education Equivalence of the American Association of Veterinary State Boards.

Agency Plan for Disposition of Request: The petition will be published on August 30, 2021, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment ending September 29, 2021.

Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its first meeting after the comment period.

Public Comment Deadline: September 29, 2021.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA, 23233, telephone (804)597-4130, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. PFR22-02; Filed August 11, 2021, 10:18 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF LOCAL AND REGIONAL JAILS

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC15-20, Regulations Governing Certification and Inspection**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). 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.

Public comment period begins August 30, 2021, and ends September 20, 2021.

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 published in the Virginia Register of Regulations.

Contact Information: Ryan McCord, Executive Director, State Board of Local and Regional Jails, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-8340.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and small business impact review of **9VAC25-790, Sewage Collection and Treatment Regulations**, and determined that this regulation should be amended. The department is publishing its report of findings dated July 20, 2021, to support this decision.

This regulation provides for the proper design, construction, and operation of sewerage systems and sewage treatment works. The control of sewerage systems and sewerage

treatment works is necessary to protect public health, safety, and welfare. The regulation contains administrative and technical requirements related to obtaining a certificate to construct (CTC) and a certificate to operate (CTO) for sewerage systems and sewage treatment works. This regulation is clearly written and easily understandable by the users of the regulation.

The regulation is necessary to protect public health, safety, and the welfare of citizens, and the agency is undertaking the process to amend the regulation. The regulation will be amended to make corrections and update the content of the regulation.

The regulation continues to be needed. This regulation contains administrative and technical requirements related to obtaining a CTC and a CTO for sewerage systems and sewage treatment works. The proper design, construction, and operation of sewerage systems and sewage treatment works is necessary to protect public health, safety and welfare.

No comments were received during the public comment period.

The regulation is complex in nature and contains detailed administrative and technical requirements related to obtaining a CTC and a CTO for sewerage systems and sewage treatment works.

This regulation is a state only regulation. The Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) and the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) regulate the point and non-point source discharges from sewage treatment works. This regulation however focuses on the proper design, construction, and operation of sewerage systems and sewage treatment works.

This regulation was last amended in 2018 to update references to Title 40 of the Code of Federal Regulations and the Environmental Protection Agency Methods Update Rule.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and small business impact review of **12VAC5-71, Regulations Governing Virginia Newborn Screening**

Periodic Reviews and Small Business Impact Reviews

Services, and determined that this regulation should be amended. The department is publishing its report of findings dated July 26, 2021, to support this decision.

The regulation meets the criteria set out in Executive Order 14 (2018) as the regulation is necessary for the protection of public health, safety, and welfare of infants born in the Commonwealth of Virginia and their families. The regulation is clearly written and understandable.

The Virginia Department of Health is recommending the regulation be amended to reflect current practices and updated scientific information relevant to newborn screening.

There is a continued need for the regulation because newborn screening for heritable disorders and genetic diseases in infants born in the Commonwealth of Virginia is still occurring, and this regulation establishes the requirements for conducting these tests. One public comment was received. The commenter recommended that the regulation be retained but improved. The commenter identified recommendations for amending the existing regulatory language. The regulation is clearly written and easily understandable. The regulation does not duplicate or conflict with any known federal or state law or regulation; however, there is some overlap with 12VAC5-191. Regulations are evaluated on an ongoing basis and this regulation was last amended as a result of a periodic review in January 2014. The regulation was amended to add two disorders to the newborn screening panel through a final exempt regulatory action in January 2019. The department does not anticipate that amending the regulation will have an adverse economic impact on small businesses in the Commonwealth of Virginia.

Contact Information: Robin Buskey, Policy Analyst, Office of Family Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 863-7253.

DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **12VAC35-12, Public Participation Guidelines; 12VAC35-190, Regulations for Voluntary Admissions to State Training Centers; 12VAC35-200, Regulations for Emergency and Respite Care Admission to State Training Centers; and 12VAC35-210, Regulations to Govern Temporary Leave from State Facilities.** The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any

issue relating to these regulations, including whether each 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.

Public comment period begins August 30, 2021, and ends September 20, 2021.

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 published in the Virginia Register of Regulations.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider amending **8VAC20-131, Regulations Establishing Standards for Accrediting Public Schools in Virginia**. The purpose of the proposed action is to establish standards governing public virtual education that will maintain a level of student achievement commensurate with high-quality instruction delivered in traditional brick and mortar schools, providing standards for local school boards as they establish virtual public education programs or schools, with all students taking coursework virtually, rather than in a traditional brick and mortar environment. The Regulations Establishing Standards for Accrediting Public Schools in Virginia do not specifically address differences in service delivery that exist between a brick and mortar public school and virtual schools that enroll students full-time. As the options available to Virginia's public school students through virtual learning programs continue to expand, students enrolled in public schools may be able to take all coursework virtually. The regulations governing virtual education would expand opportunities to learn by setting forth the expectations for a virtual school as an option for Virginia school divisions, Multidivision Online Providers, and Virtual VA. The proposed amendments would (i) establish the policies and standards necessary to ensure accountability of student learning in public virtual education; (ii) provide the board with the opportunity to develop and implement sound policies for student success in a virtual setting; and (iii) examine and adjust standards for library media, staffing requirements, hours of instruction, extracurricular activities, and school facilities and safety for virtual schools and for appropriate service delivery in a virtual environment.

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

Statutory Authority: §§ 22.1-16 and 22.1-253.13:3 of the Code of Virginia.

Public Comment Deadline: October 29, 2021.

Agency Contact: Dr. Brendon Albon, Director of STEM and Innovation, State Board of Education, 101 North 14th Street, Richmond, VA 23219, telephone (804) 786-2418, or email brendon.albon@doe.virginia.gov.

VA.R. Doc. No. R22-6920; Filed August 10, 2021, 3:06 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Hearing Aid Specialists and Opticians intends to consider amending **18VAC80-20, Hearing Aid Specialists Regulations**. The purpose of the proposed action is to create an additional method of qualifying for the license, ensuring that rules regarding entry into the profession to be as least intrusive and burdensome as possible, while still protecting the health, safety, and welfare of the public. The board also seeks several revisions to its temporary permit rules to improve the success rate of that training method.

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

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Comment Deadline: September 29, 2021.

Agency Contact: Stephen Kirschner, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hearingaidspec@dpor.virginia.gov.

VA.R. Doc. No. R22-6712; Filed August 2, 2021, 10:40 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

VIRGINIA AVIATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Aviation Board intends to consider amending **24VAC5-20, Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia**. The purpose of the proposed action is to establish a new regulation to set rules for how localities (cities, counties, and towns) and other political subdivisions (school divisions, park authorities, jail authorities, and airport authorities) may adopt local regulations governing the take-off and landing of unmanned aircraft on properties owned by the locality or other political subdivision. Any such local regulation must be submitted to the Department of Aviation prior to adoption. Once approved by the department, the political subdivision

Notices of Intended Regulatory Action

must advertise and hold a public hearing prior to acting on the regulation. The regulation contains exceptions.

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

Statutory Authority: §§ 5.1-2.2 and 5.1-2.15 of the Code of Virginia.

Public Comment Deadline: October 13, 2021.

Agency Contact: Stephen Smiley, Senior Aviation Planner, Virginia Aviation Board, 5702 Gulfstream Road, Richmond, VA 23250, telephone (804) 236-3627, FAX (804) 236-3635, or email stephen.smiley@doav.virginia.gov.

V.A.R. Doc. No. R21-6599; Filed August 13, 2021, 12:41 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 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 2, which excludes regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority. 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: 1VAC20-20. General Administration (amending 1VAC20-20-30).

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: September 30, 2021.

Agency Contact: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

Summary:

Pursuant to Chapter 353 of the 2020 Acts of Assembly, which increases membership of the State Board of Elections from three members to five members, the amendment adjusts the definition of a quorum for the board from two to three.

1VAC20-20-30. Organization of State Board of Elections; seal.

A. The board shall have a chairman and a vice-chairman of the board, in addition to the ex-officio secretary. The chairman shall preside at all meetings and perform the usual functions of a presiding officer and such other duties as are imposed by these regulations or from time to time by the board. In the chairman's absence, the vice-chairman shall perform these functions and duties. Each member, except the secretary, shall receive a per diem and expenses for attendance. Expenses shall be reported on forms approved by the Department of Accounts. The secretary is authorized to sign the vouchers for the payment of such expenses.

B. The secretary shall be authorized and it shall be the secretary's duty to employ such assistants and to purchase such equipment and supplies as are necessary from time to time, subject to the provisions of the law creating the board and the

provisions of the laws and rules relating to the budgetary and personnel systems. The secretary or secretary's designee is authorized to execute necessary vouchers for the payment of the salaries of such assistants and for equipment and supplies so secured.

C. The secretary is authorized and directed to perform all duties of a routine and administrative character imposed upon the board by the law creating the same and other such duties delegated to the secretary by the board.

D. The secretary is authorized to do all things necessary to the proper execution of the law creating and governing the board and in the performance of the duties imposed upon it insofar as the same are not from their nature such as can be performed only by the board in its corporate capacity.

E. The secretary is authorized and directed to consult with and obtain the advice of the Attorney General, on behalf of and in the name of the board, whenever in the secretary's judgment occasion arises.

F. Routine and informal action of the board or of the secretary within the scope of the secretary's authority may be evidenced merely by the signature of the secretary.

G. ~~Two~~ Three members of the board shall constitute a quorum for the transaction of business at any duly constituted meeting.

H. Notice of each meeting of the board shall be given to all board members either by the secretary or the member calling the meeting at least three business days prior to the meeting except in the case of an emergency as defined in § 2.2-3701 of the Code of Virginia. Notice shall be given to the public as required by § 2.2-3707 of the Code of Virginia. All meetings shall be conducted in accordance with the requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). All meetings shall be open to the public unless the board goes into a closed meeting pursuant to § 2.2-3711 of the Code of Virginia.

I. A record of formal official and definitive actions of the board shall be preserved in a record book which may be bound or loose leaf.

J. The secretary shall keep the seal of the board and affix the seal to evidence formal action of the board.

VA.R. Doc. No. R22-6918; Filed August 16, 2021, 5:58 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-70. Absentee Voting (adding 1VAC20-70-80).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: August 11, 2021.

Agency Contact: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

Summary:

The amendments (i) clarify the absentee ballot witness signature requirements; (ii) provide election officials time to prepare for absentee balloting in advance of an election, and (iii) establish uniformity among the submission of absentee ballots during the 45-day absentee voting period leading up to Election Day.

1VAC20-70-80. Absentee ballot witness signatures during qualifying state of emergency.

A. "Declared state of emergency related to a communicable disease of public health threat" or "state of emergency" means a state of emergency declared by the Governor of Virginia pursuant to the Governor's authority under Article V, Section 7 of the Constitution of Virginia in response to a communicable disease of public health threat, as defined in § 44-146.16 of the Code of Virginia.

B. If such a state of emergency is declared prior to the start of in-person absentee voting under § 24.2-701.1 of the Code of Virginia for an election and is ongoing at the beginning of the in-person absentee voting period, then a witness signature is not required on any absentee ballot otherwise validly submitted for that election. This rule applies to all absentee ballots submitted for that election, including any absentee ballot submitted after the state of emergency has ended.

C. If the Governor of Virginia declares such a state of emergency during the in-person absentee voting period preceding Election Day, no absentee ballot returned after such declaration of state of emergency requires a witness signature. This rule applies to any absentee ballots submitted after the state of emergency has ended.

VA.R. Doc. No. R22-6853; Filed August 5, 2021, 5:56 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-70. Absentee Voting (adding 1VAC20-70-90).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: August 10, 2021.

Agency Contact: Ashley Coles, Agency Regulatory Coordinator, Department of Elections, Washington Building, 1100 Bank Street, First Floor, Richmond, VA 23219, telephone (804) 864-8933, or email ashley.coles@elections.virginia.gov.

Summary:

Chapter 246 of the 2021 Acts of Assembly, Special Session I, amends § 24.2-706 of the Code of Virginia. The amendments conform the regulation to Chapter 246 by establishing the processes for timely delivery of (i) voter information to contractors and (ii) reports of mailed absentee ballots from contractors.

1VAC20-70-90. Requirements for third parties mailing and assembling absentee ballots.

A. Any agreement between a general registrar and a third party for the printing, assembling, and mailing of the items described in § 24.2-706 C of the Code of Virginia pursuant to § 24.2-706 D of the Code of Virginia must comply with the terms of this section.

B. To ensure the secure and timely delivery of voter information to third parties, general registrars must comply with the following:

1. General registrars shall not provide any voter information to a third party contracted with under § 24.2-706 of the Code of Virginia except for the information stated in § 24.2-706 D of the Code of Virginia and the minimum information necessary to timely print, assemble, or mail the documents listed under § 24.2-706 C of the Code of Virginia.
2. In sending the names, addresses, precincts, and ballot styles of voters to a third party, the general registrar will comply with the timelines established under § 24.2-612 of the Code of Virginia and any timelines issued by the Department of Elections.
3. In sending the names, addresses, precincts, ballot styles, and other necessary voter information to a third party, the general registrar will comply with any information security standards set by the Department of Elections.
4. As a security measure, general registrars shall use the data export file provided by the Department of Elections

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for the purpose of contracting with a third party under § 24.2-706 of the Code of Virginia.

5. General registrars are responsible for keeping a copy of any agreement with a third party made pursuant to § 24.2-706 D of the Code of Virginia for the duration of the agreement plus an additional two years. These copies may be stored either in a hard copy or electronically.

6. The general registrar is ultimately responsible for guaranteeing compliance with all relevant requirements under the Code of Virginia, including the requirements of §§ 24.2-612 and 24.2-706 of the Code of Virginia.

7. Upon forming a contract with a third party for the purpose of this section, the general registrar will provide the Department of Elections with a copy of the signed contract.

C. To ensure timely reports of mailed absentee ballots from third parties, any agreement with a third party pursuant to § 24.2-706 D of the Code of Virginia shall include the following terms:

1. A party contracted for the printing, assembly, or mailing of absentee ballots is responsible for meeting all relevant deadlines under §§ 24.2-612 and 24.2-706 of the Code of Virginia.

2. A party contracted for the printing, assembly, or mailing of absentee ballots shall not use voter information relating to those absentee ballots for any reason other than those permitted under § 24.2-706 of the Code of Virginia.

3. A party contracted for the mailing of absentee ballots under § 24.2-706 of the Code of Virginia is responsible for obtaining ballot artwork by means designated by the Department of Elections.

4. A party contracted for the mailing of absentee ballots under § 24.2-706 of the Code of Virginia is responsible for obtaining a certificate or other evidence of either first class or expedited mailing or delivery from the U.S. Postal Service or other commercial delivery provider in accordance with § 24.2-706 of the Code of Virginia.

5. A party printing, assembling, or mailing the materials listed in § 24.2-706 of the Code of Virginia shall sign a statement before the work is commenced agreeing, subject to felony penalties for making false statements pursuant to § 24.2-1016 of the Code of Virginia, that the party will print, assemble, and mail, as applicable, the ballots requested by the general registrar in accordance with the instructions given by the general registrar and meet all relevant requirements of sections §§ 24.2-612 and § 24.2-706 of the Code of Virginia.

6. A party mailing absentee ballots pursuant to § 24.2-706 of the Code of Virginia must provide a status report within 24 hours of the general registrar sending an absentee voter data file to the third party. The third party must confirm the mailing of absentee ballots to the general registrar

within 48 hours of the general registrar sending an absentee voter data file.

7. The contract between the general registrar and the third party will include penalties for a third party delay in mailing absentee ballots.

VA.R. Doc. No. R22-6854; Filed August 5, 2021, 5:52 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Final Regulation

REGISTRAR'S NOTICE: The Board of Directors of the Alcoholic Beverage Control Authority is claiming an exemption from the Administrative Process Act in accordance with the ninth enactment of Chapters 1113 and 1114 of the 2020 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 any such regulations prior to their adoption.

Title of Regulation: **3VAC5-50. Retail Operations (adding 3VAC5-50-260).**

Statutory Authority: § 4.1-111 of the Code of Virginia.

Effective Date: January 1, 2022.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Virginia Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Summary:

Pursuant to Chapters 1113 and 1114 of the 2020 Acts of Assembly, which reorganized all alcoholic beverage control licenses into a three-tier structure, the amendments establish a new license. The marketplace license permits persons operating a business enterprise of which the primary function is not the sale of alcoholic beverages to serve complimentary wine or beer to bona fide customers on the licensed premises subject to any limitations imposed by regulation.

3VAC5-50-260. Marketplace license; qualifications; application.

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

1. "Bona fide customer" means a patron of the business enterprise that is seeking to obtain the goods or services of the licensee.

2. "Personalized experience" means goods or services catered to the specifications of an individual or event.

B. The marketplace license is a retail license. A premises described in an application for a marketplace license shall be subject to any regulations and requirements that apply to licensed premises upon which alcoholic beverages may be sold at retail for on-premises consumption. The employees who are involved in the marketplace licensee's service of complimentary alcoholic beverages shall be subject to the regulations and requirements that apply to employees of licensed establishments selling wine or beer at retail. A marketplace licensee's alcoholic beverage control manager shall be subject to the same regulations and requirements as designated managers of licensed establishments selling wine or beer at retail.

C. Marketplace licensees shall be subject to all requirements of 3VAC5-70-90 that apply to licensed premises upon which beer or wine may be sold at retail. In addition, every marketplace licensee shall keep complete, accurate, and separate records of the complimentary service of alcoholic beverages. Such records shall include accurate accounts of daily service of alcoholic beverages, by the drink, showing the kinds and quantities of alcoholic beverages served.

D. In addition to the requirements in § 4.1-206.3 E of the Code of Virginia, the Board of Directors of the Alcoholic Beverage Control Authority may also consider other requirements for licensure that the Alcoholic Beverage Control Authority may deem appropriate to protect the public health, safety, and welfare based on a review of the application and determinations of the Alcoholic Beverage Control Authority, Bureau of Law Enforcement during the investigation of the applicant.

E. Any person licensed pursuant to § 4.1-206 A 9, A 11, A 12, A 14, A 18, or A 19 of the Code of Virginia prior to July 1, 2021, that wishes to maintain licensure after December 31, 2021, shall apply for a marketplace license on or before July 1, 2021. If the licensee fails to apply for a marketplace license, the licensee shall be authorized to continue to operate under such license until the expiration of its original term.

F. Any person licensed pursuant to § 4.1-206 A 9, A 11, A 12, A 14, A 18, or A 19 of the Code of Virginia prior to July 1, 2021, whose license expires prior to December 31, 2021, and wishes to renew the license, may renew the license for another year and shall be authorized to continue to operate under such license until the expiration of that term. At least 60 days prior to the expiration of that term, the licensee shall apply for a marketplace license if the licensee wishes to maintain licensure following the expiration of the renewed license.

G. Any persons not currently licensed may apply for issuance of a license pursuant to § 4.1-206 A 9, A 11, A 12, A 14, A 18, or A 19 of the Code of Virginia on or before December 31, 2021. If such license is issued, the licensee shall be authorized

to continue to operate under such license until the expiration of that term. At least 60 days prior to the expiration of that term, the licensee shall apply for a marketplace license if the licensee wishes to maintain licensure following the expiration of the issued license.

VA.R. Doc. No. R22-6683; Filed August 2, 2021, 11:35 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Directors of the Alcoholic Beverage Control Authority is claiming an exemption from the Administrative Process Act in accordance with the ninth enactment of Chapters 1113 and 1114 of the 2020 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 any such regulations prior to their adoption.

Titles of Regulations: **3VAC5-30. Tied-House (amending 3VAC5-30-50).**

3VAC5-50. Retail Operations (amending 3VAC5-50-60, 3VAC5-50-100, 3VAC5-50-110, 3VAC5-50-150, 3VAC5-50-170, 3VAC5-50-180, 3VAC5-50-190, 3VAC5-50-200, 3VAC5-50-230).

3VAC5-60. Manufacturers and Wholesalers Operations (amending 3VAC5-60-25, 3VAC5-60-50, 3VAC5-60-60, 3VAC5-60-80).

3VAC5-70. Other Provisions (amending 3VAC5-70-70, 3VAC5-70-90, 3VAC5-70-100, 3VAC5-70-180, 3VAC5-70-220, 3VAC5-70-225, 3VAC5-70-240).

Statutory Authority: § 4.1-111 of the Code of Virginia.

Effective Date: January 1, 2022.

Agency Contact: LaTonya D. Hucks-Watkins, Senior Legal Counsel, Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks-watkins@virginiaabc.com.

Summary:

Chapters 1113 and 1114 of the 2020 Acts of Assembly reorganized all alcoholic beverage control licenses pursuant to the three-tier structure and license privileges, consolidated many licenses with common privileges, aligned license fee amounts with enforcement demands, and standardized quantity limits on alcohol samples. The amendments align regulations with these statutory changes.

3VAC5-30-50. Solicitation of licensees by wine and beer solicitor salesmen or representatives.

A. A permit is not required to solicit or promote wine or beer to wholesale or retail licensees, including mixed beverage licensees, by a wine or beer solicitor salesman who represents any winery, brewery, wholesaler or importer licensed in this

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Commonwealth engaged in the sale of wine and beer. Further, a permit is not required to sell (which shall include the solicitation or receipt of orders) wine or beer to wholesale or retail licensees, including mixed beverage licensees, by a wine or beer solicitor salesman who represents any winery, brewery or wholesaler licensed in this Commonwealth engaged in the sale of wine and beer.

B. A permit is required to solicit or promote wine or beer to wholesale or retail licensees, including mixed beverage licensees, by a wine or beer solicitor salesman or representative of any out-of-state wholesaler engaged in the sale of wine or beer. A permit under this section shall not authorize the sale of wine by the permittee, the direct solicitation or receipt of orders for wine, or the negotiation of any contract or contract terms for the sale of wine unless such sale, receipt or negotiations are conducted in the presence of a licensed Virginia wholesaler or importer or such Virginia wholesaler's or importer's solicitor salesman or representative. In order to obtain a permit, a person shall:

1. Register with the board by filing an application on such forms as prescribed by the board;

~~2. Pay a fee of \$125, which is subject to proration on a quarterly basis, pursuant to § 4.1-230 E of the Code of Virginia; and~~

~~3. 2.~~ Be 18 years old or older to solicit or promote the sale of wine or beer, and may not be employed at the same time by an out-of-state wholesaler engaged in the sale of wine or beer and by a licensee to solicit the sale of or sell wine or beer, and shall not be in violation of 3VAC5-30-20.

C. Each permit shall expire yearly on June 30 unless sooner suspended or revoked by the board.

D. Solicitation and promotion under this regulation may include educational programs regarding wine or beer for mixed beverage licensees, but shall not include the promotion of, or educational programs related to, spirits or the use thereof in mixed drinks unless a spirits solicitor's permit has been obtained in addition to a solicitor's permit.

E. For the purposes of this regulation, the soliciting or promoting of wine or beer shall be distinguished from the sale of such products, the direct solicitation or receipt of orders for alcoholic beverages or the negotiation of any contract or contract terms for the sale of alcoholic beverages. This regulation shall not be deemed to regulate the representative of a manufacturer, importer or wholesaler from merely calling on retail licensees to check on market conditions, the freshness of products on the shelf or in stock, the percentage or nature of display space, or the collection of similar information where solicitation or product promotion is not involved.

3VAC5-50-60. Mixed beverage licensees generally; sales of spirits in closed containers; suspension of purchase privileges.

A. No mixed beverage restaurant or carrier licensee shall:

1. Serve as one drink the entire contents of a container of spirits in its original container for on-premises consumption except as provided by subsections C, D, and E of this section.
2. Sell any mixed beverage to which alcohol has been added.

B. No mixed beverage restaurant licensee shall:

1. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license that does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.
2. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine licensee.
3. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.
4. Allow any patron to possess more than two drinks of mixed beverages at any one time, except that a mixed beverage licensee may sell to a patron who may lawfully purchase mixed beverages a flight of distilled spirits products consisting of samples of not more than five different spirits products. Each distilled spirits product shall contain no more than one-half ounce of distilled spirits.

C. If a restaurant for which a mixed beverage restaurant license has been issued under ~~§ 4.1-210~~ § 4.1-206.3 of the Code of Virginia is located on the premises of a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packaged in original closed containers purchased from the board, as well as other alcoholic beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;
2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;
3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic

beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and

4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.

E. A mixed beverage restaurant may serve as one drink the entire contents of a container of soju in its original container for on-premises consumption under the following conditions:

- 1. The container may be no larger than 375 milliliters.
- 2. Each container of soju served must be served for consumption by at least two patrons legally eligible to consume alcoholic beverages.

F. A mixed beverage restaurant licensee may infuse, store, and sell flavored distilled spirits under the following circumstances:

- 1. If infused in the original spirits container, the mixed beverage stamp must remain affixed to the bottle.
- 2. If infused in a container other than the original spirits container, the substitute container, which shall not exceed 20 liters in volume, will be labeled with the following information:
 - a. Date of infusion;
 - b. Brand of spirits; and
 - c. Amount of spirits used.

3. Accurate records must be kept by the mixed beverage licensee as to the spirits used in any spirits infusion process.

4. Licensees infusing distilled spirits shall comply with all applicable state and federal food safety regulations.

G. Mixed beverage licensees may premix containers of sangria and other mixed beverages and serve such alcoholic beverages in pitchers subject to the following limitations:

- 1. Pitchers of mixed beverages may only be sold in containers with a maximum capacity of 32 fluid ounces or one liter if the container is in metric size containing a spirits product mixed with nonalcoholic beverages.
- 2. A pitcher of mixed beverages may only be served to two or more patrons. A licensee shall not allow any two patrons to possess more than one pitcher at any one time.
- 3. Containers of premixed sangria and other mixed beverages must be labeled as to the type of mixed beverage and the quantities of the products used to produce the mixed beverage.

H. The board may suspend the privilege of a mixed beverage licensee to purchase spirits from the board upon such licensee's failure to submit any records or other documents necessary to verify the licensee's compliance with applicable minimum food sale requirements within 30 days of the date such records or documents are due.

3VAC5-50-100. Definitions and qualifications for retail off-premises wine and beer licenses and off-premises beer....

A. Retail off-premises wine and beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "Delicatessen." An establishment which sells a variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments:

Monthly sales	\$2,000
Inventory (cost).....	\$2,000

2. "Drugstore." An establishment selling medicines prepared by a ~~registered~~ licensed pharmacist according to prescription and other medicines and articles of home and general use:

Monthly sales	\$2,000
Inventory (cost)	\$2,000

3. "Grocery store." An establishment ~~which sells edible items intended for human consumption, including a variety of staple foodstuffs used in the preparation of meals that sells food and other items intended for human consumption, including a variety of ingredients commonly used in the preparation of meals:~~

Monthly sales	\$2,000
Inventory (cost)	\$2,000

4. "Convenience grocery store." An establishment ~~which~~ that has an enclosed room in a permanent structure where stock is displayed and offered for sale, and ~~which sells maintains an inventory of~~ edible items intended for human consumption, consisting of a variety of such items of the type normally sold in grocery stores:

Monthly sales	\$2,000
Inventory (cost)	\$2,000

In regard to both grocery stores and convenience grocery stores, "edible items" shall mean such items normally used in the preparation of meals, including liquids.

5. "Gourmet shop." An establishment provided with adequate ~~shelving and storage facilities which sells products such as cheeses and gourmet foods~~ inventory, shelving, and storage facilities where, in consideration of payment, substantial amounts of domestic and imported wines and beers of various types and sizes and related products such as

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cheese and gourmet foods are habitually furnished to persons:

Monthly sales..... \$1,000
Inventory (cost) \$1,000

~~B. Retail off premises beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:~~

~~1. "Delicatessen." An establishment as defined in subdivision A 1 of this section:~~

~~Monthly sales \$1,000
Inventory (cost) \$1,000~~

~~2. "Drugstore." An establishment as defined in subdivision A 2 of this section:~~

~~Monthly sales..... \$1,000
Inventory (cost) \$1,000~~

~~3. "Grocery store." An establishment as defined in subdivision A 3 of this section:~~

~~Monthly sales..... \$1,000
Inventory (cost) \$1,000~~

~~4. "Marina store." An establishment operated by the owner of a marina which sells food and nautical and fishing supplies:~~

~~Monthly sales..... \$1,000
Inventory (cost) \$1,000~~

~~C. B.~~ The board may grant a license to an establishment not meeting the qualifying figures in subsections A and B of this section provided it affirmatively appears that there is a substantial public demand for such an establishment and that public convenience will be promoted by the issuance of the license.

~~D. C.~~ The board in determining the eligibility of an establishment for a license shall give consideration to, but shall not be limited to, the following:

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;
2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and
3. The extent to which such establishment is constructed, arranged or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

~~E. D.~~ Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia and in cases

where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

3VAC5-50-110. Definitions and qualifications for retail on-premises and on-premises and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

A. The following definitions shall apply to retail licensees with on-premises consumption privileges and mixed beverage licensees where appropriate:

1. "Bona fide, full-service restaurant" means an established place of business where meals are regularly sold to persons and that has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises.
2. "Counter" means a long, narrow surface with stools or chairs along one side for the patrons, behind which refreshments or meals are prepared and served.
3. "Designated area" means a room or an area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein.
4. "Dining area" means a public room or area in which meals are regularly sold at substantially all hours that alcoholic beverages are offered for sale therein.
5. "Meal" means a selection of foods for one individual, served and eaten especially at one of the customary, regular occasions for taking food during the day, such as breakfast, lunch, or dinner, that consists of at least one main dish of meat, fish, poultry, legumes, nuts, seeds, eggs, or other protein sources, accompanied by vegetable, fruit, grain, or starch products.
6. "Table" means an article of furniture supported by one or more vertical legs or similar supports and having a flat horizontal surface suitable for the service of meals, not immediately adjacent to the area where refreshments or meals are prepared.

B. Wine and beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the

following types of establishments provided that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on premises only). A common carrier of passengers for which a certificate as a sight-seeing carrier by boat, or a special or charter party by boat has been issued by the State Corporation Commission, habitually serving food on the boat:

Monthly sales\$2,000

2. "Restaurant." A bona fide dining establishment ~~regularly selling meals with entrees and other foods prepared on the premises with special space and accommodation where, in consideration of payment, meals with entrees or other foods prepared on the premises are regularly sold:~~

Monthly sales\$2,000

3. "Hotel." Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals and other food prepared on the premises and lodging are habitually furnished to persons and which has four or more bedrooms:

Monthly sales\$2,000

In regard to both restaurants and hotels, at least \$1,000 of the required monthly sales must be in the form of meals.

4. "Gourmet Oyster House." Any duly licensed establishment, located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring oysters and other seafood products:

Monthly sales of oysters and other seafood.....\$1,000

~~C. Beer. Retail on premises or on premises and off premises licenses may be granted to persons operating the following types of establishments provided that food is regularly sold at substantially all hours that beer is offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:~~

~~1. "Boat" (on premises only). See subdivision B 1 of this section:~~

~~Monthly sales\$2,000~~

~~2. "Restaurant." An establishment regularly selling food prepared on the premises:~~

~~Monthly sales\$2,000~~

~~3. "Hotel." See subdivision B 3 of this section;~~

~~Monthly sales.....\$2,000~~

~~D. C. Mixed beverage licenses. Mixed beverage restaurant licenses may be granted to persons operating bona fide, full-service restaurants.~~

1. Service of food in a bona fide, full-service restaurant shall consist of serving the food to the table on plates or appropriate dinnerware, accompanied by appropriate tableware. The board may approve the issuance of a mixed beverage restaurant license to a buffet restaurant if (i) both alcoholic and nonalcoholic beverage service is provided at the table and (ii) actual sales show that the requirements of subdivision D 2 of this section are met.

2. Monthly sales of food prepared on the premises of a mixed beverage restaurant licensee shall not be less than \$4,000, of which at least \$2,000 shall be in the form of meals.

3. A mixed beverage restaurant licensee must have at least as many seats at tables as at counters.

4. A mixed beverage restaurant licensee shall have food, cooked or prepared on the licensed premises, available for on-premises consumption until at least 30 minutes prior to an establishment's closing. Such food shall be available in all areas of the licensed premises in which spirits are sold or served.

~~E. D.~~ The board may grant a license to an establishment not meeting the qualifying figures in this section, provided the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

~~F. E.~~ Notwithstanding subsections A through ~~E D~~ of this section, the board may issue a temporary license for any of the retail operations in subsections A through ~~E D~~ of this section. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

~~G. F.~~ An outside terrace or patio, the location, equipment, and facilities of which have been approved by the board, may be approved as a "dining area" or as a "designated area" in the discretion of the board.

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H. G. Limited mixed beverage licenses may be granted to persons operating restaurants as defined in § 4.1-100 of the Code of Virginia, provided that food is regularly sold at substantially all hours that alcoholic beverages are offered for sale, and the total monthly food sales of food cooked or prepared on the premises for consumption in dining areas and other designated areas on the premises are not less than \$2,000.

3VAC5-50-150. Off-premises deliveries on licensed retail premises; "drive through" establishments.

No person holding a license which authorizes the licensee to sell wine or beer at retail for consumption off the premises shall deliver such wine or beer to a person on the licensed premises other than in the licensed establishment. Deliveries of such merchandise to persons through windows, apertures or similar openings at "drive through" or similar establishments, whether the persons are in vehicles or otherwise, shall not be construed to have been made in the establishments. No sale or delivery of such merchandise shall be made to a person who is seated in a vehicle. Notwithstanding any provision of law to the contrary, such deliveries may be made to (i) a person's vehicle if located in a designated parking area of the licensee's premises where such person has electronically ordered beer, wine, or farm wine in advance of the delivery; or (ii) such other locations as may be permitted by board regulation.

3VAC5-50-170. Caterer's license; qualifications; privileges; restrictions and conditions.

A. Pursuant to ~~§ 4.1-210~~ § 4.1-206.3 A 2 of the Code of Virginia, the board may grant a caterer's license to any person:

1. Engaged on a regular basis in the business of providing food and beverages to persons for service at private gatherings, or at special events as defined in § 4.1-100 of the Code of Virginia or as provided in ~~§ 4.1-210~~ § 4.1-206.3 A 3 of the Code of Virginia, and
2. With an established place of business with catering gross sales average of at least \$4,000 per month and who has complied with the requirements of the local governing body concerning sanitation, health, construction or equipment and who has obtained all local permits or licenses which may be required to conduct such a catering business.

B. The license authorizes the following privileges:

1. The purchase of spirits, vermouth and wine produced by farm wineries from the board;
2. The purchase of wine and cider from licensed wholesalers or farm wineries or the purchase of beer from licensed wholesalers;
3. The retail sale of alcoholic beverages to persons who sponsor the private gatherings or special events described in subsection A or directly to persons in attendance at such events. No banquet or mixed beverage special events license is required in either case; and

4. The storage of alcoholic beverages purchased by the caterer at the established and approved place of business.

C. In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons licensed as caterers:

1. Alcoholic beverages may be sold only for on-premises consumption to persons in attendance at the gathering or event;
2. The records required to be kept by 3VAC5-70-90 shall be maintained by caterers. If the caterer also holds other alcoholic beverage licenses, he shall maintain the records relating to his caterer's business separately from the records relating to any other license. Additionally, the records shall include the date, time and place of the event and the name and address of the sponsoring person or group of each event catered;
3. The annual gross receipts from the sale of food cooked and prepared for service at gatherings and events referred to in this regulation and nonalcoholic beverages served there shall amount to at least 45% of the gross receipts from the sale of mixed beverages and food;
4. The caterer shall notify the board in writing at least 24 hours in advance of any events to be catered under his license. For events to be catered on Saturday, Sunday, or holidays on which the board's offices are closed, such notice shall be given by close of the last business day prior to the event. The notice shall include the date, time, location and address of the event and the name of the sponsoring person, group, corporation or association;
5. Persons in attendance at a private event at which alcoholic beverages are served but not sold under the caterer's license may keep and consume their own lawfully acquired alcoholic beverages;
6. The private gathering referred to in subsection A above shall be a social function which is attended only by persons who are specifically and individually invited by the sponsoring person or organization, not the caterer;
7. The licensee shall insure that all functions at which alcoholic beverages are sold are ones which qualify for a banquet license, for a special event license or a mixed beverage special events license. Licensees are entitled to all services and equipment now available under a banquet license from wholesalers;
8. A photocopy of the caterer's license must be present at all events at which the privileges of the license are exercised; and
9. The caterer's license shall be considered a retail license for purposes of § 4.1-216 of the Code of Virginia.

3VAC5-50-180. Volunteer fire departments or volunteer rescue squads; banquet facility licenses; restrictions and conditions.

A. Pursuant to § 4.1-206.3 D 2 b of the Code of Virginia, the board may grant banquet facility licenses to volunteer fire departments and volunteer rescue squads:

1. Providing volunteer fire or rescue squad services;
2. Having as its premises a fire or rescue squad station regularly occupied by such fire department or rescue squad; and
3. Being duly recognized by the governing body of the city, county or town in which it is located.

B. The license authorizes the following privileges:

The consumption of legally acquired alcoholic beverages on the premises of the licensee or on premises other than such fire or rescue squad station which are occupied and under the control of the licensee while the privilege of its license is being exercised, by any person, association, corporation or other entity, including the fire department or rescue squad, and bona fide members and guests thereof, otherwise eligible for a banquet license and entitled to such privilege for a private affair or special event.

C. In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons holding such banquet facility licenses:

1. Alcoholic beverages cannot be sold or purchased by the licensee;
2. Alcoholic beverages cannot be sold or charged for in any way by the person, association, corporation or other entity permitted to use the premises;
3. The private affair referred to in subsection B shall be a social function which is attended only by persons who are members of the association, corporation or other entity, including the fire department or rescue squad, and their bona fide guests;
4. The volunteer fire department or rescue squad shall notify the board in writing at least two calendar days in advance of any affair or event at which the license will be used away from the fire department or rescue squad station. The notice shall include the date, time, location and address of the event and the identity of the group, and the affair or event. Such records of off-site affairs and events should be maintained at the fire department or rescue squad station for a period of two years;
5. A photocopy of the banquet facility license shall be present at all affairs or events at which the privileges of the license are exercised away from the fire or rescue squad station; and

6. The fire department or rescue squad shall comply with the requirements of the local governing body concerning sanitation, health, construction or equipment and shall obtain all local permits or licenses which may be required to exercise the privilege of its license.

3VAC5-50-190. Bed and breakfast licenses; restrictions and conditions.

A. Pursuant to ~~§ 4.1-206.4~~ § 4.1-206.3 A 9 of the Code of Virginia, the board may grant a bed and breakfast license to any person who operates an establishment consisting of:

1. No more than 15 bedrooms available for rent;
2. Offering to the public, for compensation, transitory lodging or sleeping accommodations; and
3. Offering at least one meal per day, which may but need not be breakfast, to each person to whom overnight lodging is provided.

B. In addition to other applicable statutes and regulations of the board, the following restrictions and conditions apply to persons licensed as bed and breakfast establishments:

1. Alcoholic beverages served under the privileges conferred by the license must be purchased from a government store, wine or beer wholesaler or farm winery;
2. Alcoholic beverages may be served for on-premises consumption to persons who are registered, overnight guests and are of legal age to consume alcoholic beverages;
3. Lodging, meals and service of alcoholic beverages shall be provided at one general price and no additional charges, premiums or surcharges shall be exacted for the service of alcoholic beverages;
4. Alcoholic beverages may be served in dining areas, private guest rooms and other designated areas, including outside terraces or patios;
5. The bed and breakfast establishment upon request or order of lodgers making overnight reservations, may purchase and have available for the lodger upon arrival, any alcoholic beverages so ordered, provided that no premium or surcharge above the purchase price of the alcoholic beverages may be exacted from the consumer for this accommodation purchase;
6. Alcoholic beverages purchased under the license may not be commingled or stored with the private stock of alcoholic beverages belonging to owners of the bed and breakfast establishment; and
7. The bed and breakfast establishment shall maintain complete and accurate records of the purchases of alcoholic beverages and provide sufficient evidence that at least one meal per day is offered to persons to whom overnight lodging is provided.

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3VAC5-50-200. Gift shops; wine and beer off-premises licenses; conditions; records; inspections.

A. Pursuant to ~~§ 4.1-209.7~~ § 4.1-206.3 C 1 of the Code of Virginia, the board may grant retail wine and beer off-premises licenses to gift shops. Such gift shop may be located (i) on the premises or grounds of a government registered national, state or local historic building or site or (ii) within the premises of a museum.

B. The following restrictions and conditions apply:

1. A gift shop shall be defined as any bona fide retail store selling, predominately, (i) floral arrangements or handmade arts and crafts, which may include a combination of gifts, books, souvenirs, specialty items, collectibles, or other original and handmade products; and (ii) which is open to the public on a regular basis in a permanent structure where stock is displayed and offered for sale and which has facilities to properly secure any stock of wine or beer.

2. The board shall consider the purpose, characteristics, nature, and operation of the applicant establishment in determining whether it shall be considered a gift shop within the meaning of this section.

3. Gift shop licenses, pursuant to this regulation, shall be granted only to persons who have places of business which have been in operation for no less than 12 months next preceding the filing of the application.

4. Gift shop licenses shall authorize the licensees to sell wine and beer, which have been purchased from and received at the establishment from farm winery or wholesale licensees, to sell such alcoholic beverages unchilled only within the interior premises of the gift shop in closed containers for off-premises consumption, and to deliver or ship the same to purchasers thereof in accordance with Title 4.1 of the Code of Virginia and regulations of the board.

5. In granting licenses under this regulation, the board may impose restrictions and conditions upon purchases and sales of wine and beer in accordance with this regulation or as may be deemed reasonable by the board to ensure that the distribution of alcoholic beverages is orderly, lawful and only incidental to the principal business of the licensee. In no event may the sale of such alcoholic beverages exceed 25% of total annual gross sales at the establishment.

6. Every person licensed to sell alcoholic beverages under this regulation shall comply with 3VAC5-70-90.

3VAC5-50-230. Dessert wines.

For the purposes of ~~§ 4.1-210 A 12~~ § 4.1-206.3 A 6 of the Code of Virginia, "dessert wines" shall mean any wine having an alcohol content of more than 14% by volume, any wine whose label contains a statement that it contains more than 2.0% residual sugar, or any wine described on its label as a "dessert," "late harvest," or "ice" wine.

3VAC5-60-25. Winery, farm winery, and brewery licenses; reports.

On or before the 15th day of each month, each winery, farm winery ~~and licensee, or on or before the 10th day of each month~~ each brewery licensee shall, on forms or an electronic system prescribed by the board and in accordance with the instructions set forth therein, file a report with the board of sales made in the previous calendar month. Tax payment in accordance with § 4.1-234 or 4.1-236 of the Code of Virginia shall be made with the submission of this report.

3VAC5-60-50. Records required of distillers, ~~fruit distillers,~~ winery licensees and farm winery licensees; procedures for distilling for another; farm wineries.

A person holding a distiller's, ~~fruit distiller's,~~ winery or a farm winery license shall comply with the following procedures:

1. Records. Complete and accurate records shall be kept at the licensee's place of business for a period of two years, which records shall be available during reasonable hours for inspection by any member of the board or its special agents. Such records shall include the following information:

a. The amount in liters and alcoholic content of each type of alcoholic beverage manufactured during each calendar month;

b. The amount of alcoholic beverages on hand at the end of each calendar month;

c. Withdrawals of alcoholic beverages for sale to the board or licensees;

d. Withdrawals of alcoholic beverages for shipment outside of the Commonwealth showing:

(1) Name and address of consignee;

(2) Date of shipment; and

(3) Alcoholic content, brand name, type of beverage, size of container and quantity of shipment;

e. Purchases of cider or wine including:

(1) Date of purchase;

(2) Name and address of vendor;

(3) Amount of purchase in liters; and

(4) Amount of consideration paid; ~~and~~

f. A distiller ~~or fruit distiller~~ employed to distill any alcoholic beverage shall include in his records the name and address of his employer for such purpose, the amount of grain, fruit products or other substances delivered by such employer, the type, amount in liters and alcoholic content of alcoholic beverage distilled therefrom, the place where stored, and the date of the transaction.

2. Distillation for another. A distiller ~~or fruit distiller~~ manufacturing spirits for another person shall:

- a. At all times during distillation keep segregated and identifiable the grain, fruit, fruit products or other substances furnished by the owner thereof;
- b. Keep the alcoholic beverages distilled for such person segregated in containers bearing the date of distillation, the name of the owner, the amount in liters, and the type and alcoholic content of each container; and
- c. Release the alcoholic beverages so distilled to the custody of the owner, or otherwise, only upon a written permit issued by the board.

3. Farm wineries. A farm winery shall keep complete, accurate and separate records of fresh fruits or other agricultural products grown or produced elsewhere and obtained for the purpose of manufacturing wine. Each farm winery must comply with the provisions of § 4.1-219 of the Code of Virginia for its applicable class of winery license relating to production of fresh fruits or other agricultural products. As provided in § 4.1-219, the board, upon petition by the Department of Agriculture and Consumer Services, may grant a waiver from the production requirements.

3VAC5-60-60. Wine or beer importer licenses; conditions for exercise of license privileges.

A. In addition to complying with the requirements of §§ ~~4.1-207-3 and 4.1-208-4~~ § 4.1-206.1 of the Code of Virginia, pertaining to wine and beer importer licenses, holders of wine and beer importer licenses must comply with § 4.1-218 in order to exercise the privileges of such licenses. The board shall approve such forms as are necessary to facilitate compliance with § 4.1-218. Any document executed by, or on behalf of, brand owners for the purpose of designating wine or beer importer licensees as the authorized representative of such brand owner must be signed by a person authorized by the brand owner to do so. If such person is not an employee of the brand owner, then such document must be accompanied by a written power of attorney which provides that the person executing the document on behalf of the brand owner is the attorney-in-fact of the brand owner and has full power and authority from the brand owner to execute the required statements on its behalf. The board may approve a limited power of attorney form in order to effectuate the aforesaid provision.

B. When filing the list required by § 4.1-218 of the Code of Virginia of all wholesale licensees authorized by a wine or beer importer to distribute brands of wine or beer in the Commonwealth, wine and beer importer licensees shall comply with the provisions of the Wine and Beer Franchise Acts pertaining to designations of primary areas of responsibility in the case of wholesale wine licensees and designation of sales territories in the case of wholesale beer licensees.

C. In the event that, subsequent to the filing of the brand owner's authorization for a licensed importer to import any

brand of wine or beer, the importer makes arrangements to sell and deliver or ship additional brands of wine or beer into this Commonwealth, the privileges of its license shall not extend to such additional brands until the licensee complies with the requirements of § 4.1-218 of the Code of Virginia and this section in relation to each such additional brand. Likewise, if the brand owner who has previously authorized a licensed importer to import one or more of its brands of wine or beer into this Commonwealth should, subsequent thereto, withdraw from the importer its authority to import such brand, it shall be incumbent upon such importer to make a supplemental filing of its brand owner authorizing documents indicating the deletion of any such ~~brand(s)~~ brands of wine or beer.

D. The foregoing provisions of this regulation shall not impair contracts in existence or entered into prior to July 1, 1991, between the licensed importer and its supplier or brand owner.

3VAC5-60-80. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of spirits.

A. Generally. This section applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this section shall be prohibited.

B. Permits.

1. No person shall solicit a mixed beverage licensee unless he has been issued a permit. To obtain a permit, a person shall:

- a. Register with the board by filing an application on such forms as prescribed by the board;
- b. Pay in advance the fee, ~~which is subject to proration on a quarterly basis, pursuant to § 4.1-230 E of the Code of Virginia;~~
- c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and
- d. Be an individual at least 21 years of age.

2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the board.

3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board

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for a particular brand or brands of spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice is received and filed with the board, and, until the board receives such notice, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.

C. Records. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his employer's products and shall, upon request, furnish the board with a copy of such records.

D. Permitted activities. Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

1. Distribute directly or indirectly written educational material (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value (in quantities equal to the number of employees of the retail establishment present at the time the items are delivered); and provide film or video presentations of spirits which are essentially educational to licensees and their employees only and are not for display or viewing by customers;

2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one, unopened, sample container no larger than 375 milliliters of each brand being promoted by the permittee and not sold by the licensee; such containers and sample containers shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container or sample container label; further, the spirits container shall remain the property of the permittee and may not be left with the licensee, and any sample containers left with the licensee shall not be sold by the licensee;

3. Promote his authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or spirits representatives for the benefit of their members and guests, and shall be limited as follows:

- a. To sample servings from containers of spirits purchased from government stores when the spirits donated are intended for consumption during the gathering;

- b. To displays of spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this section;

- c. To distribution of informational brochures, pamphlets and the like, relating to spirits;

- d. To distribution of novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value;

- e. To film or video presentations of spirits which are essentially educational;

- f. To display at the event the brands being promoted by the permittee;

- g. To rent display booth space if the rental fee is the same as paid by all exhibitors at the event;

- h. To provide its own hospitality, which is independent from activities sponsored by the association or organization holding the event;

- i. To purchase tickets to functions and pay registration fees if the payments or fees are the same as paid by all attendees, participants, or exhibitors at the event; and

- j. To make payments for advertisements in programs or brochures issued by the association or organization holding the event if the total payments made for all such advertisements do not exceed \$300 per year for any association or organization holding the event; or

4. Provide or offer to provide point-of-sale advertising material to licensees as provided in 3VAC5-20-20 or 3VAC5-30-80.

E. Prohibited activities. A permittee shall not:

1. Sell spirits to any licensee, solicit or receive orders for spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of spirits with a licensee;

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell spirits to licensees;

3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except that a permittee may provide a licensee "routine business entertainment," as defined in 3VAC5-30-70, subject to the same conditions and limitations that apply to wholesalers and manufacturers under that section;

4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;

5. Purchase or deliver spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine or beer by a licensed wholesaler;

6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;

7. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3 of this section;

8. Solicit or promote any brand or brands of spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; or

9. Engage in solicitation of spirits other than as authorized by law.

F. Refusal, suspension or revocation of permits.

1. The board may refuse, suspend, or revoke a permit if it shall have reasonable cause to believe that any cause exists that would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

2. Before refusing, suspending, or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the board.

3VAC5-70-70. Permits for persons having alcoholic beverages distilled; limitations.

A. Any person who contracts with or engages a licensed distiller ~~or fruit distiller~~ to manufacture spirits from grain fruit, fruit products or other substances grown or lawfully produced by such person shall obtain a board permit before withdrawing the spirits from the distillery's premises. The permit shall accompany the shipment at all times. The application for the permit shall include the following:

1. The name, address and license number, if any of the consignee;
2. The kind and quantity in gallons of alcoholic beverages; and
3. The name of the company employed to transport the shipment.

B. Permits shall be issued only for (i) spirits shipments to the board, (ii) sales and shipments to a lawful consignee outside the Commonwealth under a bona fide written contract, or (iii) shipments of spirits samples to the person growing or producing the substance distilled. Samples shall be packaged in containers of 375 or 750 milliliters and the words "Sample-Not for Sale" shall be printed in letters of reasonable size on the label.

3VAC5-70-90. Records to be kept by licensees generally; additional requirements for certain retailers; "sale" and "sell" defined; gross receipts; reports.

A. All licensees shall keep complete, accurate and separate records for a period of two years. The records shall be available for inspection and copying by any member of the board or its special agents during reasonable hours. Licensees may use microfilm, microfiche, disks, or other available technologies for the storage of their records, and may store them off site, provided the records so stored are readily subject to retrieval and made available for viewing on a screen or in hard copy by the board or its special agents at the licensed premises between the hours of 9 a.m. and 5 p.m. At any other time of day, if the licensee's records are not available for inspection, the licensee shall provide the records to a special agent of the board within 24 hours after a request is made to inspect the records.

The board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting all records, invoices and accounts therein.

"Reasonable hours" shall be deemed to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

B. All licensed manufacturers, bottlers or wholesalers of alcoholic beverages shall keep a complete, accurate and separate record of all alcoholic beverages manufactured, bottled, purchased, sold or shipped by him. Such records shall show the quantities of all such alcoholic beverages manufactured, bottled, purchased, sold or shipped by him; the dates of all sales, purchases, deliveries or shipments; the names and addresses of all persons to or from whom such sales, purchases, deliveries or shipments are made; the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged therefor and the taxes applicable thereto, if any. Every manufacturer and wholesaler, at the time of delivering alcoholic beverages to any person, shall also prepare a duplicate invoice showing the date of delivery, the quantity and value of each delivery and the name of the purchaser to whom the delivery is made.

C. Every retail licensee shall keep complete, accurate and separate records, including invoices, of the purchases and sales of alcoholic beverages, food and other merchandise. The records of alcoholic beverages shall be kept separate and apart from other records and shall include all purchases thereof, the dates of such purchases, the kinds and quantities of alcoholic beverages purchased, the prices charged therefor and the names and addresses of the persons from whom purchased.

Additionally, each retail licensee shall keep accurate accounts of daily sales, showing quantities of alcoholic beverages, food, and other merchandising sold and the prices charged therefor.

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D. In addition to the requirements of subsections A and C of this section, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales. The following actions shall also be taken:

1. On delivery of a mixed beverage restaurant license by the board, the licensee shall furnish to the board or its special agents a complete and accurate inventory of all alcoholic beverages currently held in inventory on the premises by the licensee; and
2. Once a year, each licensee shall submit on prescribed forms to the board an annual review report. The report is due within 30 days after the end of the mixed beverage license year and shall include:
 - a. A complete and accurate inventory of all alcoholic beverages purchased for sale as mixed beverages and held in inventory at the close of business at the end of the annual review period;
 - b. An accounting of the annual purchases of food, nonalcoholic beverages and alcoholic beverages, including alcoholic beverages purchased for sale as mixed beverages, and miscellaneous items; and
 - c. An accounting of the monthly and annual sales of all merchandise specified in subdivision 2 b of this subsection.

E. The terms "sale" and "sell" shall include exchange, barter or traffic, or delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages and other alcoholic beverages, and of meals or food.

F. In determining "gross receipts from the sale of food" for the purposes of ~~§ 4.1-210~~ § 4.1-206.3 of the Code of Virginia, a licensee shall not include any receipts for food for which there was no sale, as defined in this section. Food which is available at an unwritten, non-separate charge to patrons or employees during Happy Hours, private social gatherings, promotional events, or at any other time, shall not be included in the gross receipts. Food shall include hors d'oeuvres.

If in conducting its review pursuant to § 4.1-114 of the Code of Virginia, the board determines that the licensee has failed or refused to keep complete and accurate records of the amounts of mixed beverages or other alcoholic beverages sold at regular prices, as well as at all various reduced and increased prices offered by the licensee, the board may calculate the number of mixed drinks and other alcoholic beverage drinks sold, as determined from purchase records, and presume that such sales were made at the highest posted menu prices for such merchandise.

G. Any changes in the officers, directors or shareholders owning 10% or more of the outstanding capital stock of a corporation shall be reported to the board within 30 days; provided, however, that corporations or their wholly owned subsidiaries whose corporate common stock is publicly traded

and owned shall not be required to report changes in shareholders owning 10% or more of the outstanding capital stock.

H. All banquet and special event licensees in charge of public events shall report to the board the income and expenses associated with the public event on a form prescribed by the board when the licensee engages another person to organize, conduct or operate the event on behalf of the licensee. Reports shall be made within 90 days after the date of each event. "Public events" shall be deemed to include any event at which alcoholic beverages are sold to the general public and not only to personally invited guests.

All applicants for banquet or special event licenses shall indicate at the time of application whether the event is open to the public and whether another person has been or will be engaged to organize, conduct or operate the event on behalf of the licensee. If the applicant indicates that the event is open to the public and another person has been or will be engaged to organize, conduct or operate the event on behalf of the licensee, the applicant shall attach a copy of any contract between the applicant and such other person to the license application.

3VAC5-70-100. Gifts of alcoholic beverages generally; exceptions; wine and beer tastings; taxes and records.

A. Gifts of alcoholic beverages by a licensee to any other person are prohibited except as otherwise provided in this section or as provided in §§ 4.1-119 G, 4.1-201, 4.1-201.1, ~~4-205~~ 4.1-206.3, 4.1-209, 4.1-215, 4.1-325, and 4.1-325.2 of the Code of Virginia.

B. Gifts of alcoholic beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.
2. Samples. A representative of a wholesaler, winery, brewery, or importer may give a retail licensee a sample serving or a container not then sold by such licensee of wine or beer if (i) the licensee is licensed to sell such product, provided that in the case of containers, the container does not exceed 52 fluid ounces in size (1.5 liters if in a metric-sized container) and (ii) the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample container. Samples must be obtained from licensed wholesalers or purchased from retail licensees in the Commonwealth.
3. Gifts by retail licensees. An on-premises retail licensee may give a gift of one alcoholic beverage to a patron or one bottle of wine to a group of two or more patrons provided that such gifts are made to patrons to whom such alcoholic

beverages may be sold. No subsequent gift shall be provided to the same patrons within 24 hours.

4. Hospitality rooms; conventions. The following activities are permitted:

- a. A brewer or vintner may give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and
- b. A manufacturer, importer, bottler, broker, or wholesaler may host an event at conventions of national, regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

5. Conventions; educational programs, including alcoholic beverage tastings; research; licensee associations. Manufacturers, importers, bottlers, brokers, and wholesalers may donate alcoholic beverages to:

- a. A convention, trade association or similar gathering, composed of licensees and their guests, when the alcoholic beverages donated are intended for consumption during the convention;
- b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages being given away;
- c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism; and
- d. Official associations of alcoholic beverage industry members when conducting a bona fide educational program concerning alcoholic beverages, with no promotion of a particular brand, for members and guests of particular groups, associations, or organizations.

6. Conditions. Exceptions authorized by subdivisions 4 b and 5 of this subsection are conditioned upon the following:

- a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such activity; and
- b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

C. Wine and beer wholesalers may participate in a wine or beer tasting sponsored by a gourmet shop licensee for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine or beer.

D. Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4.1 of the Code of Virginia, and complete and accurate records shall be maintained.

3VAC5-70-180. Regulation of the sale of alcoholic beverages in kegs and other containers; permit and registration; other requirements.

A. The following definitions shall apply for purposes of this section:

- 1. "Keg." Any container capable of holding four gallons or more of beer or wine and which is designed to dispense beer or wine directly from the container for purposes of consumption; and
- 2. "Registration seal." Any document, stamp, declaration, seal, decal, sticker or device approved by the board which is designed to be affixed to kegs and which displays a registration number and such other information as may be prescribed by the board.

~~B. The board may grant to any person licensed to sell wine or beer at retail for off-premises consumption, a permit to sell such alcoholic beverages in kegs for off-premises consumption. Such permit shall be subject to suspension or revocation, as provided in § 4.1-225 of the Code of Virginia. No permit shall be required, however, to sell alcoholic beverages in kegs to banquet licensees or to retail licensees for on-premises consumption. Sales of such kegs to banquet licensees shall only be permitted upon presentation of a banquet license by the purchaser to the seller.~~

~~C. B. 1. No person licensed to sell wine or beer at retail for off-premises consumption, or any officer, agent or employee thereof, shall sell any such alcoholic beverage in a keg without having (i) obtained a permit pursuant to subsection B authorizing such sales, (ii) registered the sale on a form prescribed by the board, and (iii) (ii) affixed a registration seal on the keg at the time of sale; provided, if the purchaser takes possession of the keg at the premises of the wholesale licensee pursuant to subsection G, the wholesale licensee shall affix the registration seal.~~

2. Prior to the sale of alcoholic beverages in kegs, the keg registration declaration and receipt form provided by the board shall be properly completed and shall contain:

- a. The name and address of the purchaser verified by valid identification as defined in 3VAC5-50-20 B₂;
- b. The type and number of the identification presented by the purchaser;
- c. A statement, signed by the purchaser, that the purchaser is 21 years of age or older, does not intend to allow persons under 21 years of age to consume the alcoholic beverages purchased, and that the purchaser will not remove or obliterate the key registration tag affixed to the keg or allow its removal or obliteration; and

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d. The particular address or location where the keg will be consumed, and the date or dates on which it will be consumed.

3. Where the purchaser obtains more than one keg for consumption at the same location and on the same date, only one keg registration declaration and receipt form must contain all required information. All other keg registration declaration and receipt forms for that particular transaction shall contain the registration number from the fully completed form as a reference and be signed by the purchaser. Such keg registration declaration and receipt forms which contain the reference number of a fully completed form and have been signed by the purchaser constitute a valid and properly completed keg registration and declaration receipt.

4. The keg registration seal affixed to the keg may serve as the purchaser's receipt. Upon receipt of a properly registered keg from a consumer, the retail licensee shall remove and obliterate the keg registration seal from the keg and note such action on the keg registration declaration and receipt form to be retained by the retail licensee on the licensed premises. Kegs made of disposable packaging do not have to be returned to the retail licensee. The retailer shall indicate on the keg declaration and receipt form that the keg was not returnable due to its disposable packaging.

~~D.~~ C. For the purpose of tracing the kegs and purchaser responsibility, it shall be the responsibility of the seller to affix the properly completed and signed keg registration seal to all containers of four gallons or more of alcoholic beverages prior to the container leaving control of the seller.

~~E.~~ D. Except in accordance with this section, no person shall remove, alter, deface, or obliterate the registration seal affixed to a keg pursuant to this section. Throwing away empty kegs made of disposable packaging shall not constitute obliteration of the keg registration seal. If any nonlicensee is in possession of a keg containing alcoholic beverages, and which keg does not bear the registration seal, or upon which keg the registration seal has been altered, defaced or obliterated, the container and its contents shall be deemed to be contraband and subject to seizure and forfeiture.

~~F.~~ E. ~~Any retail licensee granted a permit pursuant to subsection~~ Licensees shall maintain a complete and accurate record of all registration forms and other documentation of the sale of kegs at the place of business designated in his license for a period of one year. Such records shall include the registration seal for nondisposable kegs, which the retail licensee shall remove from the keg upon its return by the purchaser. Moreover, such records regarding keg sales shall during reasonable hours be open to inspection by the board or its special agents or other law-enforcement officers.

~~G.~~ F. Before a purchaser may take possession of a keg at the premises of the wholesale licensee after purchasing such keg

from a retail licensee, the purchaser shall be required to (i) complete the registration of the transaction at the premises of the retail licensee and (ii) deliver the registration seal to the wholesale licensee who shall affix it to the keg; however, no wholesale licensee may deliver possession of any such keg to the purchaser until the wholesale licensee has collected payment from the retail licensee pursuant to 3VAC5-30-30.

~~H.~~ G. Except as authorized by the board, no person shall transfer possession of or give the registered keg or container to another person. This prohibition shall not apply, however, to the return of the registered container to the seller.

3VAC5-70-220. Wine or beer shipper's licenses, Internet wine retailer licenses, and Internet beer retailer licenses; application process; common carriers; records.

A. Any person or entity qualified for a wine and beer shipper's license ~~or beer shipper's license~~ pursuant to § 4.1-209.1 of the Code of Virginia, or an Internet wine and beer retailer license pursuant to subdivision ~~6 F 2~~ of § ~~4.1-207~~ § ~~4.1-206.3~~ of the Code of Virginia, ~~or an Internet beer retailer license pursuant to subdivision A 10 of § 4.1-208 of the Code of Virginia,~~ must apply for such license by submitting form 805-52, Application for License. In addition to the application, each applicant shall submit as attachments a list of all brands of wine or beer sought to be shipped by the applicant, along with the board-assigned code numbers for each brand or a copy of the label approval by the appropriate federal agency for any brand not previously approved for sale in Virginia pursuant to 3VAC5-40-20 that will be sold only through direct shipment to consumers.

If the applicant is not also the brand owner of the brands listed in the application, the applicant shall obtain and submit with the application a dated letter identifying each brand, from the brand owner or any wholesale distributor authorized to distribute the brand, addressed to the Supervisor, Tax Management Section, Virginia Alcoholic Beverage Control Authority, indicating the brand owner's or wholesale distributor's consent to the applicant's shipping the brand to Virginia consumers.

The applicant shall attach (i) a photocopy of its current license as a winery, farm winery, brewery, or alcoholic beverage retailer issued by the appropriate authority for the location from which shipments will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Any brewery, winery, or farm winery that applies for a shipper's license or consents to the application by any other person, other than a retail off-premises licensee, for a license to ship such brewery's, winery's, or farm winery's brands of wine or beer shall notify all wholesale licensees that have been authorized to distribute such brands in Virginia that an application for a shipper's license has been filed. Such notification shall be by a dated letter to each such wholesale licensee, setting forth the brands that wholesaler has been

authorized to distribute in Virginia for which a shipper's license has been applied. A copy of each such letter shall be forwarded to the Supervisor, Tax Management Section, by the brewery, winery, or farm winery.

C. Any holder of a wine ~~or~~ and beer shipper's license, ~~or~~ Internet wine and beer retailer's license, ~~or~~ Internet beer retailer's license may add or delete brands to be shipped by letter to the Supervisor, Tax Management Section, designating the brands to be added or deleted. Any letter adding brands shall be accompanied by any appropriate brand-owner consents or notices to wholesalers as required with an original application.

D. Any brand owner that consents to a holder of a wine and beer shipper's license, ~~beer shipper's license,~~ or Internet wine and beer retailer's license, ~~or~~ Internet beer retailer's license shipping its brands to Virginia consumers may withdraw such consent by a dated letter to the affected wine ~~or~~ and beer shipper's license, or Internet wine and beer retailer's licensee, ~~or~~ Internet beer retailer's licensee. Copies of all such withdrawals shall be forwarded by the brand owner, by certified mail, return receipt requested, to the Supervisor, Tax Management Section. Withdrawals shall become effective upon receipt of the copy by the Tax Management Section, as evidenced by the postmark on the return receipt.

E. Wine and beer shipper's licensees, ~~beer shipper's licensees,~~ and Internet wine and beer retailer's licensees, ~~and~~ Internet beer retailer's licensees shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped;
4. Names and addresses of recipients; and
5. Price charged.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

F. On or before the 15th day of each month, each wine and beer shipper's licensee, ~~beer shipper's licensee,~~ or Internet wine and beer retailer's licensee, ~~or~~ Internet beer retailer's licensee shall file with the Supervisor, Tax Management Section, either in paper form or electronically as directed by the department, a report of activity for the previous calendar month. Such report shall include:

1. Whether any shipments were made during the month; and
2. If shipments were made, the following information for each shipment:
 - a. Number of containers shipped;
 - b. Volume of each container shipped;

- c. Brand of each container shipped;
- d. Names and addresses of recipients; and
- e. Price charged.

Unless otherwise paid, payment of the appropriate beer or wine tax shall accompany each report.

G. All shipments by holders of wine and beer shipper's licenses, ~~beer shipper's licenses,~~ or Internet wine and beer retailer's licenses, ~~or~~ Internet beer retailer's licenses shall be by approved common carrier only. Common carriers possessing all necessary licenses or permits to operate as common carriers in Virginia may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of wine and beer shipper's licenses, ~~beer shipper's licenses,~~ or Internet wine and beer retailer's licenses, ~~or~~ Internet beer retailer's licenses by dated letter to the Supervisor, Tax Management Section, requesting such approval and agreeing to perform deliveries of beer or wine shipped, maintain records, and submit reports in accordance with the requirements of this section. The board may refuse, suspend, or revoke approval if it shall have reasonable cause to believe that a carrier does not possess all necessary licenses or permits, that a carrier has failed to comply with the regulations of the board, or that a cause exists with respect to the carrier that would authorize the board to refuse, suspend, or revoke a license pursuant to Title 4.1 of the Code of Virginia. Before refusing, suspending, or revoking such approval, the board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the board.

H. When attempting to deliver wine or beer shipped by a wine and beer shipper's licensee, ~~beer shipper's licensee,~~ or Internet wine and beer retailer's licensee, ~~or~~ Internet beer retailer's licensee, an approved common carrier shall require:

1. The recipient to demonstrate, upon delivery, that the recipient is at least 21 years of age; and
2. The recipient to sign an electronic or paper form or other acknowledgment of receipt that allows the maintenance of the records required by this section.

The approved common carrier shall refuse delivery when the proposed recipient appears to be younger than 21 years of age and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the wine and beer shipper's, ~~beer shipper's,~~ or Internet wine and beer retailer's license, ~~or~~ Internet beer retailer's license number of the shipping licensee. No approved common carrier shall accept for shipment any wine or beer to be shipped to anyone

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other than a licensee of the board unless the package bears the information required by this subsection.

I. Approved common carriers shall maintain for two years complete and accurate records of all shipments of wine or beer received from and delivered for wine ~~or~~ and beer shipper's licensees, or Internet wine and beer retailer's licensees, ~~or~~ Internet beer retailer's licensees, including for each shipment:

1. Date of shipment and delivery;
2. Number of items shipped and delivered;
3. Weight of items shipped and delivered;
4. ~~Acknowledgement~~ Acknowledgment signed by recipient; and
5. Names and addresses of shippers and recipients.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

J. On or before the 15th day of each January, April, July, and October, each approved common carrier shall file with the Supervisor, Tax Management Section, a report of activity for the previous calendar quarter. Such report shall include:

1. Whether any shipments were delivered during the quarter; and
2. If shipments were made, the following information for each shipment:
 - a. Dates of each delivery; and
 - b. Names and address of shippers and recipients for each delivery.

3VAC5-70-225. Delivery permits; application process; records and reports.

A. Any out of state person or entity qualified for a delivery permit pursuant to § 4.1-212.1 of the Code of Virginia must apply for such permit by submitting Form 805-52, Retail License Application. The applicant shall attach (i) a photocopy of its current license as a ~~winery, farm winery, brewery, or an~~ alcoholic beverage retailer that is authorized to sell wine or beer at retail for off-premises consumption, issued by the appropriate authority for the location from which deliveries will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Delivery permittees and licensees with delivery privileges shall maintain for two years complete and accurate records of all deliveries made under the privileges of such permits, including for each delivery:

1. Number of containers delivered;
2. Volume of each container delivered;
3. Brand of each container delivered;

4. Names and addresses of recipients;
5. Signature of recipient; and
6. Price charged for the wine or beer delivered.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

C. On or before the 15th day of each month, each delivery permittee and licensees with delivery privileges shall file with the Supervisor, Tax Management Section, a report of activity for the previous calendar month, if any deliveries were made during the month. Such report shall include the following information for each delivery:

1. Number of containers delivered;
2. Volume of each container delivered;
3. Brand of each container delivered;
4. Names and addresses of recipients; and
5. Price charged for the wine or beer delivered.

Unless previously paid, payment of the appropriate beer or wine tax imposed by § 4.1-234 or 4.1-236 of the Code of Virginia shall accompany each report. If no wine or beer was sold and delivered in any month, the permittee shall not be required to submit a report for that month; however, every permittee must submit a report no less frequently than once every 12 months even if no sales or deliveries have been made in the preceding 12 months.

D. All deliveries by holders of delivery permits and licensees with delivery privileges shall be performed by the owner or any agent, officer, director, shareholder, or employee of the permittee.

E. No more than four cases of wine nor more than four cases of beer may be delivered at one time to any person, except that a permittee or licensee may deliver more than four cases of wine or more than four cases of beer if he notifies the Supervisor, Tax Management Section, in writing at least one business day in advance of such delivery. Any notice given pursuant to this section shall include the number of containers to be delivered, the volume of each container to be delivered, the brand of each container to be delivered, and the name and address of the intended recipient.

F. When attempting to deliver wine or beer pursuant to a delivery permit or license privilege, an owner, agent, officer, director, shareholder, or employee of the permittee shall require:

1. The recipient to demonstrate, upon delivery, that he is at least 21 years of age; and
2. The recipient to sign an electronic or paper form or other acknowledgment of receipt that allows the maintenance of the records required by this section.

The owner, agent, officer, director, shareholder, or employee of the permittee or licensee shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identifications. All permittees delivering wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer delivered in the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the delivery permit number of the delivering permittee.

3VAC5-70-240. Marketing portal and fulfillment warehouse approval process.

A. Any holder of a wine or beer shipper's license wishing to use the services of a marketing portal or fulfillment warehouse, as defined in § 4.1-209.1 of the Code of Virginia, must use an approved marketing portal or fulfillment warehouse. Marketing portals or fulfillment warehouses licensed to perform such services by the state in which they are located may apply for approval to provide such services to holders of Virginia wine or beer shipper's licenses by letter to the Supervisor, Tax Management Section, Virginia Department of Alcoholic Beverage Control Authority, requesting such approval. Each applicant shall submit as attachments copies of all licenses issued by the state in which its place of business is located that authorize the provision of the services to be provided. A marketing portal shall submit as attachments copies of documents showing that it is properly organized as an agricultural cooperative in the state where it is located. The board may refuse, suspend, or revoke approval if it shall have reasonable cause to believe that a marketing portal or fulfillment warehouse is not licensed to provide such services by its home state, that it has failed to comply with the regulations of the board, or that a cause exists with respect to the marketing portal or fulfillment warehouse that would authorize the board to refuse, suspend, or revoke a license pursuant to § 4.1-100 et seq. of Title 4.1 of the Code of Virginia. Before refusing, suspending, or revoking such approval, the board shall follow the same administrative procedures accorded an applicant or licensee under § 4.1-100 et seq. of Title 4.1 of the Code of Virginia and regulations of the board.

B. Any approved marketing portal or fulfillment warehouse shall, prior to performing services for a wine or beer shipper's licensee, enter into a written contract. The contract must designate the marketing portal or fulfillment warehouse as the agent of the shipper for the purposes of complying with the provisions of this regulation and §§ 4.1-209, §§ 4.1-206.3 and 4.1-209.1 of the Code of Virginia. A copy of each such contract shall be submitted by the marketing portal or fulfillment warehouse to the Supervisor, Tax Management Section, Virginia Department of Alcoholic Beverage Control Authority, prior to the commencement of services.

C. Approved fulfillment warehouses shall maintain for two years complete and accurate records of all shipments made on

behalf of Virginia wine or beer shippers, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped; and
4. Names and addresses of recipients.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (3VAC5-70)

~~Order and Permit for Transportation of Alcohol, #703-69 (eff. 11/1987)~~

~~Order and Permit for Transportation of Alcoholic Beverages, #703-73~~

~~Mixed Beverage Annual Review Instructions for Completion, #805-44 (rev. 11/2006)~~

~~Application for Off Premises Keg Permit, #805-45 (eff. 1/93).~~

~~Special Event License Application Addendum Notice to Special Event Licenses Applicants, Form SE-1 (rev. 08/2002)~~

~~Statement of Income & Expenses for Special Event Licenses (with instructions), Form SE-2 (rev. 08/2002)~~

[Order and Permit for Transportation of Alcohol \(rev. 11/2015\)](#)

[Order and Permit for Transportation of Alcoholic Beverages \(rev. 11/2015\)](#)

[Instructions for Completion of the Mixed Beverage Annual Report and Inventory Report \(rev. 6/2018\)](#)

[Application for Grain Alcohol Permit, #805-75 \(filed 8/2021\)](#)

[Special Event License Application Addendum-Notice to Special Event Licenses Applicants, Form SE-1 \(rev. 3/2019\)](#)

[Statement of Income and Expenses for Special Event Licenses \(with instructions\), Form SE-2 \(rev. 3/2019\)](#)

[Alcohol Seller/Server Training Data Form and Evaluation Form \(eff. 7/2009\)](#)

VA.R. Doc. No. R22-6675; Filed July 30, 2021, 10:28 a.m.



Regulations

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: 4VAC20-280. **Pertaining to Speckled Trout and Red Drum (amending 4VAC20-280-10, 4VAC20-280-20, 4VAC20-280-30, 4VAC20-280-50, 4VAC20-280-55; repealing 4VAC20-280-40).**

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

Effective Date: September 1, 2021.

Agency Contact: Jennifer Farmer, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments (i) establish a daily commercial incidental catch limit for speckled trout when the directed commercial landings quota is met and (ii) remove all red drum regulatory provisions.

Chapter 280

Pertaining to Speckled Trout ~~and Red Drum~~

4VAC20-280-10. Purpose.

The purpose of this chapter is to protect and rebuild the spawning stocks of speckled trout ~~and red drum~~, minimizing the possibility of recruitment failure, and to increase yield in their fisheries.

4VAC20-280-20. Definitions.

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

~~"Red drum" means any fish of the species *Sciaenops ocellatus*.~~

"Fishing year" means the time period from September 1 of the current calendar year through August 31 of the following calendar year.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Speckled trout" means any fish of the species *Cynoscion nebulosus*.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to

the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-280-30. Size and possession limits.

A. It shall be unlawful for any person to take, catch, or possess any speckled trout less than 14 inches in total length, ~~provided however~~ except that the catch of speckled trout by pound net or haul seine may consist of up to 5.0%, by weight, of speckled trout less than 14 inches in total length.

B. It shall be unlawful for any person fishing commercially with commercial hook-and-line gear, or fishing recreationally with any gear type to possess more than one speckled trout 24 inches or greater in any one day ~~from January 1 through December 31, except as described in 4VAC20-280-40 B.~~

C. It shall be unlawful for any person fishing ~~recreationally~~ commercially with ~~any commercial hook-and-line gear type to take, catch, or possess any red drum less than 18 inches in total length or greater than 26 inches in total length or recreationally~~ with any gear type to possess more than five speckled trout in any one day.

~~D. It shall be unlawful for any person fishing commercially with any gear type to take, catch, or possess any red drum less than 18 inches in total length or greater than 25 inches in total length.~~

4VAC20-280-40. Possession limits. (Repealed.)

~~A. It shall be unlawful for any person fishing commercially with commercial hook and line gear or recreationally with any gear type to possess more than five speckled trout in any one day from January 1 through December 31.~~

~~B. It shall be unlawful for any person fishing recreationally with any gear type to possess more than three red drum.~~

~~C. It shall be unlawful for any person fishing commercially with any gear type to possess more than five red drum.~~

4VAC20-280-50. Commercial Directed commercial landings quota and daily ~~byeatch~~ incidental catch limit.

A. For each ~~12-month~~ 12-month period of September 1 through August 31, fishing year the directed commercial landings quota of speckled trout shall be limited to 51,104 pounds.

B. When it is ~~projected and announced that 80% of the~~ commission announces that the directed commercial landings quota has been ~~taken~~ reached, it shall be unlawful for any commercial fisherman registration licensee to take, harvest, land, or possess ~~a daily byeatch limit of greater than 100 pounds of speckled trout, and that daily byeatch landing limit of speckled trout shall consist of at least an equal amount of other fish species more than the daily incidental catch limit for the remainder of the fishing year. The daily incidental catch limit shall be 50 pounds of speckled trout per licensee aboard the vessel, not to exceed 100 pounds per vessel.~~

C. When it is projected that the commercial landings quota will be met by a certain date within the above period, the commission will provide notice of the closing date for commercial harvest and landing of speckled trout during that period, and it shall be unlawful for any person to harvest or land speckled trout for commercial purposes after such closing date for the remainder of that period.

4VAC20-280-55. Seafood buyer reporting requirements.

Any licensed seafood buyer who purchases speckled trout from August 1 through November 30 shall report daily purchases in pounds using the commission's interactive voice recording system on the day of purchase from August 1 to November 30, except when the commission announces that the directed commercial landings quota has been reached for the current fishing year.

VA.R. Doc. No. R22-6901; Filed July 28, 2021, 12:39 p.m.

Final Regulation

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

Title of Regulation: 4VAC20-1400. Pertaining to Red Drum (adding 4VAC20-1400-10 through 4VAC20-1400-50).

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

Effective Date: September 1, 2021.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish a new chapter for regulatory provisions pertaining to red drum, including recreational and commercial size and possession limits and penalty for violations of chapter provisions.

Chapter 1400
Pertaining to Red Drum

4VAC20-1400-10. Purpose.

The purpose of this chapter is to protect the spawning stocks of red drum, maintain the target fishing mortality rate, and increase yield in the fishery. This chapter is designed to be consistent with federal and interstate management measures.

4VAC20-1400-20. Definitions.

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

"Red drum" means any fish of the species *Sciaenops ocellatus*.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline using a straight-line measure, not measured over the curve of the body.

4VAC20-1400-30. Recreational Size and Possession Limits.

A. It shall be unlawful for any person fishing recreationally with any gear type to take, catch, or possess any red drum less than 18 inches in total length or greater than 26 inches in total length.

B. It shall be unlawful for any person fishing recreationally with any gear type to possess more than three red drum.

4VAC20-1400-40. Commercial Size and Possession Limits.

A. It shall be unlawful for any person fishing commercially with any gear type to take, catch, or possess any red drum less than 18 inches in total length or greater than 25 inches in total length.

B. It shall be unlawful for any person fishing commercially with any gear type to possess more than five red drum.

4VAC20-1400-50. Penalty.

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

VA.R. Doc. No. R22-6899; Filed July 28, 2021, 12:02 p.m.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF LOCAL AND REGIONAL JAILS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Local and Regional Jails is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The state board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 6VAC15-70. Standards for Community Residential Programs (repealing 6VAC15-70-10 through 6VAC15-70-160).

Regulations

Statutory Authority: § 53.1-5 of the Code of Virginia.

Effective Date: September 30, 2021.

Agency Contact: Tracey Jenkins, Grant Administrator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-7898, or email tracey.jenkins@vadoc.virginia.gov.

Summary:

The amendments repeal Standards for Community Residential Programs (6VAC15-70). The regulation was established under the authority of §§ 53.1-5 and 53.1-178 of the Code of Virginia, which have both been amended, § 53.1-5 by Chapter 375 of the 2011 Acts of Assembly and § 53.1-178 by Chapter 759 of the 2020 Acts of Assembly, removing regulatory authority for community residential programs.

VA.R. Doc. No. R22-4929; Filed July 29, 2021, 2:14 p.m.

FORENSIC SCIENCE BOARD

Final Regulation

REGISTRAR'S NOTICE: The Forensic Science Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. 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: **6VAC40-30. Regulations for the Approval of Field Tests for Detection of Drugs (amending 6VAC40-30-10, 6VAC40-30-20).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Effective Date: September 30, 2021.

Agency Contact: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email amy.jenkins@dfs.virginia.gov.

Summary:

Pursuant to Chapters 550 and 551 of the 2021 Acts of Assembly, Special Session I, the amendments align the regulation with the definitions of marijuana (i) in § 18.2-247 of the Code of Virginia for distribution of marijuana offenses and (ii) in § 4.1-600 of the Code of Virginia for offenses under the Cannabis Control Act (§ 4.1-600 et seq. of the Code of Virginia). The scientific definition of marijuana remains the same under both definitions.

6VAC40-30-10. Definitions.

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

"Agency" means any federal, state, or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Department of Forensic Science or the director's designee.

"Department" means the Department of Forensic Science.

"Drug" means any controlled substance, or imitation controlled substance, ~~or marijuana~~, as defined in § 18.2-247 of the Code of Virginia, or "marijuana" as defined in §§ 4.1-600 and 18.2-247 of the Code of Virginia.

"Field test" means any presumptive chemical test or any presumptive mobile instrument used outside of a forensic laboratory environment to detect the presence of a drug.

"List of approved field tests" means a list of field tests approved by the department for use by law-enforcement agencies in the Commonwealth and periodically published by the department in the Virginia Register of Regulations in accordance with § 19.2-188.1 of the Code of Virginia.

"Manufacturer" means any entity that makes or assembles field tests to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting a drug.

"Manufacturers' instructions and claims" means those testing procedures, requirements, instructions, precautions, and proposed conclusions that are published by the manufacturer and supplied with the field tests.

"Street drug preparations" means any drug or combination of drugs and any other substance that has been encountered or is likely to be encountered by a law-enforcement officer as a purported drug in the Commonwealth.

6VAC40-30-20. Authority for approval.

Section 19.2-188.1 of the Code of Virginia provides that the Department of Forensic Science shall approve field tests for use by law-enforcement officers to enable them to testify to the results obtained in any preliminary hearing regarding whether any substance, the identify of which is at issue in such hearing, is a controlled substance, or imitation controlled substance, ~~or marijuana~~, as defined in § 18.2-247 of the Code of Virginia, or "marijuana" as defined in §§ 4.1-600 and 18.2-247 of the Code of Virginia.

VA.R. Doc. No. R21-6812; Filed August 10, 2021, 4:36 p.m.



TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

Titles of Regulations: **9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-10; adding 9VAC25-610-95).**

9VAC25-910. General Permit for Use of Surficial Aquifer on the Eastern Shore (adding 9VAC25-910-10 through 9VAC25-910-90).

Statutory Authority: §§ 62.1-256 and 62.1-262.1 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: October 29, 2021.

Agency Contact: Scott Kudlas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4456, or email scott.kudlas@deq.virginia.gov.

Basis: Section 62.1-256 of the Code of Virginia authorizes the State Water Control Board to adopt such regulations as it deems necessary to administer and enforce the provisions of this chapter. Section 62.1-262.1 of the Code of Virginia requires the board to adopt regulations to provide incentives for the withdrawal of groundwater from the surficial aquifer in the Eastern Shore Groundwater Management Area (ESGMA) rather than from the deep aquifer.

Chapter 755 of the 2019 Acts of Assembly requires the board to adopt regulations to provide incentives for the withdrawal of groundwater from the surficial aquifer in the ESGMA rather than from the deep aquifer.

Purpose: The purpose of this regulatory action is to provide incentives in the form of an accelerated permit process for the use of the surficial aquifer on the Eastern Shore for nonpotable purposes through the creation of a general permit. The adoption of a general permit protects the health, safety, or welfare of citizens by providing incentives for nonpotable water needs to be met by the surficial aquifer, thus conserving groundwater in the deep aquifers for potable needs.

Substance: Amendments to the Groundwater Withdrawal Regulations will establish the framework for the issuance of a general permit under the Groundwater Withdrawal Regulations. The new general permit regulation will include the establishment of permit terms, withdrawal limitations, and reporting requirements necessary to permit withdrawals.

Issues: The advantages to the public and the agency of creating a general permit is that it will be available to facilities with eligible withdrawals to withdraw groundwater in a manner that is protective of the confined aquifers in the ESGMA without the increased cost and more complex application process

associated with issuing an individual permit. There are no known disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 755 of the 2019 Acts of Assembly,¹ the State Water Control Board (Board) proposes to create a general permit to incentivize the withdrawal of groundwater from the surficial aquifer in the Eastern Shore Groundwater Management Area rather than from the deep aquifer in that management area.

Background. In order for a person or entity to withdraw 300,000 gallons or more of groundwater per month from a Groundwater Management Area (GWMA), they must first obtain a groundwater withdrawal permit. There are two GWMA's in the state: the Eastern Virginia Groundwater Management Area, which includes all areas east of Interstate 95, and the Eastern Shore Groundwater Management Area (ESGMA), which includes Accomack and Northampton Counties. This regulatory action pertains specifically to the ESGMA.

According to the Department of Environmental Quality (DEQ), the groundwater withdrawals from the deep aquifer in the ESGMA have increased due to agricultural activities such as irrigation and due to modernization and cooling needs of poultry houses (e.g., misting of poultry to keep them cool). In particular, DEQ states that large poultry processing companies in the area (e.g., Purdue and Tysons) have been procuring poultry from growers closer to the processing plants in order to reduce their transportation costs.

Withdrawals from the deep aquifer is generally preferred by users over the surficial aquifer due to the consistency of water quality. Deep aquifers (also known as confined aquifers) are those in which an impermeable dirt or rock layer exists that prevents water from seeping into the aquifer from the ground surface located directly above. Instead, water seeps into confined aquifers from farther away where the impermeable layer does not exist. In contrast, surficial aquifers (also known as unconfined aquifers) are those into which water seeps from the ground surface directly above the aquifer. These differences produce higher quality water in the deep aquifers than the surficial aquifers, which can contain contaminants from the application of fertilizer, preservatives, other pollutants; and salt water mix to some extent. However, deep aquifers recharge much more slowly (hundreds to thousands of years depending on depth) than the surficial aquifers, which typically recharge annually based on rainfall. This has raised concerns locally that the deep aquifers may be depleted if more water is withdrawn from them than would be expected to be provided by recharge.

The General Assembly addressed these concerns with Chapter 755 of the 2019 Acts of Assembly, which mandated the board to adopt regulations to provide incentives for the withdrawal of groundwater from the surficial aquifer rather than from the

Regulations

deep aquifer in the ESGMA. According to the mandate, such incentives may include extended permit terms of as long as 20 years, an accelerated permit process, discounted permit fees, other subsidies, or other incentives.

In response, the board proposes to establish an accelerated permit process for the use of the surficial aquifer for nonpotable purposes through the creation of a general permit. Any individual, business, or other entity choosing to withdraw 300,000 gallons in a month or more of groundwater from the surficial aquifer in the ESGMA would be eligible for a general permit that would be valid for 15 years.

Estimated Benefits and Costs. Although there is no general permit currently for groundwater withdrawals, there are individual permits: 58 for agricultural uses, 24 for irrigation uses, 14 for municipal uses, eight permits for commercial uses, two for industrial uses, and one for fossil power (107 individual permits in total). The proposed rules would not directly affect the currently issued individual permits but would provide incentives to the permit holders to obtain a general permit rather than an individual permit when their individual permit expires, which also has a duration of 15 years.

The proposed general permit would provide a number of benefits. These include (1) reduced permit application fees; (2) the avoidance of detailed geotechnical studies as part of the individual permit application and not having to pay fees to publish public notices; (3) accelerated permit processing times; (4) the use of a water conservation and management checklist form for annual reporting of water conservation actions implemented instead of a customized conservation plan and reporting; and (5) simplified water withdrawal reporting to assess how much water is being withdrawn, including less frequent reporting (annually as opposed to quarterly).

Agricultural entities, which comprise the vast majority of the permit holders, are currently exempt from the individual permit fee and would also be exempt from the fee for the proposed general permit. Thus, the fee related impact would be on nonagricultural entities who would be subject to a \$600 general permit fee compared to the current \$9,000 individual permit fee. Although permit revenues would likely decrease, DEQ states that the permit revenues comprise a small portion of the program's budget (approximately 7% to 12% depending on the year from permit fees, compared to 88% to 93% from the general fund), and DEQ expects that staff time allocated to the processing of these general permits can be absorbed.

The cost of a geotechnical study required for an individual permit ranges from a one-time expense of \$1,500 to \$5,000 every 15 years. This cost could be avoided if a user chooses to apply for a general permit, provided no special circumstances exist as specified in the proposed language (such as withdrawals that require a well that is more than 80 feet deep). Similarly, publication of a notice in a newspaper at a cost of \$200 to \$300 every 15 years or whenever a significant modification to the permit is needed may be avoided with a general permit. Additionally, since the data and evaluation

requirements of a general permit are lower in comparison to an individual permit, the permit processing times for a general permit are shorter. It is expected that 10 to 12 hours per year for most facilities would be needed to conduct meter readings and assess the conservation measures, fill out the form, and provide it to DEQ, which according to DEQ represents about a four-fold reduction in hours compared to an individual permit.

Depending on the geologic properties of the surficial aquifer and its water quality at the project location, it is possible that more than one well (generally no more than 80 feet deep) would need to be drilled in the surficial aquifer to achieve the same yield as a well drilled in the confined aquifer (generally about 300 feet deep). This may increase the drilling costs. However, since the drilling costs are typically based on each foot of depth, there is the potential to achieve the same yield with more wells of a shorter drilling depth. For example, if three wells that are each 80 feet in length produce the same yield as a 300 foot confined aquifer well, then drilling costs may actually decrease (240 feet vs 300 feet of drilling).

It must be noted, however, that even though there are uncertainties in the cost difference estimates between obtaining an individual permit versus a general permit, a general permit is optional and not mandatory. Thus, we can reliably infer that the perceived benefits of a general permit to the user would exceed its perceived costs if it is chosen. Accordingly, a decision regarding whether to renew an individual permit or instead obtain a general permit would depend on the magnitude of benefits the general permit would provide to the existing permit holders. Similarly, new applicants would likely weigh costs and benefits of obtaining a general vs. individual permit.

Since existing permit holders already have established wells for deep aquifers and are not required to change to the surficial aquifer, the incentives for them to use a general permit appear lower. Moreover, a well that is already built and in use represents a sunk cost to the existing permit holders because they would need to abandon an existing well if they choose to apply for a general permit and then build a new well. New applicants, on the other hand, would be able to decide between constructing a well for deep versus surficial uses. In addition, it is likely that there will be public opposition to new deep aquifer withdrawal permits for nonpublic water supply. As a result of these facts, the number of likely prospective users of a general permit is subject to great uncertainty and an estimate does not currently exist, but this regulatory change appears more likely to impact new users than existing ones.

As for the impact on entities other than the direct user, greater use of the surficial aquifer is expected to conserve groundwater supplies within confined aquifers, making them available for potable use over a longer period. If this action is successful in promoting greater use of the surficial aquifer, it would delay any new capital investments a locality may need to make to secure surface water due to declines in groundwater availability. The rate of potential saltwater intrusion in the

confined aquifers is also expected to be reduced through greater use of the surficial aquifer. This action should not, however, have an effect on land subsidence (e.g. sinkholes), which is not considered a threat on the Eastern Shore due to its hydrogeology.

Businesses and Other Entities Affected. The proposed amendments would primarily affect prospective groundwater withdrawal permit applicants for non-potable uses. There is no reliable estimate on how many prospective users may choose this option, but some are expected to do so. The prospective users in the ESGMA may be particularly affected as they would have an option to reduce their groundwater withdrawal permit costs.

In addition, the Department of Conservation and Recreation, which has a state park in the area, may be able to meet their water needs through the use of this general permit, thereby saving them time and money as discussed above.

Small Businesses² Affected. If there are any, the prospective permit applicants are likely to be small businesses. However, the proposed general permit does not appear to adversely affect small businesses.

Localities³ Affected.⁴ ESGMA includes the Counties of Accomack and Northampton, which would particularly benefit from the proposed amendments to the extent prospective and nonpotable use applicants choose a general permit over an individual permit. These localities themselves may also prefer a general permit over an individual permit for their own nonpotable municipal uses saving them time and expense. Currently, Accomack County has one permit for municipal water supply. Northampton County as an entity does not have a permit, but the Town of Cape Charles, which is the county seat, has one municipal water supply permit. Furthermore, improved conservation of deep aquifers in their area would also be beneficial for people living in these two counties.

Projected Impact on Employment. The proposed amendments do not appear to directly affect total employment.

Effects on the Use and Value of Private Property. The potential cost savings through the proposed general permit may reduce costs of prospective nonpotable use permit applicants, which in turn could add to their asset values. Expected positive improvements in deep water conservation are not likely to directly impact real estate development costs in the short-term but may add to the value of land over the long term.

¹<https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0755&191+ful+CHAP0755>

²Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

³"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁴§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to Chapter 755 of the 2019 Acts of Assembly, the proposed amendments (i) adjust the existing groundwater withdrawal regulation to authorize the development of a new general permit and (ii) establish the new general permit regulation to manage the use of the surficial aquifer or water table aquifer for nonpotable activities to achieve greater long-term aquifer sustainability.

9VAC25-610-10. Definitions.

Unless a different meaning is required by the context, the following terms as used in this chapter shall have the following meanings:

"Act" means the Ground Water Management Act of 1992, Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural use" means utilizing groundwater for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations. Agricultural use includes withdrawals for turf farm operations, but does not include withdrawals for landscaping activities or turf installment and maintenance associated with landscaping activities.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

"Board" means the State Water Control Board.

"Consumptive use" means the withdrawal of groundwater, without recycle of said waters to their source of origin.

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"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Draft permit" means a prepared document indicating the board's tentative decision relative to a permit action.

"General permit" means a groundwater withdrawal permit authorizing the withdrawal of groundwater in a groundwater management area under specified conditions, including the size of the withdrawal or the aquifer or confining unit from which the withdrawal is to be made.

"Geophysical investigation" means any hydrogeologic evaluation to define the hydrogeologic framework of an area or determine the hydrogeologic properties of any aquifer or confining unit to the extent that withdrawals associated with such investigations do not result in unmitigated adverse impacts to existing groundwater users. Geophysical investigations include pump tests and aquifer tests.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

"Human consumption" means the use of water to support human survival and health, including drinking, bathing, showering, cooking, dishwashing, and maintaining hygiene.

"Instream beneficial uses" means uses including the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, and cultural and aesthetic values is an instream beneficial use of Virginia's waters.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit issued under the Ground Water Act of 1992.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this Commonwealth or any other state or country.

"Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

"Private well" means, as defined in § 32.1-176.3 of the Code of Virginia, any water well constructed for a person on land that is owned or leased by that person and is usually intended for household, groundwater source heat pump, agricultural use, industrial use, or other nonpublic water well.

"Public hearing" means a fact finding proceeding held to afford interested persons an opportunity to submit factual data, views, and comments to the board pursuant to § 62.1-44.15:02 of the Code of Virginia.

"Salt water intrusion" means the encroachment of saline waters in any aquifer that creates adverse impacts to existing groundwater users or is counter to the public interest.

"Special exception" means a document issued by the board for withdrawal of groundwater in unusual situations where requiring the user to obtain a groundwater withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992. Special exceptions allow the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Supplemental drought relief well" means a well permitted to withdraw a specified amount of groundwater to meet human consumption needs during declared drought conditions after mandatory water use restrictions have been implemented.

"Surface water" means all state waters that are not groundwater as groundwater is defined in § 62.1-255 of the Code of Virginia.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

"Surficial aquifer" means the upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

"Water well systems provider" means any individual who is certified by the Board for Contractors in accordance with § 54.1-1128 et seq. of the Code of Virginia and who is engaged in drilling, installation, maintenance, or repair of water wells, water well pumps, ground source heat exchangers, and other equipment associated with the construction, removal, or repair

of water wells, water well systems, and ground source heat pump exchangers to the point of connection to the ground source heat pump.

"Well" means any artificial opening or artificially altered natural opening, however made, by which groundwater is sought or through which groundwater flows under natural pressure or is intended to be withdrawn.

"Withdrawal system" means (i) one or more wells or withdrawal points located on the same or contiguous properties under common ownership for which the withdrawal is applied to the same beneficial use or (ii) two or more connected wells or withdrawal points which are under common ownership but are not necessarily located on contiguous properties.

9VAC25-610-95. General permits.

A. The board may issue a general permit by regulation for withdrawals of groundwater within a groundwater management area as it deems appropriate in accordance with the following:

1. A general permit may be written to cover the following:

- a. Withdrawals of a certain size;
- b. Withdrawals from a specific aquifer or confining unit; or
- c. Other categories of withdrawals deemed appropriate by the board.

2. A general permit must clearly identify the applicable conditions of this chapter for each category or subcategory of withdrawals covered by the permit.

3. The general permit may exclude specified withdrawals or areas from coverage.

B. When the board determines on a case-by-case basis that concerns for the aquifer, water quality, or the ecosystem services that depend on the groundwater so indicate, the board may require individual applications and individual permits rather than approving coverage under a general permit regulation. Cases where an individual permit may be required include the following:

1. The wells of two or more groundwater users within the area are interfering or may reasonably be expected to interfere substantially with one another;

2. The available groundwater or surface water supply that rely on surficial aquifer input has been or may be adversely impacted or instream beneficial uses may be impacted;

3. The groundwater or surface water in the area has been or may become polluted. Such pollution includes any alteration of the physical, chemical, or biological properties of groundwater or surface waters that has a harmful or detrimental effect on the quality or quantity of such waters;

4. The applicant or permittee is not in compliance with the conditions of the general permit regulation or coverage; or

5. An applicant or permittee no longer qualifies for coverage under the general permit.

C. General permit coverage may be revoked from a permittee for any of the reasons set forth in 9VAC25-610-300 A subject to appropriate opportunity for a hearing.

D. Activities authorized under a general permit and general permit regulation shall be authorized for the fixed term stated in the applicable general permit and general permit regulation.

E. When an individual permit is issued to a permittee, the applicability of general permit coverage to the individual permittee is automatically terminated on the effective date of the groundwater withdrawal individual permit.

F. When a groundwater withdrawal general permit regulation is issued that applies to a permittee that is already covered by an individual permit, that person may request exclusion from the provisions of the general permit regulation and subsequent coverage under an individual permit.

G. General permits may be issued, modified, revoked and reissued, or terminated in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Chapter 910

General Permit for Use of Surficial Aquifer on the Eastern Shore

9VAC25-910-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the Ground Water Management Act of 1992 (§ 62.1-44.2 et seq. of the Code of Virginia) and Groundwater Withdrawal Regulations (9VAC25-610), except that for the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons who have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

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"Beneficial use" includes domestic (including public water supply), agricultural, commercial, and industrial uses.

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

"Eastern Shore Groundwater Management Area" means the groundwater management area declared by the board encompassing the Counties of Accomack and Northampton.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit, or coverage under a general permit, issued under the Ground Water Act of 1992.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

9VAC25-910-20. Information requirements.

Pursuant to 9VAC25-610-380, the board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's groundwater withdrawal; and (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a general permit coverage shall provide the information requested by the board.

9VAC25-910-30. Purpose.

The purpose of this chapter is to establish a general permit for the use of the surficial aquifer in the Eastern Shore Groundwater Management Area under the provisions of 9VAC25-610. Applications for coverage under this general permit shall be processed for approval or denial by the board. Coverage or application denial by the board shall constitute the general permit action and shall follow all provisions in the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of

the Code of Virginia), except for the public comment and participation provisions, from which each general permit action is exempt.

9VAC25-910-40. Delegation of authority.

The director or an authorized representative may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9VAC25-910-50. Effective date of the permit.

The general permit in 9VAC25-910-90 becomes effective on (insert the effective date of the regulation) and expires on (insert the date 15 years after effective date of the regulation). Any coverage that is granted pursuant to 9VAC25-910-90 shall remain in full force and effect until 11:59 p.m. on (insert the date 15 years after the effective date of the regulation) unless the general permit coverage is terminated or revoked on or before that date.

9VAC25-910-60. Authorization to withdraw groundwater from the surficial aquifer of the Eastern Shore.

A. A person granted coverage under the general permit may withdraw groundwater from the surficial aquifer of the Eastern Shore Groundwater Management Area, as defined in 9VAC25-910-10, provided that:

1. The applicant submits an application in accordance with 9VAC25-910-80;
2. The applicant remits any required permit application fee;
3. The applicant receives general permit coverage from the Department of Environmental Quality under 9VAC25-910-90 and complies with the limitations and other requirements of the general permit, the general permit coverage letter, and the Ground Water Management Act of 1992 and attendant regulations; and
4. The applicant has not been required to obtain an individual permit under 9VAC25-610 for the proposed project withdrawals. An applicant that is eligible for general permit coverage may, at the applicant's discretion, seek an individual permit instead of coverage under this general permit.

B. Application may be made at any time for an individual permit in accordance with 9VAC25-610.

C. Coverage under this general permit does not relieve the permittee of the responsibility to comply with other applicable federal, state, or local statutes, ordinances, or regulations.

D. The activity to withdraw water shall not have been prohibited by state law or regulations, nor shall it contravene applicable Groundwater Withdrawal Regulations.

E. Coverage under this general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-610-50.

9VAC25-910-70. Reasons to deny coverage.

A. The board shall deny application for coverage under this general permit to:

1. An activity outside the Eastern Shore Groundwater Management Area.
2. An activity in an aquifer other than the surficial aquifer of the Eastern Shore Groundwater Management Area.
3. A well with a maximum depth greater than 80 feet below land surface, unless the applicant provides geophysical logs with the application that show the maximum depth of the well is constructed within the surficial aquifer of the Eastern Shore Groundwater Management Area, as determined by department review. Wells with a maximum depth less than or equal to 80 feet below land surface do not require submission of geophysical logs.
4. An activity that causes, may reasonably be expected to cause, or may contribute to causing more than minimal water level declines in the underlying confined aquifer system or degradation in water quality, stream or wetland hydrology, or other instream beneficial uses.

B. The board may require an individual permit in accordance with 9VAC25-610-95 B rather than granting coverage under this general permit.

9VAC25-910-80. Application.

A. The applicant shall file a complete application in accordance with this section for coverage under this general permit for use of the surficial aquifer in the Eastern Shore Groundwater Management Area.

B. A complete application for general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The permit fee as required by Fees for Permits and Certificates (9VAC25-20);
2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. The application forms are available from the Department of Environmental Quality;
3. A signature as described in 9VAC25-610-150;
4. A completed well construction report for all existing wells associated with the application submitted on the Water Well Completion Report, Form GW2;
5. For all proposed wells, the well name, proposed well depth, screen intervals, pumping rate, and latitude and longitude;
6. Locations of all existing and proposed wells associated with the application shown on a USGS 7.5-minute topographic map or equivalent computer generated map.

The map shall be of sufficient detail such that all wells may be easily located for site inspection. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The map must show the outline of the property and the location of each of its existing and proposed wells and must include all springs, rivers and other surface water bodies;

7. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable;

8. Notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 calendar days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery;

9. Documentation justifying volume of groundwater withdrawal requested as described in the groundwater withdrawal application provided in accordance with subdivision B 2 of this section; and

10. Where existing or proposed wells are greater than 80 feet below land surface, a complete suite of geophysical logs (16"/64" Normal, Single Point, Self Potential, Lateral, and Natural Gamma at a scale of 20 feet per inch) shall be obtained from boreholes at the locations and depths approved by the department. At least four months prior to the scheduled geophysical logging, the permittee shall notify the department of the drilling timetable to receive further guidance needed on performing the geophysical logging and to allow scheduling of department staff to make a site visit during the drilling of the borehole and the geophysical logging. Geophysical log data collected without the oversight of the department will not be accepted by the department.

C. The board may waive the requirement for information listed in subsection B of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

D. If an application is not accepted as complete by the board under the requirements of subsection B of this section, the board will require the submission of additional information pursuant to 9VAC25-610-98.

E. An incomplete permit application for coverage under this general permit may be administratively withdrawn from processing by the board for failure to provide the required

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information after 60 calendar days from the date of the latest written information request made by the board. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project after the time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

9VAC25-910-90. General permit.

An owner whose application is accepted by the board will receive coverage under the following permit and shall comply with the requirements in the permit and be subject to all requirements of 9VAC25-610.

GENERAL PERMIT FOR GROUNDWATER WITHDRAWALS FROM THE SURFICIAL AQUIFER OF THE EASTERN SHORE GROUNDWATER MANAGEMENT AREA.

Effective date: (insert the effective date of the regulation).

Expiration date: (insert the date 15 years after the effective date of the regulation).

Pursuant to § 62.1-256 of the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia) and Groundwater Withdrawal Regulations (9VAC25-610), the State Water Control Board hereby authorizes the permittee to withdraw and use groundwater in accordance with this permit.

The authorized withdrawals shall be in accordance with the information submitted with the application, this cover page, Part I – Operating Conditions, and Part II – Conditions Applicable to All Groundwater Withdrawal Permits, as set forth in this general permit.

PART I Operating Conditions

A. Authorized withdrawal. The withdrawal of groundwater shall be limited to the wells identified in the groundwater withdrawal application submitted in accordance with 9VAC25-910-80.

B. Reporting.

1. Water withdrawn from each well shall be recorded monthly at the end of each month, and reported to the department annually, in paper or electronic format, on a form provided by the department, by July 10 for the respective previous 12 months. Records of water use shall be maintained by the permittee in accordance with Part II F 1 through F 4 of this general permit.

2. The permittee shall report any amount in excess of the permitted withdrawal limit by the fifth day of the month following the month when such a withdrawal occurred.

Failure to report may result in compliance or enforcement activities.

C. Water conservation and management plan.

1. The permittee shall conduct an annual water audit quantifying the flows of the water in the system to understand its usage, reduce losses, and improve water conservation. The audit shall include:

a. Documentation of an annual review of the amount of water used compared with the expected need of the system to ensure that the water system uses the minimum amount of water necessary;

b. A list of any new water saving equipment, procedures, or improvements installed or water saving processes implemented during the previous year;

c. Documentation of implementation and evaluation of a leak detection and repair process; including documented quarterly visual monitoring during withdrawal periods where the permittee will locate and correct system leaks; and

d. A Groundwater Withdrawal Water Conservation and Management Audit Form, completed in its entirety, provided by the department.

2. Results of the annual audit shall be maintained onsite and available to the department upon request.

3. When a drought emergency is declared by the Commonwealth of Virginia in the Eastern Shore Drought Evaluation Region or in accordance with the county or locality drought management ordinance, the permittee shall implement either the provisions directed by the Commonwealth or the drought management ordinance, whichever is the most restrictive. The permittee shall be responsible for determining when drought emergencies are declared. The permittee shall retain records documenting that mandatory conservation measures were implemented during declared drought emergencies.

D. Mitigation plan. In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

1. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

2. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

3. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

4. The requirement that the claimant provide documentation that the claimant is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

E. Property rights. The issuance of coverage under this general permit neither conveys property rights in either real or personal property or exclusive privileges nor authorizes injury to private property, an invasion of personal property rights, or an infringement of federal, state, or local laws or regulations. The fact that an owner obtains coverage under this general permit shall not constitute a defense in a civil action involving private rights.

F. Well tags. Each well that is included in the coverage under this general permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records, at a minimum, the DEQ well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well. Such well identification plates shall be in a format specified by the board and are available from the department.

G. Well abandonment. The permittee shall permanently abandon out-of-service wells in accordance with the Virginia Department of Health regulations and shall submit documentation to the Department of Environmental Quality within 30 calendar days of abandonment. At least two weeks prior to the scheduled abandonment, the permittee shall notify the department of the scheduled abandonment date.

PART II

Conditions Applicable to All Groundwater Withdrawal Permits

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this permit shall be construed to relieve the permit holder of the duty to comply with all applicable federal and state statutes, regulations, and prohibitions. 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 avoid all adverse impacts that may result from this withdrawal as defined in 9VAC25-610-10 and to provide mitigation of the adverse impact in accordance with Part I D of this general permit.

D. Inspection, entry, and information requests. Upon presentation of credentials, the permittee shall allow the board, the department, or any duly authorized agent of the board, at reasonable times and under reasonable circumstances, (i) to enter upon the permittee's property, public or private; (ii) to have access to, inspect, and copy any records that must be kept as part of the permit conditions; and (iii) to inspect any facilities, well, water supply system, operations, or practices (including sampling, monitoring and withdrawal) that are regulated or required under the permit. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained in this general permit shall make an inspection time unreasonable during an emergency.

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

F. Water withdrawal volume records requirements.

1. The permittee shall maintain a copy of the permit on-site and shall make the permit available upon request.

2. Measurements taken for the purpose of monitoring shall be representative of the metered activity.

3. The permittee shall retain records of all metering information, including (i) all calibration and maintenance records, (ii) copies of all reports required by the permit, and (iii) 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 coverage under this general permit. This period may be extended by request of the board at any time.

4. Records of metering information shall include, as appropriate:

- a. The date, exact place and time of measurements;
- b. The names of the individuals that performed measurements;
- c. The date the measurements were performed; and
- d. The results of the measurements.

G. Water withdrawal volume metering and equipment requirements. Each well or impoundment or impoundment

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system shall have an in-line totalizing flow meter to read gallons, cubic feet, or cubic meters installed prior to beginning the permitted use. Meters shall produce volume determinations within plus or minus 10% of actual flows.

1. A defective meter or other device shall be repaired or replaced within 30 business days of discovery.

2. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals. The period during which the meter was defective must be clearly identified in the groundwater withdrawal report required by Part I B of this general permit. An alternative method for determining flow may be approved by the board on a case-by-case basis.

H. Well construction. At least 30 calendar days prior to the scheduled construction of any well, the permittee shall notify the department of the construction timetable and shall receive prior approval of the well location and acquire the DEQ well number. All wells shall be constructed in accordance with the following requirements.

1. A well site approval letter or well construction permit shall be obtained from the Virginia Department of Health prior to construction of the well.

2. For wells constructed with a maximum depth greater than 80 feet, a complete suite of geophysical logs (16"/64" Normal, Single Point, Self-Potential, Lateral, and Natural Gamma) shall be completed for the well and submitted to the department along with the corresponding completion report.

3. The permittee's determination of the surficial aquifer depth shall be submitted to the department for review and approval, or approved on site by the department's geologist, prior to installation of any pump.

4. A completed Uniform Water Well Completion Report, Form GW-2 and any additional water well construction documents shall be submitted to the department within 30 calendar days of the completion of any well and prior to the initiation of any withdrawal from the well. The assigned DEQ well number shall be included on all well documents.

I. Transfer of permits.

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

2. Coverage under this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 business days of the proposed transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for

transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to 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 II I 2 b of this general permit.

J. Notice of planned change. The permittee shall give notice to the department at least 30 business days prior to any planned alterations or additions to the permitted water withdrawal system.

K. Revocation and termination of coverage.

1. General permit coverage may be revoked in accordance with 9VAC25-610-290 and 9VAC25-610-300.

2. The permittee 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:

a. Operations have ceased at the facility and there are no longer withdrawals from the surficial aquifer.

b. A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a Change of Ownership Agreement Form has been submitted.

c. All groundwater withdrawals associated have been covered by an individual groundwater withdrawal permit.

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

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

a. The owner's name, mailing address, telephone number, and email address, if available;

b. The facility name and location;

c. The general permit number;

d. A completed Termination Agreement Form obtained from the department; and

e. The basis for submitting the notice of termination, including:

(1) A statement indicating that a new owner has assumed responsibility for the facility;

(2) A statement indicating that operations have ceased at the facility, and there are no longer groundwater withdrawals from the surficial aquifer;

(3) A statement indicating that all groundwater withdrawals have been covered by an individual Groundwater Withdrawal permit; or

(4) A statement indicating that termination of coverage is being requested for another reason (state the reason); and
 (5) The following certification: "I certify under penalty of law that all groundwater withdrawals from the surficial aquifer at the identified facility that are authorized by this general permit have been eliminated, or covered under a groundwater withdrawal individual 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 withdraw groundwater in accordance with the general permit, and that withdrawing groundwater is unlawful where the withdrawal is not authorized by a groundwater withdrawal permit or otherwise excluded from permitting. 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 Virginia Groundwater Management Act."

4. The notice of termination shall be signed in accordance with 9VAC25-610-150.

L. Continuation of coverage. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete application at least 90 calendar days prior to the expiration date of the permit, or a later submittal established by the board, which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to withdraw until such time as the board either:

1. Issues coverage to the owner under this general permit; or
2. Notifies the owner that the withdrawal is not eligible for coverage under this general permit.

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 currently effective permit coverage shall submit a new application at least 90 calendar days before the expiration date of the existing permit, unless permission for a later date has been granted in writing by the board. The board shall not grant permission for application to be submitted later than the expiration date of the existing permit.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (9VAC25-910)

[Application for an Eastern Shore Surficial Aquifer Groundwater Withdrawal General Permit, DEQ Form GWP-ESGP Application \(eff. 9/2020\)](#)

[Eastern Shore Surficial Aquifer General Permit Annual Groundwater Withdrawal Report, DEQ Form GWP-ESGP-Reporting \(eff. 12/2020\)](#)

[Eastern Shore Surficial Aquifer General Permit Groundwater Withdrawal Water Conservation and Management Audit Form, DEQ Form GWP-ESGP-WCMP \(eff. 12/2020\)](#)

[Groundwater Withdrawal Permit Uncontested Termination Agreement Form, DEQ Form GWP-Termination \(rev. 12/2020\)](#)

[Local Government Ordinance Form, DEQ Form GWP-LGOF \(rev. 8/2019\)](#)

[Uniform Water Well Completion Report, Form GW-2 \(rev. 8/2016\)](#)

VA.R. Doc. No. R20-6091; Filed August 3, 2021, 10:31 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 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: 9VAC25-210. Virginia Water Protection Permit Program Regulation (amending 9VAC25-210-80, 9VAC25-210-116, 9VAC25-210-130, 9VAC25-210-180).

9VAC25-660. Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (amending 9VAC25-660-30, 9VAC25-660-60, 9VAC25-660-70, 9VAC25-660-80, 9VAC25-660-100).

9VAC25-670. Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (amending 9VAC25-670-30, 9VAC25-670-60, 9VAC25-670-70, 9VAC25-670-80, 9VAC25-670-100).

9VAC25-680. Virginia Water Protection General Permit for Linear Transportation Projects (amending 9VAC25-680-30, 9VAC25-680-60, 9VAC25-680-70, 9VAC25-680-80, 9VAC25-680-100).

9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining

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Activities (amending 9VAC25-690-30, 9VAC25-690-60, 9VAC25-690-70, 9VAC25-690-80, 9VAC25-690-100).

Statutory Authority: §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia; § 401 of the Clean Water Act (33 USC § 1251 et seq.).

Effective Date: September 29, 2021.

Agency Contact: Dave Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, or email dave.davis@deq.virginia.gov.

Summary:

Pursuant to Chapter 265 of the 2021 Acts of Assembly, Special Session I, the amendments provide (i) that when a Virginia Water Protection permit applicant is required to purchase wetland or stream mitigation bank credits, but no credits are available in any mitigation provider's primary service area or at a cost of less than 200% of the price of credits available from a fund dedicated to achieving no net loss of wetland acreage and functions, the applicant may purchase or use credits from a mitigation provider's secondary service area; and (ii) that the permit applicant must comply with certain requirements in order to purchase or use such credits from a secondary service area, including minimum tree canopy requirements.

9VAC25-210-80. Application for a VWP permit.

A. Application for a VWP Permit. Any person who is required to obtain a VWP permit, except those persons applying for an emergency VWP permit for a public water supply emergency, shall submit a complete VWP permit application to the Department of Environmental Quality through the most current Joint Permit Application procedures established within each type of Joint Permit Application. The Virginia Department of Transportation (VDOT) may use its Interagency Coordination Meeting (IACM) process for submitting JPAs. There shall be no commencement of any activity subject to this chapter prior to the issuance of a VWP permit or granting VWP general permit coverage.

B. Informational requirements for all VWP individual permit applications are identified in this subsection with the exception of applications for emergency VWP permits to address a public water supply emergency, for which the information required in 9VAC25-210-340 C shall be submitted. In addition to the information in this subsection, applications involving a surface water withdrawal or a Federal Energy Regulatory Commission (FERC) license or relicense associated with a surface water withdrawal shall also submit the information required in 9VAC25-210-340 B.

1. A complete application for a VWP individual permit, at a minimum, consists of the following information, if applicable to the project:

a. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.

b. If different from applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

c. If applicable, the authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.

d. Project name and proposed project schedule. This schedule will be used to determine the VWP permit term.

e. The following information for the project site location, and any related permittee-responsible compensatory mitigation site:

(1) The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.

(2) Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

(3) The latitude and longitude to the nearest second at the center of the site or sites.

(4) The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

(5) A detailed map depicting the location of the site or sites, including the project boundary and existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

f. A narrative description of the project, including project purpose and need.

g. An alternatives analysis for the proposed project detailing the specific on-site and off-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site and off-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

h. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

(1) Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

(2) Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

(3) Open water impacts identified according to type; and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

(4) A copy of the approved jurisdictional determination when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

(5) A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 1 h (1), 1 h (2), and 1 h (3) of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

i. Plan view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

(1) North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

(2) Limits of proposed impacts to surface waters.

(3) Location of all existing and proposed structures.

(4) All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification

(i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; ordinary high water mark in nontidal areas; tidal wetlands boundary; and mean low water and mean high water lines in tidal areas.

(5) The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

(6) The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

j. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area includes at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, tidal wetland boundary, mean low water and mean high water lines in tidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of the proposed impact.

k. Materials assessment. Upon request by the board, the applicant shall provide evidence or certification that the material is free from toxic contaminants prior to disposal or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. The applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

l. An assessment of potential impacts to federal and state listed threatened or endangered species, including any correspondence or documentation from federal or state resource agencies addressing potential impacts to listed species.

m. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

(1) If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan shall be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of

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replacement of wetland acreage and functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

(2) If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan shall be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-section drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

(3) For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq.

of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions (a), (b), and (c) of this subdivision B 1 m (3) or in lieu thereof shall describe the intended protective mechanism or mechanisms that contain or contains the information required as follows:

(a) A provision for access to the site;

(b) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(c) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

(4) Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased ~~and~~ documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all information required by § 62.2-44.15:23 of the Code of Virginia.

n. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas, that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-

830), as additional state or local requirements may apply if the project is located within an RPA.

o. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

p. Permit application fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9VAC25-20. The board will continue to process the application, but the fee must be received prior to release of a draft VWP permit.

2. Reserved.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

- a. Wetland impacts per each single and complete project total 1.00 acre or less; or
- b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more, and when any of the following applies:

- a. The proposed compensatory mitigation consists of permittee-responsible compensatory mitigation, including water quality enhancements as replacement for wetlands; or
- b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Incomplete application.

1. Where an application for an individual permit or general permit coverage is not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the board considers the application complete. Where the applicant becomes aware that he omitted one or more

relevant facts from a VWP permit application or submitted incorrect information in a VWP permit application or in any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purpose of review but shall not require an additional notice or an additional permit application fee.

2. An incomplete application for an individual permit or general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee and may be subject to additional noticing requirements.

3. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application.

9VAC25-210-116. Compensation.

A. No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no net loss of existing wetland acreage and no net loss of functions in all surface waters. Compensatory mitigation ratios appropriate for the type of aquatic resource impacted and the type of compensation provided shall be applied to permitted impacts to help meet this requirement. Credit may be given for preservation of upland buffers already protected under other ordinances to the extent that additional protection and water quality and fish and wildlife resource benefits are provided.

B. Practicable and ecologically and environmentally preferable compensation alternatives.

1. An analysis shall be required to justify that permittee-responsible compensatory mitigation is ecologically and environmentally preferable to the purchase of mitigation bank credits or in-lieu fee program credits, with a primary service area that covers the impact site if such credits are available in sufficient quantity for the project at the projected time of need. The analysis shall address the ability of the permittee-responsible compensatory mitigation sites to replace lost wetland acreage and functions or lost stream functions and water quality benefits. The analysis comparing the impacted and compensation sites may use a method that assesses water quality or habitat metrics, such as that required by 9VAC25-210-80 C, or a method that assesses such criteria as water quality benefits, distance from impacts, hydrologic source and regime, watershed,

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vegetation type, soils, constructability, timing of compensation versus impact, property acquisition, and cost.

2. The applicant shall demonstrate that permittee-responsible compensatory mitigation can be protected in perpetuity through a protective mechanism approved by the Department of Environmental Quality, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument.

C. Compensatory mitigation proposals shall be evaluated as follows:

1. The purchase of mitigation bank credits and in-lieu fee program credits with a primary service area that covers the impact site when available shall in most cases be deemed the ecologically and environmentally preferable form of compensation for project impacts. However, permittee-responsible compensatory mitigation may be considered when the applicant satisfactorily demonstrates that permittee-responsible compensatory mitigation is ecologically and environmentally preferable in accordance with subdivision B 1 of this section.

2. Compensatory mitigation for unavoidable wetland impacts may be met through the following options, which are preferred in the following sequence: mitigation banking, in-lieu fee program, and permittee-responsible compensatory mitigation. However, the board shall evaluate the appropriate compensatory mitigation option on a case-by-case basis with consideration for which option is practicable and ecologically and environmentally preferable, including, in terms of replacement of acreage and functions, which option offers the greatest likelihood of success and avoidance of temporal loss of acreage and function. This evaluation shall be consistent with the U.S. Army Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources as provided in 33 CFR Part 332. When considering options for providing the required compensatory mitigation, DEQ shall consider the type and location options in the following order:

- a. Mitigation bank credits;
- b. In-lieu fee program credits;
- c. Permittee-responsible mitigation under a watershed approach;
- d. Permittee-responsible mitigation through on-site and in-kind mitigation;
- e. Permittee-responsible mitigation through off-site or out-of-kind mitigation;
- f. Restoration, enhancement, or preservation of upland buffers adjacent to wetlands when utilized in conjunction

with subdivision 2 a, 2 b, 2 c, 2 d, or 2 e of this subsection and when consistent with subsection A of this section; and g. Preservation of wetlands when utilized in conjunction with subdivision 2 a, 2 b, 2 c, 2 d, or 2 e of this subsection and when consistent with subsection A of this section.

3. Compensatory mitigation for unavoidable stream impacts may be met through the following options, which are preferred in the following sequence: mitigation banking, in-lieu fee program, and permittee-responsible mitigation. However, the board shall evaluate the appropriate compensatory mitigation option on a case-by-case basis with consideration for which option is practicable and ecologically and environmentally preferable, including, in terms of replacement of acreage and functions, which option offers the greatest likelihood of success and avoidance of temporal loss of acreage and function. This evaluation shall be consistent with the U.S. Army Corps of Engineers Compensatory Mitigation for Losses of Aquatic Resources as provided in 33 CFR Part 332. One factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology approved by the board. When considering options for providing the required compensatory mitigation, DEQ shall consider the type and location options in the following order:

- a. Mitigation bank stream credits;
- b. In-lieu fee program credits;
- c. Permittee-responsible mitigation under a watershed approach;
- d. Permittee-responsible mitigation through on-site and in-kind mitigation;
- e. Permittee-responsible mitigation through off-site or out-of-kind mitigation;
- f. Restoration, enhancement, or preservation of upland buffers adjacent to streams when utilized in conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection and when consistent with subsection A of this section; and
- g. Preservation of stream channels and adjacent riparian buffers when utilized in conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection and when consistent with subsection A of this section.

4. Compensatory mitigation for open water impacts may be required to protect state waters and fish and wildlife resources from significant impairment, as appropriate. Compensation shall not be required for permanent or temporary impacts to open waters that are identified as palustrine by the Cowardin classification method, but compensation may be required when such open waters are located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

D. In-lieu fee program approval.

1. The board may approve the use of a program by issuing a VWP permit for a specific project or by taking an enforcement action and following applicable public notice and comment requirements, or by granting approval of a program after publishing a notice of its intent in the Virginia Register of Regulations and accepting public comments on its approval for a minimum of 30 days.

2. Where a program is mandated by the Code of Virginia to be implemented and such program is approved by the U.S. Army Corps of Engineers, the program may be used as deemed appropriate for any VWP permit or enforcement action.

3. An approved program must meet the following criteria:

- a. Demonstration of a no net loss policy in terms of wetland acreage and functions or stream functions and water quality benefits by adoption of operational goals or objectives for restoration, creation, enhancement, or preservation;
- b. DEQ approval of each site for inclusion in the program;
- c. A commitment to provide annual reports to the board detailing contributions received and acreage and type of wetlands or streams preserved, created or restored in each watershed with those contributions, as well as the compensatory mitigation credits contributed for each watershed of project impact;
- d. A mechanism to establish fee amounts that will ensure each contribution will be adequate to compensate for the wetland acreage and functions or stream functions and water quality benefits lost in the impacted watershed; and
- e. Such terms and conditions as the board deems necessary to ensure a no net loss of wetland acreage and functions or stream functions and water quality benefits from permitted projects providing compensatory mitigation.

4. Approval may be granted for up to 10 years and may be renewed by the board upon a demonstration that the program has met the criteria in subdivision 3 of this subsection.

E. Use of mitigation banks. The use of mitigation banks for compensating project impacts shall be deemed appropriate if the following criteria are met:

1. The bank meets the criteria and conditions found in § 62.1-44.15:23 of the Code of Virginia;
2. The bank is ecologically and environmentally preferable to practicable on-site and off-site individual compensatory mitigation options;
3. The banking instrument, if approved after July 1, 1996, has been approved by a process that involved public review and comment in accordance with federal guidelines; and
4. The applicant provides verification to DEQ of purchase of the required amount of credits.

F. For permittee-responsible mitigation, the final compensatory mitigation plan shall include complete information on all components of the conceptual compensatory mitigation plan detailed in 9VAC25-210-80 B 1 m and:

1. For wetlands, the final compensation plan for review and approval by DEQ shall also include a summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries. The approved protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to DEQ prior to commencing impacts in surface waters.

2. For streams, the final compensation plan for review and approval by DEQ shall also include a site access plan; an erosion and sedimentation control plan, if appropriate; an abatement and control plan for undesirable plant species; a monitoring plan, including a monitoring and reporting schedule, monitoring design, and methodologies for success; proposed success criteria; location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; a plan view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries. The approved protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to DEQ prior to commencing impacts in surface waters.

9VAC25-210-130. VWP general permits.

A. The board may issue VWP general permits by regulation for certain specified categories of activities as it deems appropriate, except as limited by subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

B. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require individual applications and VWP individual permits rather than approving coverage under a VWP general permit regulation. Cases where an individual VWP permit may be required include the following:

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1. Where the activity may be a significant contributor to pollution;
2. Where the applicant or permittee is not in compliance with the conditions of the VWP general permit regulation or coverage;
3. When an applicant or permittee no longer qualifies for coverage under the VWP general permit; and
4. When a permittee operating under VWP general permit coverage requests to be excluded from coverage by applying for a VWP individual permit.

C. When a VWP individual permit is issued to a permittee, the applicability of the VWP general permit coverage to the individual permittee is automatically terminated on the effective date of the VWP individual permit.

D. When a VWP general permit regulation is issued, which applies to a permittee that is already covered by a VWP individual permit, such person may request exclusion from the provisions of the VWP general permit regulation and subsequent coverage under a VWP individual permit.

E. VWP general permit coverage may be revoked from an individual permittee for any of the reasons set forth in 9VAC25-210-180 subject to appropriate opportunity for a hearing.

F. The permittee shall be required to submit a written notice of project completion and request a permit termination by consent within 30 days following the completion of all activities in all permitted impact areas in accordance with subsection 90 A of the applicable VWP general permit regulation.

G. Activities authorized under a VWP general permit and general permit regulation shall be authorized for the fixed term stated in the applicable VWP general permit and VWP general permit regulation.

H. Unless prohibited from coverage under a VWP general permit, the board may certify or certify with conditions a general, regional, or nationwide permit proposed by the U.S. Army Corps of Engineers (USACE) in accordance with § 401 of the federal Clean Water Act as meeting the requirements of this chapter and a VWP general permit, provided that the nationwide or regional permit and the certification conditions:

1. Require that wetland or stream impacts be avoided and minimized to the maximum extent practicable;
2. Prohibit impacts that cause or contribute to a significant impairment of state waters or fish and wildlife resources;
3. Require compensatory mitigation sufficient to achieve no net loss of existing wetland acreage and functions or stream functions and water quality benefits;

4. Require that compensatory mitigation for unavoidable wetland impacts be provided in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116; and

5. Require that compensatory mitigation for unavoidable stream impacts be provided in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116, including an analysis of stream impacts utilizing a stream impact assessment methodology approved by the board.

I. The certifications allowed by subsection H of this section may be provided only after the board has advertised and accepted public comment on its intent to provide certification for at least 30 days.

J. Coverage under a general, regional, or nationwide permit promulgated by the USACE and certified by the board in accordance with this section shall be deemed coverage under a VWP general permit regulation upon submission of proof of coverage under the general, regional, or nationwide permit and any other information required by the board through the certification process. Notwithstanding the provisions of 9VAC25-20, no fee shall be required from applicants seeking coverage under this subsection.

9VAC25-210-180. Rules for modification, revocation and reissuance, extension, transfer, and termination of VWP individual permits.

A. VWP individual permits may be modified in whole or in part, revoked and reissued, extended, transferred, or terminated only as authorized by this section.

B. VWP permits may be modified upon the request of the permittee or upon board initiative when any of the following developments occur:

1. When new information becomes available about the project or activity covered by the VWP permit, including project additions or alterations, that was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
2. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
3. When changes occur that are subject to "reopener clauses" in the VWP permit; or
4. When developments applicable to surface water withdrawals as specified in 9VAC25-210-380 occur.

C. A request for a modification, except those addressed in subsection E of this section, shall include the applicable informational requirements of 9VAC25-210-80 B, updated to reflect the proposed changes to the project. The board may request additional information as necessary to review and prepare a draft permit. If the board tentatively decides to modify a permit, it shall prepare a draft permit incorporating the proposed changes in accordance with 9VAC25-210-120

and process the draft permit in accordance with 9VAC25-210-140 through 9VAC25-210-170.

D. During the drafting and authorization of a permit modification under this section, only those conditions to be modified shall be addressed with preparing a draft modified permit. VWP permit terms and conditions of the existing permit shall remain in full force and effect during the modification of the permit.

E. Upon request of the permittee, or upon board initiative with the consent of the permittee, minor modifications may be made in the VWP permit without following the public involvement procedures contained in 9VAC25-210-140, 9VAC25-210-160, or 9VAC25-210-170. Any request for a minor modification shall be in writing and shall contain the facts or reasons supporting the request. The board may request additional information as necessary to review a request for minor modification. The board, at its discretion, may require that the changes proposed under a minor modification to be processed as a modification in accordance with subsections B and C of this section. For VWP permits, a minor modification may only be processed to:

1. Correct typographical errors.
2. Require monitoring and reporting by the permittee at a different frequency than required in the VWP permit, based on new information justifying the change in conditions.
3. Change a compliance date provided it will not result in a net loss of wetland acreage or of functions in all surface waters.
4. Allow for a change in permittee provided that a written agreement containing a specific date for transfer of VWP permit responsibility, authorization, and liability from the current to the new permittee has been submitted to the board. A VWP permit shall be transferred only if the VWP permit has been modified to reflect the transfer, has been revoked and reissued to the new permittee, or has been automatically transferred. Any individual VWP permit shall be automatically transferred to a new permittee if the current permittee:
 - a. Notifies the board of the proposed transfer of the permit and provides a written agreement between the current and proposed permittees containing the date of transfer of VWP permit responsibility, authorization, and liability to the new permittee; and
 - b. The board does not within 15 days notify the current and new permittees of its intent to modify the VWP permit.
5. Change project plans or uses that do not result in a change to permitted project impacts other than allowable by subdivisions 6 and 7 of this subsection.
6. Reduce wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the

adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. The Department of Environmental Quality shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

7. Authorize additional impacts to surface waters that are proposed prior to impacting the additional areas. Proposed additional impacts shall meet the following requirements:

- a. The proposed additional impacts are located within the project boundary as depicted in the application for permit issuance, or are located in areas of directly related off-site work.
- b. The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.
- c. The cumulative, additional permanent wetland or open water impacts for one or more minor modifications do not exceed one-quarter of an acre (0.25 acre or 10,890 square feet).
- d. The cumulative, additional permanent stream impacts for one or more minor modifications do not exceed 100 linear feet.
- e. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-210-80 B 1 g.
- f. Compensatory mitigation for the proposed impacts, if required, meets the requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-80 B 1 m, and 9VAC25-210-116. Prior to a minor modification approval, DEQ may require submission of a compensatory mitigation plan for the additional impacts.
- g. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

8. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program, or substitute all or a portion of the prior authorized permittee-responsible compensatory mitigation with a purchase of mitigation credits in accordance with § 62.1-44.15:23 of the Code of Virginia and

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9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

9. Allow for extension of the expiration date of the VWP permit. Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit other than as may be allowed under this section, shall submit written notification requesting an extension. The permittee must file the request 90 days prior to the expiration date of the VWP permit. VWP permit modifications shall not be used to extend the term of a VWP permit beyond 15 years from the date of original issuance.

10. Activities or development applicable to surface water withdrawals as specified in 9VAC25-210-380 B.

F. After notice and opportunity for a formal hearing pursuant to § 62.1-44.15:02 of the Code of Virginia, a VWP permit can be terminated for cause. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; or
6. A determination that the permitted activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

G. The board may terminate the permit without cause when the permittee is no longer a legal entity due to death, dissolution, or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under § 62.1-44.15:25 of the Code of Virginia and 9VAC25-230.

H. A VWP permit may be terminated by consent, as initiated by the permittee. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all permitted activities and all required compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion. The director may accept this termination on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;
2. Name and location of the activity;
3. The VWP permit number; and
4. One of the following certifications:

a. For project completion: "I certify under penalty of law that all activities and any required compensatory mitigation authorized by a VWP permit have been completed. I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit."

b. For project cancellation: "I certify under penalty of law that the activities and any required compensatory mitigation authorized by this VWP permit will not occur. I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by DEQ, and the following certification statement: "I certify under penalty of law that the activities or the required compensatory mitigation authorized by this VWP permit have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination that I am no longer authorized to perform activities in surface waters in accordance with the VWP permit, and that performing activities in surface waters is unlawful where the activity is not authorized by a VWP permit, unless otherwise excluded from obtaining a permit. I also understand that the submittal of this notice does not release me from liability for any violations of this

VWP permit, nor does it allow me to resume the permitted activities without reapplication and issuance of another permit.

9VAC25-660-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed, provided that:

1. The applicant submits notification as required in 9VAC25-660-50 and 9VAC25-660-60.
2. The applicant remits any required permit application fee.
3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.
4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of coverage under this VWP general permit.
5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.
 - a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.
 - b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.
6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.
7. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116.

B. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the board, any person claiming this waiver shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

C. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this VWP general permit, unless a state program general permit (SPGP) is required and granted for the activity or impact.

E. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-660-60. Application.

A. The applicant shall file a complete application in accordance with 9VAC25-660-50 and this section for coverage under this VWP general permit for impacts to nontidal wetlands or open water of less than one-half acre and up to 300 linear feet of nontidal stream bed.

B. A complete application for VWP general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.
2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.
3. If applicable, the authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.
4. The existing VWP general permit tracking number, if applicable.
5. Project name and proposed project schedule.
6. The following information for the project site location:
 - a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.
 - b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.
 - c. The latitude and longitude to the nearest second at the center of the site or sites.
 - d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

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- e. A detailed map depicting the location of the site or sites, including the project boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.
7. A narrative description of the project, including project purpose and need.
8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:
- a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.
 - b. Limits of proposed impacts to surface waters.
 - c. Location of all existing and proposed structures.
 - d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.
 - e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).
 - f. The limits of areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).
9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.
10. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:
- a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.
 - b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.
 - c. Open water impacts identified according to their Cowardin classification, and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.
 - d. A copy of the approved jurisdictional determination when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.
 - e. A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.
11. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the

satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

12. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased ~~and~~, documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all information required by § 62.1-44.15:23 of the Code of Virginia.

13. A copy of the FEMA flood insurance rate map or FEMA-approved local floodplain map depicting any 100-year floodplains.

14. Permit application fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9VAC25-20.

15. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

16. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. Upon receipt of an application from the Department of Transportation for a road or highway construction project by

the appropriate DEQ office, the board has 10 business days, pursuant to § 33.2-258 of the Code of Virginia, to review the application and either determine the information requested in subsection B of this section is complete or inform the Department of Transportation that additional information is required to make the application complete. Upon receipt of an application from other applicants for any type of project, the board has 15 days to review the application and either determine that the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Pursuant to § 33.2-258 of the Code of Virginia, coverage under this VWP general permit for Department of Transportation road or highway construction projects shall be approved or approved with conditions, or the application shall be denied, within 30 business days of receipt of a complete application. For all other projects, coverage under this VWP general permit shall be approved or approved with conditions, or the application shall be denied, within 45 days of receipt of a complete application. If the board fails to act within the applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall be deemed granted.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Application for coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional requirements on a project in order to grant coverage under this VWP general permit. However, the requirements must be consistent with this chapter.

D. Incomplete application.

1. Where an application for general permit coverage is not accepted as complete by the board within the applicable 10 or 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for the purposes of review but shall not require an additional permit application fee.

2. An incomplete application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the

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applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

3. An applicant may request a suspension of application review by the board, but requesting a suspension shall not preclude the board from administratively withdrawing an incomplete application.

9VAC25-660-70. Compensation.

A. Compensatory mitigation may be required for permanent, nontidal surface water impacts as specified in 9VAC25-660-50. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with the VWP general permit in 9VAC25-660-100.

B. For the purposes of this VWP general permit chapter, the board shall assume that the purchase of mitigation bank credits or the purchase of in-lieu fee program credits with a primary service area that covers the impact site is ecologically preferable to practicable on-site or other off-site surface water compensation options. Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section, § 62.1-44.15:23 of the Code of Virginia, and the associated provisions of 9VAC25-210-116.

C. When required, compensatory mitigation for unavoidable, permanent wetland impacts shall be provided at a 2:1 mitigation ratio, as calculated on an area basis.

D. When required, compensatory mitigation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to the Department of Environmental Quality.

E. Compensation for permanent open water impacts, other than to streams, may be required at an in-kind or out-of-kind mitigation ratio of 1:1 or less, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, but compensation may be required when such open waters are located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

F. When conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 mitigation ratio, as calculated on an area basis. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this chapter. Compensation for conversion of other

types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources.

9VAC25-660-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the board in advance of a planned change, and an application or request for modification to coverage shall be reviewed according to all provisions of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts for a single and complete project equals or exceeds one-half acre of nontidal wetlands or open water or exceeds 300 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. VWP general permit coverage may be modified subsequent to issuance under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that:

a. The additional impacts are proposed prior to impacting those additional areas.

b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work, unless otherwise prohibited by this chapter.

c. The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-660-60 B 11.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written

statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored in accordance with Part I A 3 and B 11 of 9VAC25-660-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-660-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

3. A change in project plans or use that does not result in a change to authorized project impacts other than those allowed by subdivisions 1 and 2 of this subsection.

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-660-100. VWP general permit.

VWP GENERAL PERMIT NO. WP1 FOR IMPACTS LESS THAN ONE-HALF ACRE UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016

Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters

or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I. Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts to less than one-half acre of nontidal wetlands or open water and up to 300 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the board in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-660-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-660-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not

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countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or other similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90

days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection control structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and are accomplished in designated maintenance areas as indicated in the facility maintenance or

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design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit.

2. ~~The types of compensation~~ Compensation options that may be considered ~~for activities covered~~ under this VWP general permit include the purchase of mitigation bank credits or the purchase of in-lieu fee program credits with a primary service area that covers the impact site in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-660-70, and the associated provisions of 9VAC25-210-116.

3. The final compensation plan shall be submitted to and approved by the board prior to a construction activity in permitted impacts areas. The board shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the board shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the board.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs remain on the project site and shall depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form

provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-660-100 Part II C. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first authorized impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

a. Construction activities have not yet started;

b. Construction activities have started;

c. Construction activities have started but are currently inactive; or

d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered that require debris removal or involve a potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

6. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

7. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

8. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

9. Submittals required by this VWP general permit shall contain the following signed certification statement:

"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 violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of

application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

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

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. Coverage under this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

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

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer,

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the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the board of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The board does not within 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-660-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the board after public notice and opportunity for a hearing pursuant to § 62.1-44.15:02 of the Code of Virginia. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the board that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The board may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for

termination under §§ 62.1-44.15:02 and 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-660-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the activity;

3. The VWP general permit tracking number; and

4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. 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 VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the board information that the board may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

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

Q. Monitoring and records requirements.

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

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general 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.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alter or degrade existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-660-27.

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9VAC25-670-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities, provided that:

1. The applicant submits notification as required in 9VAC25-670-50 and 9VAC25-670-60.
2. The applicant remits any required permit application fee.
3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.
4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of this VWP general permit.
5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.
 - a. Where a utility line has multiple crossings of surface waters (several single and complete projects) with more than minimal impacts, the board may at its discretion require a VWP individual permit for the project.
 - b. Where an access road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.
6. The stream impact criterion applies to all components of the project, including any structures and stream channel manipulations.
7. When functions of surface waters are permanently adversely affected, such as for conversion of forested to emergent wetlands in a permanently maintained utility right-of-way, compensation shall be required for impacts outside of a 20-foot wide permanently maintained corridor. Compensation shall not be required for impacts within the 20-foot wide portion of permanently maintained corridor. For example, with a 50-foot wide, permanently maintained corridor, compensation on each side of the 20-foot portion would be required for impacts that occur between the 20-foot and the 50-foot marks.

8. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-670-70, and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the following:

1. The construction, maintenance, or repair of utility lines, including outfall structures and the excavation, backfill, or bedding for utility lines provided there is no change in preconstruction contours.
2. The construction, maintenance, or expansion of a substation facility or pumping station associated with a power line or utility line.
3. The construction or maintenance of foundations for overhead utility line towers, poles, or anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a single pad) are used where feasible.
4. The construction of access roads for the construction or maintenance of utility lines including overhead power lines and utility line substations, provided the activity in combination with any substation does not exceed the threshold limit of this VWP general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the board, any person claiming this waiver shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

D. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this VWP general permit unless (i) a state program general permit (SPGP) is required and granted for the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

F. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-670-60. Application.

A. The applicant shall file a complete application in accordance with 9VAC25-670-50 and this section for coverage

under this VWP general permit for impacts to surface waters from utility activities.

B. A complete application for VWP general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.
2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.
3. If applicable, the authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.
4. The existing VWP general permit tracking number, if applicable.
5. Project name and proposed project schedule.
6. The following information for the project site location and any related permittee-responsible compensatory mitigation site:
 - a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.
 - b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.
 - c. The latitude and longitude to the nearest second at the center of the site or sites.
 - d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.
 - e. A detailed map depicting the location of the site or sites, including the project boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.
7. A narrative description of the project, including project purpose and need.
8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:
 - a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.
 - b. Limits of proposed impacts to surface waters.
 - c. Location of all existing and proposed structures.
 - d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface

waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay reservation Area Designation and Management Regulations (9VAC25-830).

f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

c. Open water impacts identified according to their Cowardin classification, and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places

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using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination, when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 10 a, 10 b, and 10 c of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

11. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

12. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

a. If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage and functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic

analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

b. If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-sectional drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

c. For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions c (1), c (2), and c (3) of this subdivision 12 or in lieu thereof

shall describe the intended protective mechanism or mechanisms that contains the information required below:

- (1) A provision for access to the site;
 - (2) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and
 - (3) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.
- d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased ~~and~~ documentation from the approved mitigation bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all information required by § 62.1-44.15:23 of the Code of Virginia.

13. Permit application fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9VAC25-20.

14. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

15. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

- 1. No analysis shall be required when:
 - a. Wetland impacts per each single and complete project total 1.00 acre or less; or
 - b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.
- 2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more and when any of the following applies:
 - a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or
 - b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Upon receipt of an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage under the VWP general permit shall be approved or approved with conditions, or the application shall be denied, within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under the VWP general permit shall be deemed granted.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Application for coverage under the VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of surface waters or fish and wildlife resources.

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2. The board may place additional requirements on a project in order to grant coverage under this VWP general permit. However, the requirements must be consistent with this chapter.

E. Incomplete application.

1. Where an application for general permit coverage is not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for the purposes of review but shall not require an additional permit application fee.

2. An incomplete application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

3. An applicant may request a suspension of application review by the board, but requesting a suspension shall not preclude the board from administratively withdrawing an incomplete application.

9VAC25-670-70. Compensation.

A. Compensatory mitigation may be required for permanent, nontidal surface water impacts as specified in 9VAC25-670-50 A. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with 9VAC25-670-100.

B. Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section, § 62.1-44.15:23 of the Code of Virginia, and 9VAC25-210-116.

C. When required, compensatory mitigation for unavoidable permanent wetland impacts shall be provided at the following minimum mitigation ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.
2. Impacts to scrub-shrub wetlands shall be mitigated at 1.5:1, as calculated on an area basis.

3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.

D. When required, compensatory mitigation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor in determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to the Department of Environmental Quality.

E. Compensation for permanent open water impacts, other than to streams, may be required at an in-kind or out-of-kind mitigation ratio of 1:1 or less, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, but compensation may be required when such open waters are located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

F. When conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 mitigation ratio, as calculated on an area basis. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this chapter. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources.

9VAC25-670-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the board in advance of a planned change, and an application or request for modification of an authorization for coverage shall be reviewed according to all provisions of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts for a single and complete project exceeds one acre of nontidal wetlands or open water or exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. VWP general permit coverage may be modified under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that:
 - a. The additional impacts are proposed prior to impacting those additional areas.
 - b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work, unless otherwise prohibited by this chapter.
 - c. The permittee has provided sufficient documentation that the board may reasonably determine that the

additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-670-60 B 11.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-670-70. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored in accordance with Part I A 3 and B 11 of 9VAC25-670-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-670-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

3. A change in project plans or use that does not result in a change to authorized project impacts other than those allowed in subdivisions 1 and 2 of this subsection.

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-670-100. VWP general permit.

VWP GENERAL PERMIT NO. WP2 FOR FACILITIES AND ACTIVITIES OF UTILITIES AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND OTHER UTILITY LINE ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of surface waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I. Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to one acre of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the board in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-670-80. An application or request

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for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-670-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in such a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude any unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction

elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact areas where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in a Department of Environmental Quality VWP general permit coverage letter, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted

stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands, not to exceed 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a trench drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

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4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.
5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.
6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.
7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.
 2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-670-70.
 3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.
 4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.
 5. The final compensation plan shall be submitted to and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the board shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the board.
- a. The final permittee-responsible wetlands compensation plan shall include:
 - (1) The complete information on all components of the conceptual compensation plan.
 - (2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.
 - (3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.
 - b. The final permittee-responsible stream compensation plan shall include:
 - (1) The complete information on all components of the conceptual compensation plan.
 - (2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.
 - (3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

- a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.
- b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.
- c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.
- d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.
- e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.
- f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at a minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have

been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-670-100 Part II E. Corrective

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measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

- a. A sampling station shall be located upstream and immediately downstream of the relocated channel.
- b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.
- c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the fifth monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site, or from the closest weather station. Once the wetland

hydrology success criteria have been satisfied for a particular monitoring year, weekly monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the

center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-670-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

- a. Construction activities have not yet started;
- b. Construction activities have started;

- c. Construction activities have started but are currently inactive; or
- d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged

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water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur

between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"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 violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

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

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

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

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the board of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with

the requirements of enforcement activities related to the authorized activity.

2. The board does not within the 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-670-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the board after public notice and opportunity for a hearing pursuant to § 62.1-44.15:02 of the Code of Virginia. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the board that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to the VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The board may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under §§ 62.1-44.15:02 and 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-670-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination

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of coverage on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;
2. Name and location of the activity;
3. The VWP general permit tracking number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not

release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. 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 VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the board any information that the board may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

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

Q. Monitoring and records requirements.

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

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general 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.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
4. On and after October 1, 2001, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-670-27.

9VAC25-680-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for linear transportation projects, provided that:

1. The applicant submits notification as required in 9VAC25-680-50 and 9VAC25-680-60.
2. The applicant remits any required permit application fee.

3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.

4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit or coverage under another applicable VWP general permit in lieu of coverage under this VWP general permit.

5. Impacts, both temporary and permanent, result from a single and complete project, including all attendant features.

- a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of state waters (several single and complete projects), the board may at its discretion require a VWP individual permit.
- b. For the purposes of this chapter, when an interchange has multiple crossings of state waters, the entire interchange shall be considered the single and complete project.

6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.

7. Dredging does not exceed 5,000 cubic yards.

8. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-680-70, and 9VAC25-210-116.

B. Activities that may be granted coverage under this VWP general permit include the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, bicycle and pedestrian paths, and airport runways and taxiways, including all attendant features both temporary and permanent).

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the board, any person claiming this waiver shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

D. Coverage under this VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016,

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shall constitute coverage under this VWP general permit, unless a state program general permit (SPGP) is required and granted for the activity or impact.

F. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-680-60. Application.

A. Applications shall be filed with the board as follows:

1. The applicant shall file a complete application in accordance with 9VAC25-680-50 and this section for coverage under this VWP general permit for impacts to surface waters from linear transportation projects.
2. The VDOT may use its monthly IACM process for submitting applications.

B. A complete application for VWP general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.
2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.
3. If applicable, authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.
4. The existing VWP general permit tracking number, if applicable.
5. Project name and proposed project schedule.
6. The following information for the project site location, and any related permittee-responsible compensatory mitigation site:
 - a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.
 - b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.
 - c. The latitude and longitude to the nearest second at the center of the site or sites.
 - d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.
 - e. A detailed map depicting the location of the site or sites, including the project boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be

of sufficient detail to easily locate the site or sites for inspection.

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

- a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.
- b. Limits of proposed impacts to surface waters.
- c. Location of all existing and proposed structures.
- d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.
- e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).
- f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. Materials assessment. Upon request by the board, the applicant shall provide evidence or certification that the material is free from toxic contaminants prior to disposal or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. The applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

11. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

- a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.
- b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.
- c. Open water impacts identified according to their Cowardin classification; and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.
- d. A copy of the approved jurisdictional determination when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.
- e. A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 11 a, 11 b, and 11 c of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

12. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the

project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

13. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

- a. If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage and functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

- b. If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv)

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the proposed stream segment restoration locations including plan view and cross-sectional drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

c. For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions c (1), c (2), and c (3) of this subdivision 13 or in lieu thereof shall describe the intended protective mechanism or mechanisms that contains the information required below:

(1) A provision for access to the site;

(2) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and

(3) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.

d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased ~~and~~, documentation from the approved mitigation bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all

information required by § 62.1-44.15:23 of the Code of Virginia.

14. Permit application fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9VAC25-20.

15. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

16. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:

- a. Wetland impacts per each single and complete project total 1.00 acre or less; or
- b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.

2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more and when any of the following applies:

- a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or

b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Upon receipt of an application from the Department of Transportation for a road or highway construction project by the appropriate DEQ office, the board has 10 business days, pursuant to § 33.2-258 of the Code of Virginia, to review the application and either determine the information requested in subsection B of this section is complete or inform the Department of Transportation that additional information is required to make the application complete. Upon receipt of an application from other applicants for any type of project, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Pursuant to § 33.2-258 of the Code of Virginia, coverage under this VWP general permit for Department of Transportation road or highway construction projects shall be approved or approved with conditions, or the application shall be denied, within 30 business days of receipt of a complete application. For all other projects, coverage under this VWP general permit shall be approved or approved with conditions, or the application shall be denied, within 45 days of receipt of a complete application. If the board fails to act within the applicable 30 or 45 days on a complete application, coverage under this VWP general permit shall be deemed granted.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Application for coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.

2. The board may place additional requirements on a project in order to grant coverage under this VWP general permit. However, the requirements must be consistent with this chapter.

E. Incomplete application.

1. Where an application for general permit coverage is not accepted as complete by the board within the applicable 10 or 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a

new application for the purposes of review but shall not require an additional permit application fee.

2. An incomplete application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.

3. An applicant may request a suspension of application review by the board, but requesting a suspension shall not preclude the board from administratively withdrawing an incomplete application.

9VAC25-680-70. Compensation.

A. Compensatory mitigation may be required for permanent, nontidal surface water impacts as specified in 9VAC25-680-50 A. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with 9VAC25-680-100.

B. Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section, § 62.1-44.15:23 of the Code of Virginia, and 9VAC25-210-116.

C. When required, compensatory mitigation for unavoidable, permanent wetland impacts shall be provided at the following minimum mitigation ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.
2. Impacts to scrub-shrub wetlands shall be mitigated at 1.5:1, as calculated on an area basis.
3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.

D. When required, compensatory mitigation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor in determining the required stream compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to the Department of Environmental Quality.

E. Compensation for permanent open water impacts, other than to streams, may be required at an in-kind or out-of-kind mitigation ratio of 1:1 or less, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, but compensation may be required when such open waters are located in areas of karst

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topography in Virginia and are formed by the natural solution of limestone.

F. When conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 mitigation ratio, as calculated on an area basis. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this chapter. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources.

9VAC25-680-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the board in advance of a planned change, and an application or request for modification to coverage shall be reviewed according to all provisions of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts for a single and complete project exceeds two acres of nontidal wetlands or open water or exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. VWP general permit coverage may be modified under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that:
 - a. The additional impacts are proposed prior to impacting the additional areas.
 - b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work, unless otherwise prohibited in this chapter.
 - c. The permittee has provided sufficient documentation that the board may reasonably determine that the additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.
 - d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.
 - e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.
 - f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-680-60 B 12.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-680-70. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored in accordance with Parts I A 3 and B 11 of 9VAC25-680-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impact amounts as specified in 9VAC25-680-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.
3. A change in project plans or use that does not result in a change to authorized project impacts other than those allowed in subdivisions 1 and 2 of this subsection.
4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.
5. Correct typographical errors.

9VAC25-680-100. VWP general permit.**VWP GENERAL PERMIT NO. WP3 FOR LINEAR
TRANSPORTATION PROJECTS UNDER THE VIRGINIA
WATER PROTECTION PERMIT AND THE VIRGINIA
STATE WATER CONTROL LAW**

Effective date: August 2, 2016

Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I. Special Conditions.**A. Authorized activities.**

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the board in the coverage letter, if any, shall be enforceable conditions of this permit.
2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in accordance with 9VAC25-680-80. An application or request for modification to coverage or another VWP permit application may be required.
3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-680-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.
4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.
2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless specifically approved by the Department of Environmental Quality on a case-by-case basis and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipe and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes or culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.
3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.
4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.
6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

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7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material, to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary, supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of

that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct his activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must

be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized by the Department of Environmental Quality. Restoration shall be the seeding or planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap aprons for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For bank protection activities, the structure and backfill shall be placed as close to the stream bank as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the

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facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation, provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-680-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensatory mitigation plan shall be submitted to and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the board shall be an enforceable requirement of any coverage under this VWP general permit. Deviations

from the approved final plan shall be submitted and approved in advance by the board.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-

owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

- a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.
- b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.
- c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.
- d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.
- e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.
- f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring year, other than the final monitoring year, the reasons for this failure shall be determined and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for the Department of Environmental Quality approval.

Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means only, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

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2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-680-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites, including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on the first day of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured weekly during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts, either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental

Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site constructions activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted in accordance with 9VAC25-680-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted

by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

- a. Construction activities have not yet started;
- b. Construction activities have started;
- c. Construction activities have started but are currently inactive; or
- d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.

(5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.

(6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.

(7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs

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taken after the initial planting shall be included in the first monitoring report after planting is complete.

(8) Discussion of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site.

(10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.

(11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.

b. All stream compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

(4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.

(5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.

(6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or cross section, and corrective actions conducted at the stream compensation site.

(7) Documentation of undesirable plant species and summary of abatement and control measures.

(8) Summary of wildlife or signs of wildlife observed at the compensation site.

(9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.

(10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.

(11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or

potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"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 violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this

VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

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

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

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

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the board of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The board does not within 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-680-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the board after public notice and opportunity for a hearing pursuant to § 62.1-44.15:02 of the Code of Virginia. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the board that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The board may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under §§ 62.1-44.15:02 and 62.1-44.15:25 of the Code of Virginia.

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L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-680-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;
2. Name and location of the activity;
3. The VWP general permit tracking number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I

understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit authorization or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. 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 VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the board any information that the board may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

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

Q. Monitoring and records requirements.

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

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance

records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general 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.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

- 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
- 2. Excavate in a wetland;
- 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or
- 4. On and after August 1, 2001, for linear transportation projects of the Virginia Department of Transportation, or on and after October 1, 2001, for all other projects, conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
 - b. Filling or dumping;
 - c. Permanent flooding or impounding; or
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-680-27.

9VAC25-690-30. Authorization to impact surface waters.

A. Any person granted coverage under the VWP general permit effective August 2, 2016, may permanently or temporarily impact up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed for general development and certain mining activities, provided that:

- 1. The applicant submits notification as required in 9VAC25-690-50 and 9VAC25-690-60.
 - 2. The applicant remits any required permit application fee.
 - 3. The applicant receives general permit coverage from the Department of Environmental Quality and complies with the limitations and other requirements of the VWP general permit; the general permit coverage letter; the Clean Water Act, as amended; and the State Water Control Law and attendant regulations.
 - 4. The applicant has not been required to obtain a VWP individual permit under 9VAC25-210 for the proposed project impacts. The applicant, at his discretion, may seek a VWP individual permit, or coverage under another applicable VWP general permit, in lieu of coverage under this VWP general permit.
 - 5. Impacts, both temporary and permanent, result from a single and complete project including all attendant features.
 - a. Where a road segment (e.g., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of surface waters (several single and complete projects), the board may, at its discretion, require a VWP individual permit.
 - b. For the purposes of this chapter, when an interchange has multiple crossings of surface waters, the entire interchange shall be considered the single and complete project.
 - 6. The stream impact criterion applies to all components of the project, including structures and stream channel manipulations.
 - 7. Dredging does not exceed 5,000 cubic yards.
 - 8. When required, compensation for unavoidable impacts is provided in accordance with § 62.1-44.15:23 of the Code of Virginia, 9VAC25-690-70, and 9VAC25-210-116.
- B. Activities that may be granted coverage under this VWP general permit include the following:
- 1. Residential, commercial, institutional. The construction or expansion of building foundations, building pads, and attendant features for residential, commercial, and institutional development activities.
 - a. Residential developments include both single and multiple units.

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b. Commercial developments include retail stores, industrial facilities, restaurants, business parks, office buildings, and shopping centers.

c. Institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship.

d. Attendant features include roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreation facilities (such as playgrounds, playing fields, and golf courses). Attendant features must be necessary for the use and maintenance of the structures.

2. Recreational facilities. The construction or expansion of recreational facilities and small support facilities.

a. Recreational facilities include hiking trails, bike paths, horse paths, nature centers, and campgrounds (but not trailer parks). Boat ramps (concrete or open-pile timber), boathouses, covered boat lifts, mooring piles and dolphins, fender piles, camels (wooden floats serving as fenders alongside piers), and open-pile piers (including floating piers, travel-lift piers, etc.) associated with recreational facilities are also included.

b. Recreational facilities do not include as a primary function the use of motor vehicles, buildings, or impervious surfaces.

c. Golf courses and ski area expansions may qualify as recreational facilities provided the construction of the proposed facility does not result in a substantial deviation from the natural contours and the facility is designed to minimize adverse effects on state waters and riparian areas. Measures that may be used to minimize adverse effects on waters and riparian areas include the implementation of integrated pest management plans, adequate stormwater management, vegetated buffers, and fertilizer management plans.

d. Small support facilities are authorized provided they are directly related to the recreational activity. Small support facilities include maintenance storage buildings and stables.

e. The following do not qualify as recreational facilities: hotels, restaurants, playing fields (e.g., baseball, soccer, or football fields), basketball and tennis courts, racetracks, stadiums, arenas, or new ski areas.

f. The recreational facility must have an adequate water quality management plan, such as a stormwater management plan, to ensure that the recreational facility results in no substantial adverse effects to water quality.

3. Stormwater management facilities. The construction, maintenance, and excavation of stormwater management facilities; the installation and maintenance of water control structures, outfall structures, and emergency spillways; and

the maintenance dredging of existing stormwater management facilities.

a. Stormwater management facilities include stormwater ponds and facilities, detention basins, retention basins, traps, and other facilities designed to reduce pollutants in stormwater runoff.

b. The stormwater management facility must:

(1) To the maximum extent practicable, be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates).

(2) Not permanently restrict or impede the passage of normal or expected high flows, unless the primary purpose of the facility is to impound waters.

(3) Withstand expected high flows.

(4) To the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and not increase water flows from the project site, relocate water, or redirect flow beyond preconstruction conditions.

(5) To the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the facility is part of a larger system designed to manage water flows.

(6) Be designed using best management practices (BMPs) and watershed protection techniques. Examples of such BMPs are described in the Virginia Stormwater Management Handbook and include forebays, vegetated buffers, bioengineering methods, and siting considerations to minimize adverse effects to aquatic resources.

c. Maintenance excavation shall be in accordance with the original facility maintenance plan, or when unavailable, an alternative plan approved by the Department of Environmental Quality, and shall not exceed to the maximum extent practicable, the character, scope, or size detailed in the original design of the facility.

4. Mining facilities. The construction or expansion of mining facilities and attendant features for a single and complete project. This general permit may not be used to authorize impacts from in-stream mining activities or operations as defined in 9VAC25-690-10.

a. Mining facilities include activities directly associated with aggregate mining (e.g., sand, gravel, and crushed or broken stone); hard rock/mineral mining (e.g., metalliferous ores); and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Mines, Minerals and Energy.

b. Attendant features are authorized provided they are directly related to the mining facility, and include access road construction, parking lots, offices, maintenance shops, garages, and stormwater management facilities.

c. Both direct impacts (e.g., footprints of all fill areas, road crossings, sediment ponds, and stormwater management facilities; mining through state waters; stockpile of overburden, and excavation) and indirect impacts (e.g., diversion of surface water and reach of state waters affected by sediment pond pool and sediment transport) shall be considered when granting coverage under this general permit.

C. The board waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value, as defined in 9VAC25-210-10. Upon request by the board, any person claiming this waiver shall demonstrate to the satisfaction of the board that he qualifies for the waiver.

D. Coverage under VWP general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

E. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued § 401 certification in accordance with 9VAC25-210-130 H as of August 2, 2016, shall constitute coverage under this VWP general permit unless (i) a state program general permit (SPGP) is required and granted for the activity or impact; or (ii) coverage under a VWP general permit is not allowed pursuant to subdivision D 2 of § 62.1-44.15:21 of the State Water Control Law.

F. Coverage under a permit issued by the Department of Mines, Minerals and Energy under the Virginia Coal Surface Mining Control and Reclamation Act, Chapter 19 (§ 45.1-226 et seq.) of Title 45.1 of the Code of Virginia, where such permit authorizes activities that may be permitted by this chapter and contains a mitigation plan for the impacts from the mining activities, shall also constitute coverage under this VWP general permit.

G. When the board determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate, the board may require a VWP individual permit in accordance with 9VAC25-210-130 B rather than granting coverage under this VWP general permit.

9VAC25-690-60. Application.

A. The applicant shall file a complete application in accordance with 9VAC25-690-50 and this section for coverage under this VWP general permit for impacts to surface waters from development and certain mining activities.

B. A complete application for VWP general permit coverage, at a minimum, consists of the following information, if applicable to the project:

1. The applicant's legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number.

2. If different from the applicant, legal name, mailing address, telephone number, and if applicable, electronic mail address and fax number of property owner.

3. If applicable, the authorized agent's name, mailing address, telephone number, and if applicable, fax number and electronic mail address.

4. The existing VWP general permit tracking number, if applicable.

5. Project name and proposed project schedule.

6. The following information for the project site location, and any related permittee-responsible compensatory mitigation site:

a. The physical street address, nearest street, or nearest route number; city or county; zip code; and if applicable, parcel number of the site or sites.

b. Name of the impacted water body or water bodies, or receiving waters, as applicable, at the site or sites.

c. The latitude and longitude to the nearest second at the center of the site or sites.

d. The fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, for the site or sites.

e. A detailed map depicting the location of the site or sites, including the project boundary and all existing preservation areas on the site or sites. The map (e.g., a U.S. Geologic Survey topographic quadrangle map) should be of sufficient detail to easily locate the site or sites for inspection.

7. A narrative description of the project, including project purpose and need.

8. Plan-view drawing or drawings of the project site sufficient to assess the project, including at a minimum the following:

a. North arrow, graphic scale, and existing and proposed topographic or bathymetric contours.

b. Limits of proposed impacts to surface waters.

c. Location of all existing and proposed structures.

d. All delineated wetlands and all jurisdictional surface waters on the site, including the Cowardin classification (i.e., emergent, scrub-shrub, or forested) for those surface waters and waterway name, if designated; ebb and flood or direction of flow; and ordinary high water mark in nontidal areas.

e. The limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

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f. The limits of any areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas).

9. Cross-sectional and profile drawing or drawings. Cross-sectional drawing or drawings of each proposed impact area shall include at a minimum a graphic scale, existing structures, existing and proposed elevations, limits of surface water areas, ebb and flood or direction of flow (if applicable), ordinary high water mark in nontidal areas, impact limits, and location of all existing and proposed structures. Profile drawing or drawings with this information may be required on a case-by-case basis to demonstrate minimization of impacts. Any application that proposes piping or culverting stream flows shall provide a longitudinal profile of the pipe or culvert position and stream bed thalweg, or shall provide spot elevations of the stream thalweg at the beginning and end of the pipe or culvert, extending to a minimum of 10 feet beyond the limits of proposed impact.

10. Materials assessment. Upon request by the board, the applicant shall provide evidence or certification that the material is free from toxic contaminants prior to disposal or that the dredging activity will not cause or contribute to a violation of water quality standards during dredging. The applicant may be required to conduct grain size and composition analyses, tests for specific parameters or chemical constituents, or elutriate tests on the dredge material.

11. A narrative description of all impacts proposed to surface waters, including the type of activity to be conducted in surface waters and any physical alteration to surface waters. Surface water impacts shall be identified as follows:

a. Wetland impacts identified according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested); and for each classification, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places using commonly accepted arithmetic principles of rounding.

b. Individual stream impacts (i) quantified by length in linear feet to the nearest whole number and by average width in feet to the nearest whole number; (ii) quantified in square feet to the nearest whole number; and (iii) when compensatory mitigation is required, the impacts identified according to the assessed type using the Unified Stream Methodology.

c. Open water impacts identified according to their Cowardin classification, and for each type, the individual impacts quantified in square feet to the nearest whole number, cumulatively summed in square feet, and then the sum converted to acres and rounded to two decimal places

using commonly accepted arithmetic principles of rounding.

d. A copy of the approved jurisdictional determination when available, or when unavailable, (i) the preliminary jurisdictional determination from the U.S. Army Corps of Engineers (USACE), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), or DEQ or (ii) other correspondence from the USACE, NRCS, or DEQ indicating approval of the boundary of applicable jurisdictional surface waters, including wetlands data sheets if applicable.

e. A delineation map that (i) depicts the geographic area or areas of all surface water boundaries delineated in accordance with 9VAC25-210-45 and confirmed in accordance with the jurisdictional determination process; (ii) identifies such areas in accordance with subdivisions 11 a, 11 b, and 11 c of this subsection; and (iii) quantifies and identifies any other surface waters according to their Cowardin classification (i.e., emergent, scrub-shrub, or forested) or similar terminology.

12. An alternatives analysis for the proposed project detailing the specific on-site measures taken during project design and development to first avoid and then minimize impacts to surface waters to the maximum extent practicable in accordance with the Guidelines for Specification of Disposal Sites for Dredged or Fill Material, 40 CFR Part 230. Avoidance and minimization includes, but is not limited to, the specific on-site measures taken to reduce the size, scope, configuration, or density of the proposed project, including review of alternative sites where required for the project, which would avoid or result in less adverse impact to surface waters, and documentation demonstrating the reason the applicant determined less damaging alternatives are not practicable. The analysis shall demonstrate to the satisfaction of the board that avoidance and minimization opportunities have been identified and measures have been applied to the proposed activity such that the proposed activity in terms of impacts to state waters and fish and wildlife resources is the least environmentally damaging practicable alternative.

13. A compensatory mitigation plan to achieve no net loss of wetland acreage and functions or stream functions and water quality benefits.

a. If permittee-responsible compensation is proposed for wetland impacts, a conceptual wetland compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of replacement of wetland acreage and functions; (ii) a detailed location map including latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) a hydrologic

analysis including a draft water budget for nontidal areas based on expected monthly inputs and outputs that will project water level elevations for a typical year, a dry year, and a wet year; (v) groundwater elevation data, if available, or the proposed location of groundwater monitoring wells to collect these data; (vi) wetland delineation confirmation, data sheets, and maps for existing surface water areas on the proposed site or sites; (vii) a conceptual grading plan; (viii) a conceptual planting scheme including suggested plant species and zonation of each vegetation type proposed; (ix) a description of existing soils including general information on both topsoil and subsoil conditions, permeability, and the need for soil amendments; (x) a draft design of any water control structures; (xi) inclusion of buffer areas; (xii) a description of any structures and features necessary for the success of the site; (xiii) the schedule for compensatory mitigation site construction; and (xiv) measures for the control of undesirable species.

b. If permittee-responsible compensation is proposed for stream impacts, a conceptual stream compensatory mitigation plan must be submitted in order for an application to be deemed complete and shall include at a minimum (i) the goals and objectives in terms of water quality benefits and replacement of stream functions; (ii) a detailed location map including the latitude and longitude to the nearest second and the fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, at the center of the site; (iii) a description of the surrounding land use; (iv) the proposed stream segment restoration locations including plan view and cross-sectional drawings; (v) the stream deficiencies that need to be addressed; (vi) data obtained from a DEQ-approved, stream impact assessment methodology such as the Unified Stream Methodology; (vii) the proposed restoration measures to be employed including channel measurements, proposed design flows, types of instream structures, and conceptual planting scheme; (viii) reference stream data, if available; (ix) inclusion of buffer areas; (x) schedule for restoration activities; and (xi) measures for the control of undesirable species.

c. For any permittee-responsible compensatory mitigation, the conceptual compensatory mitigation plan shall also include a draft of the intended protective mechanism or mechanisms, in accordance with 9VAC25-210-116 B 2, such as, but not limited to, a conservation easement held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-1009 et seq. of the Code of Virginia) or the Virginia Open-Space Land Act (§ 10.1-1700 et seq. of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other protective instrument. The draft intended protective mechanism shall contain the information in subdivisions c (1), c (2), and c (3) of this subdivision 13 or in lieu thereof shall describe

the intended protective mechanism or mechanisms that contains the information required below:

- (1) A provision for access to the site;
- (2) The following minimum restrictions: no ditching, land clearing, or discharge of dredge or fill material, and no activity in the area designated as compensatory mitigation area with the exception of maintenance; corrective action measures; or DEQ-approved activities described in the approved final compensatory mitigation plan or long-term management plan; and
- (3) A long-term management plan that identifies a long-term steward and adequate financial assurances for long-term management in accordance with the current standard for mitigation banks and in-lieu fee program sites, except that financial assurances will not be necessary for permittee-responsible compensation provided by government agencies on government property. If approved by DEQ, permittee-responsible compensation on government property and long-term protection may be provided through federal facility management plans, integrated natural resources management plans, or other alternate management plans submitted by a government agency or public authority.
- d. Any compensatory mitigation plan proposing the purchase of mitigation bank or in-lieu fee program credits shall include the number and type of credits proposed to be purchased ~~and~~ documentation from the approved bank or in-lieu fee program sponsor of the availability of credits at the time of application, and all information required by § 62.1-44.15:23 of the Code of Virginia.

14. Permit application fee. The applicant will be notified by the board as to the appropriate fee for the project in accordance with 9VAC25-20.

15. A written description and a graphical depiction identifying all upland areas including buffers, wetlands, open water, other surface waters, and compensatory mitigation areas located within the proposed project boundary or permittee-responsible compensatory mitigation areas that are under a deed restriction, conservation easement, restrictive covenant, or other land use protective instrument (i.e., protected areas). Such description and a graphical depiction shall include the nature of the prohibited activities within the protected areas and the limits of Chesapeake Bay Resource Protection Areas (RPAs) as field-verified by the applicant, and if available, the limits as approved by the locality in which the project site is located, unless the proposed use is exempt from the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830), as additional state or local requirements may apply if the project is located within an RPA.

16. Signature page that has been signed, dated, and certified by the applicant in accordance with 9VAC25-210-100. If the

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applicant is a business or other organization, the signature must be made by an individual with the authority to bind the business or organization, and the title of the signatory must be provided. The application signature page, either on the copy submitted to the Virginia Marine Resources Commission or to DEQ, must have an original signature. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

C. An analysis of the functions of wetlands proposed to be impacted may be required by DEQ. When required, the method selected for the analysis shall assess water quality or habitat metrics and shall be coordinated with DEQ in advance of conducting the analysis.

1. No analysis shall be required when:
 - a. Wetland impacts per each single and complete project total 1.00 acre or less; or
 - b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent, or higher.
2. Analysis shall be required when wetland impacts per each single and complete project total 1.01 acres or more and when any of the following applies:
 - a. The proposed compensatory mitigation consists of permittee-responsible compensation, including water quality enhancements as replacement for wetlands; or
 - b. The proposed compensatory mitigation consists of purchasing mitigation bank or in-lieu fee program credits at less than the standard mitigation ratios of 2:1 for forest, 1.5:1 for scrub-shrub, and 1:1 for emergent.

D. Upon receipt of an application by the appropriate DEQ office, the board has 15 days to review the application and either determine the information requested in subsection B of this section is complete or inform the applicant that additional information is required to make the application complete. Coverage under this VWP general permit shall be approved or approved with conditions, or the application shall be denied, within 45 days of receipt of a complete application. If the board fails to act within 45 days on a complete application, coverage under this VWP permit general permit shall be deemed granted.

1. In evaluating the application, the board shall make an assessment of the impacts associated with the project in combination with other existing or proposed impacts. Application for coverage under this VWP general permit shall be denied if the cumulative impacts will cause or contribute to a significant impairment of state waters or fish and wildlife resources.
2. The board may place additional requirements on a project in order to grant coverage under this VWP general permit.

However, the requirements must be consistent with this chapter.

E. Incomplete application.

1. Where an application for general permit coverage is not accepted as complete by the board within 15 days of receipt, the board shall require the submission of additional information from the applicant and may suspend processing of any application until such time as the applicant has supplied the requested information and the application is complete. Where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in any report to the board, the applicant shall immediately submit such facts or the correct information. A revised application with new information shall be deemed a new application for purposes of review but shall not require an additional permit application fee.
2. An incomplete application for general permit coverage may be administratively withdrawn from processing by the board for failure to provide the required information after 60 days from the date of the latest written information request made by the board. The board shall provide (i) notice to the applicant and (ii) an opportunity for an informal fact-finding proceeding when administratively withdrawing an incomplete application. Resubmittal of an application for the same or similar project, after such time that the original permit application was administratively withdrawn, shall require submittal of an additional permit application fee.
3. An applicant may request a suspension of application review by the board, but requesting a suspension shall not preclude the board from administratively withdrawing an incomplete application.

9VAC25-690-70. Compensation.

A. Compensatory mitigation may be required for permanent, nontidal surface water impacts as specified in 9VAC25-690-50 A. All temporary, nontidal surface water impacts shall be restored to preexisting conditions in accordance with 9VAC25-690-100.

B. Compensatory mitigation and any compensatory mitigation proposals shall be in accordance with this section, § 62.1-44.15:23 of the Code of Virginia, and 9VAC25-210-116.

C. When required, compensatory mitigation for unavoidable, permanent wetland impacts shall be provided at the following minimum mitigation ratios:

1. Impacts to forested wetlands shall be mitigated at 2:1, as calculated on an area basis.
2. Impacts to scrub-shrub wetlands shall be mitigated at 1.5:1, as calculated on an area basis.

3. Impacts to emergent wetlands shall be mitigated at 1:1, as calculated on an area basis.

D. When required, compensatory mitigation for stream bed impacts shall be appropriate to replace lost functions and water quality benefits. One factor in determining the required compensation shall be an analysis of stream impacts utilizing a stream impact assessment methodology acceptable to the Department of Environmental Quality.

E. Compensation for permanent open water impacts, other than to streams, may be required at an in-kind or out-of-kind mitigation ratio of 1:1 or less, as calculated on an area basis, to offset impacts to state waters and fish and wildlife resources. Compensation shall not be required for permanent or temporary impacts to open waters identified as palustrine by the Cowardin classification method, but compensation may be required when such open waters are located in areas of karst topography in Virginia and are formed by the natural solution of limestone.

F. When conversion results in a permanent alteration of the functions of a wetland, compensatory mitigation for conversion impacts to wetlands shall be required at a 1:1 mitigation ratio, as calculated on an area basis. For example, the permanent conversion of a forested wetland to an emergent wetland is considered to be a permanent impact for the purposes of this chapter. Compensation for conversion of other types of surface waters may be required, as appropriate, to offset impacts to state waters and fish and wildlife resources.

9VAC25-690-80. Notice of planned changes; modifications to coverage.

A. The permittee shall notify the board in advance of a planned change, and an application or request for modification to coverage shall be reviewed according to all provisions of this chapter. Coverage shall not be modified if (i) the cumulative total of permanent and temporary impacts for a single and complete project exceeds two acres of nontidal wetlands or open water exceeds 1,500 linear feet of nontidal stream bed or (ii) the criteria in subsection B of this section are not met. The applicant may submit a new permit application for consideration under a VWP individual permit.

B. VWP general permit coverage may be modified under the following circumstances:

1. Additional impacts to surface waters are necessary, provided that:
 - a. The additional impacts are proposed prior to impacting the additional areas.
 - b. The proposed additional impacts are located within the project boundary as depicted in the application for coverage or are located in areas of directly-related off-site work, unless otherwise prohibited in this chapter.
 - c. The permittee has provided sufficient documentation that the board may reasonably determine that the

additional impacts will not impact federal or state listed threatened or endangered species or designated critical habitat, or result in a taking of threatened or endangered species. The board recommends that the permittee verify that the project will not impact any proposed threatened or endangered species or proposed critical habitat.

d. The cumulative, additional permanent wetland or open water impacts for one or more notices of planned change do not exceed 0.25 acre.

e. The cumulative, additional permanent stream impacts for one or more notices of planned change do not exceed 100 linear feet.

f. Documentation is provided demonstrating that the proposed surface water impacts have been avoided to the maximum extent practicable in accordance with the informational requirements of 9VAC25-690-60 B 12.

g. Compensatory mitigation for the proposed impacts, if required, meets the requirements of ~~9VAC25-210-1169 § 62.1-44.15:23 of the Code of Virginia, 9VAC25-210-116, and VAC25-690-70~~ 9VAC25-690-70. Prior to a planned change approval, the Department of Environmental Quality may require submission of a compensatory mitigation plan for the additional impacts.

h. Where such additional impacts are temporary, and prior to initiating the impacts, the permittee provides a written statement to the board that the area to be temporarily impacted will be restored to its preconstruction elevations and contours with topsoil from the impact area where practicable, such that the previous acreage and functions are restored in accordance with Parts I A 3 and B 11 of 9VAC25-690-100. The additional temporary impacts shall not cause the cumulative total impacts to exceed the general permit threshold for use. The proposed temporary impacts shall be deemed approved if DEQ does not respond within 10 days of receipt of the request for authorization to temporarily impact additional surface waters.

i. The additional proposed impacts do not change the category of the project, based on the original impacts amounts as specified in 9VAC25-690-50 A 2. However, the applicant may submit a new permit application for the total impacts to be considered under this VWP general permit, another VWP general permit, or a VWP individual permit.

2. A reduction in wetland or stream impacts. Compensatory mitigation requirements may be modified in relation to the adjusted impacts, provided that the adjusted compensatory mitigation meets the initial compensatory mitigation goals. DEQ shall not be responsible for ensuring refunds for mitigation bank credit purchases or in-lieu fee program credit purchases.

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3. A change in project plans or use that does not result in a change to authorized project impacts other than those allowed by subdivisions 1 and 2 of this subsection.

4. Substitute a specific, DEQ-approved mitigation bank or in-lieu fee program with another DEQ-approved mitigation bank or in-lieu fee program or substitute all or a portion of the prior authorized permittee-responsible compensation with a purchase of mitigation credits in accordance with § 62.1-44.15:23 of the Code of Virginia and 9VAC25-210-116 C from a DEQ-approved mitigation bank or in-lieu fee program. The amount of credits proposed to be purchased shall be sufficient to meet the compensatory mitigation requirement for which the compensatory mitigation is proposed to replace.

5. Correct typographical errors.

9VAC25-690-100. VWP general permit.

VWP GENERAL PERMIT NO. WP4 FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES UNDER THE VIRGINIA WATER PROTECTION PERMIT AND THE VIRGINIA STATE WATER CONTROL LAW

Effective date: August 2, 2016
Expiration date: August 1, 2026

In compliance with § 401 of the Clean Water Act, as amended (33 USC § 1341) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that this VWP general permit, if complied with, will protect instream beneficial uses, will not violate applicable water quality standards, and will not cause or contribute to a significant impairment of state waters or fish and wildlife resources. In issuing this VWP general permit, the board has not taken into consideration the structural stability of any proposed activities.

The permanent or temporary impact of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed shall be subject to the provisions of the VWP general permit set forth herein; any requirements in coverage granted under this general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it.

Part I. Special Conditions.

A. Authorized activities.

1. The activities authorized by this chapter shall not cause more than the permanent or temporary impacts of up to two acres of nontidal wetlands or open water and up to 1,500 linear feet of nontidal stream bed. Additional permit requirements as stipulated by the board in the coverage letter, if any, shall be enforceable conditions of this permit.

2. Any changes to the authorized permanent impacts to surface waters shall require a notice of planned change in

accordance with 9VAC25-690-80. An application or request for modification to coverage or another VWP permit application may be required.

3. Any changes to the authorized temporary impacts to surface waters shall require written notification to and approval from the Department of Environmental Quality in accordance with 9VAC25-690-80 prior to initiating the impacts and restoration to preexisting conditions in accordance with the conditions of this permit.

4. Modification to compensation requirements may be approved at the request of the permittee when a decrease in the amount of authorized surface waters impacts occurs, provided that the adjusted compensation meets the initial compensation goals.

B. Overall conditions.

1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water. Pipes and culverts placed in streams must be installed to maintain low flow conditions and shall be countersunk at both inlet and outlet ends of the pipe or culvert, unless otherwise specifically approved by the Department of Environmental Quality on a case-by-case basis, and as follows: The requirement to countersink does not apply to extensions or maintenance of existing pipes and culverts that are not countersunk, floodplain pipes and culverts being placed above ordinary high water, pipes and culverts being placed on bedrock, or pipes and culverts required to be placed on slopes 5.0% or greater. Bedrock encountered during construction must be identified and approved in advance of a design change where the countersunk condition cannot be met. Pipes and culverts 24 inches or less in diameter shall be countersunk three inches below the natural stream bed elevations, and pipes and culverts greater than 24 inches shall be countersunk at least six inches below the natural stream bed elevations. Hydraulic capacity shall be determined based on the reduced capacity due to the countersunk position. In all stream crossings appropriate measures shall be implemented to minimize any disruption of aquatic life movement.

3. Wet or uncured concrete shall be prohibited from entry into flowing surface waters, unless the area is contained within a cofferdam and the work is performed in the dry or unless otherwise approved by the Department of Environmental Quality. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

4. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.

5. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or for mining activities covered by this general permit, the standards issued by the Virginia Department of Mines, Minerals and Energy that are effective as those in the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

6. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. All denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

7. All construction, construction access (e.g., cofferdams, sheetpiling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

8. No machinery may enter flowing waters, unless authorized by this VWP general permit or approved prior to entry by the Department of Environmental Quality.

9. Heavy equipment in temporarily-impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material to minimize soil disturbance to the maximum extent practicable. Equipment and materials shall be removed immediately upon completion of work.

10. All nonimpacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits shall be clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain

revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted streams and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

12. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric, immediately stabilized to prevent entry into state waters, managed such that leachate does not enter state waters, and completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

13. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, french drains, or other similar structures.

14. The permittee shall employ measures to prevent spills of fuels or lubricants into state waters.

15. The permittee shall conduct activities in accordance with the time-of-year restrictions recommended by the Virginia Department of Wildlife Resources, the Virginia Marine Resources Commission, or other interested and affected agencies, as contained, when applicable, in Department of Environmental Quality VWP general permit coverage, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

16. Water quality standards shall not be violated as a result of the construction activities.

17. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during

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excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream channel can begin.

C. Road crossings.

1. Access roads and associated bridges, pipes, and culverts shall be constructed to minimize the adverse effects on surface waters to the maximum extent practicable. Access roads constructed above preconstruction elevations and contours in surface waters must be bridged, piped, or culverted to maintain surface flows.

2. Installation of road crossings shall occur in the dry via the implementation of cofferdams, sheetpiling, stream diversions, or similar structures.

D. Utility lines.

1. All utility line work in surface waters shall be performed in a manner that minimizes disturbance, and the area must be returned to its preconstruction elevations and contours with topsoil from the impact area where practicable and restored within 30 days of completing work in the area, unless otherwise authorized the Department of Environmental Quality. Restoration shall be the seeding of planting of the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

2. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

3. The trench for a utility line cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a french drain effect.). For example, utility lines may be backfilled with clay blocks to ensure that the trench does not drain surface waters through which the utility line is installed.

E. Stream modification and stream bank protection.

1. Riprap bank stabilization shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

2. Riprap apron for all outfalls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. For stream bank protection activities, the structure and backfill shall be placed as close to the stream bank as

practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

4. All stream bank protection structures shall be located to eliminate or minimize impacts to vegetated wetlands to the maximum extent practicable.

5. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills or breakwaters.

6. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

7. No material removed from the stream bottom shall be disposed of in surface waters, unless otherwise authorized by this VWP general permit.

F. Dredging.

1. Dredging depths shall be determined and authorized according to the proposed use and controlling depths outside the area to be dredged.

2. Dredging shall be accomplished in a manner that minimizes disturbance of the bottom and minimizes turbidity levels in the water column.

3. If evidence of impaired water quality, such as a fish kill, is observed during the dredging, dredging operations shall cease, and the Department of Environmental Quality shall be notified immediately.

4. Barges used for the transportation of dredge material shall be filled in such a manner to prevent the overflow of dredged materials.

5. Double handling of dredged material in state waters shall not be permitted.

6. For navigation channels the following shall apply:

a. A buffer of four times the depth of the dredge cut shall be maintained between the bottom edge of the design channel and the channelward limit of wetlands, or a buffer of 15 feet shall be maintained from the dredged cut and the channelward edge of wetlands, whichever is greater. This landward limit of buffer shall be flagged and inspected prior to construction.

b. Side slope cuts of the dredging area shall not exceed a two-horizontal-to-one-vertical slope to prevent slumping of material into the dredged area.

7. A dredged material management plan for the designated upland disposal site shall be submitted and approved 30 days prior to initial dredging activity.

8. Pipeline outfalls and spillways shall be located at opposite ends of the dewatering area to allow for maximum retention and settling time. Filter fabric shall be used to line the dewatering area and to cover the outfall pipe to further reduce sedimentation to state waters.

9. The dredge material dewatering area shall be of adequate size to contain the dredge material and to allow for adequate dewatering and settling out of sediment prior to discharge back into state waters.

10. The dredge material dewatering area shall utilize an earthen berm or straw bales covered with filter fabric along the edge of the area to contain the dredged material, filter bags, or other similar filtering practices, any of which shall be properly stabilized prior to placing the dredged material within the containment area.

11. Overtopping of the dredge material containment berms with dredge materials shall be strictly prohibited.

G. Stormwater management facilities.

1. Stormwater management facilities shall be installed in accordance with best management practices and watershed protection techniques (e.g., vegetated buffers, siting considerations to minimize adverse effects to aquatic resources, bioengineering methods incorporated into the facility design to benefit water quality and minimize adverse effects to aquatic resources) that provide for long-term aquatic resources protection and enhancement, to the maximum extent practicable.

2. Compensation for unavoidable impacts shall not be allowed within maintenance areas of stormwater management facilities.

3. Maintenance activities within stormwater management facilities shall not require additional permit coverage or compensation provided that the maintenance activities do not exceed the original contours of the facility, as approved and constructed, and is accomplished in designated maintenance areas as indicated in the facility maintenance or design plan or when unavailable, an alternative plan approved by the Department of Environmental Quality.

Part II. Construction and Compensation Requirements, Monitoring, and Reporting.

A. Minimum compensation requirements.

1. The permittee shall provide any required compensation for impacts in accordance with the conditions in this VWP general permit, the coverage letter, and the chapter promulgating the general permit. For all compensation that requires a protective mechanism, including preservation of surface waters or buffers, the permittee shall record the approved protective mechanism in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

2. Compensation options that may be considered under this VWP general permit shall meet the criteria in § 62.1-

44.15:23 of the Code of Virginia, 9VAC25-210-116, and 9VAC25-690-70.

3. The permittee-responsible compensation site or sites depicted in the conceptual compensation plan submitted with the application shall constitute the compensation site. A site change may require a modification to coverage.

4. For compensation involving the purchase of mitigation bank credits or the purchase of in-lieu fee program credits, the permittee shall not initiate work in permitted impact areas until documentation of the mitigation bank credit purchase or of the in-lieu fee program credit purchase has been submitted to and received by the Department of Environmental Quality.

5. The final compensation plan shall be submitted to and approved by the board prior to a construction activity in permitted impact areas. The board shall review and provide written comments on the final plan within 30 days of receipt or it shall be deemed approved. The final plan as approved by the board shall be an enforceable requirement of any coverage under this VWP general permit. Deviations from the approved final plan shall be submitted and approved in advance by the board.

a. The final permittee-responsible wetlands compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) A summary of the type and acreage of existing wetland impacts anticipated during the construction of the compensation site and the proposed compensation for these impacts; a site access plan; a monitoring plan, including proposed success criteria, monitoring goals, and the location of photo-monitoring stations, monitoring wells, vegetation sampling points, and reference wetlands or streams, if available; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan; a construction schedule; and the final protective mechanism for the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

b. The final permittee-responsible stream compensation plan shall include:

(1) The complete information on all components of the conceptual compensation plan.

(2) An evaluation, discussion, and plan drawing or drawings of existing conditions on the proposed compensation stream, including the identification of

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functional and physical deficiencies for which the measures are proposed, and summary of geomorphologic measurements (e.g., stream width, entrenchment ratio, width-depth ratio, sinuosity, slope, substrate, etc.); a site access plan; a monitoring plan, including a monitoring and reporting schedule, monitoring design and methodologies for success, proposed success criteria, location of photo-monitoring stations, vegetation sampling points, survey points, bank pins, scour chains, and reference streams; an abatement and control plan for undesirable plant species; an erosion and sedimentation control plan, if appropriate; a construction schedule; a plan-view drawing depicting the pattern and all compensation measures being employed; a profile drawing; cross-sectional drawing or drawings of the proposed compensation stream; and the final protective mechanism for the protection of the compensation site or sites, including all surface waters and buffer areas within its boundaries.

(3) The approved protective mechanism. The protective mechanism shall be recorded in the chain of title to the property, or an equivalent instrument for government-owned lands, and proof of recordation shall be submitted to the Department of Environmental Quality prior to commencing impacts in surface waters.

6. The following criteria shall apply to permittee-responsible wetland or stream compensation:

a. The vegetation used shall be native species common to the area, shall be suitable for growth in local wetland or riparian conditions, and shall be from areas within the same or adjacent U.S. Department of Agriculture Plant Hardiness Zone or Natural Resources Conservation Service Land Resource Region as that of the project site. Planting of woody plants shall occur when vegetation is normally dormant, unless otherwise approved in the final wetlands or stream compensation plan or plans.

b. All work in permitted impact areas shall cease if compensation site construction has not commenced within 180 days of commencement of project construction, unless otherwise authorized by the board.

c. The Department of Environmental Quality shall be notified in writing prior to the initiation of construction activities at the compensation site.

d. Point sources of stormwater runoff shall be prohibited from entering a wetland compensation site prior to treatment by appropriate best management practices. Appropriate best management practices may include sediment traps, grassed waterways, vegetated filter strips, debris screens, oil and grease separators, or forebays.

e. The success of the compensation shall be based on meeting the success criteria established in the approved final compensation plan.

f. If the wetland or stream compensation area fails to meet the specified success criteria in a particular monitoring

year, other than the final monitoring year, the reasons for this failure shall be determined, and a corrective action plan shall be submitted to the Department of Environmental Quality for approval with or before that year's monitoring report. The corrective action plan shall contain at minimum the proposed actions, a schedule for those actions, and a monitoring plan, and shall be implemented by the permittee in accordance with the approved schedule. Should significant changes be necessary to ensure success, the required monitoring cycle shall begin again, with monitoring year one being the year that the changes are complete, as confirmed by the Department of Environmental Quality. If the wetland or stream compensation area fails to meet the specified success criteria by the final monitoring year or if the wetland or stream compensation area has not met the stated restoration goals, reasons for this failure shall be determined and a corrective action plan, including proposed actions, a schedule, and a monitoring plan, shall be submitted with the final year monitoring report for Department of Environmental Quality approval. Corrective action shall be implemented by the permittee in accordance with the approved schedule. Annual monitoring shall be required to continue until two sequential, annual reports indicate that all criteria have been successfully satisfied and the site has met the overall restoration goals (e.g., that corrective actions were successful).

g. The surveyed wetland boundary for the wetlands compensation site shall be based on the results of the hydrology, soils, and vegetation monitoring data and shall be shown on the site plan. Calculation of total wetland acreage shall be based on that boundary at the end of the monitoring cycle. Data shall be submitted by December 31 of the final monitoring year.

h. Herbicides or algicides shall not be used in or immediately adjacent to the wetlands or stream compensation site or sites without prior authorization by the board. All vegetation removal shall be done by manual means, unless authorized by the Department of Environmental Quality in advance.

B. Impact site construction monitoring.

1. Construction activities authorized by this permit that are within impact areas shall be monitored and documented. The monitoring shall consist of:

a. Preconstruction photographs taken at each impact area prior to initiation of activities within impact areas. Photographs shall remain on the project site and depict the impact area and the nonimpacted surface waters immediately adjacent to and downgradient of each impact area. Each photograph shall be labeled to include the following information: permit number, impact area number, date and time of the photograph, name of the

person taking the photograph, photograph orientation, and photograph subject description.

b. Site inspections shall be conducted by the permittee or the permittee's qualified designee once every calendar month during activities within impact areas. Monthly inspections shall be conducted in the following areas: all authorized permanent and temporary impact areas; all avoided surface waters, including wetlands, stream channels, and open water; surface water areas within 50 feet of any land disturbing activity and within the project or right-of-way limits; and all on-site permanent preservation areas required under this permit. Observations shall be recorded on the inspection form provided by the Department of Environmental Quality. The form shall be completed in its entirety for each monthly inspection and shall be kept on site and made available for review by the Department of Environmental Quality staff upon request during normal business hours. Inspections are not required during periods of no activity within impact areas.

2. Monitoring of water quality parameters shall be conducted during permanent relocation of perennial streams through new channels in the manner noted below. The permittee shall report violations of water quality standards to the Department of Environmental Quality in accordance with the procedures in 9VAC25-690-100 Part II E. Corrective measures and additional monitoring may be required if water quality standards are not met. Reporting shall not be required if water quality standards are not violated.

a. A sampling station shall be located upstream and immediately downstream of the relocated channel.

b. Temperature, pH, and dissolved oxygen (D.O.) measurements shall be taken every 30 minutes for at least two hours at each station prior to opening the new channels and immediately before opening new channels.

c. Temperature, pH, and D.O. readings shall be taken after opening the channels and every 30 minutes for at least three hours at each station.

C. Permittee-responsible wetland compensation site monitoring.

1. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites including invert elevations for all water elevation control structures and spot elevations throughout the site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. Either type of survey shall be certified by a licensed surveyor or by a registered professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

2. Photographs shall be taken at the compensation site or sites from the permanent markers identified in the final compensation plan, and established to ensure that the same locations and view directions at the site or sites are monitored in each monitoring period. These photographs shall be taken after the initial planting and at a time specified in the final compensation plan during every monitoring year.

3. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after wetland compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1, 2, 3, and 5, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

4. The establishment of wetland hydrology shall be measured during the growing season, with the location and number of monitoring wells, and frequency of monitoring for each site, set forth in the final monitoring plan. Hydrology monitoring well data shall be accompanied by precipitation data, including rainfall amounts either from on site or from the closest weather station. Once the wetland hydrology success criteria have been satisfied for a particular monitoring year, monitoring may be discontinued for the remainder of that monitoring year following Department of Environmental Quality approval. After a period of three monitoring years, the permittee may request that hydrology monitoring be discontinued, providing that adequate hydrology has been established and maintained. Hydrology monitoring shall not be discontinued without written approval from the Department of Environmental Quality.

5. The presence of hydric soils or soils under hydric conditions shall be evaluated in accordance with the final compensation plan.

6. The establishment of wetland vegetation shall be in accordance with the final compensation plan. Monitoring shall take place in August, September, or October during the growing season of each monitoring year, unless otherwise authorized in the monitoring plan.

7. The presence of undesirable plant species shall be documented.

8. All wetland compensation monitoring reports shall be submitted in accordance with 9VAC25-690-100 Part II E 6.

D. Permittee-responsible stream compensation and monitoring.

1. Riparian buffer restoration activities shall be detailed in the final compensation plan and shall include, as appropriate, the planting of a variety of native species

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currently growing in the site area, including appropriate seed mixtures and woody species that are bare root, balled, or burlapped. A minimum buffer width of 50 feet, measured from the top of the stream bank at bankfull elevation landward on both sides of the stream, shall be required where practical.

2. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation shall be completed in the dry whenever practicable.

3. Livestock access to the stream and designated riparian buffer shall be limited to the greatest extent practicable.

4. Stream channel restoration activities shall be conducted in the dry or during low flow conditions. When site conditions prohibit access from the streambank or upon prior authorization from the Department of Environmental Quality, heavy equipment may be authorized for use within the stream channel.

5. Photographs shall be taken at the compensation site from the vicinity of the permanent photo-monitoring stations identified in the final compensation plan. The photograph orientation shall remain constant during all monitoring events. At a minimum, photographs shall be taken from the center of the stream, facing downstream, with a sufficient number of photographs to view the entire length of the restoration site. Photographs shall document the completed restoration conditions. Photographs shall be taken prior to site activities, during instream and riparian compensation construction activities, within one week of completion of activities, and during at least one day of each monitoring year to depict restored conditions.

6. An as-built ground survey, or an aerial survey provided by a firm specializing in aerial surveys, shall be conducted for the entire compensation site or sites. Aerial surveys shall include the variation from actual ground conditions, such as +/- 0.2 feet. The survey shall be certified by the licensed surveyor or by a registered, professional engineer to conform to the design plans. The survey shall be submitted within 60 days of completing compensation site construction. Changes or deviations from the final compensation plans in the as-built survey or aerial survey shall be shown on the survey and explained in writing.

7. Compensation site monitoring shall begin on day one of the first complete growing season (monitoring year 1) after stream compensation site construction activities, including planting, have been completed. Monitoring shall be required for monitoring years 1 and 2, unless otherwise approved by the Department of Environmental Quality. In all cases, if all success criteria have not been met in the final monitoring year, then monitoring shall be required for each consecutive year until two annual sequential reports indicate that all criteria have been successfully satisfied.

8. All stream compensation site monitoring reports shall be submitted by in accordance with 9VAC25-690-100 Part II E 6.

E. Reporting.

1. Written communications required by this VWP general permit shall be submitted to the appropriate Department of Environmental Quality office. The VWP general permit tracking number shall be included on all correspondence.

2. The Department of Environmental Quality shall be notified in writing prior to the start of construction activities at the first permitted impact area.

3. A construction status update form provided by the Department of Environmental Quality shall be completed and submitted to the Department of Environmental Quality twice per year for the duration of coverage under a VWP general permit. Forms completed in June shall be submitted by or on July 10, and forms completed in December shall be submitted by or on January 10. The form shall include reference to the VWP permit tracking number and one of the following statements for each authorized surface water impact location:

- a. Construction activities have not yet started;
- b. Construction activities have started;
- c. Construction activities have started but are currently inactive; or
- d. Construction activities are complete.

4. The Department of Environmental Quality shall be notified in writing within 30 days following the completion of all activities in all authorized impact areas.

5. The Department of Environmental Quality shall be notified in writing prior to the initiation of activities at the permittee-responsible compensation site. The notification shall include a projected schedule of activities and construction completion.

6. All permittee-responsible compensation site monitoring reports shall be submitted annually by December 31, with the exception of the last year, in which case the report shall be submitted at least 60 days prior to the expiration of the general permit, unless otherwise approved by the Department of Environmental Quality.

a. All wetland compensation site monitoring reports shall include, as applicable, the following:

(1) General description of the site including a site location map identifying photo-monitoring stations, vegetative and soil monitoring stations, monitoring wells, and wetland zones.

(2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.

(3) Description of monitoring methods.

- (4) Analysis of all hydrology information, including monitoring well data, precipitation data, and gauging data from streams or other open water areas, as set forth in the final compensation plan.
 - (5) Evaluation of hydric soils or soils under hydric conditions, as appropriate.
 - (6) Analysis of all vegetative community information, including woody and herbaceous species, both planted and volunteers, as set forth in the final compensation plan.
 - (7) Photographs labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary. Photographs taken after the initial planting shall be included in the first monitoring report after planting is complete.
 - (8) Discussion of wildlife or signs of wildlife observed at the compensation site.
 - (9) Comparison of site conditions from the previous monitoring year and reference site.
 - (10) Discussion of corrective measures or maintenance activities to control undesirable species, to repair damaged water control devices, or to replace damaged planted vegetation.
 - (11) Corrective action plan that includes proposed actions, a schedule, and monitoring plan.
- b. All stream compensation site monitoring reports shall include, as applicable, the following:
- (1) General description of the site including a site location map identifying photo-monitoring stations and monitoring stations.
 - (2) Summary of activities completed during the monitoring year, including alterations or maintenance conducted at the site.
 - (3) Description of monitoring methods.
 - (4) Evaluation and discussion of the monitoring results in relation to the success criteria and overall goals of compensation.
 - (5) Photographs shall be labeled with the permit number, the name of the compensation site, the photo-monitoring station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. Photographs taken prior to compensation site construction activities, during instream and riparian restoration activities, and within one week of completion of activities shall be included in the first monitoring report.
 - (6) Discussion of alterations, maintenance, or major storm events resulting in significant change in stream profile or

cross section, and corrective actions conducted at the stream compensation site.

- (7) Documentation of undesirable plant species and summary of abatement and control measures.
- (8) Summary of wildlife or signs of wildlife observed at the compensation site.
- (9) Comparison of site conditions from the previous monitoring year and reference site, and as-built survey, if applicable.
- (10) Corrective action plan that includes proposed actions, a schedule and monitoring plan.
- (11) Additional submittals that were approved by the Department of Environmental Quality in the final compensation plan.

7. The permittee shall notify the Department of Environmental Quality in writing when unusual or potentially complex conditions are encountered which require debris removal or involve potentially toxic substance. Measures to remove the obstruction, material, or toxic substance or to change the location of a structure are prohibited until approved by the Department of Environmental Quality.

8. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate Department of Environmental Quality regional office shall be notified; otherwise, the Department of Emergency Management shall be notified at 1-800-468-8892.

9. Violations of state water quality standards shall be reported to the appropriate Department of Environmental Quality office no later than the end of the business day following discovery.

10. The permittee shall notify the Department of Environmental Quality no later than the end of the third business day following the discovery of additional impacts to surface waters including wetlands, stream channels, and open water that are not authorized by the Department of Environmental Quality or to any required preservation areas. The notification shall include photographs, estimated acreage or linear footage of impacts, and a description of the impacts.

11. Submittals required by this VWP general permit shall contain the following signed certification statement:

"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

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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 violation."

Part III. Conditions Applicable to All VWP General Permits.

A. Duty to comply. The permittee shall comply with all conditions, limitations, and other requirements of the VWP general permit; any requirements in coverage granted under this VWP general permit; the Clean Water Act, as amended; and the State Water Control Law and regulations adopted pursuant to it. Any VWP general permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for (i) enforcement action, (ii) VWP general permit coverage termination for cause, (iii) VWP general permit coverage revocation, (iv) denial of application for coverage, or (v) denial of an application for a modification to VWP general permit coverage. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions.

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

C. Reopener. This VWP general permit may be reopened to modify its conditions when the circumstances on which the previous VWP general permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change since the time the VWP general permit was issued and thereby constitute cause for revoking and reissuing the VWP general permit.

D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property or any exclusive privileges, nor does it authorize injury to private property, any invasion of personal property rights, or any infringement of federal, state, or local laws or regulations.

F. Severability. The provisions of this VWP general permit are severable.

G. Inspection and entry. Upon presentation of credential, the permittee shall allow the board or any duly authorized agent of the board, at reasonable times and under reasonable

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

H. Transferability of VWP general permit coverage. VWP general permit coverage may be transferred to another permittee when all of the criteria listed in this subsection are met. On the date of the VWP general permit coverage transfer, the transferred VWP general permit coverage shall be as fully effective as if it had been granted directly to the new permittee.

1. The current permittee notifies the board of the proposed transfer of the general permit coverage and provides a written agreement between the current and new permittees containing a specific date of transfer of VWP general permit responsibility, coverage, and liability to the new permittee, or that the current permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of enforcement activities related to the authorized activity.

2. The board does not within 15 days notify the current and new permittees of its intent to modify or revoke and reissue the VWP general permit.

I. Notice of planned change. VWP general permit coverage may be modified subsequent to issuance in accordance with 9VAC25-690-80.

J. VWP general permit coverage termination for cause. VWP general permit coverage is subject to termination for cause by the board after public notice and opportunity for a hearing pursuant to § 62.1-44.15:02 of the Code of Virginia. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any provision of this chapter, any condition of the VWP general permit, or any requirement in general permit coverage;

2. The permittee's failure in the application or during the process of granting VWP general permit coverage to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order;

4. A determination by the board that the authorized activity endangers human health or the environment and can be regulated to acceptable levels by a modification to VWP general permit coverage or a termination;

5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP general permit; or

6. A determination that the authorized activity has ceased and that the compensation for unavoidable adverse impacts has been successfully completed.

K. The board may terminate VWP general permit coverage without cause when the permittee is no longer a legal entity due to death or dissolution or when a company is no longer authorized to conduct business in the Commonwealth. The termination shall be effective 30 days after notice of the proposed termination is sent to the last known address of the permittee or registered agent, unless the permittee objects within that time. If the permittee does object during that period, the board shall follow the applicable procedures for termination under §§ 62.1-44.15:02 and 62.1-44.15:25 of the Code of Virginia.

L. VWP general permit coverage termination by consent. The permittee shall submit a request for termination by consent within 30 days of completing or canceling all authorized activities requiring notification under 9VAC25-690-50 A and all compensatory mitigation requirements. When submitted for project completion, the request for termination by consent shall constitute a notice of project completion in accordance with 9VAC25-210-130 F. The director may accept this termination of coverage on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;
2. Name and location of the activity;
3. The VWP general permit tracking number; and
4. One of the following certifications:

a. For project completion:

"I certify under penalty of law that all activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage have been completed. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage."

b. For project cancellation:

"I certify under penalty of law that the activities and any required compensatory mitigation authorized by the VWP general permit and general permit coverage will not occur. I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface

waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

c. For events beyond permittee control, the permittee shall provide a detailed explanation of the events, to be approved by the Department of Environmental Quality, and the following certification statement:

"I certify under penalty of law that the activities or the required compensatory mitigation authorized by the VWP general permit and general permit coverage have changed as the result of events beyond my control (see attached). I understand that by submitting this notice of termination I am no longer authorized to perform activities in surface waters in accordance with the VWP general permit and general permit coverage, and that performing activities in surface waters is unlawful where the activity is not authorized by the VWP permit or coverage, unless otherwise excluded from obtaining coverage. I also understand that the submittal of this notice does not release me from liability for any violations of the VWP general permit or coverage, nor does it allow me to resume the authorized activities without reapplication and coverage."

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. 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 VWP general permit coverage has been granted in order to maintain compliance with the conditions of the VWP general permit or coverage.

P. Duty to provide information.

1. The permittee shall furnish to the board any information that the board may request to determine whether cause exists for modifying, revoking, or terminating VWP permit coverage or to determine compliance with the VWP general permit or general permit coverage. The permittee shall also

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furnish to the board, upon request, copies of records required to be kept by the permittee.

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

Q. Monitoring and records requirements.

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

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

3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP general permit, and records of all data used to complete the application for coverage under the VWP general permit, for a period of at least three years from the date of general 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.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

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

4. On and after October 1, 2001, conduct the following activities in a wetland:

- a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
- b. Filling or dumping;
- c. Permanent flooding or impounding; or
- d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

S. Duty to reapply. Any permittee desiring to continue a previously authorized activity after the expiration date of the VWP general permit shall comply with the provisions in 9VAC25-690-27.

VA.R. Doc. No. R22-6794; Filed July 30, 2021, 1:47 p.m.

Proposed Regulation

Titles of Regulations: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50, 9VAC25-720-60, 9VAC25-720-70, 9VAC25-720-120).**

9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (amending 9VAC25-820-40, 9VAC25-820-70, 9VAC25-820-80).

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

Public Hearing Information:

October 7, 2021 - noon - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060

Public Comment Deadline: October 29, 2021.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 689-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia is the source of legal authority identified to promulgate the amendments. Section 62.1-44.19:14 D requires that the State Water Control Board review during 2020 and every 10 years thereafter the basis for allocations granted in the Water Quality Management Planning Regulation (9VAC25-720) and as a result of the review propose for inclusion in the regulation either the reallocation of unneeded allocations to other facilities registered under the general permit or the reservation of such allocations for future use. This provision establishes the legal basis for any proposed reallocation of significant industrial discharger allocations and establishes that review of significant municipal discharger allocations will begin in 2030. The amendments being considered are modifications of the current

requirements for the treatment of wastewater that will contribute to the protection of Virginia's water quality.

Purpose: The purpose of this rulemaking is to protect state waters by adopting regulations that establish new or revised limitations on the amount of nutrients, that is, total nitrogen (TN) and total phosphorous (TP) that are discharged to the Chesapeake Bay watershed. Discharges from wastewater treatment plants contribute to the overall loading of nutrients to the Chesapeake Bay and its tributaries. These nutrients have been identified as pollutants causing adverse impacts on large portions of the bay and its tidal rivers, which are included in the list of impaired waters required under § 303(d) of the Clean Water Act and § 62.1-44.19:5 of the Code of Virginia. Waters not meeting standards require development of a total maximum daily load (TMDL), also mandated under the same sections of federal and state law. The U.S. Environmental Protection Agency (EPA) adopted the Chesapeake Bay TMDL in December 2010, and Virginia is now following a watershed implementation plan to meet the requirements of that TMDL, in part by setting regulatory nutrient wasteload allocations (WLAs). The proposed amendments to the regulation are meant to accomplish three goals.

1. Incorporate final chlorophyll-a based TP WLAs for a subset of significant dischargers in the tidal James River Basin. The regulation currently includes WLAs adopted in 2005 that are not consistent with the TMDL for the Chesapeake Bay or the amended water quality criteria for chlorophyll-a developed in accordance with Appendix X to the Chesapeake Bay TMDL, approved by the board on June 27, 2019, then approved by EPA and effective on January 9, 2020. DEQ has used the results of updated water quality modeling to establish TP WLAs to meet the recently adopted chlorophyll-a criteria. This amendment also incorporates additional TN and TP WLAs previously included in 9VAC25-820-80 into 9VAC25-720-60C;
2. Reassign unneeded TN and TP WLAs from industries that have either closed or otherwise eliminated their need for WLAs to the Nutrient Offset Fund for future use. This evaluation and reallocation is required by § 62.1-44.19:14 D of the Code of Virginia; and
3. Require additional nutrient reductions from significant municipal wastewater treatment plants in accordance with Initiative No. 52 in the Commonwealth of Virginia's Chesapeake Bay TMDL Phase III Watershed Implementation Plan dated August 23, 2019.

Substance: Substantive changes to the Water Quality Management Planning Regulation (9VAC25-720) being considered include (i) new chlorophyll-a based WLAs for TP for eight significant wastewater dischargers addressed in the James River Basin; (ii) reallocating TN and TP WLAs for five significant industrial facilities in the Potomac-Shenandoah River Basin, James River Basin, and York River Basin. These are facilities that have closed or otherwise altered their operations so that the allocations are no longer necessary; and

(iii) moving the WLAs to the DEQ held Nutrient Offset Fund and are in response to a review of current WLAs performed by DEQ staff in accordance with § 62.1-44.19:14 D of the Code of Virginia.

Substantive changes to the General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820) necessary to implement the above changes to the Water Quality Management Planning Regulation (9VAC25-720) include (i) removing reference to the Phase I TN and Phase 2 TN and TP limit effective dates; (ii) updating the compliance date for compliance plan submittals; (iii) clarifying the compliance plan submittal criteria; (iv) updating the dates associated with permittee compliance plan development options, the schedule of compliance dates for facilities subject to chlorophyll-a based WLAs, and the completion dates of projects contained in compliance plans; (v) removing the January 1, 2023, schedule of compliance for significant dischargers in the James River Basin to meet aggregate discharged TN and TP WLAs; (vi) clarifying that only facilities listed in 9VAC25-820-80 may not rely on the acquisition of credits through payments into the Nutrient Offset Fund in their annual compliance plan updates; and (vii) updating the list of facilities subject to reduced individual total nitrogen and total phosphorus wasteload allocations to correspond to amendments to the Water Quality Management Planning regulation that introduce new chlorophyll-a based TP WLAs applicable to certain facilities located both within the James River basin and throughout the Chesapeake Bay watershed.

No public comment is currently being requested on the proposed amendments that address floating WLAs for 36 significant municipal dischargers with design flows greater than or equal to five million gallons per day (MGD) west of the fall line and three MGD or greater east of the fall line. The proposed amendments have been superseded by Chapters 363 and 364 of the 2021 Acts of Assembly, Special Session I. Those amendments will be addressed in a subsequent action.

Issues: Regarding the amended TP WLAs for James River significant dischargers to meet chlorophyll-a criteria, the primary advantage to the public is protection of the aquatic life designated use through attainment of both the seasonal geometric mean and short-duration summer chlorophyll water quality criteria. Reduced annual TP loads are proposed to be targeted at the dischargers into the Upper James tidal fresh region, which has been shown to be effective through water quality modeling while also limiting the impact to the least number of affected facilities in the river basin. Likewise, the proposed floating WLAs are advantageous to the Commonwealth by achieving the nutrient load reductions necessary under Virginia's Phase III WIP in a dependable, timely and cost effective manner. The floating WLA proposal included in Initiative #52 of the Phase III WIP would have potentially impacted 96 significant municipal facilities. In

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response to input from the regulatory advisory panel, the scope of the proposal has been reduced to 36 or the largest facilities which account for well over 90% of the nutrient load. Limiting the number of facilities subject to chlorophyll-a based TP WLAs or floating WLAs and allowing facilities to meet the reductions through Virginia's nutrient trading program potentially reduces total implementation costs for all of the facilities impacted as well as the Commonwealth's obligation for cost share funding of POTW capital upgrades under Virginia's Water Quality Improvement Fund. Reassignment of unneeded industrial WLAs to the Nutrient Offset Fund benefits the Commonwealth by providing opportunity to accommodate future economic development projects. There are no disadvantages to the public or the Commonwealth as a result of this action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to: i) revise the existing total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) and establish new floating WLAs for 36 significant municipal dischargers, ii) establish TP WLAs to meet revised water quality criteria for Chlorophyll-a for seven dischargers, iii) reassign unneeded TN and TP WLAs from facilities that have either closed or otherwise eliminated their need for an allocation to the Nutrient Offset Fund for future use, iv) make numerous clarifying changes and updates to language, and v) amend the General Virginia Pollutant Discharge Elimination System Watershed Permit Regulation (9VAC25-820) for TN and TP discharges and nutrient trading in the Chesapeake Bay watershed in Virginia in order to implement the changes to the Water Quality Management Planning Regulation (9VAC25-720) described in i through iii above.

Background. The State Water Control Law (Code of Virginia § 62.1-44.2 et seq.)¹ requires that the Board: establish requirements for the treatment of sewage, industrial wastes and other wastes; review, during 2020 and every 10 years thereafter, the basis for allocations granted in the Water Quality Management Planning Regulation (9VAC25-720); and, as a result of the review, revise facility specific WLAs, reallocate unneeded allocations to other facilities registered under the general permit, or reserve such allocations for future use.

According to the Department of Environmental Quality (DEQ), the purpose of this rulemaking is to protect the state waters by establishing new or revised limitations on the amount of nutrients (TN and TP) that are discharged to the Chesapeake Bay watershed. Discharges from wastewater treatment plants contribute to the overall loading of nutrients to the Chesapeake Bay and its tributaries. These nutrients have been identified as pollutants that cause adverse impacts on large portions of the Bay and its tidal rivers, which are included

in the list of impaired waters as per §303(d) of the federal Clean Water Act and §62.1-44.19:5 of the Code of Virginia.

Waters that do not meet these limitations require the development of a Total Maximum Daily Load (TMDL) of nutrients. A TMDL is a plan for restoring impaired waters that identifies the maximum amount of a pollutant that a body of water can receive while still meeting water quality standards (which is required under the same sections of federal and state laws). The federal Environmental Protection Agency (EPA) adopted the Chesapeake Bay TMDL in December 2010.² Virginia is now following the Commonwealth of Virginia's Chesapeake Bay TMDL Phase III Watershed Implementation Plan, dated August 23, 2019,³ in part by setting nutrient WLAs in regulation.

The proposed amendments to the regulations are meant to accomplish three main goals:

1. To require additional nutrient reductions from significant municipal wastewater treatment plants in accordance with the Chesapeake Bay TMDL Phase III Watershed Implementation Plan,
2. To establish newly adopted Chlorophyll-a based TP WLAs for a subset of significant dischargers in the tidal James River Basin,
3. To reassign unneeded TN and TP WLAs from facilities that have either closed or otherwise eliminated their need for WLAs to the Nutrient Offset Fund for future use.

Currently, TN and TP WLAs for significant municipal dischargers are established based on the capacity of their plants. According to DEQ, this approach has the unintended consequence of not providing appropriate incentives to treat waste from large capacity plants that tend to discharge significantly below their capacity year-round. This proposal retains the current primary WLAs and contains new language to establish new floating WLAs. The floating WLAs are based on the average daily flow treated by the facility in a given year and nutrient concentrations of 4.0 mg/l TN and 0.30 mg/l TP.

The future effect of this proposed regulatory change is presently uncertain. As submitted to the Virginia Regulatory Town Hall, the regulatory text stipulates that 36 significant municipal dischargers would be subject to either existing WLAs or floating WLAs, whichever was more stringent. (These dischargers are those with design flows greater than or equal to 5 millions of gallons per day (MGD) west of the fall line which closely overlaps with Interstate 95 and 3 MGD or greater east of the fall line.) In other words, municipal dischargers with excess capacity would need to treat their waste to meet the benchmark nutrient concentrations, even though their discharges may be well below their primary WLAs.

However, House Bill (HB) 2129 (passed by the 2021 General Assembly Special Session I)⁴ appears to have effectively rendered the proposed floating WLAs in this action moot. Given the new legislation, which goes in effect on July 1, 2021,

DEQ agrees that the Board will not have the authority to adopt or enforce floating WLAs after July 1, 2021. Therefore, the economic impact of floating WLAs included in this action on 36 significant municipal dischargers is not estimated in this analysis.

This analysis also does not address the item numbered "v" above that would amend the General Virginia Pollutant Discharge Elimination System Watershed Permit Regulation. Changes to the general permit regulation are exempt from the Administrative Process Act, and hence its requirement for an economic impact analysis, per §2.2-4006 (A)(8) of the Code of Virginia. Those changes are included in this regulatory action for administrative convenience for the agency.

This analysis discusses the remaining parts of the proposed amended language that DEQ believes are unaffected by the new legislation. Those are the proposed Chlorophyll-a based WLAs and the reassignment of unneeded TN and TP waste load allocations from plants that have either closed or otherwise eliminated their need for an allocation to the Nutrient Offset Fund for future use.

Estimated Benefits and Costs. Chlorophyll-a related reductions in TP WLAs.

The Water Quality Management Planning Regulation currently includes WLAs adopted in 2005 that are not consistent with the amended water quality criteria that are currently in place for Chlorophyll-a. These amended criteria (which were developed in accordance with Appendix X to the Chesapeake Bay TMDL), were approved by the Board on June 27, 2019. Following approval by EPA, the amended criteria became effective on January 9, 2020.⁵ DEQ has used the results of updated water quality modeling to establish TP WLAs to meet the recently amended Chlorophyll-a criteria. The Chlorophyll-a criteria does not affect the TN WLAs; only TP allocations would change.

These facilities now have a combined TP WLA of 286,316 lbs./year. Under the proposal, TP allocations would be 141,233 lbs./year for all of the seven facilities, representing a 50.7 percent reduction.⁶ This change would reduce the TP allocation by 1,089 lbs./year for the private facility that is still in business. For six municipal facilities, the total reduction would be 143,994 lbs./year; the individual reduction amount varies by facility from 6,320 lbs./year to 46,934 lbs./year. The affected municipal wastewater treatment plants (WWTP), localities, and the individual reductions amounts are as follows: Richmond WWTP (City of Richmond, 28,161 lbs./year); Falling Creek WWTP (Chesterfield County, 6,320 lbs./year); Proctor's Creek WWTP (Chesterfield County, 16,896 lbs./year); Henrico County WWTP (Henrico County, 46,934 lbs./year); Hopewell WWTP (City of Hopewell, 31,290 lbs./year); and South Central WWTP (City of Petersburg, the City of Colonial Heights, Chesterfield County, Dinwiddie County, and Prince George County, 14,393 lbs./year). Although the quantity of reductions varies, the amounts represent a 50.7 percent reduction for each of the affected

facilities. Thus, the relative size of the reduction on individual facility allocations is the same.

DEQ estimates that the compliance costs for the single private facility that would experience a 1,089 lbs./year reduction would be approximately \$4,000/year if it were to purchase credits from the WLA trading program. The 2021 Virginia Nutrient Credit Exchange Compliance Plan Annual Update⁷ lists Class A TN and TP WLA prices for 2021 compliance year at \$3.87 and \$5.82 per lbs./year. Class A credits are for trades that take place well before the compliance year based on expectations and planning and are generally priced lower than the Class B credits. Class B credits are more like a spot market for the regulants to true up their actual discharge compared to their allocations usually at the end of the compliance year when the actual discharges exceed the expectations. Therefore, using the Class A credit prices, and including the reduction amounts for the six municipal facilities, the value of the proposed combined 145,083 lbs./year of TP WLA reduction in 2021 compliance year would be \$844,383.

Although the purchase of credits would ensure compliance, credits must be available for purchase. DEQ reports that currently there is an oversupply of credits. The market condition for credits could change however, forcing the facilities to incur capital costs to upgrade their treatment technology, which is the only other way to ensure compliance.⁸ In fact, DEQ reports that there are not enough credits available through the fund to ensure compliance with the proposed reductions and therefore, at least some of the facilities will have to either upgrade or do better with the facilities that they already have sometime in the future. If that were the case, the compliance costs of achieving the same reduction in WLAs would likely depend on specific circumstances of each facility. At this time, however, DEQ does not have any facility specific compliance cost estimates for the affected six municipal facilities.

Nutrient offset fund. The proposed regulation would reassign unneeded TN (311,443 lbs./year) and TP (20,755 lbs./year) WLAs from four private facilities that have closed, and from two municipal plants that eliminated their need for a portion of their current allocation, to the Nutrient Offset Fund for future use. Further, the proposal stipulates that WLAs (243,099 lbs./year TN and 170 lbs./year TP) for a facility currently in operation, but expected to cease operations in the near future, be transferred to the fund when the facility is retired. Of this particular facility's WLAs that would revert to the fund, a 82,240 lbs./year TN reallocation would be held in reserve and may be made available by the DEQ to Chesterfield County for an expansion of the Proctor's Creek WWTP provided that a) the expanded facility provides treatment to achieve an annual average TN concentration of 3.0 mg/l or less, and b) Falling Creek WWTP is designed meet its individual TN WLA.

One of the four private facilities was located in the Potomac River Basin and was a poultry processing facility. It has permanently closed and no processed wastewater is being

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discharged from the facility. TN and TP WLAs respectively in the amounts of 18,273 and 914 lbs./year would be moved to the Nutrient Offset Fund in accordance with § 62.1- 44.19:14 D of the Code of Virginia.⁹ Another private facility, which was located in York River Basin, has permanently closed and thus it no longer generates significant nutrient loads. Its 167,128 lbs./year TN and 17,689 lbs./year TP WLAs would be moved to the fund. The remaining two of the four private facilities were located in the James River Basin. One was originally granted 25,583 and 768 lbs./year of TN and TP WLAs respectively for a cigarette manufacturing facility which subsequently closed and the WLAs would revert back to the fund. The second private facility in the James River Basin had an allocation of 80,000 lbs./year of TN, and no TP WLAs, for the construction of a proposed paper mill which was acquired from another facility through a private agreement. The proposed mill was never constructed and the WLAs would revert back to the fund. In total, 290,984 lbs./year TN and 19,371 lbs./year TP WLAs would be reassigned back to the fund from the four private facilities. These WLAs may be made available for future economic development as the fund serves as a source of last resort for the WLA credits.

The reassignment of unneeded WLAs to the fund does not appear to have an adverse economic impact on the four private facilities. Using the exchange prices, the 290,984 lbs./year TN and 19,371 lbs./year TP WLAs could be valued at \$1,126,109 and \$112,739 respectively. According to DEQ, however, despite aggressive efforts of the at least two facilities to sell their credits, they could not find a buyer, primarily due to excess supply of credits that exists currently. The exchange prices are "firm" due to the trading association's goal to provide certainty to its members. Thus, the credit prices are not "market based" in the usual sense as they are not determined based on supply and demand. These facilities would have sold them if they could, but they could not. Now using the authority granted by § 62.1- 44.19:14 D, the Board is proposing "reservation of such allocations for future use" because the facilities are currently closed. According to DEQ, this adjustment allows for additional economic development.

Similarly, both of the municipal plants whose allocations would be adjusted are located in the James River Basin. The original WLAs for these two facilities were based upon design flows that were greater than the design flow of the treatment plants actually constructed. The excess portions of the combined WLAs (20,459 lbs./year TN and 1,384 lbs./year TP) from these two facilities would be reallocated back to the fund. This change also does not appear to have an adverse economic impact because the actual capacity is lower than originally planned for the two municipal dischargers. DEQ believes this adjustment provides for more equitable WLA distribution and also allows for additional economic development.

Finally, the Chesterfield County may be allocated 82,240 lbs./year TN after another facility retires, whose allocations revert to the fund, and held in reserve until the county improves the treatment levels at two of its plants.

Other Changes. This proposal would also make numerous clarifying changes and updates. For example, many facilities have gone through name changes and the new language would update the names. In addition, the WLAs in the regulation would be updated to reflect private trades; this change would help DEQ and the public keep an accurate inventory of WLAs by entity. This group of clarifying changes and updates are not expected to have a significant economic impact other than improving the clarity and accuracy of the regulatory language.

Businesses and Other Entities Affected. The proposed Chlorophyll-a related reductions in TP WLAs appear to adversely affect¹⁰ one private and six municipal facilities.¹¹ The proposed reallocations are occurring either because the facility is closed or their current capacity does not call for it.¹² In addition, while the private facilities could have sold their allocations, there does not appear to be a market for them at this time. Thus, the reallocation of unused WLAs does not appear to have an adverse impact on the four private and two municipal facilities affected. The conditional possible allotment of 82,240 lbs./year TN for one of its plants presents an opportunity to the Chesterfield County.

Small Businesses¹³ Affected. The proposed Chlorophyll-a related reductions in TP WLAs appear to adversely affect one private facility, but that facility is not a small business. Thus, the proposal does not appear to adversely affect small businesses.

Localities¹⁴ Affected¹⁵. The proposed Chlorophyll-a related reductions in TP WLAs would adversely affect six municipal facilities. The impact would be greater on localities that discharge more in the James River Basin. The quantity of reductions in descending order are as follows: Henrico County WWTP (Henrico County, 46,934 lbs./year); Hopewell WWTP (City of Hopewell, 31,290 lbs./year); Richmond WWTP (City of Richmond, 28,161 lbs./year); Proctor's Creek WWTP (Chesterfield County, 16,896 lbs./year); South Central WWTP (City of Petersburg, the City of Colonial Heights, Chesterfield County, Dinwiddie County, and Prince George County, 14,393 lbs./year); Falling Creek WWTP (Chesterfield County, 6,320 lbs./year).

When assessing the disproportionate impact, it is worth noting that the proposed reduction amounts represent a 50.7 percent reduction for each of the affected facilities. Thus, the relative size of the reduction on individual facility allocations is the same.

The proposed Chlorophyll-a related reductions for the six municipal facilities could introduce approximately \$844,383 in costs if they were to purchase the credits from the exchange at published prices. If they choose to make facility upgrades to their plants to achieve proposed reductions, costs could be higher, but they may also draw approximately 25 percent of the costs from the state as the state usually funds a portion of similar upgrades under the Water Quality Improvement Fund program. At some point, it appears at least some of the facilities

would have to upgrade as the credits available for sale may not be enough to ensure compliance in the long term.

Finally, the conditional possible allotment of 82,240 lbs./year TN for one of its plants presents an opportunity to the Chesterfield County and if the stipulated allotment is granted, the adverse impact on Chesterfield County due to Chlorophyll-a related TP reductions would be offset.

Projected Impact on Employment. The proposed amendments do not appear to have a significant effect on total employment.

Effects on the Use and Value of Private Property. The proposed reductions in TP WLAs would introduce approximately \$4,000 in compliance costs for a non-small private business, but are unlikely to have any noticeable impact on its asset value. Also, this action would help clean the Chesapeake Bay and its tributaries and improve water quality. Such changes, if significant, could contribute to real estate development where such environmental improvements would be realized.

¹<http://law.lis.virginia.gov/vacode/title62.1/chapter3.1/>

²<https://www.epa.gov/chesapeake-bay-tmdl/chesapeake-bay-tmdl-document>

³<https://www.deq.virginia.gov/home/showpublisheddocument?id=4481>

⁴See <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0363>

⁵The adoption of the final regulation for Chlorophyll-a standard can be found at: <https://townhall.virginia.gov/1/ViewStage.cfm?stageid=8678>

⁶This change would also reduce WLA from 1,556 lbs./year to 768 lbs./year for a now out-of-business private facility. The impact on this particular facility is discuss later as the remaining allocation of 788 lbs./year would be reallocated to the Nutrient Offset Fund.

⁷<https://www.deq.virginia.gov/home/showpublisheddocument?id=6987>, Attachment B on pp. 8-17.

⁸DEQ can sell credits from the Nutrient Offset Fund (see 9VAC25-820-70 J.3 at \$4.60 and \$10.10 lbs./year for TN and TP WLAs), but that has yet to happen.

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

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

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
B37R	Coors Brewing Company <u>Molson Coors - Shenandoah Brewery</u>	VA0073245	54,820	4,112
B14R	ACSA - Fishersville Regional STP <u>WWTP</u>	VA0025291	48,729	3,655
B32R	INVISTA - Waynesboro <u>The Lycra Company (Outfall 101)</u>	VA0002160	78,941	1,009
B39R	Luray STP <u>WWTP</u>	VA0062642	19,492	1,462
B35R	Massanutten PSA <u>Public Service Corporation STP</u>	VA0024732	18,273	1,371

⁹<http://law.lis.virginia.gov/vacode/title62.1/chapter3.1/section62.1-44.19:14/>

¹⁰Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

¹¹Data source: DEQ

¹²DEQ reports that so far no substantial objections to the proposed reallocations have come from the facilities that have closed.

¹³Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

¹⁴"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁵§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendments (i) change wasteload allocations (WLAs) for dischargers of total nitrogen (TN) and total phosphorus (TP) to various river basins throughout the Commonwealth of Virginia necessary for the restoration of water quality in the Chesapeake Bay and its tidal tributaries; (ii) establish TP WLAs to meet revised water quality criteria for chlorophyll-a in the tidal James River Basin; and (iii) reassign unneeded TN and TP WLAs from industries that have either closed or otherwise eliminated their need for a WLA to the Nutrient Offset Fund for future use.

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B37R	Merck – Stonewall WWTP <u>Sharp & Dohme Corp. - Elkton Plant (Outfall 101)[†]</u>	VA0002178	43,835	4,384
B12R	<u>ACSA - Middle River Regional STP WWTP</u>	VA0064793	82,839 ¹	6,213 ²
B23R	North River WWTF <u>WWTF³</u>	VA0060640	253,391 <u>260,226¹</u>	19,004 <u>19,574²</u>
B22R	VA Poultry Growers <u>VPGC, LLC - Hinton</u>	VA0002313	27,410	1,371
B38R	Pilgrims Pride – Alma <u>Nutrient Offset Fund</u>	Formerly VA0001961	18,273	914
B31R	<u>ACSA - Stuarts Draft WWTP</u>	VA0066877	48,729	3,655
B32R	<u>Waynesboro STP WWTP</u>	VA0025151	48,729 ¹	3,655 ²
B23R	<u>ACSA - Weyers Cave STP WWTP</u>	VA0022349	6,091	457
B58R	<u>Berryville STP WWTP</u>	VA0020532	8,528	640
B55R	<u>Front Royal STP WWTP</u>	VA0062812	48,729 ¹	3,655 ²
B49R	Georges Chicken LLC	VA0077402	31,065	1,553
B48R	Mt. Jackson STP	VA0026441	8,528	640
B45R	Broadway Regional WWTF	VA0090263	29,481	2,211
B49R	Stoney Creek SD STP	VA0028380	7,309	548
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827
A06R	Basham Simms WWTF	VA0022802	18,273	1,371
A09R	Broad Run WRF	VA0091383	134,005 ¹	3,350 ²
A08R	Leesburg WPCF	VA0092282	121,822 ¹	9,137 ²
A06R	Round Hill Town WWTF <u>WWTP</u>	VA0026212	9,137	685
A25R	DSC VA American Water Prince William - Section 1 <u>WWTF</u>	VA0024724	42,029 ¹	2,522 ²
A25R	DSC VA American Water Prince William - Section 8 <u>WWTF</u>	VA0024678	42,029 ¹	2,522 ²
A25E	H L Mooney WWTF	VA0025101	219,280 ¹	13,157 ²
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill WWTF <u>WWTP</u>	VA0020460	11,573	868
B08R	Opequon WRF ^{2,4}	VA0065552	121,851 ¹	11,512 ²
B08R	Parkins Mills STP <u>Mill WWTF</u>	VA0075191	60,911 ¹	4,568 ²
A13E	Alexandria Renew Enterprises ³ <u>WWTP⁵</u>	VA0025160	493,381 ¹	29,603 ²
A12E	Arlington County Water PCF	VA0025143	365,467 ¹	21,928 ²
A16R	Noman M Cole Jr PCF <u>PCP</u>	VA0025364	612,158 ¹	36,729 ²
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	<u>USMC Quantico WWTF</u> <u>Mainside STP</u>	VA0028363	20,101	1,206

A28R	Aquia WWTF <u>WWTP</u>	VA0060968	73,093 ¹	4,386 ²
A31E	Colonial Beach STP <u>WWTP</u>	VA0026409	18,273	1,827
A30E	<u>KGCSA - Dahlgren WWTF District WWTP</u>	VA0026514	9,137	914
A29E	<u>King George County Service Authority KGCSA - Fairview Beach WWTP</u>	VA0092134	1,827	183
A30E	<u>US NSWC Dahlgren WWTF Naval Support Facility Dahlgren</u>	VA0021067	6,578	658
A31R	<u>KGCSA - Purkins Corner STP WWTP</u>	VA0070106	1,096	110
	<u>Unallocated Reserve WLA Nutrient Offset Fund</u>		9,137	685
	TOTALS:		5,156,169 <u>5,214,628</u>	246,635 <u>254,334</u>

Notes:

¹~~Merek Stonewall~~ (a) these wasteload allocations will be subject to further consideration, consistent with the Chesapeake Bay TMDL, as it may be amended, and possible reduction upon "full scale" results showing the optimal treatment capability of the 4 stage Bardenpho technology at this facility consistent with the level of effort by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; (b) in any year when credits are available after all other exchanges within the Shenandoah Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merek shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and (c) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause (b).

¹Effective January 1, 2026, the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TN WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 4.0 \text{ mg/l} \times 8.345 \times 365$$

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

²Effective January 1, 2026, the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TP WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 0.30 \text{ mg/l} \times 8.345 \times 365$$

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

³The North River WWTF WLA includes 6,835 lbs/yr of TN and 570 lbs/yr of TP from the consolidation of the McGaheysville STP (VA0072931).

^{2,4} Opequan WRF: (a) the TN WLA is derived based on 3 mg/l of TN and 12.6 MGD; (b) the TN WLA includes an additional allocation for TN in the amount of 6,729 lbs/yr by means of a landfill leachate consolidation and treatment project; and (c) the TP WLA is derived based on 0.3 mg/l of TP and 12.6 MGD.

^{3,5} Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 4.0 mg/l and TP concentration of 0.18 mg/l.

9VAC25-720-60. James River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-60 are not amended; therefore, that text is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers.

The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
I37R	Buena Vista STP	VA0020991	41,115	3,426 <u>2,778</u>

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I09R	Covington STP	VA0025542	54,820	4,568 <u>3,705</u>
H02R	Georgia Pacific	VA0003026	122,489	49,658 <u>40,273</u>
I37R	Lees Carpets <u>Mohawk Industries, Inc.</u>	VA0004677	30,456	12,182 <u>9,880</u>
I35R	Lexington-Rockbridge WQCF	VA0088161	54,820	4,568 <u>3,705</u>
I09R	Low Moor STP	VA0027979	9,137	761 <u>617</u>
I09R	Lower Jackson River STP	VA0090671	63,957 <u>47,516</u>	5,330 <u>3,211</u>
<u>I09R</u>	<u>Nutrient Offset Fund</u>	<u>Formerly</u> <u>VA0090671</u>	<u>16,441</u>	<u>1,112</u>
I04R	MeadWestvaco <u>WestRock Virginia LLC - Covington</u>	VA0003646	394,400	159,892 <u>96,711</u>
H12R	Amherst STP	VA0031321	10,964	914 <u>741</u>
H05R	BWX Technologies Inc.	VA0003697	187,000	1,523 <u>1,235</u>
H05R	Greif Inc.	VA0006408	73,246	29,694 <u>24,082</u>
H31R	Lake Monticello STP WWTP	VA0024945	48,182 <u>14,164</u>	1,515 <u>957</u>
<u>H31R</u>	<u>Nutrient Offset Fund</u>	<u>Formerly</u> <u>VA0024945</u>	<u>4,018</u>	<u>272</u>
H05R	Lynchburg STP ¹	VA0024970	536,019 ⁵	33,504 <u>27,169</u> ⁴
H28R	Moores Creek Regional STP <u>Advanced WRRF</u> ⁶	VA0025518	274,100 <u>282,994</u> ³	22,842 <u>19,637</u> ⁴
H38R	Powhatan CC STP	VA0020699	8,588	716 <u>581</u>
J11R	Crewe WWTP	VA0020303	9,137	761 <u>617</u>
J01R	Farmville WWTP	VA0083135	43,856	3,655 <u>2,964</u>
G02E	The Sustainability Park, LLC <u>Nutrient Offset Fund</u>	<u>Formerly</u> VA0002780	25,583	1,919 <u>768</u>
G01E	E I du Pont - Spruance	VA0004669	201,080	7,816 <u>6,339</u>
G01E	Falling Creek WWTP	VA0024996	153,804 <u>182,738</u> ³	15,380 <u>6,153</u> ⁴
G01E	Henrico County WWTP	VA0063690	1,142,085 ³	114,209 <u>45,689</u> ⁴
G03E	Honeywell - Hopewell <u>AdvanSix Resins and Chemicals LLC</u>	VA0005291	1,090,798	51,592 <u>40,541</u>
G03R	Hopewell WWTP	VA0066630	1,827,336 ⁷	76,139 <u>30,459</u> ⁸
G15E	HRSD – Boat Harbor STP	VA0081256	740,000 <u>473,524</u> ³	76,139 <u>43,175</u> ⁴
G11E	HRSD – James River STP	VA0081272	1,250,000 <u>378,819</u> ³	60,911 <u>34,540</u> ⁴
G10E	HRSD – Williamsburg STP	VA0081302	800,000 <u>426,171</u> ³	68,525 <u>38,858</u> ⁴
G02E	Philip Morris – Park 500	VA0026557	139,724	2,650 <u>1,060</u>
G01E	Proctors Creek WWTP	VA0060194	411,151 ³	41,115 <u>16,448</u> ⁴
G01E	Richmond WWTP ¹	VA0063177	1,096,402 ⁵	68,525 <u>27,413</u> ⁴

G02E	Dominion-Chesterfield ²	VA0004146	272,036 <u>243,099</u>	240 <u>170</u>
J15R	South Central WW Authority	VA0025437	350,239 ³	35,024 <u>14,011</u> ⁴
G07R	Chickahominy WWTP	VA0088480	6,167	123
G05R	Tyson Foods – Glen Allen	VA0004031	19,552	409
G11E	HRSD – Nansemond STP	VA0081299	750,000 <u>568,228</u> ³	91,367 <u>51,811</u> ⁴
G15E	HRSD – Army Base STP	VA0081230	610,000 <u>340,937</u> ³	54,820 <u>31,086</u> ⁴
G15E	HRSD – VIP WWTP	VA0081281	750,000 <u>757,638</u> ³	121,822 <u>69,081</u> ⁴
G15E	JH Miles & Company <u>HRSD - MS4</u> ⁹	VA0003263	153,500	21,500 <u>17,437</u>
C07E	HRSD – Ches.-Elizabeth STP ¹⁰	VA0081264	1,100,000 <u>454,583</u>	108,674 <u>41,448</u>
G01E	Tranlin/Vastly <u>Nutrient Offset Fund</u>	<u>Formerly</u> <u>Tranlin/Vastly</u>	80,000	<u>0</u>
	TOTALS		14,901,739 <u>12,256,851</u>	1,354,375 <u>753,932</u>

Notes:

¹Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 8.0 mg/l and a TP concentration of 1.0 mg/l.

²~~Wasteload allocations are "net" loads, based on the portion of the nutrient discharge introduced by the facility's process waste streams, and not originating in raw water intake. Dominion-Chesterfield wasteload allocations shall be transferred to the Nutrient Offset Fund on January 1, following the retirement of the last coal fired generating unit. 82,240 lbs/yr of TN WLA shall be held in reserve and may be made available by the department for an expansion of the Proctor's Creek WWTP provided that the expanded facility provides treatment to achieve an annual average TN concentration of 3.0 mg/l or less and the Falling Creek WWTP is designed to meet its individual TN WLA.~~

³Effective January 1, 2026, the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TN WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 4.0 \text{ mg/l} \times 8.345 \times 365$$

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

⁴Effective January 1, 2026, the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TP WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 0.30 \text{ mg/l} \times 8.345 \times 365$$

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

⁵Effective January 1, 2026, the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TN WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 8.0 \text{ mg/l} \times 8.345 \times 365$$

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

⁶The Moores Creek Advanced WRRF WLA includes 8,894 lbs/yr of total nitrogen and 1,112 lbs/yr of total phosphorus from the consolidation of the Camelot WWTP (VA0025488).

⁷Effective January 1, 2026, the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the value listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TN WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 12.0 \text{ mg/l} \times 8.345 \times 365$$

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

⁸Effective January 1, 2026, the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the value listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TP WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 0.50 \text{ mg/l} \times 8.345 \times 365$$

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

Regulations

⁹The former J. H. Miles wasteload allocations acquired by HRSD in accordance with an agreement dated December 21, 2015 may be used to fulfill HRSD commitments to provide nutrient credits to municipal separate storm sewer systems only.

¹⁰Effective January 1, 2023, the total nitrogen and total phosphorus wasteload allocations for the HRSD Chesapeake-Elizabeth STP transfer to the Nutrient Offset Fund.

9VAC25-720-70. Rappahannock River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-70 are not amended; therefore, that text is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers.

The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
E09R	Culpeper WWTP	VA0061590	73,093 ¹	5,483 ²
E02R	Marshall WWTP	VA0031763	7,797	585
E13R	Orange STP	VA0021385	36,547	2,741
E11R	Rapidan STP WWTP	VA0090948	7,309	548
E02R	Fauquier County Water & Sewer Authority Remington WWTP	VA0076805	24,364	1,827
E02R	Clevengers Village WWTP	VA0080527	10,964	822
E02R	Warrenton Town STP	VA0021172	30,456	2,284
E18R	Wilderness WWTP	VA0083411	15,228	1,142
E20E	FMC WWTF	VA0068110	48,737 ¹	3,655 ²
E20E	Fredericksburg WWTF	VA0025127	54,820 ¹	4,112 ²
E21E	Haymount WWTF	VA0089125	7,066	530
E24E	Haynesville CC WWTP	VA0023469	2,802	210
E21E	KGCSA - Hopyard Farms STP Farm WWTP	VA0089338	6,091	457
E20E	Little Falls Run WWTF	VA0076392	97,458 ¹	7,309 ²
E20E	Massaponax WWTF	VA0025658	114,505 ¹	8,405 ²
E23R	Montross Westmoreland WWTP	VA0072729	1,584	119
E21E	KGCSA - Oakland Park STP	VA0086789	1,706	128
E23E	Tappahannock WWTP	VA0071471	9,746	731
E26E	HRSD - Urbanna WWTP STP	VA0026263	1,218	91
E21R	US Army - Ft. A P Hill WWTP	VA0032034	6,457	484
E23E	Warsaw Aerated Lagoons WWTP	VA0026891	3,655	274
C01E	Omega Protein - Reedville	VA0003867	21,213	1,591

C01E	Reedville Sanitary District	VA0060712	2,436	183
C01E	Kilmarnock WTP <u>WWTP</u>	VA0020788	6,091	457
	Unallocated Reserve WLA <u>Nutrient Offset Fund</u>		22,904	1,900
	TOTALS:		614,245 <u>614,247</u>	46,068

¹Effective January 1, 2026, the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TN WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 4.0 \text{ mg/l} \times 8.345 \times 365$$

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

²Effective January 1, 2026, the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TP WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 0.30 \text{ mg/l} \times 8.345 \times 365$$

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

9VAC25-720-120. York River Basin.

EDITOR'S NOTE: Subsections A and B of 9VAC25-720-120 are not amended; therefore, that text is not set out.

C. Nitrogen and phosphorus wasteload allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus wasteload allocations for the identified significant dischargers and the total nitrogen and total phosphorus wasteload allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Wasteload Allocation (lbs/yr)	Total Phosphorus (TP) Wasteload Allocation (lbs/yr)
F20R	Caroline County STP <u>Regional WWTP</u>	VA0073504	9,137	609
F01R	Gordonsville STP	VA0021105	17,177	1,145
F04R	Ashland WWTP	VA0024899	36,547	2,436
F09R	Doswell WWTP	VA0029521	18,273	1,218
F09R	Bear Island Paper Company <u>819 Virginia LLC</u>	VA0029521	47,328	10,233
F27E	Plains Marketing L.P. Yorktown <u>Nutrient Offset Fund</u>	<u>Formerly</u> VA0003018	167,128	17,689
F27E	HRSD - York River STP	VA0081311	275,927 ¹	18,395 ²
F14R	Parham Landing WWTP	VA0088331	36,547	2,436
F14E	RockTenn <u>WestRock</u> CP LLC - West Point	VA0003115	259,177	56,038
F12E	Totopotomoy WWTP	VA0089915	182,734 ¹	12,182 ²
F25E	HRSD - West Point STP	VA0075434	10,964	731
	TOTALS:		1,060,939	123,112

¹Effective January 1, 2026, the total nitrogen wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:

$$\text{TN WLA (lbs/yr)} = \text{Annual average treated flow (MGD)} \times 4.0 \text{ mg/l} \times 8.345 \times 365$$

Regulations

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

Effective January 1, 2026, the total phosphorus wasteload allocation for any given calendar year is the lesser of (i) the values listed in this table and (ii) the floating wasteload allocation calculated as follows:

TP WLA (lbs/yr) = Annual average treated flow (MGD) x 0.30 mg/l x 8.345 x 365

Annual average treated flow is the sum of 12 monthly average treated flows divided by 12. Floating wasteload allocations shall be calculated to the nearest pound without regard to mathematical rules of precision.

9VAC25-820-40. Compliance plans.

A. By July 1, ~~2017~~ 2022, every owner of a facility subject to reduced individual total nitrogen or total phosphorous wasteload allocations as identified in 9VAC25-820-80 and subject to a limit effective date after January 1, 2017, as defined in Part I C 1 of 9VAC25-820-70 shall either individually or through the Virginia Nutrient Credit Exchange Association submit compliance plans to the department for approval.

1. The compliance plans shall contain any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined wasteload allocations of all the permittees in the tributary as soon as possible. Permittees submitting individual plans are not required to account for other facilities' activities.

2. As part of the compliance plan development, permittees shall either:

a. Demonstrate that the additional capital projects anticipated by subdivision 1 of this subsection are necessary to ensure continued compliance with these allocations ~~by the applicable deadline for the tributary to which the facility discharges (Part I C of the permit) January 1, 2026, or~~

b. Request that their individual wasteload allocations become effective on January 1, ~~2017~~ 2022.

3. The compliance plans may rely on the exchange of point source credits in accordance with this general permit, but not the acquisition of credits through payments into the Nutrient Offset Fund (§ 10.1-2128.2 of the Code of Virginia), to achieve compliance with the individual and combined wasteload allocations in each tributary.

B. Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit annual compliance plan updates to the department for approval as required by Part I D of the general permit.

9VAC25-820-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements of the general permit.

General Permit No.: VAN000000

Effective Date: January 1, ~~2017~~ 2022

Expiration Date: December 31, ~~2021~~ 2026

GENERAL PERMIT FOR TOTAL NITROGEN AND
TOTAL PHOSPHORUS DISCHARGES AND NUTRIENT
TRADING IN THE CHESAPEAKE WATERSHED IN
VIRGINIA
AUTHORIZATION TO DISCHARGE UNDER THE
VIRGINIA POLLUTANT DISCHARGE ELIMINATION
SYSTEM AND THE VIRGINIA STATE WATER
CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of facilities holding a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen or total phosphorus discharges, or both to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen or total phosphorus, or both.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special Conditions Applicable to New and Expanded Facilities, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

Part I

SPECIAL CONDITIONS APPLICABLE TO ALL FACILITIES

Any owner whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements of the general permit.

General Permit No.: VAN000000

Effective Date: January 1, ~~2017~~ 2022

Expiration Date: December 31, ~~2021~~ 2026

GENERAL PERMIT FOR TOTAL NITROGEN AND TOTAL
PHOSPHORUS DISCHARGES AND NUTRIENT TRADING IN
THE CHESAPEAKE WATERSHED IN VIRGINIA
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA
POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE
VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of facilities holding

a VPDES individual permit or owners of facilities that otherwise meet the definition of an existing facility, with total nitrogen or total phosphorus discharges, or both to the Chesapeake Bay or its tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen or total phosphorus, or both.

The authorized discharge shall be in accordance with the registration statement filed with DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special Conditions Applicable to New and Expanded Facilities, and Part III-Conditions Applicable to All VPDES Permits, as set forth herein.

Part I

SPECIAL CONDITIONS APPLICABLE TO ALL FACILITIES

A. Authorized activities.

1. Authorization to discharge for owners of facilities required to register.

a. Every owner of a facility required to submit a registration statement to the department by November 1, ~~2016~~ 2021, and thereafter upon the reissuance of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

b. Any owner of a facility required to submit a registration statement with the department at the time he makes application with the department for a new discharge or expansion that is subject to an offset or technology-based requirement in Part II of this general permit, shall be authorized to discharge total nitrogen and total phosphorus subject to the requirements of this general permit upon the department's approval of the registration statement.

c. Upon the department's approval of the registration statement, a facility will be included in the registration list maintained by the department.

2. Authorization to discharge for owners of facilities not required to register. Any owner of a facility authorized by a VPDES permit and not required by this general permit to submit a registration statement shall be deemed to be authorized to discharge total nitrogen and total phosphorus under this general permit at the time it is issued. Owners of facilities that are deemed to be permitted under this subsection shall have no obligation under this general permit prior to submitting a registration statement and securing coverage under this general permit based upon such registration statement.

3. Continuation of permit coverage.

a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, ~~2021~~

2026, in accordance with Part III M or who is not required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this general permit until such time as the board either:

(1) Issues coverage to the owner under the reissued general permit, or

(2) Notifies the owner that the discharge is not eligible for coverage under this general permit.

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

(1) Initiate enforcement action based upon the ~~2012~~ 2017 general permit,

(2) 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 administratively continued coverage under the terms of the ~~2012~~ 2017 general permit or be subject to enforcement action for operating without a permit, or

(3) Take other actions authorized by the State Water Control Law.

B. Wasteload allocations.

1. Wasteload allocations allocated to permitted facilities pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, or applicable TMDLs, or wasteload allocations acquired by owners of new and expanding facilities to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion under Part II B of this general permit, and existing loads calculated from the permitted design capacity of expanding facilities not previously covered by this general permit, shall be incorporated into the registration list maintained by the department. The wasteload allocations contained in this list shall be enforceable as annual mass load limits in this general permit. Credits shall not be generated by facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005.

2. Except as described in subdivisions 2 c and 2 d of this subsection, an owner of two or more facilities covered by this general permit and discharging to the same tributary may apply for and receive an aggregated mass load limit for delivered total nitrogen and an aggregated mass load limit for delivered total phosphorus reflecting the total of the water quality-based total nitrogen and total phosphorus wasteload allocations or permitted design capacities established for such facilities individually.

Regulations

a. The permittee (and all of the individual facilities covered under a single registration) shall be deemed to be in compliance when the aggregate mass load discharged by the facilities is less than the aggregate load limit.

b. The permittee will be eligible to generate credits only if the aggregate mass load discharged by the facilities is less than the total of the wasteload allocations assigned to any of the affected facilities.

c. The aggregation of mass load limits shall not affect any requirement to comply with local water quality-based limitations.

d. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, cannot be aggregated with other facilities under common ownership or operation.

e. Operation under an aggregated mass load limit in accordance with this section shall not be deemed credit acquisition as described in Part I J 2 of this general permit.

3. An owner that consolidates two or more facilities discharging to the same tributary into a single regional facility may apply for and receive an aggregated mass load limit for ~~delivered~~ total nitrogen and an aggregated mass load limit for ~~delivered~~ total phosphorus, subject to the following conditions:

a. Aggregate mass limits will be calculated accounting for delivery factors in effect at the time of the consolidation.

b. If all of the affected facilities have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the wasteload allocations of the affected facilities. The regional facility shall be eligible to generate credits.

~~b.~~ c. If any, but not all, of the affected facilities has a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding:

(1) Wasteload allocations of those facilities that have wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

(2) Permitted design capacities assigned to affected industrial facilities; and

(3) Loads from affected sewage treatment works that do not have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, defined as the lesser of

a previously calculated permitted design capacity, or the values calculated by the following formulae:

Nitrogen Load (~~(lbs/day)~~ (lbs/year) = flow (MGD) x 8.0 mg/l x 8.345 x 365 days/year

Phosphorus Load (~~(lbs/day)~~ (lbs/year) = flow (MGD) x 1.0 mg/l x 8.345 x 365 days/year

Flows used in the preceding formulae shall be the design flow of the treatment works from which the affected facility currently discharges.

The regional facility shall be eligible to generate credits.

~~e.~~ d. If none of the affected facilities have a wasteload allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation, the aggregate mass load limit shall be calculated by adding the respective permitted design capacities for the affected facilities.

~~d.~~ e. Facilities whose operations were previously authorized by a Virginia Pollution Abatement (VPA) permit that was issued before July 1, 2005, may be consolidated with other facilities under common ownership or operation, but their allocations cannot be transferred to the regional facility.

e. f. Facilities whose operations were previously authorized by a VPA permit that was issued before July 1, 2005, can become regional facilities, but they cannot receive additional allocations beyond those permitted in Part II B 1 d of this general permit.

4. Unless otherwise noted, the nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered total loads, including nutrients present in the intake water from the river, as applicable. On a case-by-case basis, an industrial discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load originates in its intake water. This demonstration shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit the permitted discharge to the net nutrient load portion of the assigned wasteload allocation.

5. Bioavailability. Unless otherwise noted, the entire nitrogen and phosphorus wasteload allocations assigned to permitted facilities are considered to be bioavailable to organisms in the receiving stream. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the board that a portion of the nutrient load is not bioavailable; this demonstration shall not be based on the ability of the nutrient to resist degradation at the wastewater treatment plant, but instead, on the ability of the nutrient to resist degradation within a natural environment for the amount of time that it is expected to remain in the Chesapeake Bay watershed. This demonstration shall also be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay models. In these cases, the board may limit

the permitted discharge to the bioavailable portion of the assigned wasteload allocation.

C. Schedule of compliance.

1. ~~The following schedule of compliance pertaining to the load allocations for total nitrogen and total phosphorus applies to the For~~ facilities listed in 9VAC25-820-80, compliance with chlorophyll-a based total phosphorus wasteload allocations shall be achieved as soon as possible but no later than January 1, 2026. Compliance with floating wasteload allocations shall be no later than the January 1, 2026, effective date of the allocations.

~~a. Compliance shall be achieved as soon as possible, but no later than the following dates, subject to any compliance plan-based adjustment by the board pursuant to subdivision 1 b of this subsection, for each upgrade phase:~~

Upgrade Phase	Limit Effective Date
Phase 1 Total Nitrogen	January 1, 2017
Phase 2 Total Nitrogen	January 1, 2022
Phase 2 Total Phosphorus	January 1, 2017

~~b. 2.~~ Following submission of compliance plans and compliance plan updates required by 9VAC25-820-40, the board shall reevaluate the schedule of compliance in subdivision 1 a of this subsection, taking into account the information in the compliance plans and the factors in § 62.1-44.19:14 C 2 of the Code of Virginia. When warranted based on such information and factors, the board shall adjust the schedule in subdivision 1 a of this subsection as appropriate by modification or reissuance of this general permit.

~~2. 3.~~ The registration list shall contain individual dates for compliance with wasteload allocations for dischargers, as follows:

- a. Owners of facilities listed in 9VAC25-820-80 will have individual dates for compliance based on their respective compliance plans that may be earlier than the ~~upgrade phase~~ schedule listed in subdivision 1 of this subsection.
- b. Owners of facilities listed in 9VAC25-820-80 that waive their compliance schedules in accordance with 9VAC25-820-40 A 2 b shall have an individual compliance date of January 1, ~~2017~~ 2022.
- c. Upon completion of the projects contained in their compliance plans, owners of facilities listed in 9VAC25-820-80 may receive a revised individual compliance date of January 1 for the calendar year immediately following the year in which a Certificate to Operate was issued for the capital projects, but not later than ~~the upgrade phase schedule listed in subdivision 1 of this subsection~~ January 1, 2026.
- d. Owners of new and expanded facilities will have individual dates for compliance corresponding to the date that coverage

under this general permit was extended to discharges from the facility.

~~3. The significant dischargers in the James River Basin shall meet aggregate discharged wasteload allocations of 8,968,864 lbs/yr TN and 545,558 lbs/yr TP by January 1, 2023.~~

D. Annual update of compliance plan. Every owner of a facility required to submit a registration statement shall either individually or through the Virginia Nutrient Credit Exchange Association submit updated compliance plans to the department no later than February 1 of each year. The compliance plans shall contain sufficient information to document a plan to achieve and maintain compliance with applicable total nitrogen and total phosphorus individual wasteload allocations on the registration list and aggregate wasteload allocations in Part I C 3. Compliance plans for owners of facilities that were required to submit a registration statement with the department under Part I G 1 a may rely on the acquisition of point source credits in accordance with Part I J of this general permit, ~~but not the acquisition of credits through payments into the Nutrient Offset Fund,~~ to achieve compliance with the individual and combined wasteload allocations in each tributary. Annual compliance plan updates for facilities subject to reduced wasteload allocations and listed in 9VAC25-820-80 shall not rely on the acquisition of credits through payments into the Nutrient Offset Fund. Compliance plans for expansions or new discharges for owners of facilities that are required to submit a registration statement with the department under Part I G 1 b and c may rely on the acquisition of allocation in accordance with Part II B of this general permit to achieve compliance with the individual and combined wasteload allocations in each tributary.

E. Monitoring requirements.

1. Discharges shall be monitored by the permittee during weekdays as specified in the table below unless the department determines that weekday only sampling results in a non-representative load. Weekend monitoring or alternative monthly load calculations to address production schedules or seasonal flows shall be submitted to the department for review and approval on a case-by-case basis. Facilities that exhibit instantaneous discharge flows that vary from the daily average discharge flow by less than 10% may submit a proposal to the department to use an alternative sample type; such proposals shall be reviewed and approved by the department on a case-by-case basis.

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Parameter	Sample Type and Collection Frequency				
STP design flow	≥20.0 MGD	1.0 - 19.999 MGD	0.5 - 0.999 MGD	0.040 - 0.499 MGD	< 0.040 MGD
Effluent TN load limit for industrial facilities		≥ 100,000 → 350,000 lb/yr	50,000 - 99,999 lb/yr	487 - 49,999 lb/yr	< 487 lb/yr
Effluent TP load limit for industrial facilities		≥ 10,000 → 35,000 lb/yr	5,000 - 9,999 lb/yr	37 - 4,999 lb/yr	< 37 lb/yr
Flow	Totalizing, Indicating, and Recording				1/Day, see individual VPDES permit for sample type
Nitrogen Compounds (Total Nitrogen = TKN + NO ₂ - (as N) + NO ₃ - (as N))	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week*	8 HC 2/Month, > 7 days apart	1/Month Grab
Total Phosphorus	24 HC 3 Days/Week	24 HC 2 Days/Week*	8 HC 2 Days/Week*	8 HC 2/Month, > 7 days apart	1/Month Grab
*Two flow composited samples taken in the same calendar week that are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement.					

2. Monitoring for compliance with effluent limitations shall be performed in a manner identical to that used to determine compliance with effluent limitations established in the individual VPDES permit unless specified otherwise in subdivisions 3, 4, and 5 of Part I E. Monitoring or sampling shall be conducted according to analytical laboratory methods approved under 40 CFR Part 136, unless other test or sample collection procedures have been requested by the permittee and approved by the department in writing. All analysis for compliance with effluent limitations shall be conducted in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories. Monitoring may be performed by the permittee at frequencies more stringent than listed in subdivision 1 of Part I E; however, the permittee shall report all results of such monitoring.

3. Loading values greater than or equal to 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading values of less than 10 pounds reported in accordance with Part I E and F of this general permit shall be calculated and reported to at least two significant digits with the exception

that all complete calendar year annual loads shall be reported to the nearest pound.

4. Data shall be reported on a form provided by the department, by the same date each month as is required by the owner's individual VPDES permit. The total monthly load shall be calculated in accordance with the following formula:

$$ML = \left(\frac{\sum DL}{s} \right) \times d$$

where:

ML = total monthly load (lb/mo) = average daily load for the calendar month multiplied by the number of days of the calendar month on which a discharge occurred

DL = daily load = daily concentration (expressed as mg/l to the nearest 0.01 mg/l) multiplied by the flow volume of effluent discharged during the 24-hour period (expressed as MGD to at least the nearest 0.01 MGD and in no case less than two significant digits), multiplied by 8.345. Daily loads greater than or equal to 10 pounds may be rounded to the nearest whole number to convert to pounds per day (lbs/day). Daily loads less than or equal to 10 pounds may be rounded to no fewer than two significant figures.

s = number of days in the calendar month in which a sample was collected and analyzed

d = number of discharge days in the calendar month

For total phosphorus, all daily concentration data below the quantification level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported. If all data are below the QL, then the average shall be reported as half the QL.

For total nitrogen (TN), if none of the daily concentration data for the respective species (i.e., TKN, nitrates/nitrites) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point as reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

The quantification levels shall be less than or equal to the following concentrations:

Parameter	Quantification Level
TKN	0.50 mg/l
Nitrite	0.10 mg/l
Nitrate	0.20 mg/l
Nitrite + Nitrate	0.20 mg/l

Higher QLs may be approved on a case-by-case basis where a higher QL routinely results in reportable results of the species in question or is otherwise technically appropriate based on standard lab practices.

The total year-to-date mass load shall be calculated in accordance with the following formula:

$$AL_{YTD} = \sum_{(Jan-present)} ML$$

where:

AL-YTD = calendar year-to-date annual load (lb/yr)

ML = total monthly load (lb/mo)

The total annual mass load shall be calculated in accordance with the following formula:

$$AL_{YTD} = \sum_{(Jan-present)} ML$$

where:

AL = calendar year annual load (lb/yr)

ML = total monthly load (lb/mo)

5. The department may authorize a chemical usage evaluation as an alternative means of determining nutrient

loading for outfalls where the only source of nutrients is that found in the surface water intake and chemical additives used by the facility. Such an evaluation shall be submitted to the department for review and approval on a case-by-case basis. Implementation of approved chemical usage evaluations shall satisfy the requirements specified under Part I E 1 and 2.

6. Facilities with approved reclamation and reuse programs that choose to base their floating wasteload allocations on treated flow shall measure and report the total annual flow discharged to the reuse distribution system.

F. Annual reporting. On or before February 1, annually, each permittee shall file a discharge monitoring report with the department identifying the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by the permitted facility during the previous calendar year.

G. Requirement to register; exclusions.

1. The following owners are required to register for coverage under this general permit:

a. Every owner of an existing facility authorized by a VPDES permit to discharge 100,000 gallons or more per day from a sewage treatment work, or an equivalent load from an industrial facility, directly into tidal waters, or 500,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into nontidal waters shall submit a registration statement to the department by November 1, 2016, and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner upon approval of a registration statement.

b. Any owner of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day from a sewage treatment works, or an equivalent load from an industrial facility, directly into tidal or nontidal waters shall submit a registration statement with the department at the time he makes application for an individual permit with the department for a new discharge or expansion that is subject to an offset requirement in Part II of this general permit or to a technology-based requirement in 9VAC25-40-70, and thereafter upon the reissuance of this general permit in accordance with Part III M. The conditions of this general permit will apply to such owner beginning January 1 of the calendar year immediately following approval of a registration statement and issuance or modification of the individual permit.

c. Any owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011, and is subject to offset requirements in accordance with Part II A 1 c of this

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general permit, shall submit a registration statement with the department at the time he makes application for an individual permit with the department or prior to commencing a discharge, whichever occurs first, and thereafter upon the reissuance of this general permit in accordance with Part III M.

2. All other categories of discharges are excluded from registration under this general permit.

H. Registration statement.

1. The registration statement shall contain the following information:

a. Name, mailing address and telephone number, email address and fax number of the owner (and facility operator, if different from the owner) applying for permit coverage;

b. Name (or other identifier), address, city or county, contact name, phone number, email address and fax number for the facility for which the registration statement is submitted;

c. VPDES permit numbers for all permits assigned to the facility, or pursuant to which the discharge is authorized;

d. If applying for an aggregated wasteload allocation in accordance with Part I B 2 of this permit, a list of all affected facilities and the VPDES permit numbers assigned to these facilities;

e. For new and expanded facilities, a plan to offset new or increased delivered total nitrogen and delivered total phosphorus loads, including the amount of wasteload allocation acquired. Wasteload allocations or credits sufficient to offset projected nutrient loads must be provided for period of at least five years; and

f. For existing facilities, the amount of a facility's wasteload allocation transferred to or from another facility to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

g. For facilities subject to a floating wasteload allocation as listed in 9VAC25-820-80 with an approved reclamation and reuse system, an indication of whether the allocation should be based on discharged or treated flow. Facilities choosing to base their floating wasteload allocation on treated flow shall provide a water reclamation and reuse flow schematic and a description of how total flows discharged to the reuse distribution system will be measured.

2. The registration statement shall be submitted to the DEQ Central Office, Office of VPDES Permits. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements), as provide for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in

compliance with this section and 9VAC25-31-1020. There shall be at least three months of notice provided between the notification from the department and the date after which such forms must be submitted electronically.

3. An amended registration statement shall be submitted to DEQ immediately upon the acquisition or transfer of a facility's wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion.

I. Public notice for registration statements proposing modifications or incorporations of new wasteload allocations or delivery factors.

1. All public notices issued pursuant to a proposed modification or incorporation of a (i) new wasteload allocation to offset new or increased delivered total nitrogen and delivered total phosphorus loads from a new discharge or expansion or (ii) delivery factor shall be published once a week for two consecutive weeks in a local newspaper of general circulation serving the locality where the facility is located informing the public that the owner of the facility intends to apply for coverage under this general permit. At a minimum, the notice shall include:

a. A statement of the owner's intent to register for coverage under this general permit;

b. A brief description of the facility and its location;

c. The amount of wasteload allocation that will be acquired or transferred if applicable;

d. The delivery factor for a new discharge or expansion;

e. If applicable, any proposed nonpoint source to point source trading ratio less than 2:1 proposed under Part II B 1 b (1);

f. A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication, and to establish a dialogue between the owner and persons who may be affected by the discharge from the facility;

g. An announcement of a 30-day comment period and the name, telephone number, and address of the owner's representative who can be contacted by the interested persons to answer questions;

h. The name, telephone number, and address of the DEQ representative who can be contacted by the interested persons to answer questions, or where comments shall be sent; and

i. The location where copies of the documentation to be submitted to the department in support of this general permit notification and any supporting documents can be viewed and copied.

2. The owner shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

3. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the notice is published in the local newspaper.

J. Compliance with wasteload allocations.

1. Methods of compliance. The owner of the permitted facility shall comply with its wasteload allocation contained in the registration list maintained by the department. The owner of the permitted facility shall be in compliance with its wasteload allocation if:

a. The annual mass load is less than or equal to the applicable wasteload allocation assigned to the facility in this general permit (or permitted design capacity for expanded facilities without allocations);

b. The owner of the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision 2 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility; or

c. In the event he is unable to meet the individual wasteload allocation pursuant to subdivision 1 a or 1 b of this subsection, the owner of the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund pursuant to subdivision 3 of this subsection; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual wasteload allocations for each permitted facility.

2. Credit acquisition from owners of permitted facilities. A permittee may acquire point source nitrogen credits or point source phosphorus credits from one or more owners of permitted facilities only if:

a. The credits are generated and applied to a compliance obligation in the same calendar year;

b. The credits are generated by one or more permitted facilities in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from owners of permitted facilities in the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of Potomac tributary facilities at a trading ratio of 1:1. A trading ratio of 1.3:1 shall apply to the acquisition of credits from the owners of a Rappahannock tributary facility by the owner of an Eastern Shore Basin facility;

c. The exchange or acquisition of credits does not affect any requirement to comply with local water quality-based limitations as determined by the board;

d. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

e. The credits are generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations (until a facility is constructed and has commenced operation, such credits are held, and may be sold, by the Nutrient Offset Fund; and

f. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a credit exchange notification form supplied by the department that he has acquired sufficient credits to satisfy his compliance obligations. The permittee shall comply with the terms and conditions contained in the credit exchange notification form submitted to the department.

3. Credit acquisitions from the Nutrient Offset Fund. Until such time as the board finds that no allocations are reasonably available in an individual tributary, permittees that cannot meet their total nitrogen or total phosphorus effluent limit may acquire nitrogen or phosphorus credits through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia only if, no later than June 1 immediately following the calendar year in which the credits are to be applied, the permittee certifies on a form supplied by the department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of this general permit. Such certification may include, but not be limited to, providing a record of solicitation or demonstration that point source allocations are not available for sale in the tributary in which the permittee's facility is located. Payments to the Nutrient Offset Fund shall be in the amount of ~~\$4.60~~ \$5.08 for each pound of nitrogen and ~~\$10.10~~ \$11.15 for each pound of phosphorus and shall be subject to the following requirements:

a. The credits are generated and applied to a compliance obligation in the same calendar year.

b. The credits are generated in the same tributary, except that owners of permitted facilities in the Eastern Shore Basin may also acquire credits from the owners of facilities that discharge to the Potomac and Rappahannock tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the owners of facilities that discharge to a Potomac tributary at a trading ratio of 1:1. A trading

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ratio of 1.3:1 shall apply to the acquisition of credits from owners of facilities that discharge to a Rappahannock tributary by the owners of an Eastern Shore Basin facility.

c. The acquisition of credits does not affect any requirement to comply with local water quality-based limitations, as determined by the board.

4. This general permit neither requires nor prohibits a municipality or regional sewerage authority's development and implementation of trading programs among industrial users, which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403 and the municipality's or authority's individual VPDES permit.

Part II

SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

A. Offsetting mass loads discharged by new and expanded facilities.

1. An owner of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under this general permit.

a. An owner of a facility authorized by a VPDES permit first issued before July 1, 2005, that expands the facility to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

b. An owner of a facility authorized by a VPDES permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads.

c. An owner of a facility treating domestic sewage authorized by a VPDES permit with a discharge greater than 1,000 gallons per day up to and including 39,999 gallons per day that did not commence the discharge of pollutants prior to January 1, 2011, shall demonstrate to the department that he has acquired wasteload allocations sufficient to offset his delivered total nitrogen and delivered phosphorus loads prior to commencing the discharge, except when the facility is for short-term temporary use only as determined by the department or when treatment of domestic sewage is not the primary purpose of the facility.

2. Offset calculations shall address the proposed discharge that exceeds:

a. The applicable wasteload allocation assigned to discharges from the facility in this general permit, for expanding significant dischargers with a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60

C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

b. The permitted design capacity, for all other expanding dischargers; and

c. Zero, for facilities with a new discharge.

3. An owner of multiple facilities that discharge into the same tributary, and assigned an aggregate mass load limit in accordance with Part I B 2 of this general permit, that undertakes construction of new or expanded facilities shall be required to acquire wasteload allocations sufficient to offset any increase in delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond the aggregate mass load limit assigned these facilities.

B. Acquisition of wasteload allocations. wasteload allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the wasteload allocations or point source nitrogen or point source phosphorus credits from the owners of one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;

b. Acquisition of credits certified by the board pursuant to § 62.1-44.19:20 of the Code of Virginia. Credits used to offset new or increased nutrient loads under this subdivision shall be:

(1) Subject to a trading ratio of two pounds reduced for every pound to be discharged if certified as a nonpoint source credit by the board pursuant to § 62.1-44.19:20 of the Code of Virginia. On a case-by-case basis the board may approve nonpoint source to source trading ratios of less than 2:1 (but not less than 1:1) when the applicant demonstrates factors that ameliorate the presumed 2:1 uncertainty ratio for credits generation by nonpoint sources such as:

(a) When direct and representative monitoring of the pollutant loadings from a nonpoint source is performed in a manner and at a frequency similar to that performed at VPDES point sources and there is consistency in the effectiveness of the operation of the nonpoint source best management practice (BMP) approaching that of a conventional point source.

(b) When nonpoint source credits are generated from land conservation that ensures permanent protection through a conservation easement or other instrument attached to the deed and when load reductions can be reliably determined;

(2) Calculated using best management practices efficiency rates and attenuation rates, as established by the latest

science and relevant technical information, and approved by the board;

(3) Based on appropriate delivery factors, as established by the latest science and relevant technical information, and approved by the board;

(4) Demonstrated to have achieved reductions beyond those already required by or funded under federal or state law, or by Virginia's Chesapeake Bay TMDL Watershed Implementation Plan;

(5) Generated in accordance with conditions of the facility's individual VPDES permit; and

(6) In the case of credits generated by land use conversions and urban source reduction controls (BMPs), the credits shall represent nutrient reductions beyond those in place as of July 1, 2005;

c. Until such time as the board finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia; or

d. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis. This includes allocations granted by the board to an owner of a facility that is authorized by a VPA permit to land apply domestic sewage if:

- (1) The VPA permit was issued before July 1, 2005;
- (2) The allocation does not exceed the facility's permitted design capacity as of July 1, 2005;
- (3) The waste treated by the facility that is covered under the VPA permit will be treated and discharged pursuant to a VPDES permit for a new discharge; and
- (4) The owner installs state-of-the-art nutrient removal technology at such a facility.

2. Acquisition of allocations or point source nitrogen or point source phosphorus credits is subject to the following conditions:

- a. The allocations or credits shall be generated and applied to an offset obligation in the same calendar year in which the credit is generated;
- b. The allocations or credits shall be generated in the same tributary;
- c. Such acquisition does not affect any requirement to comply with local water quality-based limitations, as determined by the board;
- d. The allocations are authenticated (i.e., verified to have been generated) by the permittee as required by the facility's individual VPDES permit, utilizing procedures approved by the board, no later than February 1 immediately following the calendar year in which the allocations are applied; and

e. If obtained from the owner of a permitted point source, the allocations shall be generated by a facility that has been constructed, and has discharged from treatment works whose design flow or equivalent industrial activity is the basis for the facility's wasteload allocations.

f. Such allocations or credits shall be secured for a period of five years with each registration under the general permit.

3. Priority of options. The board shall give priority to allocations or credits acquired in accordance with subdivisions 1 a, b, and d of this subsection. The board shall approve allocations acquired in accordance with subdivision 1 c of this subsection only after the owner has demonstrated that he has made a good faith effort to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this subsection, and that such allocations are not reasonably available taking into account timing, cost and other relevant factors. Such demonstration may include, but not be limited to, providing a record of solicitation, or other demonstration that point source allocations or nonpoint source allocations are not available for sale in the tributary in which the permittee's facility discharge is located.

4. Annual allocation acquisitions from the Nutrient Offset Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the Nutrient Offset Fund, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the department on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.

Part III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

A. 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).

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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 records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved, or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating 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 the discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, 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 that discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part III F, or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharge 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 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 that shall be reported within 24 hours under this paragraph:
 - a. Any unanticipated bypass; and
 - b. Any upset 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 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 Part III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at

~~<http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>~~

<https://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx>. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. When the permittee becomes aware that it failed to submit any relevant facts in the permit registration statement or submitted incorrect information in a permit registration statement, it shall promptly submit such facts or information.

J. Notice of planned changes.

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

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

(1) After promulgation of standards of performance under § 306 of the Clean Water Act (33 USC § 1251 et seq.) that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations 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 of 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 of disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

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K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit 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. 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 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 modification~~; or denial of a permit coverage renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 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 registration statements to be submitted later than the expiration date of the existing permit.

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

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the

permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by § 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part 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 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) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems 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 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 that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

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

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part 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 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 in Part III U 3 a.

V. Upset.

1. An upset, defined in 9VAC25-31-10, 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 cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with 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 an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

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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 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, substances or parameters at any location.

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

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of ~~permits~~ permit coverage. ~~Permits are~~ Permit coverage is not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department within 30 days of the 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 described 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.

9VAC25-820-80. Facilities subject to reduced ~~individual individual~~ total nitrogen and total phosphorus wasteload allocations.

~~The James River facilities identified in this section are subject to reduced individual total nitrogen and total phosphorus wasteload allocations as indicated.~~

Facility	VPDES No.	Phase 1 Total Nitrogen (lbs/yr)	Phase 2 Total Nitrogen (lbs/yr)	Phase 2 Total Phosphorus (lbs/yr)
Buena Vista STP	VA0020991	N/A	N/A	2,778
Covington STP	VA0025542	N/A	N/A	3,705
GP Big Island LLC	VA0003026	N/A	N/A	40,273
Mohawk Industries, Inc.	VA0004677	N/A	N/A	9,880
Lexington—Rockbridge Regional WQCF	VA0088161	N/A	N/A	3,705
Alleghany County—Low Moor STP	VA0027979	N/A	N/A	617
Lower Jackson River STP	VA0090671	N/A	N/A	1,852
Clifton Forge STP	VA0022772	N/A	N/A	2,470
MeadWestvaco	VA0003646	N/A	N/A	96,771
Amherst—Rutledge Creek WWTP	VA0031321	N/A	N/A	741
BWX Technologies Inc.	VA0003697	N/A	N/A	1,235
Greif Inc.	VA0006408	N/A	N/A	24,082
Lake Monticello STP	VA0024945	N/A	N/A	1,229
Lynchburg STP (DWF only)	VA0024970	N/A	N/A	27,169

RWSA—Moore's Creek Regional STP	VA0025518	N/A	N/A	18,525
Powhatan CC STP	VA0020699	N/A	N/A	581
Crewe WWTP	VA0020303	N/A	N/A	617
Farmville WWTP	VA0083135	N/A	N/A	2,964
Richmond WWTP (DWF only)	VA0063177	N/A	N/A	55,574
E. I. DuPont—Spruance	VA0004669	N/A	N/A	6,339
Chesterfield County—Falling Creek WWTP	VA0024996	N/A	N/A	12,473
Chesterfield County—Proctors Creek WWTP	VA0060194	N/A	N/A	33,344
Dominion—Chesterfield (Net)	VA0004146	N/A	N/A	170
Henrico County WWTP	VA0063690	N/A	N/A	92,623
The Sustainability Park LLC	VA0002780	N/A	N/A	1,556
Philip Morris USA—Park 500	VA0026557	N/A	N/A	2,149
Honeywell—Hopewell	VA0005291	N/A	N/A	41,841
Hopewell Regional WTF	VA0066630	N/A	N/A	61,749
South Central WW Authority WWTF	VA0025437	N/A	N/A	28,404
Tyson Foods—Glen Allen	VA0004031	N/A	N/A	409
Chickahominy WWTP	VA0088480	N/A	N/A	123
HRSD—Boat Harbor STP	VA0081256	N/A	N/A	43,177
HRSD—James River STP	VA0081272	N/A	N/A	34,541
HRSD—Williamsburg STP	VA0081302	N/A	N/A	38,859
HRSD—Nansemond STP	VA0081299	N/A	N/A	51,812
HRSD—Army Base STP	VA0081230	N/A	N/A	31,087
HRSD—Virginia Initiative Plant WWTP	VA0081281	N/A	N/A	69,083
HRSD—Chesapeake—Elizabeth STP	VA0081264	N/A	N/A	41,450
HRSD Aggregate Nutrient Discharge*	N/A	4,400,000	3,400,000	310,010
JH Miles and Company	VA0003263	N/A	N/A	17,437

*HRSD James River Aggregate includes Boat Harbor STP (VA0081256), James River STP (VA0081272), Williamsburg STP (VA0081302), Nansemond STP (VA0081299), Army Base STP (VA0081230), Virginia Initiative STP (VA0081281), and Chesapeake—Elizabeth STP (VA0081264).

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A. Floating wasteload allocations.

<u>Facility</u>	<u>VPDES No.</u>
<u>ACSA - Middle River Regional WWTP</u>	<u>VA0064793</u>
<u>North River WWTF</u>	<u>VA0060640</u>
<u>Waynesboro WWTP</u>	<u>VA0025151</u>
<u>Front Royal WWTP</u>	<u>VA0062812</u>
<u>Broad Run WRF</u>	<u>VA0091383</u>
<u>Leesburg WPCF</u>	<u>VA0092282</u>
<u>VA American Water Prince William - Section 1 WWTF</u>	<u>VA0024724</u>
<u>VA American Water Prince William - Section 8 WWTF</u>	<u>VA0024678</u>
<u>H. L. Mooney WWTF</u>	<u>VA0025101</u>
<u>Opequan WRF</u>	<u>VA065552</u>
<u>Parkins Mill WWTF</u>	<u>VA0075191</u>
<u>Alexandria Renew Enterprises WWTP</u>	<u>VA0025160</u>
<u>Arlington County WPCF</u>	<u>VA0025143</u>
<u>Noman M Cole Jr PCP</u>	<u>VA0025364</u>
<u>Aquia WWTP</u>	<u>VA0060968</u>
<u>Culpeper WWTP</u>	<u>VA0061590</u>
<u>FMC WWTF</u>	<u>VA0068110</u>
<u>Fredericksburg WWTF</u>	<u>VA0025127</u>
<u>Little Falls Run WWTF</u>	<u>VA0076392</u>
<u>Massaponax WWTF</u>	<u>VA0025658</u>
<u>HRSD - York River STP</u>	<u>VA0081311</u>
<u>Totopotomoy WWTP</u>	<u>VA0089915</u>
<u>Lynchburg STP</u>	<u>VA0024970</u>
<u>Moore's Creek Advanced WRRF</u>	<u>VA0025518</u>
<u>Falling Creek WWTP</u>	<u>VA0024996</u>
<u>Henrico County WWTP</u>	<u>VA0063690</u>
<u>Hopewell WWTP</u>	<u>VA0066630</u>
<u>HRSD - Boat Harbor STP</u>	<u>VA0081256</u>
<u>HRSD - James River STP</u>	<u>VA0081272</u>
<u>HRSD - Williamsburg STP</u>	<u>VA0081302</u>
<u>Proctor's Creek WWTP</u>	<u>VA0060194</u>
<u>Richmond WWTP</u>	<u>VA0063177</u>
<u>South Central Wastewater Authority WWTP</u>	<u>VA0025437</u>

<u>HRSD - Nansemond STP</u>	<u>VA0081299</u>
<u>HRSD - Army Base STP</u>	<u>VA0081230</u>
<u>HRSD - VIP WWTP</u>	<u>VA0081281</u>

B. Chlorophyll-a based total phosphorus wasteload allocations.

<u>Facility</u>	<u>VPDES No.</u>
<u>Richmond WWTP</u>	<u>VA0063177</u>
<u>Falling Creek WWTP</u>	<u>VA0024996</u>
<u>Proctor's Creek WWTP</u>	<u>VA0060194</u>
<u>Henrico County WWTP</u>	<u>VA0063690</u>
<u>Phillip Morris - Park 500</u>	<u>VA0026557</u>
<u>Hopewell WWTP</u>	<u>VA0063690</u>
<u>South Central Wastewater Authority WWTP</u>	<u>VA0025437</u>

VA.R. Doc. No. R20-6191; Filed August 4, 2021, 9:38 a.m.

Final Regulation

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 Chapter 1207 of the 2020 Acts of Assembly, which exempts the actions of the board relating to the initial adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide a public comment period of at least 60 days prior to adoption of final regulations.

Title of Regulation: **9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations (amending 9VAC25-830-40, 9VAC25-830-190; adding 9VAC25-830-155).**

Statutory Authority: §§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

Effective Date: September 29, 2021.

Agency Contact: Justin L. Williams, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4185 FAX (804) 698-4178, or email justin.williams@deq.virginia.gov.

Summary:

Pursuant to Chapter 1207 of the 2020 Acts of Assembly, which amended the Chesapeake Bay Preservation Act (§ 62.1-44.15:72 et seq. of the Code of Virginia) and added coastal resilience and adaptation to sea-level rise and climate change to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act, the amendments define specific criteria related to coastal resilience for Tidewater

Virginia localities to consider in land development activities.

Changes to the proposed regulation include (i) addition of definitions; (ii) provision of specifics concerning the assessment of climate change for projects in the resource protection area (RPA); (iii) addition of an allowance for the climate change assessment to be part of a water quality impact assessment and explicit language empowering local governments to require those conditions, alterations, or measures in response to a climate change assessment; (iv) refinement of the limitations on exceptions; (v) addition of specifics and conditions on requirements for adaptation measures; and (vi) provisions for exempting living shoreline projects from additional requirements. Additional revisions centered on the recognition of interplay between activities in the RPA and the jurisdiction of wetlands authority and the removal of unnecessary language in light of other revisions.

[9VAC25-830-40. Definitions.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 62.1-44.15:68 of the Act.

"Act" means the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Adaptation measure" means a project, practice, or approach to mitigate or address an impact of climate change including sea-level rise, storm surge, and flooding including increased or recurrent flooding.

"Best management practice" means a practice, or combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

"Board" means the State Water Control Board.

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of this chapter and § 62.1-44.15:74 of the Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Daylighted stream" means a stream that had been previously diverted into an underground drainage system and has been redirected into an aboveground channel using natural channel design concepts as defined in § 62.1-44.15:51 of the Code of

Virginia, and where the adjacent lands would meet the criteria for being designated as a Resource Protection Area (RPA) as defined by the board under this chapter.

"Department" means the Department of Environmental Quality.

"Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

"Director" means the Director of the Department of Environmental Quality.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

"Infill" means utilization of vacant land in previously developed areas.

"Intensely Developed Areas" means those areas designated by the local government pursuant to 9VAC25-830-100.

"Local governments" means counties, cities, and towns. This chapter applies to local governments in Tidewater Virginia, as defined in § 62.1-44.15:68 of the Act, but the provisions of this chapter may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and this chapter.

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"Local program adoption date" means the date a local government meets the requirements of subdivisions 1 and 2 of 9VAC25-830-60.

"Nature-based solution" means an approach that reduces the impacts of sea-level rise, flooding and storm events through the use of environmental processes and natural systems.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.

"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with § 62.1-44.15:74 of the Act and this chapter, prior to issuance of a building permit.

"Public road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law and (ii) the Virginia Stormwater Management Act. This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

"Redevelopment" means the process of developing land that is or has been previously developed.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts ~~which~~ that may result in significant degradation to the quality of state waters.

"Silvicultural activities" means forest management activities, including ~~but not limited to~~ the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

"Substantial alteration" means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

"Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § 62.1-44.15:68 of the Act.

"Use" means an activity on the land other than development including, ~~but not limited to~~, agriculture, horticulture and silviculture.

"Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, ~~but are not limited to~~ (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.]

9VAC25-830-155. Climate change resilience and adaptation criteria.

A. [Pursuant to § 62.1-44.15:72 of the Code of Virginia, this section provides criteria and requirements to address coastal resilience and adaptation to sea-level rise and climate change. Adaptation measures may be allowed in the Chesapeake Bay Preservation Areas subject to approval by the local government, in accordance with the conditions set forth in this chapter.]

This section applies in addition to 9VAC25-830-130 and 9VAC25-830-140. Local governments shall incorporate [~~these provisions~~ the requirements of this section] into all relevant ordinances and ensure their enforcement through implementation of appropriate processes and documentation for oversight and enforcement. [~~Localities~~ In doing so, local governments] shall [~~update and amend their ordinances to adopt and incorporate these performance criteria by (insert date three years after effective date of this amendment)~~ ensure that the incorporation is consistent with the water quality protections of the Act].

[~~B. Land development and adaption measures or activities, including buffer modifications or encroachments necessary to install adaptation measures, mitigation measures, or other actions necessary to address the impacts of climate change,~~

~~including sea level rise, recurrent flooding, and storm surge, may be allowed in a Chesapeake Bay Preservation area provided the activity complies with all other applicable provisions of this chapter. Nothing in these provisions shall preclude a locality from adopting requirements or criteria in addition to the requirements of these provisions to address the impacts of climate change and sea level rise in Chesapeake Bay Preservation areas in the locality, including extension of the Resource Protection Areas, further restrictions on development, or further preservation of existing vegetation.~~

~~C. B.] Local governments shall [~~consider~~ assess] the impacts of climate change [~~or and~~] sea-level rise on any proposed land development in the Resource Protection Area [during the plan of development or project review process]. [~~Based upon this consideration, local governments may require the installation of additional measures or design features as part~~ Such assessment shall be based on the Resource Protection Area as delineated at the time] of the proposed land development [~~consistent with the requirements of the Act and this chapter. In considering the future impact, local governments shall~~ Such assessment shall at a minimum]:~~

1. [~~Consider~~ Be based upon] a potential impact range of [~~no less than~~] 30 years [or the lifespan of the project if less than 30 years]:

2. Utilize [~~an appropriate a~~] model or forecast [~~to aid in the consideration of~~ developed by or on behalf of the Commonwealth;

3. Identify potential] impacts [~~through use of~~]:

a. [~~The most updated~~ From projected sea-level rise using the] 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate-High scenario projection curve [or any subsequently updated version thereof, on the project site]:

[~~b. A model or forecast that incorporates or utilizes the 2017 National Oceanographic and Atmospheric Administration (NOAA) Intermediate High scenario projection curve; or~~

~~c. A peer reviewed model or forecast that includes NOAA 2017 projections, including the Intermediate High scenario projection curve and has been developed, utilized, or recognized by a state or federal agency and is not based solely upon extrapolation of historical data;~~

3. Include the consideration of future floodplain:

b. From storm surge based upon the most updated NOAA hydrodynamic Sea, Lake, and Overland Surges from Hurricanes model on the project site; and

c. From flooding based upon the most updated Special Flood Hazard Area and the Limit of Moderate Wave Action on the project site. Such assessment of flooding should be in conjunction with the requirements and application of floodplain management requirements and programs.

4. Assess the potential impacts in light of the proposed land development on buffer function including loss of riparian buffer vegetation and vegetation migration;] water [~~level, storm surge, or other impacts in altering~~ migration; as well as the potential impacts resulting in additional future land disturbance or development in] the Resource Protection Area [~~or diminishing the protection of water quality due to the proposed development from these impacts; and~~ 4. Identify measures, conditions, or alterations connected] to the proposed land development [.

5. Identify conditions, alterations, or adaptation measures for the proposed land development] to address these [potential] impacts as necessary and appropriate based upon site conditions [; nature], type [, and size] of proposed land development [, and projected including whether such proposed land development is in an Intensely Developed Area overlay; extent of] potential impacts [; This includes; and the necessity to minimize future land disturbance.

6. Local governments may require this assessment to be submitted as part of a Water Quality Impact Assessment. The specific content and procedures for the assessment shall be established by each local government and shall be of sufficient specificity to demonstrate compliance with this requirement.

7. Based upon the assessment, local governments shall, as necessary and appropriate, require conditions, alterations, or the installation of adaptation] measures [~~such~~] as [~~state or federally recognized or approved best management practices appropriate for part of~~] the [~~site conditions and proposed~~] land development [~~to address such impacts~~ consistent with the requirements of the Act and this chapter].

[~~D. Local governments shall not grant exceptions to the requirements of 9VAC25-830-130, 9VAC250-830-140, or 9VAC20-830-155 where:~~

1. The impact of climate change, including sea level rise on the land development is not considered as outlined in subsection C of this section for exceptions in the Resource Protection Area;

2. The exception consists of approval solely for the use of fill or other material to the Resource Protection Area or within 100 feet of the Resource Protection Area; or

3. The exception permits encroachment into seaward 50 feet of the buffer area of the Resource Protection Area notwithstanding permitted modifications and adaptive measures.

~~E. C.] Local governments may allow [~~adaption~~ adaptation] measures [~~or activities~~] within the Resource Protection Area [to address climate change, including sea level rise] subject to the following criteria [~~These criteria~~] and requirements [, which] shall apply [~~to such adaptation measure or activity~~] in~~

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~~[lieu of the criteria addition to those found] in 9VAC25-830-130 and 9VAC25-830-140 [1. Where the including the requirement for a Water Quality Impact Assessment pursuant to subdivision 6 of 9VAC25-830-140. The] adaptation [measures or activity is within a Resource Protection Area that has been previously developed, including Intensely Developed Areas, and is not naturally vegetated, the adaptation measure or activity measure] shall:~~

~~[1. Be a nature-based solution adaptation measure that uses environmental processes, natural systems, or natural features, is appropriate for site conditions, and is:~~

~~a. A Best Management Practice approved by the Chesapeake Bay Program Partnership;]~~

~~b. [a. Be designed, implemented An approved Virginia Stormwater Best Management Practice listed in the Virginia Stormwater Best Management Practice Clearinghouse;~~

~~c. An approved Shoreline Protection Strategy in accordance with the Tidal Wetlands Guidelines as determined by the Virginia Marine Resource Commission; or~~

~~d. A project that is an eligible activity for funding by the Virginia Community Flood Preparedness Fund as determined by the Virginia Department of Conservation and Recreation.~~

~~2. Be designed, installed,] and maintained in accordance with [best management practices the] applicable [to the] adaptation measure [or activity as recognized or approved by a state or federal agency; b. Not consist solely specifications in accordance with the type] of the [use of fill or other materials to raise the elevation of a Resource Protection Area;~~

~~e. Incorporate natural features or measures such as the planting of vegetation or trees, maximize preservation of existing natural vegetation and trees particularly mature trees, and minimize land disturbance and impervious cover to the maximum extent practicable consistent with the applicable best management practices; and~~

~~d. Where applicable, obtain any applicable federal, state, and local permits and comply with any applicable federal, state, and local requirements.~~

~~2. Where the adaptation measure or activity is within a Resource Protection Area that is naturally vegetated or has not been previously developed, the measure or activity shall:~~

~~a. Be designed and implemented in accordance with best management practices applicable to the adaptation measure or activity as recognized or approved by state or federal agencies;~~

~~b. Preserve to the maximum extent practicable any existing vegetation in the additional 50 feet landward adaptation measure identified in 9VAC25-830-155 C 1.~~

3. Allow for the use of fill only under the following conditions:

a. The grading and slope created by the use of fill shall be no greater than necessary based upon the project specifications and implemented in a manner that minimizes the impact of run-off;

b. The fill must have the necessary biogeochemical characteristics, including sufficient organic content, to support the growth of vegetation and adequate permeability to allow infiltration consistent with the project specifications;

c. The use of fill shall not enhance stormwater runoff] from the Resource Protection Area [, and any lateral flow onto adjacent properties shall be controlled];

~~[e. Not consist solely d. Any impacts on the management] of [the use of fill or other materials to raise stormwater upland of] the [elevation of a] Resource Protection Area [created by the use of fill shall be mitigated as necessary];~~

~~[d e. The use of fill shall not negatively impact septic systems and drainfields; and~~

f. The use of fill shall be consistent with any applicable federal or state law, including floodplain management requirements in 44 CFR Part 60.

4.] Maximize [the] preservation of existing [natural] vegetation [and trees, particularly including] mature trees [, incorporate the planting and establishment of vegetation, particularly trees,] and minimize land disturbance [and impervious cover to the maximum extent practicable consistent with the applicable best management practices; and e. Where applicable, obtain any applicable federal, state, and local permits and comply consistent] with [any applicable the adaptation measure specifications.

5. Comply with all] federal, state, and local requirements [: 3. Where the adaptation measure or activity is a best management practice recognized or approved by a state or federal agency to reduce runoff, prevent erosion, and filter nonpoint source pollution, a Water Quality Impact Assessment in accordance with subdivision 6 of 9VAC25-830-140 shall not be required. All other measures or activities shall require a Water Quality Impact Assessment in accordance with subdivision 6 of 9VAC25-830-140 including any required permits and conditions.

6. Nothing in this provision shall be construed to authorize approval or allowance of an adaptation measure in contravention of floodplain management requirements, including the National Flood Insurance Program and established floodplain ordinances, or construed to require a locality to approve or allow an adaptation measure in contravention of its participation in the National Flood Insurance Program Community Rating System.

D. Local governments shall ensure that any activity in the Resource Protection Area is consistent with Chapter 13 Title

28.2. Code of Virginia, and the accompanying Tidal Wetlands Guidelines which provide for "minimum standards for the protection and conservation of wetlands," and "ensure protection of shorelines and sensitive coastal habitat from sea level rise and coastal hazard." Shoreline management and alteration projects should be coordinated to address the requirements of the most updated Tidal Wetlands Guidelines in conjunction with the requirements of this chapter, including subdivision 5 a (4) of 9VAC25-830-140].

[~~4. Where the proposed adaptation measure is~~ E. For] a living shoreline [~~project or related activity~~, as defined in § 28.2-104.1 of the Code of Virginia, where] the locality otherwise approves of the project, the [~~projects project~~ minimizes land disturbance and] maintains or establishes a vegetative buffer inland of the living shoreline [~~to maximum extent practicable, minimizes land disturbance to the maximum extent practicable, and the project, complies with the fill conditions in subdivision C 3 of this section, and] receives approval from the Virginia Marine Resources Commission [~~including a permit or the local wetlands board~~] as applicable, [~~and any other necessary permits or approvals, the adaptation measure shall be the locality may~~] exempt [it] from additional [~~performance criteria~~] requirements [~~or criteria~~], including a Water Quality Impact Assessment.~~

[F. Local governments shall not grant exceptions to the requirements of 9VAC25-830-130, 9VAC25-830-140, or this section where:

1. The assessment of climate change and sea-level rise as outlined in subsection B of this section has not occurred; or
2. The proposed adaptation measure allows for the use of fill in a Resource Protection Area contravention of the requirements of 9VAC25-830-155 C 3.]

[9VAC25-830-190. Land development ordinances, regulations, and procedures.

A. Local governments shall review and revise their land development regulations, as necessary, to comply with § 62.1-44.15:74 of the Act. To achieve this:

1. Local zoning ordinances shall ensure that the uses permitted by the local zoning regulations are consistent with the Act and this chapter;
2. Local land development ordinances and regulations shall incorporate either explicitly or by direct reference the performance criteria in Part IV (9VAC25-830-120 et seq.) of this chapter. Specific development standards that implement the performance criteria from subdivisions 1, 2 and 4 of 9VAC25-830-130 (minimizing land disturbance and impervious cover and preserving existing vegetation) shall be included;
3. Local land development ordinances and regulations shall protect the integrity of Chesapeake Bay Preservation Areas by incorporating standards to ensure (i) the protection of

water quality; (ii) the preservation of Resource Protection Area land categories, as set forth in 9VAC25-830-80, including the 100-foot wide buffer area; and (iii) the compatibility of development with Resource Management Area land categories, as set forth in 9VAC25-830-90;

4. Local land development ordinances and regulations shall provide for (i) depiction of Resource Protection Area and Resource Management Area boundaries on plats and site plans, including a notation on plats of the requirement to retain an undisturbed and vegetated 100-foot wide buffer area, as specified in subdivision 3 of 9VAC25-830-140; (ii) a plat notation of the requirement for pump-out and 100% reserve drainfield sites for onsite sewage treatment systems, when applicable; and (iii) a plat notation of the permissibility of only water dependent facilities or redevelopment in Resource Protection Areas, including the 100-foot wide buffer area; and

5. Local governments shall require, during the plan of development review process, the delineation of the buildable areas that are allowed on each lot. The delineation of buildable areas shall be based on the performance criteria specified in Part IV (9VAC25-830-120 et seq.) of this chapter, local front and side yard setback requirements, and any other relevant easements or limitations regarding lot coverage.

B. Local governments shall undertake the following as necessary, to comply with § 62.1-44.15:74 of the Act:

1. Local governments shall evaluate the relationship between the submission requirements, performance standards, and permitted uses in local land development ordinances and regulations to identify any obstacles to achieving the water quality goals of the Act and this chapter as set forth in § 62.1-44.15:74 B of the Act, 9VAC25-830-50 and 9VAC25-830-120. Local governments shall revise these ordinances and regulations, as necessary, to eliminate any obstacles identified in the submission requirements or development standards.

2. Local governments shall review and revise their land development ordinances and regulations adopted pursuant to § 62.1-44.15:74 and Articles 1 (§ 15.2-2200 et seq.), 2 (§ 15.2-2210 et seq.), 4 (§ 15.2-2233 et seq.), 5 (§ 15.2-2239), 6 (15.2-2240 et seq.), and 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia to assure that their subdivision ordinances, zoning ordinances, and all other components of their local Chesapeake Bay Preservation Act programs are consistent in promoting and achieving the protection of state waters. In addition, local governments shall identify and resolve any conflicts among the components of the local programs and with other local ordinances, regulations and administrative policies, to assure that the intent of the Act and this chapter is fulfilled.

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3. Local governments shall review and revise their land development ordinances and regulations to ensure consistency with the water quality protection goals, objectives, policies, and implementation strategies identified in the local comprehensive plan.

C. Local governments shall update and amend their ordinances and regulations to adopt and incorporate updated requirements in Part IV (9VAC25-830-120 et seq.) of this chapter based upon statutory revisions to Virginia Code § 62.1-44.15:72. by September 29, 2024.]

VA.R. Doc. No. R21-6647; Filed July 30, 2021, 1:38 p.m.

Final Regulation

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 Chapter 1207 of the 2020 Acts of Assembly, which exempts the actions of the board relating to the initial adoption of regulations necessary to implement the provisions of the act; however, the board is required to provide a public comment period of at least 60 days prior to adoption of final regulations.

Title of Regulation: 9VAC25-830. Chesapeake Bay Preservation Area Designation and Management Regulations (amending 9VAC25-830-40, 9VAC25-830-130, 9VAC25-830-140, 9VAC25-830-190).

Statutory Authority: §§ 62.1-44.15:69 and 62.1-44.15:72 of the Code of Virginia.

Effective Date: September 29, 2021.

Agency Contact: Justin L. Williams, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4185 FAX (804) 698-4178, or email justin.williams@deq.virginia.gov.

Summary:

Pursuant to Chapter 1207 of the 2020 Acts of Assembly, which amended the Chesapeake Bay Preservation Act (§ 62.1-44.15:72 et seq. of the Code of Virginia) and added coastal resilience and adaptation to sea-level rise and climate change to the criteria requirements for regulations to be established by the State Water Control Board for use by local governments under the Chesapeake Bay Preservation Act, the amendments provide performance criteria requirements related to trees, particularly mature trees, under the Chesapeake Bay Preservation Act program, including (i) requiring preservation and protection of mature trees, including in instances where existing vegetation is removed that includes trees and requiring that trees are utilized in reestablishing vegetation to the maximum extent practicable; and (ii) providing that where vegetation or buffers must be established, the planting of trees should be utilized where practicable.

[9VAC25-830-40. Definitions.

The following words and terms used in this chapter have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 62.1-44.15:68 of the Act.

"Act" means the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Best management practice" means a practice, or combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

"Board" means the State Water Control Board.

"Buffer area" means an area of natural or established vegetation managed to protect other components of a Resource Protection Area and state waters from significant degradation due to land disturbances.

"Canopy tree" means a tree that typically reaches 35 feet in height or taller when mature.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of this chapter and § 62.1-44.15:74 of the Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area.

"Daylighted stream" means a stream that had been previously diverted into an underground drainage system and has been redirected into an aboveground channel using natural channel design concepts as defined in § 62.1-44.15:51 of the Code of Virginia, and where the adjacent lands would meet the criteria for being designated as a Resource Protection Area (RPA) as defined by the board under this chapter.

"Department" means the Department of Environmental Quality.

"Development" means the construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

"Director" means the Director of the Department of Environmental Quality.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Floodplain" means all lands that would be inundated by flood water as a result of a storm event of a 100-year return interval.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resources Conservation Service.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. Impervious surfaces include; ~~but are not limited to~~, roofs, buildings, streets, parking areas, and any concrete, asphalt or compacted gravel surface.

"Infill" means utilization of vacant land in previously developed areas.

"Intensely Developed Areas" means those areas designated by the local government pursuant to 9VAC25-830-100.

"Local governments" means counties, cities, and towns. This chapter applies to local governments in Tidewater Virginia, as defined in § 62.1-44.15:68 of the Act, but the provisions of this chapter may be used by other local governments.

"Local program" means the measures by which a local government complies with the Act and this chapter.

"Local program adoption date" means the date a local government meets the requirements of subdivisions 1 and 2 of 9VAC25-830-60.

"Mature tree" means a canopy tree with a diameter at breast height (DBH) of 12 inches or greater or an understory tree with a DBH of four inches or greater.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.

"Plan of development" means any process for site plan review in local zoning and land development regulations designed to ensure compliance with § 62.1-44.15:74 of the Act and this chapter, prior to issuance of a building permit.

"Public road" means a publicly owned road designed and constructed in accordance with water quality protection criteria at least as stringent as requirements applicable to the Virginia Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and Sediment Control Law and (ii) the Virginia Stormwater Management Act. This definition includes those roads where the Virginia Department of Transportation exercises direct supervision over the design or construction activities, or both, and cases where secondary roads are constructed or maintained, or both, by a local government in accordance with the standards of that local government.

"Redevelopment" means the process of developing land that is or has been previously developed.

"Resource Management Area" means that component of the Chesapeake Bay Preservation Area that is not classified as the Resource Protection Area.

"Resource Protection Area" means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts ~~which that~~ may result in significant degradation to the quality of state waters.

"Silvicultural activities" means forest management activities, including ~~but not limited to~~ the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation that are conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of the Code of Virginia and are located on property defined as real estate devoted to forest use under § 58.1-3230 of the Code of Virginia.

"Substantial alteration" means expansion or modification of a building or development that would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource Management Area only.

"Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low water level and the mean high water level.

"Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of the Code of Virginia.

"Tidewater Virginia" means those jurisdictions named in § 62.1-44.15:68 of the Act.

"Understory tree" means a tree that typically reaches 12 feet to 35 feet in height when mature.

"Use" means an activity on the land other than development including, ~~but not limited to~~, agriculture, horticulture, and silviculture.

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"Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Water-dependent facility" means a development of land that cannot exist outside of the Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature of its operation. These facilities include, ~~but are not limited to~~ (i) ports; (ii) the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v) fisheries or other marine resources facilities.]

9VAC25-830-130. General performance criteria.

Through their applicable land use ordinances, regulations, and enforcement mechanisms, local governments shall require that any use, development, or redevelopment of land in Chesapeake Bay Preservation Areas meets the following performance criteria:

1. No more land shall be disturbed than is necessary to provide for the proposed use or development.

2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed. Mature trees shall [be protected during development and] only [be] removed where [determined to be] necessary [, including] to provide for the proposed use or development [and protected during development to the maximum extent practicable].

[A locality which has an ordinance providing for the conservation, planting, and replacement of trees during the land development process pursuant to § 15.2-961 or 15.2-961.1 of the Code of Virginia may rely on such ordinance for demonstrating compliance with this requirement related to mature trees in Resource Management Areas.]

3. All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with § 15.2-2286 A 8 of the Code of Virginia and subdivision 1 e of 9VAC25-830-240.

4. Land development shall minimize impervious cover consistent with the proposed use or development.

5. Any land disturbing activity that exceeds an area of 2,500 square feet (including construction of all single family houses, septic tanks, and drainfields, but otherwise as defined in § 62.1-44.15:51 of the Code of Virginia) shall comply with the requirements of the local erosion and sediment control ordinance. Enforcement for noncompliance with the erosion and sediment control requirements referenced in this criterion shall be conducted under the provisions of the Erosion and Sediment Control Law and attendant regulations.

6. Any Chesapeake Bay Preservation Act land-disturbing activity as defined in § 62.1-44.15:24 of the Code of Virginia shall comply with the requirements of 9VAC25-870-51 and 9VAC25-870-103.

7. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System (VPDES) permit shall:

a. Have pump-out accomplished for all such systems at least once every five years.

(1) If deemed appropriate by the local health department and subject to conditions the local health department may set, local governments may offer to the owners of such systems, as an alternative to the mandatory pump-out, the option of having a plastic filter installed and maintained in the outflow pipe from the septic tank to filter solid material from the effluent while sustaining adequate flow to the drainfield to permit normal use of the septic system. Such a filter should satisfy standards established in the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the Virginia Department of Health.

(2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years, local governments may allow owners of onsite sewage treatment systems to submit documentation every five years, certified by an operator or onsite soil evaluator licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code of Virginia as being qualified to operate, maintain, or design onsite sewage systems, that the septic system has been inspected, is functioning properly, and the tank does not need to have the effluent pumped out of it.

b. For new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local health department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an onsite sewage treatment system that operates under a permit issued by the board. All sewage disposal site records shall be administered to provide adequate notice and enforcement. As an alternative to the 100% reserve sewage disposal site, local governments may offer the owners of such systems the option of installing an alternating drainfield system meeting the following conditions:

(1) Each of the two alternating drainfields in the system shall have, at a minimum, an area not less than 50% of the area that would otherwise be required if a single primary drainfield were constructed.

(2) An area equaling 50% of the area that would otherwise be required for the primary drainfield site must be reserved

for subsurface absorption systems that utilize a flow diversion device, in order to provide for future replacement or repair to meet the requirements for a sewage disposal system. Expansion of the primary system will require an expansion of this reserve area.

(3) The two alternating drainfields shall be connected by a diversion valve, approved by the local health department, located in the pipe between the septic (aerobic) tank and the distribution boxes. The diversion valve shall be used to alternate the direction of effluent flow to one drainfield or the other at a time. However, diversion valves shall not be used for the following types of treatment systems:

- (a) Sand mounds;
 - (b) Low-pressure distribution systems;
 - (c) Repair situations when installation of a valve is not feasible; and
 - (d) Any other approved system for which the use of a valve would adversely affect the design of the system, as determined by the local health department.
- (4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e., resistant to sewage and leakproof and designed so that the effluent from the tank can be directed to flow into either one of the two distribution boxes).
- (5) There shall be a conduit from the top of the valve to the ground surface with an appropriate cover to be level with or above the ground surface.
- (6) The valve shall not be located in driveways, recreational courts, parking lots, or beneath sheds or other structures.
- (7) In lieu of the aforementioned diversion valve, any device that can be designed and constructed to conveniently direct the flow of effluent from the tank into either one of the two distribution boxes may be approved if plans are submitted to the local health department and found to be satisfactory.
- (8) The local government shall require that the ~~owner(s)~~ owner alternate the drainfields every 12 months to permit the yearly resting of half of the absorption system.
- (9) The local government shall ensure that the ~~owner(s)~~ owner are notified annually of the requirement to switch the valve to the opposite drainfield.

8. Land upon which agricultural activities are being conducted, including ~~but not limited to~~ crop production, pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land by the local government, shall have a soil and water quality conservation assessment conducted that evaluates the effectiveness of existing practices pertaining to soil erosion and sediment control, nutrient management, and management of pesticides, and, where necessary, results in a plan that outlines additional

practices needed to ensure that water quality protection is being accomplished consistent with the Act and this chapter.

a. Recommendations for additional conservation practices need address only those conservation issues applicable to the tract or field being assessed. Any soil and water quality conservation practices that are recommended as a result of such an assessment and are subsequently implemented with financial assistance from federal or state cost-share programs must be designed, consistent with cost-share practice standards effective in January 1999 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service or the June 2000 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of Conservation and Recreation, respectively. Unless otherwise specified in this section, general standards pertaining to the various agricultural conservation practices being assessed shall be as follows:

- (1) For erosion and sediment control recommendations, the goal shall be, where feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. However, in no case shall erosion exceed the soil loss consistent with an Alternative Conservation System, referred to as an "ACS", as defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service.
- (2) For nutrient management, whenever nutrient management plans are developed, the operator or landowner must provide soil test information, consistent with the Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).
- (3) For pest chemical control, referrals shall be made to the local cooperative extension agent or an Integrated Pest Management Specialist of the Virginia Cooperative Extension Service. Recommendations shall include copies of applicable information from the "Virginia Pest Management Guide" or other Extension materials related to pest control.

b. A higher priority shall be placed on conducting assessments of agricultural fields and tracts adjacent to Resource Protection Areas. However, if the landowner or operator of such a tract also has Resource Management Area fields or tracts in his operation, the assessment for that landowner or operator may be conducted for all fields or tracts in the operation. When such an expanded assessment is completed, priority must return to Resource Protection Area fields and tracts.

c. The findings and recommendations of such assessments and any resulting soil and water quality conservation plans will be submitted to the local Soil and Water Conservation

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District Board, which will be the plan-approving authority.

9. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this chapter provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the Fifth Edition (March 2011) of "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

10. Local governments shall require evidence of all wetlands permits required by law prior to authorizing grading or other onsite activities to begin.

9VAC25-830-140. Development criteria for Resource Protection Areas.

In addition to the general performance criteria set forth in 9VAC25-830-130, the criteria in this section are applicable in Resource Protection Areas.

1. Land development may be allowed in the Resource Protection Area, subject to approval by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment; (iii) constitutes development or redevelopment within a designated Intensely Developed Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section; or (vi) is a flood control or stormwater management facility satisfying the conditions set forth in subdivision 1 e of this section.

a. A water quality impact assessment in accordance with subdivision 6 of this section shall be required for any proposed land disturbance.

b. A new or expanded water-dependent facility may be allowed provided that the following criteria are met:

- (1) It does not conflict with the comprehensive plan;
- (2) It complies with the performance criteria set forth in 9VAC25-830-130;
- (3) Any nonwater-dependent component is located outside of Resource Protection Areas; and
- (4) Access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

c. Redevelopment outside locally designated Intensely Developed Areas shall be permitted in the Resource Protection Area only if there is no increase in the amount of [~~imperious~~ impervious] cover and no further encroachment within the Resource Protection Area, and it shall conform to applicable erosion and sediment control and stormwater management criteria set forth in the

Erosion and Sediment Control Law and the Virginia Stormwater Management Act and their attendant regulations, as well as all applicable stormwater management requirements of other state and federal agencies.

d. Roads and driveways not exempt under subdivision B 1 of 9VAC25-830-150 and which, therefore, must comply with the provisions of this chapter, may be constructed in or across Resource Protection Areas if each of the following conditions is met:

- (1) The local government makes a finding that there are no reasonable alternatives to aligning the road or driveway in or across the Resource Protection Area;
- (2) The alignment and design of the road or driveway are optimized, consistent with other applicable requirements, to minimize (i) encroachment in the Resource Protection Area and (ii) adverse effects on water quality;
- (3) The design and construction of the road or driveway satisfy all applicable criteria of this chapter, including submission of a water quality impact assessment; and
- (4) The local government reviews the plan for the road or driveway proposed in or across the Resource Protection Area in coordination with local government site plan, subdivision and plan of development approvals.

e. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

2. Exemptions in Resource Protection Areas. The following land disturbances in Resource Protection Areas may be exempt from the criteria of this part provided that they comply with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and archaeological activities:

- a. Local governments shall establish administrative procedures to review such exemptions.
- b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the erosion and sediment control criteria in subdivision 5 of 9VAC25-830-130.

3. Buffer area requirements. The 100-foot wide buffer area shall be the landward component of the Resource Protection Area as set forth in subdivision B 5 of 9VAC25-830-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the adverse effects of human activities on the other components of the Resource Protection Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist. Where such buffer must be established, the planting of trees [should shall] be [utilized to the maximum extent practicable and incorporated as] appropriate to site conditions [and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred].

- a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.
- b. Where land uses such as agriculture or silviculture within the area of the buffer cease and the lands are proposed to be converted to other uses, the full 100-foot wide buffer shall be reestablished. In reestablishing the buffer, management measures shall be undertaken to provide woody vegetation that assures the buffer functions set forth in this chapter. [Such measures should include to the maximum extent practicable and appropriate to site conditions the planting of trees in reestablishing the buffer. Where such buffer must be reestablished, the planting of trees shall be incorporated as appropriate to site conditions and in such a manner to maximize the buffer function. Inclusion of native species in tree planting is preferred.]

4. Permitted encroachments into the buffer area.

- a. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

(1) Encroachments into the buffer area shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

(2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel. Such vegetated area where established [should shall] include the planting of trees [as appropriate] to [the maximum extent practicable site conditions. Inclusion of native species in tree planting is preferred].

(3) The encroachment may not extend into the seaward 50 feet of the buffer area.

b. When the application of the buffer area would result in the loss of a buildable area on a lot or parcel recorded between October 1, 1989, and March 1, 2002, encroachments into the buffer area may be allowed through an administrative process in accordance with the following criteria:

- (1) The lot or parcel was created as a result of a legal process conducted in conformity with the local government's subdivision regulations;
- (2) Conditions or mitigation measures imposed through a previously approved exception shall be met;
- (3) If the use of a best management practice (BMP) was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
- (4) The criteria in subdivision 4 a of this section shall be met.

5. Permitted modifications of the buffer area.

a. In order to maintain the functional value of the buffer area, existing vegetation may be removed, subject to approval by the local government, only to provide for reasonable sight lines, access paths, general woodlot management, and best management practices, including those that prevent upland erosion and concentrated flows of stormwater, as follows:

(1) Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff. Mature trees [should shall] be preserved and [not removed trimmed or pruned in lieu of removal as site conditions permit and any removal should be limited] to the [maximum extent practicable under this provision fewest number of trees feasible]. When trees are removed [the other vegetation to replace the trees should be to provide for sight lines and vista, they shall be replaced with] trees as [well appropriate] to [the maximum extent

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practicable site conditions and in such a manner as to maximize the buffer function and to protect the quality of state waters. Inclusion of native species in tree replanting is preferred].

(2) Any path shall be constructed and surfaced so as to effectively control erosion.

(3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson grass, kudzu, and multiflora rose) may be removed and thinning of trees may be allowed pursuant to sound horticultural practice incorporated into locally-adopted standards.

(4) For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements. Mature trees [~~should~~ shall] be [~~preserved to the maximum extent practicable removed only as necessary for the installation and maintenance of the projects] consistent with the best available technical advice [project plans,] and [applicable] permit conditions or requirements [~~and trees should~~. Trees shall] be utilized in the [~~projects to the maximum extent practicable project when vegetation is being established as appropriate to the site conditions and the project specifications. Inclusion of native species in tree planting is preferred]~~~~.

b. On agricultural lands the agricultural buffer area shall be managed to prevent concentrated flows of surface water from breaching the buffer area and appropriate measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu, and multiflora rose) from invading the buffer area. Agricultural activities may encroach into the buffer area as follows:

(1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide buffer area when at least one agricultural best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—erosion control or nutrient management—is being implemented on the adjacent land, provided that the combination of the undisturbed buffer area and the best management practice achieves water quality protection, pollutant removal, and water resource conservation at least the equivalent of the 100-foot wide buffer area. If nutrient management is identified as the predominant water quality issue, a nutrient management plan, including soil tests, must be developed consistent with the ~~Virginia~~ Nutrient Management Training and Certification Regulations (4VAC5-15) (4VAC50-85) administered by the ~~Virginia Department of~~ Soil and Water Conservation and Recreation Board.

(2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide buffer area when

agricultural best management practices which address erosion control, nutrient management, and pest chemical control, are being implemented on the adjacent land. The erosion control practices must prevent erosion from exceeding the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture Natural Resource Conservation Service. A nutrient management plan, including soil tests, must be developed, consistent with the ~~Virginia~~ Nutrient Management Training and Certification Regulations (4VAC5-15) (4VAC50-85) administered by the ~~Virginia Department of~~ Soil and Water Conservation and Recreation Board. In conjunction with the remaining buffer area, this collection of best management practices shall be presumed to achieve water quality protection at least the equivalent of that provided by the 100-foot wide buffer area.

(3) The buffer area is not required to be designated adjacent to agricultural drainage ditches if at least one best management practice which, in the opinion of the local soil and water conservation district board, addresses the more predominant water quality issue on the adjacent land—either erosion control or nutrient management—is being implemented on the adjacent land.

(4) If specific problems are identified pertaining to agricultural activities that are causing pollution of the nearby water body with perennial flow or violate performance standards pertaining to the vegetated buffer area, the local government, in cooperation with soil and water conservation district, shall recommend a compliance schedule to the landowner and require the problems to be corrected consistent with that schedule. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

(5) In cases where the landowner or ~~his~~ the landowner's agent or operator has refused assistance from the local soil and water conservation district in complying with or documenting compliance with the agricultural requirements of this chapter, the district shall report the noncompliance to the local government. The local government shall require the landowner to correct the problems within a specified period of time not to exceed 18 months from their initial notification of the deficiencies to the landowner. The local government, in cooperation with the district, shall recommend a compliance schedule to the landowner. This schedule shall expedite environmental protection while taking into account the seasons and other temporal considerations so that the probability for successfully implementing the corrective measures is greatest.

6. Water quality impact assessment. A water quality impact assessment shall be required for any proposed development within the Resource Protection Area consistent with this part and for any other development in Chesapeake Bay Preservation Areas that may warrant such assessment because of the unique characteristics of the site or intensity of the proposed use or development.

a. The purpose of the water quality impact assessment is to identify the impacts of proposed development on water quality and lands in the Resource Protection Areas consistent with the goals and objectives of the Act, this chapter, and local programs, and to determine specific measures for mitigation of those impacts. The specific content and procedures for the water quality impact assessment shall be established by each local government. Local governments should notify the board of all development requiring such an assessment.

b. The water quality impact assessment shall be of sufficient specificity to demonstrate compliance with the criteria of the local program.

7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas the local government may exercise discretion regarding whether to require establishment of vegetation in the 100-foot wide buffer area. However, while the immediate establishment of vegetation in the buffer area may be impractical, local governments shall give consideration to implementing measures that would establish vegetation in the buffer in these areas over time in order to maximize water quality protection, pollutant removal, and water resource conservation. In considering such measures, [the] local [government—should governments shall] consider the planting of trees as a [part component] of any such [measures measure. Inclusion of native species in tree planting is preferred].

[9VAC25-830-190. Land development ordinances, regulations, and procedures.

A. Local governments shall review and revise their land development regulations, as necessary, to comply with § 62.1-44.15:74 of the Act. To achieve this:

1. Local zoning ordinances shall ensure that the uses permitted by the local zoning regulations are consistent with the Act and this chapter;

2. Local land development ordinances and regulations shall incorporate either explicitly or by direct reference the performance criteria in Part IV (9VAC25-830-120 et seq.) of this chapter. Specific development standards that implement the performance criteria from subdivisions 1, 2 and 4 of 9VAC25-830-130 (minimizing land disturbance and impervious cover and preserving existing vegetation) shall be included;

3. Local land development ordinances and regulations shall protect the integrity of Chesapeake Bay Preservation Areas

by incorporating standards to ensure (i) the protection of water quality; (ii) the preservation of Resource Protection Area land categories, as set forth in 9VAC25-830-80, including the 100-foot wide buffer area; and (iii) the compatibility of development with Resource Management Area land categories, as set forth in 9VAC25-830-90;

4. Local land development ordinances and regulations shall provide for (i) depiction of Resource Protection Area and Resource Management Area boundaries on plats and site plans, including a notation on plats of the requirement to retain an undisturbed and vegetated 100-foot wide buffer area, as specified in subdivision 3 of 9VAC25-830-140; (ii) a plat notation of the requirement for pump-out and 100% reserve drainfield sites for onsite sewage treatment systems, when applicable; and (iii) a plat notation of the permissibility of only water dependent facilities or redevelopment in Resource Protection Areas, including the 100-foot wide buffer area; and

5. Local governments shall require, during the plan of development review process, the delineation of the buildable areas that are allowed on each lot. The delineation of buildable areas shall be based on the performance criteria specified in Part IV (9VAC25-830-120 et seq.) of this chapter, local front and side yard setback requirements, and any other relevant easements or limitations regarding lot coverage.

B. Local governments shall undertake the following as necessary, to comply with § 62.1-44.15:74 of the Act:

1. Local governments shall evaluate the relationship between the submission requirements, performance standards, and permitted uses in local land development ordinances and regulations to identify any obstacles to achieving the water quality goals of the Act and this chapter as set forth in § 62.1-44.15:74 B of the Act, 9VAC25-830-50 and 9VAC25-830-120. Local governments shall revise these ordinances and regulations, as necessary, to eliminate any obstacles identified in the submission requirements or development standards.

2. Local governments shall review and revise their land development ordinances and regulations adopted pursuant to § 62.1-44.15:74 and Articles 1 (§ 15.2-2200 et seq.), 2 (§ 15.2-2210 et seq.), 4 (§ 15.2-2233 et seq.), 5 (§ 15.2-2239), 6 (15.2-2240 et seq.), and 7 (§ 15.2-2280 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia to assure that their subdivision ordinances, zoning ordinances, and all other components of their local Chesapeake Bay Preservation Act programs are consistent in promoting and achieving the protection of state waters. In addition, local governments shall identify and resolve any conflicts among the components of the local programs and with other local ordinances, regulations and administrative policies, to assure that the intent of the Act and this chapter is fulfilled.

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3. Local governments shall review and revise their land development ordinances and regulations to ensure consistency with the water quality protection goals, objectives, policies, and implementation strategies identified in the local comprehensive plan.

C. Local governments shall update and amend their ordinances and regulations to adopt and incorporate updated performance criteria requirements in Part IV (9VAC25-830-120 et seq.) of this chapter, based upon statutory revisions to § 62.1-44.15:72 of the Code of Virginia, by September 29, 2024.]

VA.R. Doc. No. R21-6648; Filed July 30, 2021, 1:22 p.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 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. 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: 9VAC25-840. Erosion and Sediment Control Regulations (adding 9VAC25-840-45).

Statutory Authority: § 62.1-44.15:52 of the Code of Virginia.

Effective Date: September 29, 2021.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, FAX (804) 698-4178, or email andrew.hammond@deq.virginia.gov.

Summary:

Chapter 497 of the 2021 Acts of Assembly, Special Session I, amends the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) to provide that any local Virginia Erosion and Sediment Control Program (VESCP) authority that does not operate a regulated municipal separate storm sewer system and for which the department did not administer a Virginia Stormwater Management Program as of July 1, 2020, shall notify the department if it decides to have the department provide the local VESCP authority with (i) review of the Erosion and Sediment Control (ESC) Plan required by the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and the Erosion and Sediment Control Regulations (9VAC25-840) and (ii) a recommendation on the ESC Plan's compliance with the requirements of the law and regulations for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five megawatts. Chapter 497 also established timeframes within which the local VESCP authority must forward any newly submitted or resubmitted ESC Plan to the department for review and timeframes within which the department must review and respond. The

amendments add a new section to the regulation aligning it with statute.

9VAC25-840-45. Department review of erosion and sediment control plans for solar projects.

A. Any VESCP authority that does not operate a regulated municipal separate storm sewer system and for which the department did not administer a Virginia Stormwater Management Program as of July 1, 2020, shall notify the department if it decides to have the department provide the VESCP authority with (i) review of the erosion and sediment control plan required by § 62.1-44.15:55 A of the Code of Virginia and (ii) a recommendation on the plan's compliance with the requirements of this chapter for any solar project and its associated infrastructure with a rated electrical generation capacity exceeding five megawatts.

B. Any VESCP authority that notifies the department pursuant to this section shall within five days of receiving the erosion and sediment control plan forward the plan to the department for review. If the plan forwarded to the department is incomplete, the department shall return the plan to the VESCP authority immediately, and the application process shall start over. If the plan forwarded to the department is complete, the department shall review the plan for compliance with the requirements of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of Virginia.

C. Any VESCP authority that notifies the department pursuant to this section shall within five days of receiving the resubmittal of a previously disapproved erosion and sediment control plan forward the resubmitted plan to the department for review. The department shall review the resubmitted plan for compliance with the requirements of this chapter and provide a recommendation to the VESCP authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of Virginia.

VA.R. Doc. No. R22-6796; Filed July 30, 2021, 2:19 p.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 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. 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: 9VAC25-840. Erosion and Sediment Control Regulations (amending 9VAC25-840-100).

Statutory Authority: § 62.1-44.15:52 of the Code of Virginia.

Effective Date: September 29, 2021.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, FAX (804) 698-4178, or email andrew.hammond@deq.virginia.gov.

Summary:

Pursuant to Chapter 401 of the 2021 Acts of Assembly, Special Session I, the amendment changes the name of the position of Secretary of Natural Resources to Secretary of Natural and Historic Resources.

9VAC25-840-100. State agency projects.

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

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

C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided in an appropriate final order, the director of the department may petition for compliance as follows: For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations in other state agencies, to the head of such agency. Where the petition does not achieve timely compliance, the director shall bring the matter to the Governor for resolution. The board or the department may also pursue enforcement as provided by § 62.1-44.15:63 of the Act.

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

V.A.R. Doc. No. R22-6791; Filed July 30, 2021, 2:13 p.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 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. 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: **9VAC25-900. Certification of Nonpoint Source Nutrient Credits (amending 9VAC25-900-40).**

Statutory Authority: § 62.1-44.19:20 of the Code of Virginia.

Effective Date: September 29, 2021.

Agency Contact: Allan Brockenbrough, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4147, FAX (804) 698-4178, or email allan.brockenbrough@deq.virginia.gov.

Summary:

Pursuant to Chapter 360 of the 2021 Acts of Assembly, Special Session I, the amendment allows any facility that is issued a Virginia Pollutant Discharge Elimination System (VPDES) permit regulating stormwater discharges that requires nitrogen and phosphorus monitoring at the facility to acquire, use, and transfer credits for compliance with any wasteload allocations established as effluent limitations in that facility's VPDES permit.

9VAC25-900-40. Relationship to other laws and regulations.

A. Specific requirements regarding the use of nutrient credits are found in the following regulations and statutes:

1. Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870).
 - a. VSMP Individual Permits for Discharges from Construction Activities. As specified in § 62.1-44.19:21 B of the Act, those applicants required to comply with water quality requirements for land-disturbing activities operating under a construction individual permit issued pursuant to 9VAC25-870 may acquire and use perpetual nutrient credits placed on the registry for exchange.
 - b. VSMP Individual Permits for Municipal Separate Storm Sewer Systems. As specified in § 62.1-44.19:21 A of the Act, an MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any wasteload allocations established as effluent limitations in an MS4 individual permit issued pursuant to 9VAC25-870. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes

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the use of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.

2. General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880). As specified in § 62.1-44.19:21 B of the Act, those applicants required to comply with water quality requirements for land-disturbing activities operating under a general VSMP permit for discharges of stormwater from construction activities issued pursuant to 9VAC50-880 may acquire and use perpetual nutrient credits placed on the registry for exchange.

3. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (9VAC25-890). As specified in § 62.1-44.19:21 A of the Act, an MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any wasteload allocations established as effluent limitations in an MS4 general permit issued pursuant to 9VAC25-890. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.

4. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). As specified in § 62.1-44.19:21 C of the Act, owners of confined or concentrated animal feeding operations issued individual permits pursuant to 9VAC25-31 may acquire, use, and transfer credits for compliance with any wasteload allocations contained in the provisions of a VPDES permit. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

5. ~~General~~ Virginia Pollutant Discharge Elimination System (VPDES) ~~Permit~~ Permits for Discharges of Storm Water Associated with Industrial Activity (~~9VAC25-151~~). As specified in § 62.1-44.19:21 D of the Act, owners of facilities registered for coverage under 9VAC25-151 for the general VPDES permit or issued a VPDES permit regulating stormwater discharges that requires nitrogen and phosphorus monitoring at the facility may acquire, use, and transfer credits for compliance with any wasteload allocations established as effluent limitations in a VPDES permit. Such method of compliance may be approved by the department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

6. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). Nutrient credits certified pursuant to this chapter may be acquired to offset mass loads of total nitrogen or total phosphorus discharged by new or expanded facilities regulated by 9VAC25-820.

B. This chapter shall not be construed to limit or otherwise affect the authority of the board to establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this chapter shall not affect any requirement to comply with such local water quality-based limitations.

VA.R. Doc. No. R22-6788; Filed July 30, 2021, 2:24 p.m.

TITLE 13. HOUSING

VIRGINIA MANUFACTURED HOUSING BOARD

Fast-Track Regulation

Title of Regulation: **13VAC6-20. Manufactured Housing Licensing and Transaction Recovery Fund Regulations (amending 13VAC6-20-400, 13VAC6-20-450).**

Statutory Authority: § 36-85.18 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 29, 2021.

Effective Date: October 15, 2021.

Agency Contact: Jeff Brown, Director of State Building Codes Office, Department of Housing and Community Development, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7161, or email jeff.brown@dhcd.virginia.gov.

Basis: The statutory authority to update the regulation is contained in §§ 36-85.18 and 36-85.36 of the Code of Virginia.

Purpose: This regulatory action is to update the regulation so that it is in line with the Code of Virginia. The provisions related to limitations on damages retained by dealers was considered by the Manufactured Housing Board in 2009 but was erroneously left out of subsequent updates. This action will bring the regulation in line with the Code of Virginia. The changes are necessary to protect the public health, safety, or welfare to the extent that they conform with state code as related to limitations on damages retained by manufactured home dealers and limitations on manufactured housing and transaction recovery fund payments.

Rationale for Using Fast-Track Rulemaking Process: This action is noncontroversial as it aligns the regulation with state code. Affected regulants have been in compliance with state code for a number of years and will not experience a negative impact from the regulatory changes.

Substance: This is simply an editorial correction to ensure that the limitations on damages retained by dealers and limitations on recovery fund payments, in the regulation match what is already in the Code of Virginia.

Issues: The advantages to the public and the agency or Commonwealth will be that the regulations will align with state code. There are no known disadvantages to the public or the agency or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of an internal review and a 2009 legislative mandate, the Board of Housing and Community Development (Board) proposes to amend 13VAC6-20 Manufactured Housing Licensing and Transaction Recovery Fund Regulations (regulation) to conform to §§ 36-85.28 and 36-85.32 of the Code of Virginia.

Background. Chapter 579 of the 2009 Acts of Assembly amended §§ 36-85.28, 36-85.31, and 36-85.32 of the Code of Virginia (Code) to provide greater financial protection to both dealers and purchasers of manufactured homes. In particular, § 36-86.28 of the Code was amended to:

1. Limit to \$4,000 the amount of actual damages that a manufactured home dealer may retain when a buyer fails to accept delivery of a manufactured home that is larger than a single section unit and in the manufactured home dealer's stock.
2. Raise the limit of actual damages from \$5,000 to \$7,000 when a buyer fails to accept delivery of a manufactured home that is larger than a single section unit and is specially ordered for the buyer.
3. Raise the limit of actual damages from \$500 to \$1000 when a buyer fails to accept delivery of a manufactured home that is a single section unit in the dealer's stock.
4. Raise the limit of actual damages from \$1000 to \$2000 when a buyer fails to accept delivery of a manufactured home that is a single section unit and is specially ordered for the buyer.

Section 36-85.32 of the Code was amended to raise the maximum claim amount of a single claimant against the Manufactured Housing Transaction Recovery Fund (recovery fund) for single or multiple violations by one or more regulants from \$20,000 to \$40,000.¹ The Department of Housing and Community Development (DHCD) has been operating with the understanding that these legislative changes were reflected in the regulation when it was last amended in 2012 and recently realized that they had been inadvertently excluded.² Hence, the board proposes to amend the regulation to implement the changes to the Code, as summarized above.³ In addition, the Board proposes to specify that the amount of damages awarded from the recovery fund shall be limited to actual, compensatory damages and shall not include attorney's fees for representation before the board.⁴

Estimated Benefits and Costs. The increased damages would benefit dealers of manufactured homes who are faced with situations wherein buyers make an upfront payment toward the purchase of a manufactured home but subsequently fail to

accept delivery. DHCD did not specify if such occurrences were common, or the frequency had been diminished since the 2009 legislation had passed. The increased damages may also deter buyers from placing orders if they are uncertain of their ability to accept delivery.

Claimants who had not received the damages owed to them by a regulant (that had been awarded to them by the board following a hearing) are allowed to request to the board that they be paid from the recovery fund. Such claimants would benefit from the increased maximum claim amount, since it would allow them to recoup up to an additional \$20,000 in damages from the recovery fund if they had been awarded \$40,000 or more, but the regulant had failed to pay the award.

Lastly, to the extent that regulants as well as purchasers of manufactured housing had already been aware of the changes made by the 2009 legislation described, the proposed amendments are unlikely to create any new costs or benefits beyond conforming the regulation to the Code.

Businesses and Other Entities Affected. DHCD reports that there are currently 198 licensed dealers of manufactured housing that would benefit from the increased damages. In addition, DHCD reports there are 13 licensed brokers, 38 licensed manufacturers, and 368 licensed salespersons. Although these regulants are not directly affected by the proposed amendments, clients of all four classes of licensees potentially stand to benefit from the increase in maximum damages to the extent that they may have to seek damages from the recovery fund.

Small Businesses⁵ Affected. DHCD could not provide the number of regulants that are small businesses, since they do not collect information on regulants' revenues or number of employees. However, the proposed amendments would not introduce any costs to businesses, including small businesses.

Localities⁶ Affected.⁷ The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to affect the aggregate number of licensed manufacturers, brokers, dealers, or salespersons of manufactured homes.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use and value of private property, including manufactured homes. Real estate development costs are not affected.

¹See <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=091&typ=bil&val=ch579>. Note that Chapter 579 also amended § 36-85.31 of the Code to raise the minimum balance of the Fund from 250,000 to 300,000 and to authorize parts of the fund to be applied towards education programs and conducting investigations. However, the bill specified that the amendments to § 36-85.31 were to expire on July 1, 2011, rendering these changes moot as of this writing.

²See <https://townhall.virginia.gov/L/ViewAction.cfm?actionid=2736> for the 2012 action.

³See https://townhall.virginia.gov/L/GetFile.cfm?File=Meeting\84\31103\Minutes_DHCD_31103_v1.pdf

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⁴A statement to this effect is already included in Section 430 of this regulation, which addresses filing claims.

⁵Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

⁶"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁷§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Virginia Manufactured Housing Board and Department of Housing and Community Development staff concur with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The amendments align the regulation with the Code of Virginia regarding limitations on damages retained by dealers and limitations on recovery fund payments.

13VAC6-20-400. Limitation on damages retained by dealer; disclosure to buyer.

A. If a buyer fails to accept delivery of a manufactured home, the dealer may retain actual damages from the buyer's deposit according to the following terms:

1. If the manufactured home is a single section unit and is in the dealer's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be ~~\$500~~ \$1,000.

2. If the manufactured home is a single section unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be ~~\$1,000~~ \$2,000.

3. If the manufactured home is ~~a multi-section home (two or more sections)~~ larger than a single section unit in the dealer's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be ~~\$5,000~~ \$4,000.

4. If the manufactured home is larger than a single section unit and is specially ordered for the buyer from the manufacturer, the maximum retention shall be \$7,000.

B. A dealer shall provide a written disclosure to the buyer at the time of the sale of a manufactured home alerting the buyer to the actual damages that may be assessed of the buyer by the dealer, as listed in subsection A of this section, for failure to take delivery of the manufactured home as purchased.

13VAC6-20-450. Payment of damages; limitations; conditions.

A. If a regulant has not paid the awarded amount within 30 days as provided in 13VAC6-20-430 or filed an appeal to the circuit court as provided in 13VAC6-20-440, the board shall, upon request of the claimant pay the awarded amount to the

claimant from the recovery fund under the following conditions:

1. The maximum claim of one claimant against the fund because of a ~~single violation or multiple violations~~ by one regulant or more regulants shall be limited to ~~\$20,000~~ \$40,000;

2. The fund balance is sufficient to pay the awarded amount;

3. The claimant has assigned the board all rights and claims against the regulant; and

4. The claimant agrees to subrogate to the board all rights of the claimant to the extent of payment.

B. The aggregate amount of claims paid from the fund for violations by any one regulant during any license period shall be as follows:

1. For a manufacturer -- \$75,000.

2. For a dealer -- \$35,000.

3. For a broker -- \$35,000.

4. For a salesperson -- \$25,000.

C. If the board has reason to believe there may be additional claims against the fund from other transactions by the same regulant, the board may withhold any payments, involving that regulant, from the fund for a period of not more than one year from the date the board approved the original claimant's award. After this one-year period, if the aggregate of claims against the same regulant exceeds the limitations of this section, the aggregate amount shall be prorated by the board among the claimants and paid from the fund in proportion to the amounts of their awards remaining unpaid.

D. The amount of damages awarded by the board shall be limited to actual, compensatory damages and shall not include attorney fees for representation before the board.

VA.R. Doc. No. R22-6329; Filed August 2, 2021, 1:46 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Fast-Track Regulation

Title of Regulation: **18VAC80-30. Opticians Regulations (amending 18VAC80-30-20).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: September 29, 2021.

Effective Date: October 14, 2021.

Agency Contact: Stephen Kirschner, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hearingaidspec@dpor.virginia.gov.

Basis: Section 54.1-201.5 of the Code of Virginia gives authority to the Board for Hearing Aid Specialists and Opticians to promulgate regulations necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board.

Purpose: This regulatory change is required because the current regulation regarding related instruction does not meet federal or state requirements or the board's standards of apprenticeship. The apprenticeship is required to have 144 hours of related instruction each year of the apprenticeship, and home study is not authorized as a substitute for related instruction. The related technical instruction requirements established by state and federal requirements are designed as the minimum necessary theory instruction to go along with the on-the-job training requirement of a registered apprenticeship. State and federal authorities have deemed this requirement necessary to ensure minimum competency for the protection of the health, safety, and welfare of the public. By simplifying the language, as proposed by this regulation, the language will fall into line with current requirements, and remain flexible for any unforeseen future state or federal revisions.

Rationale for Using Fast-Track Rulemaking Process: This change is required to remove antiquated language and bring the board's requirement in line current apprenticeship requirements, so it is not anticipated to be controversial. The apprenticeship is required to have 144 hours of related instruction each year of the apprenticeship, and home study is not authorized as a substitute for related instruction.

Substance: The proposed revision amends the apprenticeship training option by removing the reference to one school year of related instruction or home study and replaces it with the general language all required related technical instruction.

Issues: The primary advantage of this change is that it brings the regulations into alignment with the state and federal apprenticeship requirements and removes language from the regulations that inaccurately describes the requirements of a registered apprenticeship under the Department of Labor and Industry. This will clarify the regulatory text and reduce the likelihood of confusion by potential applicants. There are no disadvantages to the public.

There are no advantages or disadvantages to the agency or commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board for Hearing Aid Specialists and Opticians (Board) proposes to amend language concerning apprenticeships to reflect current requirements in practice.

Background. In order to become licensed as an optician, the current regulation states that the applicant must successfully complete one of two options for the education requirement:

A board-approved two-year course in a school of opticianry, including the study of topics essential to qualify for practicing as an optician; or

A two-year apprenticeship with a minimum of one school year of related instruction or home study while registered in the apprenticeship program in accordance with the standards established by the state Department of Labor and Industry (DOLI) Division of Registered Apprenticeship, and approved by the board;

According to the Department of Professional and Occupational Regulation, the phrase "a minimum of one school year of related instruction or home study" is antiquated language that does not reflect the standards of DOLI registered apprenticeships. DOLI registered apprenticeships require related technical instruction every year of the apprenticeship, and do not provide a "home study" alternative. The board proposes to remove "with a minimum of one school year of related instruction or home study" from the regulation, and replace it with "including all required related technical instruction."

Estimated Benefits and Costs. The proposal does not affect requirements in practice, but is beneficial in that it may reduce confusion among readers of the regulation.

Businesses and Other Entities Affected. The proposal may particularly affect individuals considering an apprenticeship in opticianry. There are currently 95 registered optician apprenticeships.¹ The proposal does not produce costs.

Small Businesses² Affected. The proposal does not substantively affect small businesses.

Localities³ Affected.⁴ The proposal does not substantively affect localities.

Projected Impact on Employment. The proposal does not affect employment.

Effects on the Use and Value of Private Property. The proposal does not substantively affect the use and value of private property or real estate development costs.

¹Data source: Department of Professional and Occupational Regulation via Department of Labor and Industry

²Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million."

Regulations

³"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

⁴§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board for Hearing Aid Specialists and Opticians concurs with the economic impact analysis prepared by the Virginia Department of Planning and Budget.

Summary:

The amendments remove language to align the regulation with the current training requirements of registered apprenticeship standards established by the Department of Labor and Industry and with federal apprenticeship requirements.

18VAC80-30-20. Qualifications of applicant.

An applicant for a license shall furnish satisfactory evidence on an application provided by the board establishing that:

1. The applicant is at least 18 years of age unless emancipated under the provisions of § 16.1-333 of the Code of Virginia;
2. The applicant is a graduate of an accredited high school, has completed the equivalent of grammar school and a four-year high school course, or is a holder of a certificate of general educational development;
3. The applicant is in good standing as a licensed optician in every jurisdiction where licensed;
4. The applicant has not been convicted in any jurisdiction of a misdemeanor or felony involving sexual offense, drug distribution or physical injury, or any felony that directly relates to the profession of opticianry. The board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of opticianry. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The licensee shall provide a certified copy of a final order, decree, or case decision by a court or regulatory agency with the lawful authority to issue such order, decree, or case decision, and such copy shall be admissible as prima facie evidence of such conviction. This record shall be forwarded by the licensee to the board within 10 days after all appeal rights have expired;
5. The applicant has successfully completed one of the following education requirements:
 - a. A board-approved two-year course in a school of opticianry, including the study of topics essential to qualify for practicing as an optician; or
 - b. A two-year apprenticeship ~~with a minimum of one school year of related instruction or home study, including~~ all required related technical instruction, while registered

in the apprenticeship program in accordance with the standards established by the state Department of Labor and Industry, Division of Registered Apprenticeship, and approved by the board;

6. The applicant has disclosed his current mailing address;
7. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the director of the department to serve as service agent for all actions filed in any court in the Commonwealth; and
8. The applicant shall certify, as part of the application, that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board.

VA.R. Doc. No. R22-6470; Filed August 2, 2021, 12:28 p.m.

BOARD OF COUNSELING

Final Regulation

Title of Regulation: **18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-20 through 18VAC115-40-50).**

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

Effective Date: September 29, 2021.

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

Summary:

The amendments (i) update the requirements for application and reinstatement of the certification, (ii) add a fee for anyone requesting documentation of their certification from the board, (iii) change the renewal deadline to June 30, (iv) expand the list of violations that would constitute grounds for disciplinary action, and (v) make clarifications.

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

18VAC115-40-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of rehabilitation providers:

Initial certification by examination:	\$115
Processing and initial certification	
Initial certification by endorsement:	\$115
Processing and initial certification	
Certification renewal	\$65
Duplicate certificate	\$10
<u>Verification of certification</u>	<u>\$25</u>

Late renewal	\$25
Reinstatement of a lapsed certificate	\$125
Replacement of or additional wall certificate	\$25
Returned check	\$35
Reinstatement following revocation or suspension	\$600

B. Fees shall be paid to the board. All fees are nonrefundable.

18VAC115-40-22. Criteria for eligibility.

A. Education and experience requirements for certification are as follows:

1. Any baccalaureate degree from a regionally accredited college or university or a current registered nurse license in good standing in Virginia; and
2. Documentation of 2,000 hours of supervised experience in performing those services that will be offered to a workers' compensation claimant under § 65.2-603 of the Code of Virginia. Experience may be acquired through supervised training or experience or both. A supervised internship in rehabilitation services may count toward part of the required 2,000 hours. Any individual who does not meet the experience requirement for certification must practice under the supervision of an individual who meets the requirements of 18VAC115-40-27. Individuals shall not practice in an internship or supervisee capacity for more than five years.

B. A passing score on a board-approved examination shall be required.

C. The board may grant certification without examination to applicants certified as rehabilitation providers in other states or by nationally recognized certifying agencies, boards, associations and commissions by standards substantially equivalent to those set forth in the board's current regulation.

D. The applicant shall have no unresolved disciplinary action against a health, mental health, or rehabilitation-related license, certificate, or registration in Virginia or in another jurisdiction. The board will consider history of disciplinary action on a case-by-case basis.

18VAC115-40-25. Application process.

The applicant shall submit to the board:

1. A completed application form;
2. The official transcript or transcripts submitted from the appropriate institutions of higher education;
3. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirement of 18VAC115-40-26. Documentation of supervision obtained outside of Virginia must include

verification of the supervisor's out-of-state license or certificate;

4. Documentation of passage of the examination required by 18VAC115-40-28;

5. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); and

~~5. Documentation of~~ 6. Verification that the applicant's national or out-of-state license or certificate is in good standing where applicable.

18VAC115-40-26. Supervised experience requirement.

The following shall apply to the supervised experience requirement for certification:

1. On average, the supervisor and the supervisee shall consult for two hours per week in group or personal instruction. The total hours of personal instruction shall not be less than 100 hours within the 2,000 hours of experience. Group instruction shall not exceed six ~~members~~ persons in a group.
2. Half of the personal instruction contained in the total supervised experience shall be face-to-face between the supervisor and supervisee. A portion of the face-to-face instruction shall include direct observation of the supervisee-rehabilitation client interaction.

18VAC115-40-30. Annual renewal of certificate.

Every certificate issued by the board shall expire on ~~January 31~~ June 30 of each year.

1. To renew certification, the certified rehabilitation provider shall submit a renewal form and fee as prescribed in 18VAC115-40-20.
2. Failure to receive a renewal notice and form shall not excuse the certified rehabilitation provider from the renewal requirement.

18VAC115-40-35. Reinstatement.

A. A person whose certificate has expired may renew it within one year after its expiration date by paying the renewal fee and the late renewal fee prescribed in 18VAC115-40-20.

B. A person who fails to renew a certificate for one year or more shall apply for reinstatement, pay the reinstatement fee and submit evidence regarding the continued ability to perform the functions within the scope of practice of the certification, such as certificates of completion for continuing education, verification of practice in another jurisdiction, or maintenance of national certification.

18VAC115-40-38. Change of name or address.

A certified rehabilitation provider whose name has changed or whose address of record or public address, if different from

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the address of record, has changed shall submit the name change or new address in writing to the board within 30 60 days of such change.

18VAC115-40-50. Grounds for revocation, suspension, probation, reprimand, censure, denial of renewal of certificate; petition for rehearing.

Action by the board to revoke, suspend, decline to issue or renew a certificate, to place such a certificate holder on probation or to censure, reprimand or fine a certified rehabilitation provider may be taken in accord with the following:

1. Procuring, attempting to procure, or maintaining a license, certificate, or registration by fraud or misrepresentation.
2. Violation of, or aid to another in violating, any regulation or statute applicable to the provision of rehabilitation services.
3. The denial, revocation, suspension or restriction of a registration, license, or certificate to practice in another state, or a United States possession or territory or the surrender of any such registration, license, or certificate while an active administrative investigation is pending.
4. Conviction of any felony, or of a misdemeanor involving moral turpitude.
5. Providing rehabilitation services without reasonable skill and safety to clients by virtue of physical, mental, or emotional illness or substance abuse misuse;
6. Conducting one's practice in such a manner as to be a danger to the health and welfare of one's clients or to the public;
7. Performance of functions outside of one's board-certified area of competency;
8. Intentional or negligent conduct that causes or is likely to cause injury to a client;
9. Performance of an act likely to deceive, defraud, or harm the public;
10. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;
11. Failure to report evidence of child abuse or neglect as required by § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required by § 63.2-1606 of the Code of Virginia;
12. Knowingly allowing persons under supervision to jeopardize client safety or provide care to clients outside of such person's scope of practice or area of responsibility; or
13. Violating any provisions of this chapter, including practice standards set forth in 18VAC115-40-40.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS

~~Application for Certification as a Rehabilitation Provider, Form 1 (rev. 8/07).~~

[Application for Certification as a Rehabilitation Provider \(rev. 5/2018\)](#)

[General Information for Certification as a Rehabilitation Provider \(rev. 7/2011\)](#)

~~Verification of Experience for Rehabilitation Provider Certification, Form 2 (rev. 8/07).~~

~~Rehabilitation Provider Verification of Licensure/Certification (rev. 8/07).~~

~~Licensure/Certification Verification of Out of State Supervisor, Form 4 (rev. 8/07 4/18).~~

~~Rehabilitation Provider Application for Reinstatement of a Lapsed Certificate (rev. 8/07 5/18).~~

[Verification of Experience for Rehabilitation Provider Certification \(rev. 5/2018\)](#)

[Out-of-State License or Certification Verification \(4/2018\)](#)

[Licensure/Certification Verification of Out-of-State Supervisor \(4/2018\)](#)

[Rehabilitation Provider Application for Reinstatement of a Lapsed Certificate \(5/2018\)](#)

VA.R. Doc. No. R20-6208; Filed July 30, 2021, 12:53 p.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 19VAC30-240. Regulations Governing the Virginia Community Policing Act (adding 19VAC30-240-10, 19VAC30-240-20, 19VAC30-240-30).

Statutory Authority: § 52-30.3 of the Code of Virginia.

Effective Date: October 1, 2021.

Agency Contact: Kirk Marlowe, Regulatory Coordinator, Bureau of Administrative and Support Services, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2936, or email kirk.marlowe@vsp.virginia.gov.

Summary:

Pursuant to Chapter 37 of the 2020 Acts of Assembly, Special Session I, the amendments establish a new chapter, Regulations Governing the Virginia Community Policing Act (19VAC30-240), to (i) define the required data elements and format that are required to be collected by law-enforcement agencies; (ii) delineate the method and frequency of data submission by law-enforcement agencies; and (iii) set forth how the public may access the data collected and submitted.

Chapter 240

Regulations Governing the Virginia Community Policing Act

19VAC30-240-10. Collection and reporting of data.

A. All state and local law-enforcement agencies of the Commonwealth and its political subdivisions shall collect and report the data specified in subsections C and D of § 52-30.2 of the Code of Virginia in the format designated in this section. All data elements listed in this section are mandatory unless otherwise specified.

B. Incident details. The following information shall be collected and reported:

1. Record ID. A unique record identifier for each submitted stop assigned by the reporting agency to uniquely identify the stop (e.g., the CAD number, stop number). The identifier may contain up to 12 characters and must be alphanumeric (A through Z and 0 through 9) or a hyphen. A hyphen is the only special character permitted. No blank spaces are permitted. An officer's information may not be used as a unique record identifier.

2. Stop date. The date of the stop in the numeric format of MMDDYY (e.g., 030821 for March 8, 2021).

3. Originating agency identification (ORI) number. The nine-digit ORI assigned to the agency of the officer making the stop. The required format is the agency's nine-digit, alphanumeric number (e.g., VAVSP0000).

4. Location. The highway, address, intersection, or coordinates of the location of the stop and up to 45 alphanumeric or special characters may be used in this free text field. Global Positioning System (GPS) coordinates are preferred but not required. Text elements must be separated

by a space and commas may not be used to identify the location.

5. Jurisdiction code. The jurisdiction code for the county or city in which the stop was initiated based on codes provided by Department of State Police. The code list is available at <https://www.vsp.virginia.gov/afis/livescan/files/CityCountyCodesNameOrder.html>.

6. Initial reason for stop. The initial reason for the stop using only the data values specified in the table in this subsection. Conclusions of the stop are gathered in a separate data element.

C. Individual or driver details. The following information shall be collected and reported:

1. Person type. Whether the person subject to the investigative detention stop is a driver, passenger, or pedestrian using only the data values specified in the table in this subdivision. This data must be collected on each person who is subject to an investigative detention.

<u>Data Value</u>	<u>Person Type Description</u>
<u>D</u>	<u>Driver</u>
<u>P</u>	<u>Passenger</u>
<u>F</u>	<u>Pedestrian</u>

2. Individual or driver race. The race of the individual or driver involved, using only the data values specified in the table in this subdivision.

<u>Data Value</u>	<u>Individual or Driver Race Description</u>
<u>W</u>	<u>White</u>
<u>B</u>	<u>Black or African American</u>
<u>I</u>	<u>American Indian or Alaska Native</u>
<u>A</u>	<u>Asian or Native Hawaiian or Other Pacific Islander</u>
<u>U</u>	<u>Unknown</u>

3. Individual or driver ethnicity. The ethnicity of the individual or driver involved shall be indicated using only the data values specified in the table in this subdivision.

<u>Data Value</u>	<u>Individual or Driver Ethnicity Description</u>
<u>H</u>	<u>Hispanic or Latino</u>
<u>N</u>	<u>Not Hispanic or Latino</u>
<u>U</u>	<u>Unknown</u>

4. Individual or driver age. The actual age of the individual or driver involved as a two-character numeric value; a range may not be used. The numerals "01" through "98" must be used for persons age one year through 98 years, and the

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numeral "99" must be used for persons 99 years of age or older. The numeral "00" shall be used if the age is unknown.

5. Individual or driver gender. The gender of the individual or driver involved using "F" for female; "M" for male; or "O" for other, nonbinary, or Gender X.

6. Individual or driver English-speaking. Whether the individual or driver speaks English using "Y" for yes or "N" for no.

7. Action taken. The most serious action taken toward the individual or driver at the completion of the stop or as a result of the stop using only the data values specified in the table in this subdivision.

<u>Data Value</u>	<u>Value Name</u>	<u>Action Taken Description</u>
<u>W</u>	<u>Warning Issued</u>	<u>Individual or driver received a verbal or written warning</u>
<u>S</u>	<u>Citation or Summons</u>	<u>Individual or driver received a citation or summons</u>
<u>A</u>	<u>Arrest</u>	<u>Individual or driver was arrested</u>
<u>N</u>	<u>No enforcement action</u>	<u>No enforcement action was taken</u>

8. Specific violation. The most serious violation warned, cited, or arrested as a result of the stop, based on severity type (i.e., infraction, misdemeanor, or felony) and degree of the violation using only one Code of Virginia section. Refer to the Code of Virginia at <https://law.lis.virginia.gov/vacode/> for a specific code section. Up to 20 alphanumeric characters, including hyphens, periods, colons, and parentheses (e.g., 46.2-870) may be used.

9. Virginia Crime Code (VCC) This incident detail is optional. The corresponding VCC code using the correct nine-character alphanumeric code for the code section charged if included. Refer to http://www.courts.state.va.us/courtadmin/aoc/djs/resources/ust/ust_table.pdf.

D. Additional stop details. The following information shall be collected and reported:

1. Persons searched. Whether the individual or driver was searched as a result of the stop using "Y" for yes and "N" for no.

2. Vehicle searched. Whether the vehicle was searched as a result of the stop using "Y" for yes and "N" for no. A vehicle inventory conducted incident to vehicle storage is not included in this incident detail.

3. Physical force used by officer. Whether the law-enforcement officer used physical force against any person using "Y" for yes and "N" for no.

4. Physical force used by subject. Whether the subject used physical force against any officers using "Y" for yes and "N" for no.

5. Residency. This incident detail is optional. Indicate the residency of the subject stopped. If included, use only the data values in the table in this subdivision.

<u>Data Values</u>	<u>Residency Description</u>
<u>R</u>	<u>Resident of town/city/county of stop</u>
<u>V</u>	<u>Other Virginia jurisdiction resident</u>
<u>O</u>	<u>Out of state resident</u>
<u>U</u>	<u>Unknown</u>

19VAC30-240-20. Submission of data.

A. Collected data elements shall be submitted at least quarterly on or by the 15th day of the month following the last day that the data was collected. Agencies are permitted to submit their data either monthly or quarterly. Only one file per agency per reporting period may be submitted. If an agency has no data to report for a reporting period, the agency shall send an email to the address in subsection D of this section stating "no stop data" and including the agency's name and originating agency identification (ORI).

B. All data collected shall be submitted as a comma separated value (CSV) format. The data may be collected either by (i) using data extraction from Computer Aided Dispatch/Records Management System (CAD/RMS) or (ii) manually utilizing the Excel spreadsheet provided by the Virginia State Police. Agencies may request a copy of the Excel spreadsheet via the email address in subsection D of this section.

C. The file name for data submissions shall be submitted using the following format: ORI Month Year or ORI Quarter year.

D. The CSV file containing the agency's data submissions shall be sent by email to communitypolicingdata@vsp.virginia.gov.

19VAC30-240-30. Access to data.

Virginia Community Policing Act data is publicly available on the [Virginia Open Data Portal website at https://data.virginia.gov/stories/s/rden-cz3h](https://data.virginia.gov/stories/s/rden-cz3h).

VA.R. Doc. No. R22-6867; Filed August 11, 2021, 11:57 a.m.



TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

VIRGINIA AVIATION BOARD

Emergency Regulation

Title of Regulation: 24VAC5-20. Regulations Governing the Licensing and Operation of Airports and Aircraft and Obstructions to Airspace in the Commonwealth of Virginia (amending 24VAC5-20-10; adding 24VAC5-20-410 through 24VAC5-20-450).

Statutory Authority: §§ 5.1-2.2 and 5.1-2.15 of the Code of Virginia.

Effective Dates: August 13, 2021, through February 12, 2023.

Agency Contact: Stephen Smiley, Senior Aviation Planner, Virginia Aviation Board, 5702 Gulfstream Road, Richmond, VA 23250, telephone (804) 236-3627, FAX (804) 236-3635, or email stephen.smiley@doav.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

The amendments establish a new regulation that authorizes localities and other political subdivisions to adopt local regulations for the take-off and landing of unmanned aircraft on properties owned by the locality or other political subdivision, including (i) what the locality or other political subdivision must do to adopt and finalize a local regulation and (ii) exceptions to enable an unmanned aircraft to be launched and landed during an emergency under certain circumstances and to enable a sole occupant of public property to launch and land unmanned aircraft on the property possessed by the occupant.

24VAC5-20-10. Definitions.

Words or terms defined in § 5.1-1 of the Code of Virginia are incorporated by reference. The following words and terms when used in this regulation chapter shall have the following meanings unless the context clearly indicates otherwise:

"Aircraft" means any contrivance now known or hereafter invented that is controlled, used, and usually occupied by a person for the purpose of navigation and transportation through the air, excepting "hang glider" as defined in § 5.1-1 of the Code of Virginia. Commonly recognized names for aircraft include, ~~but are not limited to,~~ planes, helicopters, seaplanes, ultralights, and hot air balloons.

"Airline" means an air carrier operation under Federal Aviation Regulations 14 CFR Part 119, 14 CFR Part 121,

14 CFR Part 129, or 14 CFR Part 135 providing scheduled passenger service.

"Airport sponsor" means an entity that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants, and other obligations required for an airport.

"Antique aircraft" means any aircraft constructed by the original manufacturer, or his licensee, on or before December 31, 1945.

"Approach surface" means a surface longitudinally centered on the extended runway centerline and extending outward and upward. An approach surface is applied to each end of each runway.

"Aviation" means activities and infrastructure related to transportation by air, including ~~but not limited to~~ (i) the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories; (ii) the establishment, design, construction, extension, operation, improvement, repair, or maintenance of airports or landing areas; and (iii) navigable airspace, other air navigation facilities, and air instruction.

"Commercial operator" means a person, except an airline, who operates any aircraft for the purpose of rental or charter or for other purposes from which revenue is derived.

"Contract carrier permit" means a permit issued by the department to contract carriers operating under Federal Aviation Regulations 14 CFR Part 61, 14 CFR Part 135, or 14 CFR Part 141 for transport of passengers or freight on demand by air. Owners of aircraft who contract to provide flight instruction in their aircraft for profit are required to have a contract carrier permit.

"Day/VFR Use Only License" means a conditional airport license issued with the restriction that operations at the airport can only occur between sunrise and sunset and only under Visual Flight Rules (VFR) for the purpose of allowing continuing operations at an airport that is not in compliance with the minimum requirement for approach surfaces.

"Department" means the Virginia Department of Aviation.

"Effective runway length" means the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway and the far end thereof.

"Hazard" means a fixed or mobile structure or object, natural growth, or use of land that obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to the landing or taking off of aircraft.

"Helipad" means a small designated area, usually with a prepared surface, on an airport, heliport, landing/takeoff area, apron/ramp, or movement area used for the takeoff, landing, or parking of helicopters.

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"Heliport" means (i) an identifiable area on land, water, or structure, including a building or facilities thereon, used or intended to be used for the landing and takeoff of helicopters or other rotorcraft or (ii) appurtenant areas that are used, or intended for use, for heliport buildings or other heliport facilities including rights-of-way, easements, and all heliport buildings and facilities located thereon.

"Noncommercial dealer" means a person who owns and offers for sale a minimum of three aircraft during any consecutive 12-month period, which aircraft are not used for personal use, rental, charter, or for a purpose from which revenue is derived.

"Obstacle" means a fixed or mobile object that interferes with the situating or operation of navigational aids or that may control the establishment of instrument procedures. An obstacle could be located on an area intended for the ground movement of aircraft or would extend above the approach surfaces intended to protect aircraft in flight or the runway object free area.

"Obstruction" means an object, obstacle, or structure that penetrates the approach surfaces or runway object free area at an aircraft landing area. The obstruction may be man-made or of natural growth, including trees.

"Obstruction clearance plane" means a plane sloping upward from the runway at a slope meeting the appropriate requirements to clear all obstructions within a specified area as shown in a profile view of that area.

"Private-Use Landing Area License" means a license issued for a facility not open for public use, including airports, heliports, helipads, and seaplane bases, that is within five nautical miles of a licensed public-use airport, in accordance with § 5.1-7 of the Code of Virginia.

"Runway" means a rectangular surface area that may be turf, paved, or water course that is designed specifically for the purpose of approaching and landing and taking-off and departing of aircraft.

"Runway object free area" means an imaginary area centered on the runway centerline that is clear of aboveground objects protruding above the runway centerline, except for allowable objects necessary for air navigation or aircraft ground maneuvering purposes.

"Runway safety area" means a rectangular area symmetrical about the runway centerline, which includes the runway, runway shoulders, and safety overruns, if present. The portion abutting the edge of the runway shoulders, runway ends, and safety overruns is cleared, drained, graded, and usually turfed. Under normal conditions, the runway safety area is capable of supporting snow removal, firefighting, and rescue equipment and of accommodating the occasional passage of aircraft without causing major damage to the aircraft.

"Safety overrun" or "stopway" means an area beyond the takeoff runway, no less wide than the runway and centered upon the extended centerline of the runway, able to support an aircraft during an aborted takeoff without causing structural damage to the aircraft and designated by the airport authorities for use in decelerating the aircraft during an aborted takeoff.

"Seaplane base" means an area of water used or intended to be used for the landing and takeoff of aircraft, together with appurtenant shoreside buildings and facilities.

"Structure" means (i) a man-made object, including a mobile object, constructed or erected by man, including ~~but not limited to~~ buildings, towers, cranes, smokestacks, earth formations, overhead transmission lines, flag poles, and ship masts or (ii) natural objects, including ~~but not limited to~~ trees.

"Threshold" means the beginning of that portion of the runway identified for the landing of aircraft. A threshold may be displaced, or moved down the runway, to provide for adequate safety provisions.

"UAS" means unmanned aircraft system.

"Ultralight" means an aircraft that (i) is used or intended to be used for manned operation in the air by a single occupant; (ii) is used or intended to be used for recreation and sport purposes only; (iii) does not have a United States or foreign air worthiness certificate; (iv) weighs less than 254 pounds empty weight, excluding floats and safety devices that are intended for deployment in a potentially catastrophic situation; (v) has a fuel capacity not exceeding five United States gallons; and (vi) is not capable of more than 55 knots calibrated airspeed at full power in level flight and has a power-off stall speed that does not exceed 24 knots calibrated airspeed.

"Unmanned aircraft" means an aircraft that is operated without the possibility of human intervention from within or on the aircraft.

Part VIII Unmanned Aircraft

24VAC5-20-410. Definitions for Part VIII, Unmanned Aircraft.

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

"Commercial operator" means a person operating a UAS for a commercial purpose in compliance with applicable FAA regulations.

"Emergency response personnel" means the officials and employees of governmental and nongovernmental entities responding to or supporting emergency response operations, including search and rescue, law enforcement, hazardous materials, fires, car crashes, and natural or man-made disasters.

"Locality" or "local government" means a county, city, or town.

"Operator" means the person who is directly responsible for the operation of an unmanned aircraft.

"Property owned" means any real property owned through fee interest, together with all buildings and other structures, facilities, or improvements located on the real property.

"Political subdivision" means (i) a locality, (ii) a school division, or (iii) any park authority, jail authority, or airport authority that has the power to enact or promulgate ordinances, or regulations having the force or effect of law.

"Recreational operator" means a person who is operating an unmanned aircraft solely for a recreational purpose and is fully in compliance with 49 USC § 44809.

24VAC5-20-420. Political subdivision powers.

A. Any political subdivision may regulate the take-off and landing of an unmanned aircraft on property owned by the political subdivision, in a manner consistent with this part. All regulations of any political subdivision, whether enacted by ordinance or resolution by a locality or adopted by a political subdivision other than a locality, must comply with this part of this chapter.

B. The regulations may provide for times when take-offs and landings are allowed.

C. The regulations may designate specific properties of increased concern for public safety or risk to natural resources where an operator seeking to use the property must show (i) the purpose of the take-off and landing, (ii) what steps the operator will take to limit risk to the public or to natural resources, and (iii) information to demonstrate that the take-off and landing can be carried out safely. On such properties, the regulation may deny permission to take-off or land unmanned aircraft, unless the operator can demonstrate the safety of the take-off and landing, based on the information provided.

Prior to designating any properties pursuant to this subsection, the political subdivision must show the basis for the designation. The designation must be based on a significant and specific risk to public safety or to natural resources. Every area designated pursuant to this subsection must include a map showing, with specificity, the area of prohibited use. The map and any related documents must be provided in electronic, computable, machine-readable, and transmissible form.

D. For unmanned aircraft with a takeoff weight of 55 pounds or more, the regulations may require the operator to provide information prior to any take-off or landing, demonstrating the safety of the take-off and landing.

E. No political subdivision shall require a permit for operators for take-off and landing unmanned aircraft in areas designated for unmanned aircraft use. This subsection shall not apply to unmanned aircraft covered by subsection C of this section.

F. No subdivision shall regulate the take-off and landing of unmanned aircraft with a ready-for-take-off weight of less than

0.55 pounds, except on properties regulated pursuant to the authority in subsection B of this section.

G. Any political subdivision may provide or participate in offering UAS classes, competitions, and similar events on its property.

24VAC5-20-430. Procedure for adopting an ordinance or regulation.

A. Any locality that proposes to regulate the take-off and landing of unmanned aircraft shall enact such regulations by ordinance or resolution. Any other political subdivision shall adopt regulations for such purposes.

B. No proposed ordinance or regulation may be advertised for a public hearing until the political subdivision has submitted the regulation to the department for comment and the department has notified the political subdivision that the regulations are consistent with this chapter.

C. A locality may regulate the use of unmanned aircraft by ordinance or resolution. The locality shall hold a public hearing prior to adoption of regulations. The locality shall advertise the hearing and the substance of the regulations on the locality website for a minimum of 14 days, displayed where public hearings are set out on the locality's website and shall include the advertising in the applicable social media feeds of the locality for the same period of time. The regulations must be based on findings of need for public safety protection or protection of specific natural resources.

D. Any political subdivision other than a locality shall hold a public hearing prior to adoption of regulations. The other political subdivision shall advertise the hearing and the substance of the regulations on the subdivision's website for a minimum of 14 days, displayed where public hearings are set out on the political subdivision's website and shall include notice of the advertising in the applicable social media feeds of the subdivision for the same period of time. The regulations must be based on findings of need for public safety enhancement protection or protection of specific natural resources.

E. Every political subdivision shall report the adoption of any regulation permitted by this chapter to the Department of Aviation within 14 days of adoption. The report shall include an electronic copy of the regulations, policies, maps, and any other documents related to the regulations with links to the political subdivision's regulations. No regulation shall take effect until it is published on the department's website.

F. The department will publish all new or revised regulations or provide links to the political subdivision's website pages containing such information within 14 days of receipt from the political subdivision. The department shall publish and update annually on its website, and any other website the department deems appropriate, a summary of any such regulations adopted.

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G. If, at any time, the department deems a political subdivision's local regulation to be inconsistent with this chapter, the department will inform the subdivision of the discrepancies. The political subdivision shall amend its regulation to eliminate the discrepancies.

regulations, including Title 14 of the Code of Federal Regulations.

VA.R. Doc. No. R21-6599; Filed August 13, 2021, 12:41 p.m.

24VAC5-20-440. Exceptions.

A. No ordinance or regulation may prohibit:

1. The take-off or landing of an unmanned aircraft by a commercial operator in compliance with Federal Aviation Administration regulations or as deemed reasonable or necessary by private or public entities for emergency or maintenance support functions or services, including the protection and maintenance of public or private critical infrastructure;

2. The landing of an unmanned aircraft by an operator in compliance with Federal Aviation Administration regulations as deemed reasonable or necessary by the operator in the event of a technical malfunction of an unmanned aircraft system;

3. The take-off or landing of an unmanned aircraft being operated by a sworn public safety officer or other emergency response personnel in the performance of the public safety officer's duties;

4. The take-off or landing of an unmanned aircraft owned or operated by the United States government, or any operator under contract with any agency of the United States government, in performance of the officer's assigned duties;

5. The take-off or landing of an unmanned aircraft by a commercial operator done as a part of the response to an emergency declared by the Governor or a local emergency declared pursuant to the laws of the Commonwealth; or

6. The take-off or landing of unmanned aircraft by employees and agents of a political subdivision on the political subdivision's lands.

B. No political subdivision's local regulation enacted pursuant to the authority in this chapter shall apply to take-offs and landings on the vehicular travel portions of public highways or streets.

C. If a private entity has exclusive use of more than one-half acre of public property for a specific event, such as a concert, sports activity, or family event, any local regulation may allow the entity to launch and land its own unmanned aircraft at the event and may allow an operator employed by the entity to launch and land unmanned aircraft during the event on that property, only.

24VAC5-20-450. Federal laws and regulations.

Nothing in this chapter shall allow any use of unmanned aircraft in any manner inconsistent with the federal laws and

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: [Adult Protective Services Division Manual Chapter 8.](#)

Public Comment Deadline: September 29, 2021.

Effective Date: September 30, 2021.

Agency Contact: Elizabeth Patacca, Administrative Staff Assistant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 726-6625, or email elizabeth.patacca@dars.virginia.gov.

BOARD OF MEDICINE BOARD OF NURSING

Title of Document: [Practice Agreement Requirements for Licensed Nurse Practitioners.](#)

Public Comment Deadline: September 29, 2021.

Effective Date: September 30, 2021.

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

BOARD OF PHYSICAL THERAPY

Title of Document: [Board Guidance on Credentialing and TOEFL Requirements for Physical Therapy Graduates of Schools Not Approved by CAPTE.](#)

Public Comment Deadline: September 29, 2021.

Effective Date: September 30, 2021.

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

DEPARTMENT OF TAXATION

Title of Document: [Guidelines for the Application of the Retail Sales and Use Tax to Sales of Accommodations Facilitated by Accommodations Intermediaries.](#)

Public Comment Deadline: September 29, 2021.

Effective Date: September 30, 2021.

Agency Contact: Joe Mayer, Lead Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, or email joseph.mayer@tax.virginia.gov.

BOARD OF VETERINARY MEDICINE

Titles of Documents: [Virginia Board of Veterinary Medicine Bylaws.](#)

[Disposition of Routine Inspection Violations.](#)

Public Comment Deadline: September 29, 2021.

Effective Date: September 30, 2021.

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

GENERAL NOTICES

DEPARTMENT OF ENVIRONMENTAL QUALITY

Draft Virginia State Water Resources Plan - Extension of Public Comment Period

The Virginia Department of Environmental Quality released the draft 2020 Virginia State Water Resources Plan (State Plan) on June 28, 2021, for public comment. The department received a request for an extension of the public comment period. An extension of the public comment period through September 13, 2021, has been granted.

The State Plan, as required by § 62.1-44.38 of the Code of Virginia, is published at five-year intervals and compiles information provided to the department by localities on water sources, demand projections, and water use data, as well as information collected through annual withdrawal reporting and withdrawal permit reporting into a central document. The department analyzes this information by completing cumulative impact analysis (CIA) modeling of surface water and groundwater resources. The first State Plan was published in 2015. The draft 2020 State Plan includes advances in CIA modeling, updated current and future water use and discharge data, and the addition of several new modeling scenarios that evaluate the impacts of climate change. The draft 2020 State Plan also includes 20 distinct regional analyses conducted at river basin scale that will allow evaluation of results beyond the statewide trends. The draft 2020 State Plan will be available beginning June 28, 2021, through September 13, 2021, on the department website at <https://www.deq.virginia.gov/water/water-quantity/water-supply-planning/virginia-water-resources-plan>.

A free public informational webinar summarizing the draft 2020 State Plan was held on July 8, 2021, at 2 p.m. During the webinar, the department provided an overview of the draft 2020 State Plan's purpose and key results. A recording of the webinar can be viewed at <https://attendee.gotowebinar.com/recording/3311445765057734156>.

Written comments on the draft 2020 State Plan can be sent to Hannah Somers, Office of Water Supply, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, or via email at hannah.somers@deq.virginia.gov. Commenters must include their name, postal address, telephone number, and email address. Responses to public comment received will be included as an appendix to the final draft of the 2020 State Plan.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

Oriden LLC Staunton Project Notice of Intent for Small Renewable Energy Project (Solar) - Halifax County

Oriden LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for the Staunton Project, a small renewable energy project (solar) in Halifax County. The Staunton Project will be located at the intersections of MacDonald and Dryburg Roads, approximately 3.5 miles from the Town of Scottsburg. Latitude and longitude coordinates are: 36.740000, -78.728889. The project's maximum generating capacity will be 47 megawatts alternating current, and the project will be sited on approximately 300 acres of timberland within the fenced area. Current site layout consists of approximately 127,000 photovoltaic modules. The project's point of interconnection is a direct connection into the onsite 115kV Dryburg substation.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

Midway Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) - Albemarle County

Midway 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) in Albemarle County. Midway Solar LLC will be located at approximately 1.5 miles southwest of the Town of Batesville. Latitude and longitude coordinates are: 37.98511, -78.740200. The project's maximum generating capacity will be eight megawatts alternating current and will be paired with a four-megawatt battery system. The project will encompass approximately 80 acres of a single 136-acre parcel. Approximately 35 acres of clearing will be required to construct the project; this clearing will largely be constrained to existing mature timber farm areas.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

Waller Solar I LLC Notice of Intent for Small Renewable Energy Project (Solar) - Lancaster County

Waller Solar I 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) in Lancaster County. The project is located on the east and west sides of State Route 3 between White Chapel Road and the boundary with Richmond County, approximately three

miles northwest of the Town of Lancaster in Lancaster County. The project will be constructed on multiple parcels of land totaling approximately 1,200 acres and will use photovoltaic solar modules to deliver up to 131 megawatts of electricity (alternating current) to an existing transmission line. The project is located at 37.795 N, 76.507 W.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Reimbursement of Pharmacy-Provided Vaccines

The Virginia Department of Medical Assistance Services hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of the notice.

The department is specifically soliciting input from stakeholders, providers, and beneficiaries on the potential impact of the proposed changes discussed in this notice. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to emily.mcclellan@dmas.virginia.gov and such comments are available for review at the same address. Comments may also be submitted, in writing, on the Virginia Regulatory Town Hall public comment forum at <https://townhall.virginia.gov/L/generalnotice.cfm>.

In accordance with Items 313.UUUUU, of Chapter 552, 2021 Acts of Assembly, Special Session I, the department will be making the following changes to Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

The state plan is being revised to authorize reimbursement, using a budget neutral methodology, of pharmacy-administered immunizations for all vaccinations covered under the medical benefit for Medicaid members. Reimbursement for fee-for-service members will be the cost of the vaccine plus an administration fee not to exceed \$16. Reimbursement for pharmacy-administered vaccinations for pediatric Medicaid members eligible for free vaccinations through the Vaccines for Children program shall include only the administration fee.

The expected increase in annual aggregate expenditures is \$6,369 in federal funds in federal fiscal year 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Intent to Amend the Virginia State Plan for Medical Assistance Pursuant to § 1902(a)(13) of the Social Security Act (USC § 1396a(a)(13)) - Sick Leave, Overtime, Private Duty Nursing Rate

The Virginia Department of Medical Assistance Services hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates; Other Types of Care (12VAC30-80).

This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act, 42 USC § 1396a(a)(13). A copy of this notice is available for public review from the contact listed at the end of this notice.

This notice is available for public review on the Virginia Regulatory Town Hall at <https://townhall.virginia.gov/L/generalnotice.cfm>.

In accordance with Items 313.YYYY, ZZZZ, and BBBBBB of Chapter 552 of the 2021 Acts of Assembly, Special Session I, DMAS will be making the following changes to Methods and Standards for Establishing Payment Rates-Other Types of Care (12VAC30-80)

1. In accordance with Item 313.YYYY, the State Plan is being revised to increase rates for skilled and private duty nursing services to 80% of the benchmark rate developed by the department.

The expected increase in annual aggregate expenditures is \$1,230,321 in state general funds and \$1,892,322 in federal funds in federal fiscal year 2021.

2. In accordance with Item 313.ZZZZ, the department will allow qualifying overtime to be paid at 150% of the rate (time and a half) for consumer-directed personal care services provided under the Early and Periodic Diagnostic and Treatment (EPSDT) program.

The total cost for overtime across all coverage categories (including EPSDT) is \$5,213,801 in state general funds and \$6,009,750 in federal funds in federal fiscal year 2021.

3. In accordance with Item 313.BBBBBB, the department will implement a paid sick leave benefit for qualifying consumer-directed personal care services provided under the EPSDT program.

General Notices

The total cost for qualifying sick across all coverage categories (including EPSDT) is \$678,441 in state general funds and \$690,791 in federal funds in federal fiscal year 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

Contact Information for the Department of Medical Assistance Services draft manual general notices is provided at the end of the notices.

Draft CCC Plus Waiver Appendix C

The draft CCC Plus Waiver Provider Manual Appendix C is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/>.

Draft Early and Periodic Diagnostic and Treatment Provider Manual

The draft EPSDT Private Duty Nursing Services Provider Manual is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 9, 2021.

Draft EPSDT Supplement B Provider Manual

The draft EPSDT Supplement B Provider Manual is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 9, 2021.

Draft Pharmacy Provider Manual

The draft Pharmacy Provider Manual Chapter IV is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 9, 2021.

Draft Pharmacy Provider Manual Appendix D

The draft Pharmacy Provider Manual Appendix D is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/>.

Draft Physician and Practitioner Provider Manual

The draft Physician and Practitioner Provider Manual Chapter IV is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 9, 2021.

Draft Physician and Practitioner Provider Manual

The draft Physician and Practitioner Provider Manual Chapter V is now available on the Department of Medical Assistance Services website at <https://www.dmas.virginia.gov/providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 3, 2021.

Contact Information for all draft manuals: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Foxcroft School

An enforcement action has been proposed for Foxcroft School for violations of the State Water Control Law and regulations at 22407 Foxhound Lane in Middleburg, Virginia. The State Water Control Board proposes to issue a consent order to resolve the unauthorized discharge of oil to state waters at Foxcroft School. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email or postal mail from August 31, 2021, to September 30, 2021.

Contact Information: Stephanie Bellotti, Department of Environmental Quality, Northern Regional Office, 19301 Crown Court, Woodbridge, VA 22193, or email stephanie.bellotti@deq.virginia.gov.

Proposed Enforcement Action for Henrico County and MEB Haymes Joint Venture LLC

The State Water Control Board proposes to issue a consent special order to Henrico County and MEB Haymes Joint Venture LLC for alleged violation of the State Water Control Law at the Cobbs Creek Reservoir Project located at 1617 Columbia Road, Cumberland County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person will accept comments by email or postal mail from August 30, 2021, to September 30, 2021.

Contact Information: Jeff Reynolds, Department of Environmental Quality, Piedmont Regional Office

(Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email jefferson.reynolds@deq.virginia.gov.

Proposed Enforcement Action for King George County Service Authority

An enforcement action has been proposed for the King George County Service Authority for violations of the State Water Control Law and regulations. The State Water Control Board proposes to issue a consent order to resolve violations associated with various wastewater treatment plants and associated sewage pumping stations located in King George County. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from August 31, 2021, to September 30, 2021.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virginia.gov.

Proposed Enforcement Action for Prince George Sewerage and Water Company

The State Water Control Board proposes to issue a consent special order to Prince George Sewerage and Water Company for alleged violation of the State Water Control Law at 16905 Parkdale Road, Petersburg, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email or postal mail from August 30, 2021, to September 30, 2021.

Contact Information: Jeff Reynolds, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email jefferson.reynolds@deq.virginia.gov.

Proposed Enforcement Action for Waterway Materials Recycling LLC

An enforcement action has been proposed for Waterway Materials Recycling LLC for violations of the State Water Control Law and regulations at the Waterway Materials Facility located in Chesapeake, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Waterway Materials Facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact person listed will accept comments by email or by postal mail from August 30, 2021, through September 30, 2021.

Contact Information: Russell Deppe, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, or email russell.deppe@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 <http://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/cumulatab.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

STATE BOARD OF EDUCATION

Title of Regulation: **8VAC20-780. Standards for Licensed Child Day Centers.**

Publication: 37:24 VA.R. 3503-3643 July 19, 2021.

Correction to Final Regulation:

Page 3524, 8VAC20-780-240 C, change "4." to "4. 1." and change "5." to "~~5.~~ 2."

VA.R. Doc. No. R21-6777; Filed August 6, 2021, 1:15 p.m.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Title of Regulation: **18VAC10-20. Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations.**

Publication: 37:24 VA.R. 3693-3722 July 19, 2021.

Correction to Final Regulation:

Page 3712, 18VAC10-20-490 A, line 1, after "A." unstrike "~~Applicants shall~~"

line 2, after "~~requirements:~~" delete "A", and insert "possess a"

VA.R. Doc. No. R17-5025; Filed August 9, 2021, 9:31 a.m.

BOARD OF PHARMACY

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors.**

Publication: 37:25 VA.R. 3883-3909 August 2, 2021.

Correction to Final Regulation:

Page 3900, 18VAC110-60-240 E 5, line 7, after "that" insert "are"

Page 3905, 18VAC110-60-300 C, clause (ii), line 4, after "The" change "same" to "sample"

VA.R. Doc. No. R21-6755; Filed August 19, 2021, 4:00 p.m.