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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**; **Leslie L. Lilley**; **Jennifer L. McClellan**; **Christopher R. Nolen**; **Don L. Scott, Jr.**; **Charles S. Sharp**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

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PUBLICATION SCHEDULE AND DEADLINES

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

October 2021 through October 2022

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
39:4	September 21, 2022	October 10, 2022
39:5	October 5, 2022	October 24, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Initial Agency Notice

Title of Regulation: **12VAC5-110. Regulations for the Immunization of School Children.**

Statutory Authority: §§ 32.1-46 and 32.1-47 of the Code of Virginia.

Name of Petitioner: Kristen M. Calleja.

Nature of Petitioner's Request: I am writing to voice my request and sincere hope that the board will mandate vaccines for all school employees, with only medical exemptions allowed. Vaccines are already required for all state employees. In addition, vaccines should be required for all students for whom the vaccine has been fully approved, just as many other vaccines are mandated.

My 10th grade daughter and all other kids have sacrificed much over the past 18 months. They only have one childhood. They are finally back to in-person school, but we are already seeing constant disruptions to education for far too many due to infections, possible infections based on symptoms, and mandatory quarantines.

My daughter and all other students should have a right to be able to attend school without being unnecessarily put at risk by other students and teachers who refuse to be vaccinated, and without constant disruptions to their education. And it sure would be great for them to be able to go to school without masks and without worrying about lunch and other unmasked times, as well as overcrowded buses. The irrational minority should not be dictating the public health policy for Virginia or the schools.

Agency Plan for Disposition of Request: Upon publication of the Notice of Petition in the Virginia Register of Regulations, and upon completion of the 21-day public comment period, the Virginia Department of Health will make a determination within 90 days of the close of the public comment period as to whether or not to grant the petition.

Public Comment Deadline: October 17, 2021.

Agency Contact: Kristin Collins, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7298, or email kristin.collins@vdh.virginia.gov.

VA.R. Doc. No. PFR22-06; Filed September 1, 2021, 1:54 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Initial Agency Notice

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Name of Petitioner: Cody Bishop.

Nature of Petitioner's Request: To amend regulations to authorize pharmacy technicians to administer all vaccinations under the supervision of a pharmacist.

Agency Plan for Disposition of Request: Pharmacy technicians are allowed to administer COVID-19 vaccinations because of legislation passed by the General Assembly authorizing administration by certain "non-traditional" vaccinators. It is likely the amendment requested will necessitate a permanent change in the Code in Virginia, specifically in § 54.1-3408, which allows prescribers to authorize pharmacists and nurses to administer adult vaccines under a protocol. There is no mention of authorization for pharmacy technicians.

Pursuant to legislation passed in the 2021 Session of the General Assembly, Special Session I, a workgroup is meeting on September 24, 2021, to discuss the possibility of expansion of duties for pharmacy technicians. The petition will be included in the agenda for the workgroup.

In accordance with Virginia law, the petition has been filed with the Virginia Registrar of Regulations and will be published on September 27, 2021. Comment on the petition may be sent by email, postal mail, or posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov; comment will be requested until October 27, 2021.

If the board does not have statutory authority to amend its regulations in accordance with the petition, the board will decide whether it would support a change in the Code of Virginia. This matter will be on the board's agenda for its next meeting following the close of comment, scheduled for December 7, 2021.

Public Comment Deadline: October 27, 2021.

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

VA.R. Doc. No. PFR22-05; Filed August 30, 2021, 9:59 a.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

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: **9VAC25-880, General VPDES Permit for Discharges of Stormwater from Construction Activities**. 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 September 27, 2021, and ends October 18, 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: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.

Agency Notice

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Water Control Board is conducting a periodic review and a small business impact review of **9VAC25-890, General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended, July 16, 2018).

The Notice of Intended Regulatory Action for 9VAC25-890, which is published in this issue of the Virginia Register, serves as the announcement of the periodic review.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4178, or email melissa.porterfield@deq.virginia.gov.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Psychology conducted a periodic review and a small business impact review of **18VAC125-15, Regulations Governing Delegation to an Agency Subordinate**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated August 31, 2021, to support this decision.

The Regulatory Committee reviewed the regulation and noted that it is mandated by the law. The board voted on August 31, 2021, to retain the regulation without amendment. While the board has not yet delegated cases to an agency subordinate, it is anticipated that agency subordinates may be utilized to conduct informal fact-finding proceedings, so the regulation is necessary for public health, welfare, and safety to retain the regulation as written.

The regulation is necessary for public protection since there is a statutory mandate for licensure in subdivision 10 of § 54.1-2400 of the Code of Virginia. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board. There have been no comments or complaints. The regulation was promulgated in 2004 as an emergency regulation that became effective in 2005. It was reviewed in 2012 for clarity and for ease of understanding with an amendment to 18VAC125-15-20. This regulation does not overlap, duplicate, or conflict with state or federal law. This regulation has no impact on small businesses.

Contact Information: Jaime Hoyle, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE 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 regulation is undergoing a periodic review and a small business impact review: **22VAC30-80, Auxiliary Grants Program**. 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

Periodic Reviews and Small Business Impact Reviews

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 September 27, 2021, and ends October 18, 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: Charlotte Arbogast, Policy Analyst, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7093.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-800, Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges Resulting from the Application of Pesticides to Surface Waters**. The purpose of the proposed action is to reissue and amend as necessary the existing Virginia Pollutant Discharge Elimination System (VPDES) general permit regulation that addresses discharges resulting from the application of pesticides to surface waters. The general permit establishes limitations and monitoring requirements for point source discharges from specified pesticide applications. The effluent limits and the special conditions in the general permit will be reviewed to ensure that the permit is still protective of water quality. The primary issue that needs to be addressed is that the existing general permit expires on February 29, 2024, and must be reissued in order to continue making a general permit available after that date. Some issues that may need to be addressed include (i) reviewing effluent limitations and monitoring requirements; (ii) examining electronic reporting when this is made available for this industry; (iii) reviewing total maximum daily load requirements; (iv) reviewing special conditions to ensure the special conditions are updated and protective of water quality; and (v) making appropriate conforming changes based on the U.S. Environment Protection Agency's most recent Pesticide General Permit.

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

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

Public Comment Deadline: October 27, 2021.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4044, FAX (804) 698-4032, or email peter.sherman@deq.virginia.gov.

VA.R. Doc. No. R22-6928; Filed September 7, 2021, 9:58 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-890, General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems**. The purpose of the proposed action is to amend and reissue the existing general permit, which expires on October 31, 2023. The general permit governs local governments and state and federal agencies that

discharge stormwater from municipally owned separate storm sewer systems (MS4s) located within the Census Urbanized Area as determined by the Bureau of Census. The general permit establishes the minimum control measures to reduce the potential discharge of pollutants in municipal stormwater as well as requirements for demonstration of compliance with total maximum daily load wasteload allocations for local watersheds and the Chesapeake Bay. The general permit protects water quality in the Commonwealth of Virginia and authorizes municipal owners or operators of MS4s to discharge stormwater to waters of the state. Changes being considered to the existing general permit include updating the effective dates of the general permit, clarifying permit requirements, and correcting typographical errors. Based on concerns expressed during the previous reissuance of the general permit, the Department of Environmental Quality is considering either replacement of the existing general permit effective July 1, 2023, or shortening the term of the reissued general permit to June 30, 2028, to match the fiscal year reporting requirements under the regulation. Amendments may be identified following public comment on this notice, through the work of the technical advisory committee, or to comply with federal regulations and watershed plans.

In addition, a periodic review and a small business impact review of this regulation will be conducted as part of this regulatory action.

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

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

Public Comment Deadline: October 27, 2021.

Agency Contact: Derick Winn, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4114, FAX (804) 698-4178, or email derick.winn@deq.virginia.gov.

VA.R. Doc. No. R22-6940; Filed August 27, 2021, 2:56 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 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Commissioner and Board of Agriculture and Consumer Services are claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the commissioner and the board when promulgating regulations pursuant to § 3.2-5406 of the Code of Virginia including adopting (i) by reference any regulation under the federal acts as it pertains to Chapter 54 (§ 3.2-5400 et seq.) of Title 3.2 of the Code of Virginia, amending it as necessary for intrastate applicability and (ii) any regulation containing provisions no less stringent than those contained in federal regulation. The Department of Agriculture and Consumer Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

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

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

Effective Date: September 27, 2021.

Agency Contact: JoAnn G. Connell, Program Manager, Meat and Poultry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4569, FAX (804) 786-1003, TDD (800) 828-1120, or email joann.connell@vdacs.virginia.gov.

Summary:

*The amendment updates the publication date for Title 9, Chapter III, Subchapters A and E of the Code of Federal Regulations incorporated by reference in the regulation to January 1, 2021. The U.S. Department of Agriculture Food Safety and Inspection Service has amended sections of these subchapters, (i) eliminating the requirements for both ready-to-eat and not-ready-to-eat pork and pork products to be treated to destroy trichinae (*Trichinella spiralis*) because the regulations are inconsistent with the Hazard Analysis and Critical Control Point regulations and because these prescriptive regulations are no longer necessary and (ii) amending the definition and standard of identity for the "roaster" or "roasting chicken" poultry.*

2VAC5-210-10. Adoption by reference.

The rules and regulations governing the meat and poultry inspection of the U.S. Department of Agriculture specified in this part, as contained in Title 9, Chapter III, Subchapters A and E of the Code of Federal Regulations, as it exists and has been published in the January 1, ~~2018~~ 2021, update with amendments and with administrative changes therein as needed to make them appropriate and applicable to intrastate operations and transactions subject to the Virginia Meat and Poultry Products Inspection Act, are hereby adopted by reference.

VA.R. Doc. No. R22-6757; Filed September 8, 2021, 11:19 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 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: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-940).**

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

Effective Date: October 27, 2021.

Agency Contact: William Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4178, or email william.norris@deq.virginia.gov.

Summary:

Pursuant to Chapters 387 and 532 of the 2021 Acts of Assembly, Special Session I, the amendments change the name of the Department of Mines, Minerals and Energy to

Regulations

the Department of Energy and update a citation to the Code of Virginia.

9VAC25-31-940. Authority of the Department of ~~Mines, Minerals and Energy~~ for coal surface mining operations.

A. For the purpose of Part X of this chapter, NPDES and VPDES permits are synonymous.

~~A. B.~~ The Director of the Department of ~~Mines, Minerals and Energy (DMME)~~ has the authority to issue, revoke and reissue, modify, or terminate NPDES permits for the discharge of industrial wastes or other wastes other than sewage from coal surface mining operations as defined in ~~§ 45.1-229~~ § 45.2-1000 of the Code of Virginia. Any NPDES permit issued, modified, or revoked and reissued by the Director of ~~DMME~~ the Department of Energy that meets the conditions set forth in this chapter shall be as valid and enforceable as if issued by the board.

B. C. Prior to issuing permits, the Director of ~~DMME~~ the Department of Energy shall adhere to the following requirements:

1. That every permit issued, revoked and reissued, or modified shall conform to the requirements of this chapter, the CWA, and all pertinent regulations adopted by the board under law and those adopted under the CWA;
2. That the Director of ~~DMME~~ the Department of Energy shall transmit to the department a copy of each application for a NPDES permit received by it, a copy of every draft NPDES permit prepared by it, and written notice of every action taken or contemplated to be taken by the Director of ~~DMME~~ the Department of Energy with respect to such a permit; and
3. That no NPDES permit shall be issued, revoked and reissued, or modified if, within 30 days of the date of the transmittal to the department of the complete application and the draft NPDES permit to it, the board objects in writing to the issuance, revocation and reissuance, or modification of such permit. Where required, the board shall stipulate more stringent permit conditions as necessary to maintain applicable water quality standards and provisions of the law. Each such stipulation shall be accompanied by a justifying documentation to the Director of ~~DMME~~ the Department of Energy. Such stipulations shall be binding upon the Director of ~~DMME~~ the Department of Energy. However, nothing herein shall affect or impair any rights that the applicant may have to a public hearing before the board pursuant to the law or to judicial review of such decision pursuant to the law.

~~C. D.~~ The Director of ~~DMME~~ the Department of Energy shall enforce NPDES permits issued to coal surface mining operations for the discharge of industrial wastes and other wastes; provided, however, that the board reserves the right to assert its enforcement authority as provided in ~~§ 45.1-254 F~~ § 45.2-1029 F of the Code of Virginia and provided further that

the board reserves the right to take emergency enforcement action where the Director of ~~DMME~~ the Department of Energy has not taken or cannot take effective emergency enforcement action.

VA.R. Doc. No. R22-6780; Filed August 29, 2021, 10:55 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.

Title of Regulation: **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation (amending 9VAC25-32-10, 9VAC25-32-560).**

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

Effective Date: October 27, 2021.

Agency Contact: William Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4178, or email william.norris@deq.virginia.gov.

Summary:

Pursuant to Chapters 387 and 532 of the 2021 Acts of Assembly, Special Session I, the amendments change the name of the Department of Mines, Minerals and Energy to the Department of Energy.

9VAC25-32-10. Definitions.

A. The following words and terms, when used in this chapter and in VPA permits issued under this chapter, shall have the meanings defined in the State Water Control Law, unless the context clearly indicates otherwise and as follows:

"Active sewage sludge unit" means a sewage sludge unit that has not closed.

"Aerobic digestion" means the biochemical decomposition of organic matter in sewage sludge into carbon dioxide and water by microorganisms in the presence of air.

"Agricultural land" means land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

"Agricultural storm water discharge" means a precipitation-related discharge of manure, litter, or process wastewater that has been applied on land areas under the control of an animal feeding operation or under the control of an animal waste end-user in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation

and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

"Agronomic rate" means, in regard to biosolids, the whole sludge application rate (dry weight basis) designed: (i) to provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation grown on the land and (ii) to minimize the amount of nitrogen in the biosolids that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

"Anaerobic digestion" means the biochemical decomposition of organic matter in sewage sludge or biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.

"Animal feeding operation" means a lot or facility where the following conditions are met:

1. Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Animal waste" means liquid, semisolid, and solid animal manure and process wastewater, compost, or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.

"Animal waste end-user" means any recipient of transferred animal waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use for an operation under his control.

"Animal waste fact sheet" means the document that details the requirements regarding utilization, storage, and management of animal waste by end-users. The fact sheet is approved by the department.

"Annual pollutant loading rate" or "APLR" means the maximum amount of a pollutant that can be applied to a unit area of land during a 365-day period.

"Annual whole sludge application rate" or "AWSAR" means the maximum amount of biosolids (dry weight basis) that can be applied to a unit area of land during a 365-day period.

"Apply biosolids" or "biosolids applied to the land" means land application of biosolids.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or the environment.

"Best Management Practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMPs include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

"Biosolids" means a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-32-356, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with this regulation. Liquid biosolids contains less than 15% dry residue by weight. Dewatered biosolids contains 15% or more dry residue by weight.

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Bulk biosolids" means biosolids that are not sold or given away in a bag or other container for application to the land.

"Bypass" means intentional diversion of waste streams from any portion of a treatment works.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys regardless of animal age or sex.

"Critical areas" and "critical waters" mean areas and waters in proximity to shellfish waters, a public water supply, or recreation or other waters where health or water quality concerns are identified by the Department of Health.

"Cumulative pollutant loading rate" means the maximum amount of an inorganic pollutant that can be applied to an area of land.

"Density of microorganisms" means the number of microorganisms per unit mass of total solids (dry weight) in the sewage sludge.

"Department" means the Department of Environmental Quality.

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

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"Discharge" means, when used without qualification, a discharge of a pollutant.

"Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean other than discharge from a vessel or other floating craft when being used as a means of transportation.

"Domestic septage" means either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap at a restaurant.

"Domestic sewage" means waste and wastewater from humans or household operations that is discharged to or otherwise enters a treatment works.

"Draft VPA permit" means a document indicating the board's tentative decision to issue, deny, modify, revoke and reissue, terminate or reissue a VPA permit. A notice of intent to terminate a VPA permit and a notice of intent to deny a VPA permit are types of draft VPA permits. A denial of a request for modification, revocation and reissuance or termination is not a draft VPA permit.

"Dry tons" means dry weight established as representative of land applied biosolids or industrial residuals and expressed in units of English tons.

"Dry weight" means the measured weight of a sample of sewage sludge, biosolids, or industrial residuals after all moisture has been removed in accordance with the standard methods of testing and often represented as percent solids.

"Dry weight basis" means calculated on the basis of having been dried at 105°C until reaching a constant mass (i.e., essentially 100% solids content).

"Exceptional quality biosolids" means biosolids that have received an established level of treatment for pathogen control and vector attraction reduction and contain known levels of pollutants, such that they may be marketed or distributed for public use in accordance with this regulation.

"Facilities" means, in regard to biosolids, processes, equipment, storage devices and dedicated sites, located or operated separately from a treatment works, utilized for sewage sludge management including, but not limited to, handling, treatment, transport, and storage of biosolids.

"Fact sheet" means the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department in consultation with the Department of Conservation and Recreation.

"Feed crops" means crops produced primarily for consumption by animals.

"Fiber crops" means crops produced primarily for the manufacture of textiles, such as flax and cotton.

"Field" means an area of land within a site where land application is proposed or permitted.

"Food crops" means crops produced primarily for consumption by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

"Forest" means a tract of land thick with trees and underbrush.

"General VPA permit" means a VPA permit issued by the board authorizing a category of pollutant management activities.

"Generator" means the owner of a sewage treatment works that produces sewage sludge and biosolids.

"Groundwater" means water below the land surface in the saturated zone.

"Industrial residuals" means solid or semisolid industrial waste including solids, residues, and precipitates separated or created by the unit processes of a device or system used to treat industrial wastes.

"Industrial wastes" means liquid or other wastes resulting from any process of industry, manufacture, trade, or business, or from the development of any natural resources.

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater, referred to as "effluent," stabilized sewage sludge, referred to as "biosolids," or industrial residuals by spreading or spraying on the surface of the land, injecting below the surface of the land, or incorporating into the soil with a uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil. Sites approved for land application of biosolids in accordance with this regulation are not to be considered to be treatment works. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. For the purpose of this regulation, the use of biosolids in agricultural research and the distribution and marketing of exceptional quality biosolids are not land application.

"Land application area" means, in regard to biosolids, the area in the permitted field, excluding the setback areas, where biosolids may be applied.

"Land applier" means someone who land applies biosolids or industrial residuals pursuant to a valid permit from the department as set forth in this regulation.

"Land with a high potential for public exposure" means land that the public uses frequently. This includes, but is not limited to, a public contact site and a reclamation site located in a populated area (e.g., a construction site located in a city).

"Land with a low potential for public exposure" means land that the public uses infrequently. This includes, but is not limited to, agricultural land, forest, and a reclamation site located in an unpopulated area (e.g., a strip mine located in a rural area).

"Limitation" means any restriction imposed on quantities, rates or concentration of pollutants which are managed by pollutant management activities.

"Liner" means soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less.

"Local monitor" means a person or persons employed by a local government to perform the duties of monitoring the operations of land appliers pursuant to a local ordinance.

"Local ordinance" means an ordinance adopted by counties, cities, or towns in accordance with § 62.1-44.16 or 62.1-44.19:3 of the Code of Virginia.

"Malodor" means an unusually strong or offensive odor associated with biosolids or sewage sludge as distinguished from odors commonly associated with biosolids or sewage sludge.

"Monitoring report" means forms supplied by the department for use in reporting of self-monitoring results of the permittee.

"Monthly average" means the arithmetic mean of all measurements taken during the month.

"Municipality" means a city, county, town, district association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge or biosolids management; or a designated and approved management agency under § 208 of the federal Clean Water Act, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity; or an integrated waste management facility as defined in § 201(e) of the federal Clean Water Act, as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge or biosolids.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff or mine runoff that is not collected or discharged as a point source.

"Odor sensitive receptor" means, in the context of land application of biosolids, any health care facility, such as hospitals, convalescent homes, etc. or a building or outdoor facility regularly used to host or serve large groups of people such as schools, dormitories, or athletic and other recreational facilities.

"Operate" means the act of any person who may have an impact on either the finished water quality at a waterworks or the final effluent at a sewage treatment works, such as to (i)

place into or take out of service a unit process or unit processes, (ii) make or cause adjustments in the operation of a unit process or unit processes at a treatment works, or (iii) manage sewage sludge or biosolids.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks or wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks or wastewater works.

"Other container" means either an open or closed receptacle. This includes, but is not limited to, a bucket, a box, a carton, and a vehicle or trailer with a load capacity of one metric ton or less.

"Overflow" means the unintentional discharge of wastes from any portion of a treatment works.

"Owner" means the Commonwealth or any of its political subdivisions including sanitary districts, sanitation district commissions and authorities; federal agencies; any individual; any group of individuals acting individually or as a group; or any public or private institution, corporation, company, partnership, firm, or association that owns or proposes to own a sewerage system or treatment works as defined in § 62.1-44.3 of the Code of Virginia.

"Pasture" means land on which animals feed directly on feed crops such as legumes, grasses, grain stubble, or stover.

"Pathogenic organisms" means disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

"Permittee" means an owner or operator who has a currently effective VPA permit issued by the board or the department.

"Person who prepares biosolids" means either the person that generates biosolids during the treatment of domestic sewage in a treatment works or the person that derives the material from sewage sludge.

"pH" means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25°C or measured at another temperature and then converted to an equivalent value at 25°C.

"Place sewage sludge" or "sewage sludge placed" means disposal of sewage sludge on a surface disposal site.

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

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"Pollutant" means, in regard to wastewater, any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by the Department of Mines, Minerals and Energy unless the board determines that such injection or disposal will result in the degradation of ground or surface water resources.

"Pollutant" means, in regard to sewage sludge or biosolids, an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the board, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

"Pollutant limit" means a numerical value that describes the amount of a pollutant allowed per unit amount of biosolids (e.g., milligrams per kilogram of total solids), the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare), or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

"Pollutant management activity" means a treatment works with a potential or actual discharge to state waters, but which does not have a point source discharge to surface waters.

"Pollution" means such alteration of the physical, chemical, or biological properties of any state waters or soil as will, or is likely to, create a nuisance or render such waters or soil: (i) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (ii) unsuitable despite reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses. Such alteration is also deemed to be pollution, if there occurs: (a) an alteration of the physical, chemical, or biological property of state waters or soil, or a discharge or a deposit of sewage, industrial wastes, or other wastes to state waters or soil by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of, or discharge, or deposit, to state waters or soil by other owners, is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters or soil; or (c) the contravention of standards of air or water quality duly established by the board.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under his operational control and transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" means any recipient of transferred poultry waste who stores or utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another and is not otherwise involved in the transfer or transaction of the waste nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Primary sludge" means sewage sludge removed from primary settling tanks that is readily thickened by gravity thickeners.

"Privately owned treatment works (PVOTW)" means any sewage treatment works not publicly owned.

"Process" means a system, or an arrangement of equipment or other devices that remove from waste materials pollutants including, but not limited to, a treatment works or portions thereof.

"Public contact site" means land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, and golf courses.

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

"Public hearing" means a fact-finding proceeding held to afford interested persons an opportunity to submit factual data, views, and arguments to the board.

"Reclamation site" means drastically disturbed land that is reclaimed using biosolids. This includes, but is not limited to, strip mines and construction sites.

"Run-off" means rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

"Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the federal Clean Water

Act (33 USC 1251 et seq.), the law, and board regulations, standards and policies.

"Setback area" means the area of land between the boundary of the land application area and adjacent features where biosolids or other managed pollutants may not be land applied.

"Sewage" means the water-carried and non-water-carried human excrement, kitchen, laundry, shower, bath, or lavatory wastes, separately or together with such underground, surface, storm, and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments, or other places.

"Sewage sludge" means any solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

"Sewage sludge unit" means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include surface waters.

"Sewage sludge use or disposal" means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

"Site" means the area of land within a defined boundary where an activity is proposed or permitted.

"Sludge" means solids, residues, and precipitates separated from or created by the unit processes of a treatment works.

"Sludge management" means the treatment, handling, transportation, storage, use, distribution, or disposal of sewage sludge.

"Specific oxygen uptake rate" or "SOUR" means the mass of oxygen consumed per unit time per mass of total solids (dry weight basis) in the sewage sludge.

"State waters" means all water on the surface or under the ground wholly or partially within or bordering the state or within its jurisdiction.

"State Water Control Law (law)" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

"Store sewage sludge" or "storage of sewage sludge" means the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

"Substantial compliance" means designs and practices that do not exactly conform to the standards set forth in this chapter as

contained in documents submitted pursuant to 9VAC25-32-60, but whose construction or implementation will not substantially affect health considerations or performance.

"Supernatant" means a liquid obtained from separation of suspended matter during sludge treatment or storage.

"Surface disposal site" means an area of land that contains one or more active sewage sludge units.

"Surface water" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate "wetlands";
3. All other waters such as inter/intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters of the United States under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. "Wetlands" adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

"Total solids" means the materials in sewage sludge that remain as residue when the sewage sludge is dried to 103°C to 105°C.

"Toxic pollutant" means any pollutant listed as toxic under § 307 (a)(1) of the CWA or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing § 405 (d) of the CWA.

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health, or other adverse environmental effects.

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"Treatment facility" means only those mechanical power driven devices necessary for the transmission and treatment of pollutants (e.g., pump stations, unit treatment processes).

"Treat sewage sludge" or "treatment of sewage sludge" means the preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

"Treatment works" means either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature. Treatment works may include but are not limited to pumping, power, and other equipment and their appurtenances; septic tanks; and any works, including land, that are or will be (i) an integral part of the treatment process or (ii) used for ultimate disposal of residues or effluents resulting from such treatment. "Treatment works" does not include biosolids use on privately owned agricultural land.

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

"Unstabilized solids" means organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit limitations because of factors beyond the permittee's reasonable control. An upset does not include noncompliance caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Use" means to manage or recycle a processed waste product in a manner so as to derive a measurable benefit as a result of such management.

"Variance" means a conditional approval based on a waiver of specific regulations to a specific owner relative to a specific situation under documented conditions for a specified period of time.

"Vector attraction" means the characteristic of biosolids or sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

"Virginia Pollution Abatement (VPA) permit" means a document issued by the board, pursuant to this chapter, authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the board pursuant to 9VAC25-31, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Volatile solids" means the amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550°C in the presence of excess air.

"VPA application" means the standard form or forms approved by the board for applying for a VPA permit.

"Waste storage facility" means a (i) waste holding pond or tank used to store manure prior to land application, (ii) lagoon or treatment facility used to digest or reduce the solids or nutrients, or (iii) structure used to store manure or waste.

"300 animal units" means 300,000 pounds of live animal weight or the following numbers and types of animals:

- a. 300 slaughter and feeder cattle;
- b. 200 mature dairy cattle (whether milked or dry cows);
- c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);
- d. 150 horses;
- e. 3,000 sheep or lambs;
- f. 16,500 turkeys;
- g. 30,000 laying hens or broilers.

"Water quality standards" means the narrative statements for general requirements and numeric limits for specific requirements that describe the water quality necessary to meet and maintain reasonable and beneficial uses. Such standards are established by the board under § 62.1-44.15 (3a) of the Code of Virginia.

B. Generally used technical terms not defined in subsection A of this section or the department's latest definitions of technical terms as used to implement § 62.1-44.15 of the Code of Virginia shall be defined in accordance with "Glossary-Water and Wastewater Control Engineering" published by the American Public Health Association (APHA), American Society of Civil Engineers (ASCE), American Water Works Association (AWWA), and the Water Environment Federation (WEF).

9VAC25-32-560. Biosolids utilization methods.

A. Requirements applicable to land application of biosolids.

1. All biosolids application rates, application times and other site management operations shall be restricted as specified

in the biosolids management plan. The biosolids management plan shall include a nutrient management plan as required by 9VAC25-32-410 and prepared by a certified nutrient management planner as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia.

2. Biosolids shall be treated to meet standards for land application as required by Part IX (9VAC25-32-303 et seq.) of this chapter prior to delivery at the land application site. No person shall alter the composition of biosolids at a site approved for land application of biosolids under a Virginia Pollution Abatement Permit. Any person who engages in the alteration of such biosolids shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. The addition of lime or deodorants to biosolids that have been treated to meet standards for land application as required by Part IX (9VAC25-32-303 et seq.) of this chapter shall not constitute alteration of the composition of biosolids. The board may authorize public institutions of higher education to conduct scientific research on the composition of biosolids that may be applied to land.

B. Agricultural use. Agricultural use of biosolids is the land application of biosolids to cropland or pasture land to obtain agronomic benefits as a plant nutrient source and soil conditioner.

1. Biosolids treatment. As a minimum, biosolids that are applied to the land or incorporated into the soil shall be treated by a Class II pathogen treatment process and shall be treated or managed to provide an acceptable level of vector attraction reduction.

2. Site soils.

a. Depth to bedrock or restrictive layers shall be a minimum of 18 inches.

b. Biosolids application shall not be made during times when the seasonal high water table of the soil is within 18 inches of the ground surface. If Natural Resources Conservation Service soil survey information regarding depth of seasonal water table is not available, the water table depth shall be determined by soil characteristics or water table observations. If the soil survey or such evidence indicates that the seasonal water table can be less than 18 inches below the average ground surface, soil borings shall be conducted within seven days prior to land application operations during periods of high water table for the soil series present to verify the actual water table depth. The use of soil borings and water table depth verification may be required for such sites from November to May (during seasonal high water table elevations) of each year depending on soil type. Constructed channels (agricultural drainage ditches) may be utilized to remove surface water and lower the water table as necessary for crop production and site management.

c. The pH of the biosolids and soil mixture shall be 6.0 or greater at the time of each biosolids application if the biosolids cadmium concentration is greater than or equal to 21 mg/kg. The soil pH must be properly tested and recorded prior to land application operations during which a pH change of one-half unit or more may occur within the zone of incorporation (i.e., use of biosolids containing lime or other alkaline additives at 10% or more of dry solid weight).

d. When soil test pH is less than 5.5 S.U., the land shall be supplemented with lime at the recommended agronomic rate prior to or during biosolids application if the biosolids to be land applied have not been alkaline stabilized.

e. When soil test potassium levels are less than 38 parts per million (Mehlich I analytical procedure or equivalent), the land shall be supplemented with potash at the recommended agronomic rate prior to or during biosolids application.

3. Management practices.

a. Site specific application rates shall not exceed the rates established in the nutrient management plan nor result in exceedance of the cumulative trace element loading rates specified in 9VAC25-32-356 Table 3.

b. Agricultural use of stabilized septage shall be in accordance with the same requirements as biosolids.

c. Infrequent application. If biosolids are applied to a field only once in a three-year period, biosolids may be applied such that the total crop needs for nitrogen is not exceeded during a one-year crop rotation period including the production and harvesting of two crops in succession within a consecutive 12-month growing season. The infrequent application rate may be restricted (i) down to 10% of the maximum cumulative loading rate (9VAC25-32-356 Table 3) for cadmium and lead or (ii) to account for all sources of nutrients applied to the site, including existing residuals.

d. Operations.

(1) Field management. The application rate of all application equipment shall be routinely measured as described in a biosolids management plan. Liquid biosolids shall not be applied at rates exceeding 14,000 gallons per acre, per application. Sufficient drying times shall be allowed between subsequent applications. Application vehicles shall be suitable for use on agricultural land. Pasture and hay fields shall be grazed or clipped to a height of approximately six inches prior to biosolids application. Biosolids shall be applied such that uniform application is achieved. If application methods do not result in a uniform distribution of biosolids, additional operational methods shall be employed following application such as dragging with a pasture harrow, followed by clipping if required, to achieve a uniform distribution of the applied biosolids.

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(2) Surface incorporation may be required on cropland by the department, or the local monitor with approval of the department, to mitigate malodors when incorporation is practicable and compatible with a soil conservation plan or contract meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

(3) Slopes above 15%. Biosolids shall not be applied to site slopes exceeding 15%. This restriction may be waived by the department for the establishment and maintenance of perennial vegetation or based on site specific criteria and BMPs in place in the field.

(4) Biosolids application timing and slope restrictions shall conform to criteria contained in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia.

(5) Snow. Biosolids may only be applied to snow-covered ground if the snow cover does not exceed one inch and the snow and biosolids are incorporated within 24 hours of application. If snow melts during biosolids application, incorporation is not necessary.

e. Setback distances.

(1) Setback distances. The land application of biosolids shall not occur within the following minimum setback distance requirements (Table 1 of this section):

Adjacent Feature	Minimum Setback Distance (Feet) to Land Application Area
Occupied dwelling	200 ^{1,2,3}
Odor sensitive receptors (without injection or same day incorporation)	400 ³
Odor sensitive receptors (with injection or same day incorporation)	200
Property lines	100 ^{2,4}
Property lines of publicly accessible sites ⁵	200
Water supply wells or springs	100
Public water supply reservoirs	400
All segments of streams and tributaries designated as a Public Water Supply under the Water Quality Standards	100

Surface waters without a vegetated buffer	100
Surface waters with a 35-foot vegetated buffer	35
Agricultural drainage ditches	10
All improved roadways	10
Rock outcrops	25
Open sinkholes	100
Limestone rock outcrops and closed sinkholes ⁶	50

¹The setback distance to occupied dwellings may be reduced or waived upon written consent of the occupant and landowner of the dwelling.

²The department shall grant to any landowner or resident in the vicinity of a biosolids land application site an extended setback of up to 200 feet from their property line and up to 400 feet from their occupied dwelling upon request from their physician based on medical reasons. In order for an extended setback request to be granted, the request must be submitted to the department in writing on a form provided by the department. A request must be received by the department no later than 48 hours before land application commences on the field affected by the extended setback, and communicated to the permittee no later than 24 hours before land application commences on the field affected by the extended setback. The department may extend a setback distance within 48 hours of land application if requested by the Virginia Department of Health in connection with the landowner or resident's physician.

³Setback distances may be extended beyond 400 feet where an evaluation by the Virginia Department of Health determines that a setback in excess of 400 feet is necessary to prevent specific and immediate injury to the health of an individual.

⁴The setback distance to property lines may be reduced or waived upon written consent of the landowner.

⁵Publicly accessible sites are open to the general public and routinely accommodate pedestrians and include, but are not limited to, schools, churches, hospitals, parks, nature trails, businesses open to the public, and sidewalks. Temporary structures, public roads or similar thoroughfares are not considered publicly accessible.

⁶A closed sinkhole does not have an open conduit to groundwater. The setback from a closed sinkhole may be reduced or waived by the department upon evaluation by a professional soil scientist.

(2) In cases where more than one setback distance is involved, the most restrictive distance governs.

(3) Waivers. Waivers from adjacent property residents and landowners may only be used to reduce setback distances from occupied dwellings and property lines.

(4) Extended setback distances. The department may increase setback requirements based on site specific features, such as agricultural drainage features and site slopes.

f. Voluntary extensions of setback distances. If a permit holder negotiates a voluntary agreement with a landowner or resident to extend setback distances or add other more restrictive criteria than required by this regulation, the permit holder shall document the agreement in writing and provide the agreement to the department. Voluntary

setback increases or other management criteria will not become an enforceable part of the land application permit unless the permit holder modifies the biosolids management plan to include the additional restriction.

g. Extension of setback distances with phosphorus index. If the application rate included in a nutrient management plan for a biosolids land application site is dependent upon an extended setback distance calculated using the phosphorus index, the phosphorus index calculations shall be included in the nutrient management plan. The extended setback distance shall be an enforceable part of the permit.

C. Forestland (Silviculture). Silvicultural use includes application of biosolids to timber and fiber production land, as well as federal and state forests. The forestland may be recently cleared and planted, young plantations (two-year-old to five-year-old trees), or established forest stands.

1. Biosolids standards. Refer to the standards of this article.
2. Site suitability.
 - a. Site suitability requirements shall conform to the requirements contained in subdivision B 2 of this section.
 - b. Notwithstanding the requirements of subdivision B 2 of this section the soil pH shall be managed at the natural soil pH for the types of trees proposed for growth.
 - c. Notwithstanding the requirements of subdivision B 2 of this section the soil test potassium level is not required to be at a minimum level at the time of biosolids application.
3. Management practices.
 - a. Application rates. Biosolids application rates shall be in accordance with the biosolids management plan. The biosolids management plan shall include information provided by the Virginia Department of Forestry.
 - b. Operations.
 - (1) Field management.
 - (a) High pressure spray shall not be utilized if public activity is occurring within 1,500 feet downwind of the application site. Public access to the site shall be controlled following application in accordance with Article 3 (9VAC25-32-490 et seq.) of this part.
 - (b) Biosolids application vehicles shall have adequate ground clearance to be suitable for silvicultural field use.
 - (c) Application scheduling included in the biosolids management plan shall take into account rainfall and periods of freezing conditions.
 - (d) Monitoring requirements shall be site specific and may include groundwater, surface water or soils, for frequent application sites.
 - (2) Setbacks. Setbacks shall conform to those for agricultural utilization. Refer to Table 1 of this section.

D. Reclamation of disturbed land.

1. Biosolids standards. Refer to the standards of this article.
2. Site suitability. Site suitability requirements shall conform to the requirements contained in subdivision B 2 of this section. Exceptions may be considered on a case-by-case basis.
3. Management practices.
 - a. Application rates. The biosolids application rates shall be established in the biosolids management plan in consultation with the Virginia Department of ~~Mines, Minerals and Energy~~, the Virginia Department of Conservation and Recreation, and the Department of Crop and Soil Environmental Sciences of the Virginia Polytechnic Institute and State University. The nutrient management plan shall be approved by the Department of Conservation and Recreation prior to permit issuance where land application is proposed at greater than agronomic rates.
 - b. Vegetation selection. The land shall be seeded with grass and legumes even when reforested. The biosolids management plan shall include information on the seeding mixture and a detailed seeding schedule.
 - c. Operations.
 - (1) The soil pH shall be maintained at 6.0 or above if the cadmium level in the biosolids applied is at or above 21 mg/kg. during the first year after the initial application. Soil samples should be analyzed by a qualified laboratory. The application rate shall be limited by the most restrictive cumulative trace element loading (9VAC25-32-356 Table 3).
 - (2) Surface material shall be turned or worked prior to the surface application of liquid biosolids.
 - (3) Unless the applied biosolids are determined to be Class A or have been documented as subjected to Class I treatment, crops intended for direct human consumption shall not be grown for a period of three years following the date of the last biosolids application. No animals whose products are intended for human consumption may graze the site or obtain feed from the site for a period of six months following the date of the last biosolids application.

VA.R. Doc. No. R22-6781; Filed August 29, 2021, 11:00 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.

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Title of Regulation: 9VAC25-91. Facility and Aboveground Storage Tank (AST) Regulation (amending 9VAC25-91-30).

Statutory Authority: §§ 62.1-44.15, 62.1-44.34:15, 62.1-44.34:15.1, and 62.1-44.34:19.1 of the Code of Virginia.

Effective Date: October 27, 2021.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4178, or email william.norris@deq.virginia.gov.

Summary:

Pursuant to Chapters 387 and 532 of the 2021 Acts of Assembly, Special Session I, the amendments change the name of the Department of Mines, Minerals and Energy to the Department of Energy and correct a citation to the Code of Virginia.

9VAC25-91-30. Exclusions.

A. The requirements of this chapter do not apply to:

1. Vessels;
2. Licensed motor vehicles, unless used solely for the storage of oil (e.g., airport refueling trucks and mobile refueling vehicles);
3. An AST with a storage capacity of 660 gallons or less of oil;
4. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60°F at 14.7 pounds per square inch absolute) subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC § 9601 et seq.);
5. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the federal Clean Water Act (33 USC § 1251 et seq.);
6. An AST that is regulated by the Department of ~~Mines, Minerals and Energy~~ under Chapter ~~22.1 (§ 45.1-361.1 et seq.)~~ 16 (§ 45.2-1600 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia;
7. An AST used for the storage of products that are regulated pursuant to the federal Food, Drug, and Cosmetic Act (21 USC § 301 et seq.);
8. An AST that is used to store hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Solid Waste Disposal Act) (42 USC § 6901 et seq.), or a mixture of such hazardous wastes and other regulated substances;

9. An AST that is used to store propane gas, butane gas or other liquid petroleum gases;

10. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;

11. A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations;

12. A surface impoundment, pit, pond, or lagoon;

13. A stormwater or wastewater collection system;

14. Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems;

15. An AST that forms an integral part (cannot be readily detached or removed) of the equipment or machinery and the contents of the AST are solely used by the attached equipment or machinery (e.g., fuel tank affixed into the frame of an emergency generator);

16. An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and cleanup of oil; (ii) used by a federal, state or local entity in responding to an emergency, including response related drills; or (iii) used temporarily on-site to replace permanent capacity storage;

17. Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers or capacitors;

18. A flow-through process tank;

19. Oily water separators;

20. An AST containing dredge spoils;

21. An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with a storage capacity of 1,100 gallons or less; or

22. Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment.

B. In addition to the exclusions listed in subsection A of this section, the following are excluded from the requirements contained in Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter:

1. An AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored;

2. An AST storing asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute); and

3. Line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 et seq.).

C. Asphalt and asphalt compounds that are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute) are excluded from any requirement to install groundwater monitoring wells or groundwater protection devices or to conduct groundwater characterization studies under Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) and Part V (9VAC25-91-180 et seq., Groundwater Characterization Study (GCS) and GCS Well Monitoring Requirements) of this chapter.

V.A.R. Doc. No. R22-6782; Filed August 29, 2021, 11:06 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.

Title of Regulation: 9VAC25-220. Surface Water Management Area Regulation (amending 9VAC25-220-70).

Statutory Authority: § 62.1-249 of the Code of Virginia.

Effective Date: October 27, 2021.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4178, or email william.norris@deq.virginia.gov.

Summary:

Pursuant to Chapters 387 and 532 of the 2021 Acts of Assembly, Special Session I, the amendments change the name of the Department of Mines, Minerals and Energy to the Department of Energy.

9VAC25-220-70. Application for a permit.

A. Duty to apply. Any person who withdraws surface water or proposes to withdraw surface water in a surface water management area must have a surface water withdrawal permit, except persons excluded under subsection B of this section or exempted under subsection C of this section, or withdrawals made pursuant to a voluntary agreement approved by the board pursuant to 9VAC25-220-60. A complete application shall be submitted to the board in accordance with this section.

B. Exclusions. The following do not require a surface water withdrawal permit but may require other permits under state and federal law:

1. Any nonconsumptive use;

2. Any water withdrawal of less than 300,000 gallons in any single month;

3. Any water withdrawal from a farm pond collecting diffuse surface water and not situated on a perennial stream as defined in the United States Geological Survey 7.5-minute series topographic maps;

4. Any withdrawal in any area which has not been declared a surface water management area; and

5. Any withdrawal from a wastewater treatment system permitted by the State Water Control Board or the Department of ~~Mines, Minerals and~~ Energy.

C. Exemptions. The following do not require a surface water withdrawal permit but may require other permits under state and federal law. However, the following do require a surface water withdrawal certificate containing details of a board approved water conservation or management plan as found in subdivision 2 of 9VAC25-220-100 and Part V (9VAC25-220-250 et seq.) of this chapter. It is not the intent or purpose of this certification program to affect the withdrawal of water approved by the board.

1. No political subdivision or investor-owned water company permitted by the Department of Health shall be required to obtain a surface water withdrawal permit for:

- a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989.

- b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received, by that date, a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawal; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

- c. Any withdrawal in existence on July 1, 1989, from an instream impoundment of water used for public water supply purposes; however, during periods when permit conditions in a water management area are in force pursuant to subsection G of 9VAC25-220-80 and 9VAC25-220-190, and when the rate of flow of natural surface water into the impoundment is equal to or less than the average flow of natural surface water at that location, the board may require release of water from the impoundment at a rate not exceeding the existing rate of flow of natural surface water into the impoundment. Withdrawals by a political subdivision or investor-owned water company permitted by the Department of Health shall be affected by this subdivision only at the option of

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that political subdivision or investor-owned water company.

2. No existing beneficial consumptive user shall be required to obtain a surface water withdrawal permit for:

a. Any withdrawal in existence on July 1, 1989; however, a permit shall be required in a declared surface water management area before the daily rate of any such existing withdrawal is increased beyond the maximum daily withdrawal made before July 1, 1989; and

b. Any withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal has received, by that date, a § 401 certification from the State Water Control Board pursuant to the requirements of the Clean Water Act to install any necessary withdrawal structures and make such withdrawals; however, a permit shall be required in any surface water management area before any such withdrawal is increased beyond the amount authorized by the said certification.

D. Duty to reapply.

1. Any permittee with an effective permit shall submit a new permit application at least 180 days before the expiration date of an effective permit unless permission for a later date has been granted by the board.

2. Owners or persons who have effective permits shall submit a new application 180 days prior to any proposed modification to their activity which will:

a. Result in a significantly new or substantially increased water withdrawal; or

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

E. Complete application required.

1. Any person proposing to withdraw water shall submit a complete application and secure a permit prior to the date planned for commencement of the activity resulting in the withdrawal. There shall be no water withdrawal prior to the issuance of a permit.

2. Any person reapplying to withdraw water shall submit a complete application.

3. A complete surface water withdrawal permit application to the State Water Control Board shall, as a minimum, consist of the following:

a. The location of the water withdrawal, including the name of the waterbody from which the withdrawal is being made;

b. The average daily withdrawal, the maximum proposed withdrawal, and any variations of the withdrawal by season including amounts and times of the day or year during which withdrawals may occur;

c. The use for the withdrawal, including the importance of the need for this use;

d. Any alternative water supplies or water storage; and

e. If it is determined that special studies are needed to develop a proper instream flow requirement, then additional information may be necessary.

4. Where an application is considered incomplete, the board may require the submission of additional information after an application has been filed and may suspend processing of any application until such time as the applicant has supplied missing or deficient information and the board considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a permit application, or submitted incorrect information in a permit application or in any report to the board, he shall immediately submit such facts or the correct information.

5. Any person proposing to withdraw water shall submit an application for a permit 180 days prior to the date planned for commencement of the activity resulting in the withdrawal. There shall be no water withdrawal prior to the issuance of a permit.

6. Any person with an existing unpermitted water withdrawal operation shall submit an application immediately upon discovery by the owner or within 30 days upon being requested to by the board whichever comes first.

F. Informational requirements. All applicants for a surface water withdrawal permit shall provide all such information consistent with this chapter as the board deems necessary. All applicants for a permit must submit a complete permit application in accordance with subsection A of this section.

VA.R. Doc. No. R22-6783; Filed August 29, 2021, 11:12 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.

Title of Regulation: **9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-50, 9VAC25-610-380).**

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

Effective Date: October 27, 2021.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4178, or email william.norris@deq.virginia.gov.

Summary:

Pursuant to Chapters 387 and 532 of the 2021 Acts of Assembly, Special Session I, the amendments change the name of the Department of Mines, Minerals and Energy to the Department of Energy.

9VAC25-610-50. Exclusions.

The following do not require a groundwater withdrawal permit:

1. Withdrawals of less than 300,000 gallons per month;
2. Withdrawals associated with temporary construction dewatering that do not exceed 24 months in duration;
3. Withdrawals associated with a state-approved groundwater remediation that do not exceed 60 months in duration;
4. Withdrawals for use by a groundwater source heat pump where the discharge is reinjected into the aquifer from which it was withdrawn;
5. Withdrawals from ponds recharged by groundwater without mechanical assistance;
6. Withdrawals for the purpose of conducting geophysical investigations, including pump tests;
7. Withdrawals coincident with exploration for and extraction of coal or activities associated with coal mining regulated by the Department of ~~Mines, Minerals and Energy~~;
8. Withdrawals coincident with the exploration for or production of oil, gas or other minerals other than coal, unless such withdrawal adversely impacts aquifer quantity or quality or other groundwater users within a groundwater management area;
9. Withdrawals in any area not declared to be a groundwater management area;
10. Withdrawal of groundwater authorized pursuant to a special exception issued by the board; and
11. Withdrawal of groundwater discharged from free flowing springs where the natural flow of the spring has not been increased by any method.

9VAC25-610-380. Statewide information requirements.

The board may require any person withdrawing groundwater for any purpose anywhere in the Commonwealth, whether or not declared to be a groundwater management area, to furnish to the board such information that may be necessary to carry out the provisions of the Ground Water Management Act of 1992. Groundwater withdrawals that occur in conjunction with activities related to the exploration and production of oil, gas, coal, or other minerals regulated by the Department of ~~Mines, Minerals and Energy~~ are exempt from any information reporting requirements.

V.A.R. Doc. No. R22-6786; Filed August 29, 2021, 11:18 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.

Title of Regulation: **9VAC25-640. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (amending 9VAC25-640-30).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.34:16 of the Code of Virginia.

Effective Date: October 27, 2021.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4178, or email william.norris@deq.virginia.gov.

Summary:

Pursuant to Chapters 387 and 532 of the 2021 Acts of Assembly, Special Session I, the amendments change the name of the Department of Mines, Minerals and Energy to the Department of Energy and update Code of Virginia citations.

9VAC25-640-30. Exclusions.

The requirements of this chapter do not apply to:

1. Vessels;
2. Licensed motor vehicles, unless used solely for the storage of oil (e.g., airport refueling trucks and mobile refueling vehicles);
3. An AST with a storage capacity of 660 gallons or less of oil, except with regard to purposes of the requirements of 9VAC25-640-220;
4. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60°F at 14.7 pounds per square inch absolute) subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC § 9601 et seq.);
5. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under § 402 or § 307(b) of the federal Clean Water Act (33 USC § 1251 et seq.);

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6. An AST that is regulated by the Department of ~~Mines, Minerals and Energy~~ under Chapter ~~22.1~~ (§ ~~45.1-361.1 et seq.~~) ~~16~~ (§ ~~45.2-1600 et seq.~~) of Title ~~45.1~~ ~~45.2~~ of the Code of Virginia;
7. An AST used for the storage of products that are regulated pursuant to the federal Food, Drug and Cosmetic Act (21 USC § 301 et seq.), except with regard to purposes of the requirements of 9VAC25-640-220;
8. An AST that is used to store hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Solid Waste Disposal Act) (42 USC § 6901 et seq.);
9. An AST that is used to store propane gas, butane gas, or other liquid petroleum gases;
10. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;
11. A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations;
12. A surface impoundment, pit, pond, or lagoon;
13. A stormwater or wastewater collection system;
14. Equipment or machinery that contains oil for operational purposes, including lubricating systems, hydraulic systems, and heat transfer systems;
15. An AST that forms an integral part (cannot be readily detached or removed) of the equipment or machinery and the contents of the AST are solely used by the attached equipment or machinery (e.g., fuel tank affixed into the frame of an emergency generator);
16. An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and clean up of oil; (ii) used by a federal, state, or local entity in responding to an emergency; or (iii) used temporarily on site to replace permanent storage capacity, except with regard to purposes of the requirements of 9VAC25-640-220;
17. Oil-filled electrical equipment, including transformers, circuit breakers, or capacitors;
18. A flow-through process tank;
19. Oily water separators;
20. An AST containing dredge spoils;
21. An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with an aggregated storage capacity of 1,100 gallons or less, except with regard to purposes of the requirements of 9VAC25-640-220;
22. Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment;

23. An AST storing asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute);
24. Underground storage tanks regulated under a state program;
25. An AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored, except with regard to purposes of the requirements of 9VAC25-640-220.

VA.R. Doc. No. R22-6787; Filed August 29, 2021, 11:22 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.

Title of Regulation: **9VAC25-690. Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (amending 9VAC25-690-20, 9VAC25-690-30, 9VAC25-690-100).**

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

Effective Date: October 27, 2021.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4178, or email william.norris@deq.virginia.gov.

Summary:

Pursuant to Chapters 387 and 532 of the 2021 Acts of Assembly, Special Session I, the amendments change the name of the Department of Mines, Minerals and Energy to the Department of Energy and update Code of Virginia citations.

9VAC25-690-20. Purpose; delegation of authority.

A. The purpose of this chapter is to establish VWP General Permit Number WP4 under 9VAC25-210 to govern permanent and temporary impacts related to the construction and maintenance of development activities and to 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~~. Applications for coverage under this VWP general permit shall be processed for approval, approval with conditions, or denial by the board. Coverage,

coverage with conditions, or application denial by the board shall constitute the VWP general permit action and shall follow all provisions in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each VWP general permit action is exempt.

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

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.
 - 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.

Regulations

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.)~~ 10 (§ 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 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.

9VAC25-690-100. 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.

Regulations

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 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.

Regulations

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 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.

Regulations

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 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.

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(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 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

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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 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.

V.A.R. Doc. No. R22-6789; Filed August 29, 2021, 11:30 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.

Title of Regulation: 9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-10).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 303 of the federal Clean Water Act.

Effective Date: October 27, 2021.

Agency Contact: William K. Norris, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4178, or email william.norris@deq.virginia.gov.

Summary:

Pursuant to Chapters 387 and 532 of the 2021 Acts of Assembly, Special Session I, the amendments change the name of the Department of Mines, Minerals and Energy to the Department of Energy.

9VAC25-720-10. Definitions.

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

"Assimilative capacity" means the greatest amount of loading that a water can receive without violating water quality standards, significantly degrading waters of existing high quality, or interfering with the beneficial use of state waters.

"Best management practices (BMP)" means a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMPs include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

"Best practicable control technology currently available (BPT)" means control measures required of point source discharges (other than POTWs) as determined by the EPA

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pursuant to § 304(b)(1) of the CWA (33 USC § 1251 et seq.) as of 1987.

"Board" means the State Water Control Board (SWCB).

"Chesapeake Bay Watershed" means the following Virginia river basins: Potomac River Basin (9VAC25-260-390 and 9VAC25-260-400), James River Basin (9VAC25-260-410, 9VAC25-260-415, 9VAC25-260-420, and 9VAC25-260-430), Rappahannock River Basin (9VAC25-260-440), Chesapeake Bay and small coastal basins (9VAC25-260-520, Sections 2 through 3g), and the York River Basin (9VAC25-260-530).

"Clean Water Act or Act (CWA)" means 33 USC § 1251 et seq. as amended, as of 1987.

"Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus delivered to tidal waters for every pound discharged from a permitted facility, as determined by the specific geographic location of the permitted facility, to account for attenuation that occurs during riverine transport between the permitted facility and tidal waters. Delivery factors shall be calculated using the Chesapeake Bay Program watershed model.

"Discharge" means when used without qualification, a discharge of a pollutant or any addition of any pollutant or combination of pollutants to state waters or waters of the contiguous zone or ocean or other floating craft when being used for transportation.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates or concentrations of pollutants that are discharged from point sources into state waters.

"Effluent limitation guidelines" means a regulation published by EPA under the Act and adopted by the board.

"Effluent limited segment (EL)" means a stream segment where the water quality does and probably will continue to meet state water quality standards after the application of technology-based effluent limitations required by §§ 301(b) and 306 of the CWA (33 USC § 1251 et seq.) as of 1987.

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of total phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total nitrogen and 760 pounds per year of total phosphorus at a flow volume of 100,000 gallons per day; and 28,500 pounds per year of total nitrogen and 3,800 pounds per year of total phosphorus at a flow volume of 500,000 gallons per day.

"Load or loading" means the introduction of an amount of matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (background loading).

"Load allocation (LA)" means the portion of a receiving water's loading capacity attributable either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which may range from accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

"Nonpoint source" means a source of pollution, such as a farm or forest land runoff, urban storm water runoff, mine runoff, or salt water intrusion that is not collected or discharged as a point source.

"Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural land.

"Pollutant" means any substance, radioactive material, or heat that causes or contributes to, or may cause or contribute to, pollution. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil, dry gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by the Department of ~~Mines, Minerals and Energy~~ unless the board determines that such injection or disposal will result in the degradation of ground or surface water resources.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that: (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner, which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this water quality management plan.

"Publicly owned treatment works (POTW)" means any sewage treatment works that is owned by a state or

municipality. Sewers, pipes, or other conveyances are included in this definition only if they convey wastewater to a POTW providing treatment.

"Significant discharger" means (i) a point source discharger to the Chesapeake Bay watershed with a design capacity of 0.5 million gallons per day or greater, or an equivalent load; (ii) a point source discharger to the Chesapeake Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or greater, or an equivalent load; (iii) a planned or newly expanding point source discharger to the Chesapeake Bay watershed that is expected to be in operation by 2010 with a permitted design of 0.5 million gallons per day or greater, or an equivalent load; or (iv) a planned or newly expanding point source discharger to the Chesapeake Bay watershed downstream of the fall line with a design capacity of 0.1 million gallons per day or greater, or an equivalent load, that is expected to be in operation by 2010.

"State waters" means all waters, on the surface and under the ground and wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Surface water" means all waters in the Commonwealth except ground waters as defined in § 62.1-255 of the Code of Virginia.

"Total maximum daily load (TMDL)" means the sum of the individual waste load allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural background loading and usually a safety factor. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"Toxic pollutant" means any agent or material including, but not limited to, those listed under § 307(a) of the CWA (33 USC § 1251 et seq. as of 1987), which after discharge will, on the basis of available information, cause toxicity.

"Toxicity" means the inherent potential or capacity of a material to cause adverse effects in a living organism, including acute or chronic effects to aquatic life, detrimental effects on human health or other adverse environmental effects.

"Virginia Pollution Discharge Elimination System (VPDES) permit" means a document issued by the board, pursuant to 9VAC25-31, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

"Waste load allocation (WLA)" means the portion of a receiving water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality limited segment (WQL)" means any stream segment where the water quality does not or will not meet applicable water quality standards, even after the application

of technology-based effluent limitations required by §§ 301(b) and 306 of the CWA (33 USC § 1251 et seq. as of 1987).

"Water quality management plan (WQMP)" means a state- or area-wide waste treatment management plan developed and updated in accordance with the provisions of §§ 205(j), 208 and 303 of the CWA (33 USC § 1251 et seq. as of 1987).

"Water quality standards (WQS)" means narrative statements that describe water quality requirements in general terms, and of numeric limits for specific physical, chemical, biological or radiological characteristics of water. These narrative statements and numeric limits describe water quality necessary to meet and maintain reasonable and beneficial uses such as swimming and, other water based recreation, public water supply and the propagation and growth of aquatic life. The adoption of water quality standards under the State Water Control Law is one of the board's methods of accomplishing the law's purpose.

V.A.R. Doc. No. R22-6790; Filed August 29, 2021, 11:36 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 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: 9VAC25-720. **Water Quality Management Planning Regulation (amending 9VAC25-720-60, 9VAC25-720-120).**

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

Effective Date: October 27, 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:

Chapters 363 and 364 of the 2021 Acts of Assembly, Special Session I, revise the Virginia Pollutant Discharge Elimination System permits to implement the Phase III Watershed Implementation Plan Enhanced Nutrient Removal Certainty Program. As part of that program, specific nutrient wasteload allocation reductions require the amendments, which (i) reduce nitrogen and phosphorus wasteload allocations for six Hampton Roads Sanitation District (HRSD) facilities in the James River basin according to staggered effective dates and the total nitrogen and phosphorus wasteload allocations for the James River

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basin accordingly; (ii) transfer the wasteload allocation for one HRSD facility in the James Basin to the Nutrient Offset Fund; (iii) transfer the nitrogen and phosphorus wasteload allocations for one former industry to HRSD to reflect a previous trade addressed in the legislation; and (iv) reduce the nitrogen wasteload allocation for one HRSD facility in the York River basin and adjust the total nitrogen wasteload allocation for the York River basin accordingly.

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
I09R	Covington STP	VA0025542	54,820	4,568
H02R	Georgia Pacific	VA0003026	122,489	49,658
I37R	Lees Carpets	VA0004677	30,456	12,182
I35R	Lexington-Rockbridge WQCF	VA0088161	54,820	4,568
I09R	Low Moor STP	VA0027979	9,137	761
I09R	Lower Jackson River STP	VA0090671	63,957	5,330
I04R	MeadWestvaco	VA0003646	394,400	159,892
H12R	Amherst STP	VA0031321	10,964	914
H05R	BWX Technologies Inc.	VA0003697	187,000	1,523
H05R	Greif Inc.	VA0006408	73,246	29,694
H31R	Lake Monticello STP	VA0024945	18,182	1,515
H05R	Lynchburg STP ¹	VA0024970	536,019	33,501
H28R	Moores Creek Regional STP	VA0025518	274,100	22,842
H38R	Powhatan CC STP	VA0020699	8,588	716
J11R	Crewe WWTP	VA0020303	9,137	761
J01R	Farmville WWTP	VA0083135	43,856	3,655
G02E	The Sustainability Park, LLC	VA0002780	25,583	1,919
G01E	E I du Pont - Spruance	VA0004669	201,080	7,816
G01E	Falling Creek WWTP	VA0024996	153,801	15,380
G01E	Henrico County WWTP	VA0063690	1,142,085	114,209
G03E	Honeywell – Hopewell	VA0005291	1,090,798	51,592
G03R	Hopewell WWTP	VA0066630	1,827,336	76,139
G15E	HRSD – Boat Harbor STP	VA0081256	740,000 <u>304,593³</u>	76,139 <u>38,074³</u> <u>30,459⁴</u> <u>22,844⁵</u>

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G11E	HRSD – James River STP	VA0081272	1,250,000 <u>243,674³</u>	60,911 <u>30,459³</u> <u>24,367⁴</u> <u>18,276⁵</u>
G10E	HRSD – Williamsburg STP	VA0081302	800,000 <u>274,133³</u>	68,525 <u>34,267³</u> <u>27,413⁴</u> <u>20,560⁵</u>
G02E	Philip Morris – Park 500	VA0026557	139,724	2,650
G01E	Proctors Creek WWTP	VA0060194	411,151	41,115
G01E	Richmond WWTP ¹	VA0063177	1,096,402	68,525
G02E	Dominion-Chesterfield ²	VA0004146	272,036	210
J15R	South Central WW Authority	VA0025437	350,239	35,024
G07R	Chickahominy WWTP	VA0088480	6,167	123
G05R	Tyson Foods – Glen Allen	VA0004031	19,552	409
G11E	HRSD – Nansemond STP	VA0081299	750,000 <u>365,511³</u>	91,367 <u>45,689³</u> <u>36,551⁴</u> <u>27,413⁵</u> <u>27,413⁵</u>
G15E	HRSD – Army Base STP	VA0081230	610,000 <u>219,307³</u>	54,820 <u>27,413³</u> <u>21,931⁴</u> <u>16,448⁵</u>
G15E	HRSD – VIP WWTP	VA0081281	750,000 <u>487,348³</u>	121,822 <u>60,919³</u> <u>48,735⁴</u> <u>36,551⁵</u>
G15E	HRSD – JH Miles & Company	VA0003263	153,500	21,500 <u>17,437</u>
C07E	HRSD – Ches.-Elizabeth STP	VA0081264	1,100,000 <u>454,596^{6, 7}</u>	408,674 <u>41,450⁷</u>
G01E	Tranlin/Vastly		80,000	
	TOTALS		14,901,739 <u>14,256,335⁶</u> <u>11,250,901³</u>	1,354,375 <u>1,283,088</u> <u>1,046,325³</u> <u>998,960⁴</u> <u>951,596⁵</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.

²Wasteload 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.

³Effective January 1, 2026.

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⁴Effective January 1, 2030.

⁵Effective January 1, 2032.

⁶Effective January 1, 2022.

⁷Effective January 1, 2026, the HRSD – Chesapeake-Elizabeth STP wasteload allocations for total nitrogen and total phosphorus are transferred to the Nutrient Offset Fund.

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	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	VA0029521	47,328	10,233
F27E	Plains Marketing L.P. - Yorktown	VA0003018	167,128	17,689
F27E	HRSD - York River STP	VA0081311	275,927 <u>228,444¹</u>	18,395
F14R	Parham Landing WWTP	VA0088331	36,547	2,436
F14E	RockTenn CP LLC - West Point	VA0003115	259,177	56,038
F12E	Totopotomoy WWTP	VA0089915	182,734	12,182
F25E	HRSD - West Point STP	VA0075434	10,964	731
	TOTALS:		1,060,939 <u>1,013,456¹</u>	123,112

Notes:

¹Effective January 1, 2026.

VA.R. Doc. No. R22-6773; Filed August 28, 2021, 4:02 p.m.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: Pursuant to subdivision (6a) of § 40.1-22 of the Code of Virginia, the Safety and Health Codes Board may adopt an emergency temporary standard to take immediate effect upon publication in a newspaper of general circulation, published in the City of Richmond, Virginia, if the board determines that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and that such emergency standard is necessary to protect employees from such danger. Such emergency standard was published [36:26 VA.R. 2770-2789 August 17, 2020](#). The newspaper publication constituted notice that the board intends to adopt such standard within a period of six months. The board by similar publication shall prior to the expiration of six months give notice of the time and date of, and conduct a hearing on, the adoption of a permanent standard. This permanent standard supersedes the emergency standard.

Title of Regulation: 16VAC25-220. Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19 (amending 16VAC25-220-10 through 16VAC25-220-90).

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

Effective Date: September 8, 2021.

Agency contact information: Princy Doss, Director of Policy, Planning, and Public Information, Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, or email princy.doss@doli.virginia.gov.

Summary:

The amendments change the primary focus of the regulation from risk exposure level to mitigation strategies directed at protecting employees who are unvaccinated, not fully vaccinated, or are otherwise at risk from the grave danger presented by the SARS-CoV-2 virus, its variants, and COVID-19 disease and include (i) incorporating by reference two Centers for Disease Control and Prevention (CDC) documents; (ii) removing exposure risk levels and public or private institutions of higher education reopening plans; (iii) revising effective dates; (iv) adding and revising definitions; (v) revising CDC procedures for cleaning or disinfecting surfaces; (vi) making the requirement for employers to notify the Virginia Department of Labor and Industry of cases within a 14-day period consistent with a requirement to report such cases to the Virginia Department of Health; (vi) adding requirements for health care services or health care support services; and (vii) adding requirements for higher-risk workplaces.

16VAC25-220-10. Purpose, scope, and applicability.

A. This ~~standard~~ chapter is designed to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19) to and among employees and employers.

B. This ~~standard~~ chapter is adopted in accordance with subdivision ~~6-a (6a)~~ of § 40.1-22 of the Code of Virginia and shall apply to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program as described in 16VAC25-60-20 and 16VAC25-60-30.

1. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502, et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board and take effect, application of this chapter, except for 16VAC25-220-40 B 7 d and B 7 e and 16VAC25-220-90, to such covered employers and employees subject to the chapter shall be suspended while the federal COVID-19 Emergency Temporary Standard remains in effect.

2. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502 et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed or invalidated by a state or federal court, the provisions of this chapter, including 16VAC25-220-50, shall immediately apply to such employers and employees in its place with no further action of the board required.

3. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502 et seq., applicable to all settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed by federal OSHA, or otherwise revoked, repealed, declared unenforceable, or permitted to expire, the provisions of this chapter, including 16VAC25-220-50, shall immediately apply to such employers and employees in its place with no further action of the board required. In addition, the Virginia Safety and Health Codes Board shall within 30 days, notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for this chapter or whether it should be maintained, modified, or revoked.

C. This ~~standard~~ chapter is designed to supplement and enhance existing VOSH laws, rules, regulations, and standards applicable directly or indirectly to SARS-CoV-2 virus or COVID-19 disease-related hazards such as, but not limited to, those dealing with personal protective equipment, respiratory protective equipment, sanitation, access to employee exposure and medical records, occupational exposure to hazardous

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chemicals in laboratories, hazard communication, § 40.1-51.1-A § 40.1-51.1 A of the Code of Virginia, etc. Should this standard conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply. Notwithstanding anything to the contrary in this standard, no enforcement action shall be brought against an employer or institution for failure to provide PPE required by this standard if such PPE is not readily available on commercially reasonable terms and the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms. The Department of Labor and Industry shall consult with the Virginia Department of Health as to the ready availability of PPE on commercially reasonable terms and, in the event there are limited supplies of PPE, whether such supplies are being allocated to ~~high risk or very high risk~~ the appropriate workplaces.

~~D. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus related and COVID-19 disease related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).~~

~~1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard. It is further recognized that various required job tasks prohibit an employee from being able to observe physical distancing from other persons.~~

~~2. Factors that shall be considered in determining exposure risk level include, but are not limited to:~~

~~a. The job tasks being undertaken, the work environment (e.g., indoors or outdoors), the known or suspected presence of the SARS-CoV-2 virus, the presence of a person known or suspected to be infected with the SARS-CoV-2 virus, the number of employees and other persons in relation to the size of the work area, the working distance between employees and other employees or persons, and the duration and frequency of employee exposure through contact inside of six feet with other employees or persons (e.g., including shift work exceeding eight hours per day); and~~

~~b. The type of hazards encountered, including exposure to respiratory droplets and potential exposure to the airborne transmission of SARS-CoV-2 virus; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances and exits to the facility; shared work vehicles; and industries or places of employment where employer sponsored shared transportation is a common practice,~~

~~such as ride share vans or shuttle vehicles, car pools, and public transportation, etc. Reserved.~~

E. To the extent that an employer actually complies with a recommendation contained in current CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard chapter, the employer's actions shall be considered in compliance with this standard chapter. An employer's actual compliance with a recommendation contained in current CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard chapter shall be considered evidence of good faith in any enforcement proceeding related to this standard chapter. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with current CDC guidelines.

~~F. A public or private institution of higher education that has received certification from the State Council of Higher Education for Virginia that the institution's reopening plans are in compliance with guidance documents, whether mandatory or non-mandatory, developed by the Governor's Office in conjunction with the Virginia Department of Health shall be considered in compliance with this standard, provided the institution operates in compliance with its certified reopening plans and the certified reopening plans provide equivalent or greater levels of employee protection than this standard.~~

~~G. A public school division or private school that submits its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and that operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard. An institution's actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.~~

~~H. F. Nothing in the standard chapter shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.~~

16VAC25-220-20. Effective dates.

A. Adoption process.

1. This ~~standard chapter~~ shall take effect upon review by the Governor, and if no revisions are requested, filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

2. If the Governor's review results in one or more requested revisions to the ~~standard chapter~~, the Safety and Health Codes Board shall reconvene to approve, amend, or reject the requested revisions.

3. If the Safety and Health Codes Board approves the requested revisions to the ~~standard chapter~~ as submitted, the ~~standard chapter~~ shall take effect upon filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

4. Should the Governor fail to review the ~~standard chapter~~ under subdivision A 1 of this section within 30 days of its approval by the Safety and Health Codes Board, the board will not need to reconvene to take further action, and the ~~standard chapter~~ shall take effect upon filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

5. ~~The Governor reviewed the standard under subdivision A 1 of this section, and the effective date is January 27, 2021.~~

~~B. The requirements for 16VAC25-220-70 shall take effect on March 26, 2021. The training requirements in 16VAC25-220-80 shall take effect on March 26, 2021.~~

~~C. Within 14 days of the expiration of the Governor's COVID-19 State of Emergency and Commissioner of Health's COVID-19 Declaration of Public Emergency, the Safety and Health Codes Board shall notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for the standard.~~

B. The Governor reviewed this chapter under subdivision A 1 of this section, and the requirements of this chapter shall take effect on September 8, 2021, except where otherwise noted.

C. The requirements for 16VAC25-220-70 shall take effect on October 8, 2021.

D. The training requirements in 16VAC25-220-80 shall take effect on November 7, 2021.

16VAC25-220-30. Definitions.

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

"Administrative control" means any procedure that significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.

"Aerosol-generating procedure" means a medical procedure that generates aerosols that can be infectious and are of respirable size. Only the following medical procedures are considered aerosol-generating procedures: open suctioning of airways; sputum induction; cardiopulmonary resuscitation; endotracheal intubation and extubation; non-invasive ventilation (e.g., BiPAP, CPAP); bronchoscopy; manual ventilation; medical/surgical/postmortem procedures using oscillating bone saws; and dental procedures involving: ultrasonic scalers; high-speed dental handpieces; air/water syringes; air polishing; and air abrasion.

"Airborne infection isolation room" or "AIIR," formerly a negative pressure isolation room, means a single occupancy patient care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIIRs provide (i) negative pressure in the room so that air flows under the door gap into the room, (ii) an air flow rate of six to 12 air changes per hour (ACH) (six ACH for existing structures, 12 ACH for new construction or renovation), and (iii) direct exhaust of air from the room to the outside of the building or recirculation of air through a high efficiency particulate air (HEPA) filter before returning to circulation means a dedicated negative pressure patient-care room, with special air handling capability, that is used to isolate persons with a suspected or confirmed airborne-transmissible infectious disease. AIIRs include both permanent rooms and temporary structures (e.g., a booth, tent, or other enclosure designed to operate under negative pressure).

"Ambulatory care" means health care services performed on an outpatient basis, without admission to a hospital or other facility. It is provided in settings such as offices of physicians and other health care professionals; hospital outpatient departments; ambulatory surgical centers; specialty clinics or centers (e.g., dialysis, infusion, medical imaging); and urgent care clinics. Ambulatory care does not include home health care settings.

"ASTM" means American Society for Testing and Materials.

"Asymptomatic" means a person who does not have symptoms.

"Building or facility owner" means the legal entity, including a lessee, that exercises control over management and

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recordkeeping functions relating to a building or facility in which activities covered by this standard chapter take place.

"CDC" means Centers for Disease Control and Prevention.

"Cleaning" means the removal of dirt and impurities, including germs, from surfaces ~~Cleaning alone does not kill germs. But by removing the germs, cleaning decreases their number and therefore the risk of spreading infection using soap and water or other cleaning agents.~~ Cleaning alone reduces germs on surfaces by removing contaminants and may also weaken or damage some of the virus particles, which decreases risk of infection from surfaces.

"Community transmission," also called "community spread," means people have been infected with SARS-CoV-2 in an area, including some who are not sure how or where they became infected.

The level of community transmission is classified by the CDC as:

- ~~1. "No to minimal" where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings;~~
- ~~2. "Moderate" where there is sustained community transmission with high likelihood or confirmed exposure within communal settings and potential for rapid increase in cases;~~
- ~~3. "Substantial, controlled" where there is large scale, controlled community transmission, including communal settings (e.g., schools, workplaces, etc.); or~~
- ~~4. "Substantial, uncontrolled" where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).~~

The level of community transmission may be obtained from the VDH website and is assessed using, at a minimum, two metrics: (i) new COVID-19 cases per 100,000 persons in the last seven days and (ii) the percentage of positive SARS-CoV-2 diagnostic nucleic acid amplification tests in the last seven days. For each of these metrics, CDC classifies transmission values as low, moderate, substantial, or high. If the values for each of these two metrics differ (e.g., one indicates moderate and the other low), then the higher of the two should be used for decision-making.

CDC core indicators of and thresholds for community transmission levels of SARS-CoV-2:

<u>Indicator Level</u>	<u>Low</u>	<u>Moderate</u>	<u>Substantial</u>	<u>High</u>
<u>New COVID-19 cases per 100,000 persons in the last 7 days</u>	<u>0-9.99</u>	<u>10.00-49.99</u>	<u>50.00-99.99</u>	<u>≥100.00</u>

<u>Percentage of positive SARS-CoV-2 diagnostic nucleic acid amplification tests in the last 7 days</u>	<u><5.00</u>	<u><5.00</u>	<u>8.00-9.99</u>	<u>≥10.00</u>

"Confirmed COVID-19" means a person, whether symptomatic or asymptomatic, who has tested positive for SARS-CoV-2, and the employer knew or with reasonable diligence should have known that the person has tested positive for SARS-CoV-2.

"COVID-19" means Coronavirus Disease 2019, which is primarily a respiratory disease, caused by the SARS-CoV-2 virus.

"COVID-19 positive and confirmed COVID-19" refer to a person who has a confirmed positive test for, or who has been diagnosed by a licensed health care provider with, COVID-19.

"COVID-19 test" means a test for SARS-CoV-2 that is:

1. Cleared or approved by the U.S. Food and Drug Administration (FDA) or is authorized by an emergency use authorization (EUA) from the FDA to diagnose current infection with the SARS-CoV-2 virus; and
2. Administered in accordance with the FDA clearance or approval or the FDA EUA as applicable.

"Disinfecting" means using chemicals approved for use against SARS-CoV-2 virus, for example EPA-registered disinfectants, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2 virus, to kill germs on surfaces. The process of disinfecting does not necessarily clean dirty surfaces or remove germs, but killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

"Duration and frequency of employee exposure" means how long ("duration") and how often ("frequency") an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of time of the exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation could involve a customer, patient, or other person who is not fully vaccinated not wearing a face covering or personal protective equipment or coughing or sneezing directly into the face of an employee. An example of a chronic situation could involve a job task that requires an employee who is not fully vaccinated to interact either for an extended period of time inside six feet with a smaller static

group of other employees or persons or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

"Economic feasibility" means the employer is financially able to undertake the measures necessary to comply with one or more requirements in this standard chapter. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this standard chapter has occurred. If an employer's level of compliance lags significantly behind that of its industry, an employer's claim of economic infeasibility will not support a VOSH decision to decline to take enforcement action.

"Elastomeric respirator" means a tight-fitting respirator with a facepiece that is made of synthetic or rubber material that permits it to be disinfected, cleaned, and reused according to manufacturer's instructions. It is equipped with a replaceable cartridge, canister, or filter.

"Elimination" means a method of exposure control that removes the employee completely from exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

"Employee" means an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this standard chapter also includes, but is not limited to, temporary employees and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

"Engineering control" means the use of substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

~~"Exposure risk level" means the level of possibility that an employee could be exposed to the hazards associated with SARS-CoV 2 virus and the COVID 19 disease. The exposure risk level assessment should address all risks and all modes of transmission, including airborne transmission, as well as transmission by asymptomatic and presymptomatic individuals. Risk levels should be based on the risk factors present that increase risk exposure to COVID 19 and are present during the course of employment regardless of location. Hazards and job tasks have been divided into four risk exposure levels: very high, high, medium, and lower:~~

~~"Very high" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV 2 virus (e.g., laboratory samples) or persons known or suspected to be infected with the SARS-CoV 2 virus, including, but not limited to, during specific medical, postmortem, or laboratory procedures:~~

~~1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a patient or person known or suspected to be infected with the SARS-CoV 2 virus;~~

~~2. Collecting or handling specimens from a patient or person known or suspected to be infected with the SARS-CoV 2 virus (e.g., manipulating cultures from patients known or suspected to be infected with the SARS-CoV 2 virus); and~~

~~3. Performing an autopsy that involves aerosol-generating procedures on the body of a person known or suspected to be infected with the SARS-CoV 2 virus at the time of their death.~~

~~"High" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2, or with persons known or suspected to be infected with the SARS-CoV 2 virus that are not otherwise classified as very high exposure risk, including, but not limited to:~~

~~1. Health care (physical and mental health) delivery and support services provided to a patient known or suspected to be infected with the SARS-CoV 2 virus, including field hospitals (e.g., doctors, nurses, cleaners, and other hospital staff who must enter patient rooms or areas);~~

~~2. Health care (physical and mental) delivery, care, and support services, wellness services, non medical support services, physical assistance, etc., provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV 2 virus involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services, mental health services, home health care, nursing home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, blood donation services, and chiropractic services;~~

~~3. First responder services provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV 2 virus;~~

~~4. Medical transport services (loading, transporting, unloading, etc.) provided to patients known or suspected to be infected with the SARS-CoV 2 virus (e.g., ground or air emergency transport, staff, operators, drivers, pilots, etc.);~~

~~5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known or suspected to be infected with the SARS-CoV 2 virus at the time of their death; and~~

~~6. Correctional facilities, jails, detention centers, and juvenile detention centers.~~

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"Medium" exposure risk hazards or job tasks are those not otherwise classified as very high or high exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected to be infected with the SARS-CoV-2 virus. Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience stores, and food banks; drug stores and pharmacies; manufacturing settings; indoor and outdoor construction settings; work performed in customer premises, such as homes or businesses; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming, salon, and spa settings; venues for sports, entertainment, movies, theaters, and other forms of mass gatherings; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and

2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other health care (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities; outpatient medical facilities; clinics, drug treatment programs, and medical outreach services; non-medical support services; mental health facilities; home health care, nursing homes, assisted living facilities, memory care facilities, and hospice care; rehabilitation centers, doctors' offices, dentists' offices, and chiropractors' offices; first responders services provided by police, fire, paramedic and emergency medical services providers, medical transport; contact tracers; correctional facilities, jails, detentions centers, and juvenile detention centers, etc.

"Lower" exposure risk hazards or job tasks are those not otherwise classified as very high, high, or medium exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting, or are able to achieve minimal occupational contact with others through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);

2. Telecommuting;

3. Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public;

4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc., that allows employees to maintain physical distancing from other employees, other persons, and the general public; and

5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact.

"Face covering" means an item made of two or more layers of washable, breathable fabric that fits snugly against the sides of the face without any gaps, completely covering the nose and mouth and fitting securely under the chin. Neck gaiters made of two or more layers of washable, breathable fabric, or folded to make two such layers are considered acceptable face coverings. Nonmedical disposable masks for single use that otherwise meet the definition of "face covering" in this chapter, with the exception that they are not washable, are permissible to use as face coverings. Face coverings shall not have exhalation valves or vents, which allow virus particles to escape, and shall not be made of material that makes it hard to breathe, such as vinyl. A face covering is not a surgical/medical procedure surgical mask or respirator. A face covering is not subject to testing and approval by a state or federal government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards. Notwithstanding any other provisions in this definition, face coverings approved as having met ASTM standards for face coverings effective against the SARS-CoV-2 virus shall be considered to be in compliance with this chapter.

"Facemask" means a surgical, medical procedure, dental, or isolation mask that is FDA-cleared, authorized by an FDA EUA, or offered or distributed as described in an FDA enforcement policy. Facemasks may also be referred to as "medical procedure masks."

"Face shield" means a form of personal protective equipment made of transparent, impermeable materials primarily used for eye protection from droplets or splashes for the person wearing it. A face shield is not a substitute for a face covering, surgical/medical procedure mask, or respirator. device, typically made of clear plastic, that:

1. Is certified to ANSI/ISEA Z87.1; or

2. Covers the wearer's eyes, nose, and mouth to protect from splashes, sprays, and spatter of body fluids, wraps around the

sides of the wearer's face (i.e., temple-to-temple), and extends below the wearer's chin.

"Feasible" as used in this standard chapter includes both technical and economic feasibility.

"Filtering facepiece respirator" means a negative pressure air purifying particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium. Filtering facepiece respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH).

"Fully vaccinated" means a person is considered fully vaccinated for COVID-19 more than or equal to two weeks after they have received the second dose in a two-dose series, or more than or equal to two weeks after they have received a single-dose vaccine, provided such vaccine has been FDA-approved, or authorized by an FDA EUA, or authorized for emergency use by the World Health Organization (WHO).

"Hand sanitizer" means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this standard chapter.

"HIPAA" means Health Insurance Portability and Accountability Act.

~~"Known to be infected with the SARS-CoV-2 virus" means a person, whether symptomatic or asymptomatic, who has tested positive for SARS-CoV-2, and the employer knew or with reasonable diligence should have known that the person has tested positive for SARS-CoV-2.~~

~~"May be infected with SARS-CoV-2 virus" means any person not currently known or suspected to be infected with SARS-CoV-2 virus.~~

~~"Minimal occupational contact" means no or very limited, brief, and infrequent contact with employees or other persons at the place of employment. Examples include, but are not limited to, remote work (i.e., those working from home); employees with no more than brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet); health care employees providing only telemedicine services; a long distance truck driver.~~

"Health care services" mean services that are provided to individuals by professional health care practitioners (e.g., doctors, nurses, emergency medical personnel, oral health professionals) for the purpose of promoting, maintaining, monitoring, or restoring health. Health care services are delivered through various means including hospitalization, longterm care, ambulatory care, home health and hospice care, emergency medical response, and patient transport. Health care services include autopsies.

"Health care support services" mean services that facilitate the provision of health care services. Health care support

services include patient intake or admission, patient food services, equipment and facility maintenance, housekeeping services, health care laundry services, medical waste handling services, and medical equipment cleaning or reprocessing services.

"Occupational exposure" means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards at the work location or while engaged in work activities at another location.

"Otherwise at-risk" means a person whose ability to have a full immune response to vaccination may have been affected by certain conditions, such as a prior transplant, as well as prolonged use of corticosteroids or other immune-weakening medications.

"Personal protective equipment" or "PPE" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological, or other workplace hazards. Personal protective equipment for actual or potential exposure to SARS-CoV-2 or COVID-19 exposure may include, but is not limited to, gloves, safety glasses, goggles, ~~shoes, earplugs or muffs, hard hats,~~ respirators, ~~surgical/medical procedure~~ surgical masks, facemasks, impermeable gowns or coveralls, face shields, vests, and full body suits.

"Physical distancing" also called "social distancing" means a person keeping space between himself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least six feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall (e.g., an office setting) constitutes one form of physical distancing from an employee or other person stationed on the other side of the wall, provided that six feet of travel distance is maintained from others around the edges or sides of the wall as well.

"Powered air-purifying respirator" or "PAPR" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

~~"Respirator" means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be (i) tight-fitting, which means either a half mask that covers the mouth and nose or a full face piece that covers the face from the hairline to below the chin or (ii) loose-fitting, such as hoods or helmets that cover the head completely.~~

~~There are two major classes of respirators:~~

- ~~1. Air-purifying, which remove contaminants from the air; and~~

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~~2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures type of PPE that is certified by NIOSH under 42 CFR Part 84 or is authorized under an EUA by the FDA. Respirators protect against airborne hazards by removing specific air contaminants from the ambient (surrounding) air or by supplying breathable air from a safe source. Common types of respirators include filtering facepiece respirators, elastomeric respirators, and PAPRs. Face coverings, facemasks, and face shields are not respirators.~~

"Respirator user" means an employee who in the scope of their current job may be assigned to tasks that may require the use of a respirator in accordance with this ~~standard~~ chapter or required by other provisions in the VOSH and OSHA standards.

"SARS-CoV-2" means the novel virus that causes coronavirus disease 2019, or COVID-19. Coronaviruses are named for the crown-like spikes on their surfaces.

"Severely immunocompromised" means a seriously weakened immune system that lowers the body's ability to fight infection and may increase the risk of getting severely sick from SARS-CoV-2, from being on chemotherapy for cancer, being within one year out from receiving a hematopoietic stem cell or solid organ transplant, untreated HIV infection with CD4 T lymphocyte count less than 200, combined primary immunodeficiency disorder, and receipt of prednisone greater than 20mg per day for more than 14 days. The degree of immunocompromise is determined by the treating provider, and preventive actions are tailored to each individual and situation.

"Signs of COVID-19" are medical conditions that can be objectively observed and may include fever, cough, shortness of breath or trouble breathing or shortness of breath, cough, vomiting, new confusion, bluish lips or face, inability to wake or stay awake, pale, gray, or blue-colored skin, lips, or nail beds, depending on skin tone, etc.

~~"Surgical/medical procedure mask" means a mask to be worn over the wearer's nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. A surgical/medical procedure mask protects others from the wearer's respiratory emissions. A surgical/medical procedure mask has a looser fitting face seal than a tight fitting respirator. A surgical/medical procedure mask does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. A surgical/medical procedure mask is considered a form of personal protective equipment, but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).~~

"Surgical mask" means a mask that covers the user's nose and mouth and provides a physical barrier to fluids and particulate materials. The mask meets certain fluid barrier protection standards and Class I or Class II flammability tests. Surgical masks are generally regulated by FDA as Class II devices under 21 CFR 878.4040 – Surgical apparel.

"Suspected to be infected with SARS-CoV-2 virus COVID-19" means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza) been told by a licensed health care provider that they are suspected to have COVID-19; or is experiencing recent loss of taste and/or smell with no other explanation; or is experiencing both fever (greater than or equal to 100.4° F) and new unexplained cough associated with shortness of breath; or has symptoms consistent with the clinical criteria in the CDC national case definition and no other explanation for symptoms exist.

"Symptomatic" means a person is experiencing signs or symptoms attributed to COVID-19. A person may become symptomatic two to 14 days after exposure to the SARS-CoV-2 virus.

"Symptoms of COVID-19" are medical conditions that are subjective to the person and not observable to others and may include chills, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea, ~~congestion or runny nose,~~ or diarrhea, etc.

"Technical feasibility" means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances that can be applied to one or more requirements in this ~~standard~~ chapter with a reasonable possibility that employee exposure to the SARS-CoV-2 virus and COVID-19 disease hazards will be reduced. If an employer's level of compliance lags significantly behind that of the employer's industry, allegations of technical infeasibility will not be accepted.

"USBC" means Virginia Uniform Statewide Building Code.

"Vaccine" means a biological product authorized or licensed by the FDA to prevent or provide protection against COVID-19, whether the substance is administered through a single dose or a series of doses.

"VDH" means Virginia Department of Health.

"VOSH" means Virginia Occupational Safety and Health.

"Work practice control" means a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.

16VAC25-220-40. Mandatory requirements for all employers.

A. Employers shall ~~ensure compliance with the requirements in this section to protect employees in all exposure risk levels from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease~~ have a policy in place to ensure compliance with the requirements in this section to protect employees from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease. Such policy shall have a method to receive anonymous complaints of violations. An employer that enforces its policy in good faith and resolves filed complaints shall be considered in compliance with this subsection.

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. ~~Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees exposed to the same hazard may be grouped for classification purposes.~~

Employers may rely on an employee's representation of being fully vaccinated, as defined by this chapter without requiring proof of vaccination; however, nothing in this chapter shall be construed to preclude an employer from requiring proof that an employee is fully vaccinated.

2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if employees suspect possible exposure ~~or are experiencing signs or symptoms of illness.~~

3. Serological testing, also known as antibody testing, is a test to determine if persons have been infected with SARS-CoV-2 virus. It has not been determined that persons who test positive for the presence of antibodies by serological testing are immune from infection.

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as ~~known or suspected to be infected with the SARS-CoV-2 virus~~ suspected or confirmed COVID-19.

b. Serologic test results shall not be used to make decisions concerning employees who were previously classified as ~~known or suspected to be infected with the SARS-CoV-2 virus~~ suspected or confirmed COVID-19 about grouping, residing in, or being admitted to congregate settings, such as schools, dormitories, etc.

4. Employers shall develop and implement policies and procedures for employees to report when they are

experiencing signs or symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza). Such employees shall be designated by the employer as ~~"suspected to be infected with SARS-CoV-2 virus."~~ suspected COVID-19.

5. Employers shall not permit suspected or confirmed COVID-19 employees or other persons ~~known or suspected to be infected with SARS-CoV-2 virus~~ to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work (see subsection C of this section).

Nothing in this ~~standard chapter~~ shall prohibit an employer from permitting ~~an employee known or suspected to be infected with SARS-CoV-2 virus~~ a suspected or confirmed COVID-19 employee from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to the SARS-CoV-2 virus.

6. Employers shall discuss with subcontractors and companies that provide contract or temporary employees the importance and requirement to exclude from work employees or other persons (e.g., volunteers) who are ~~known or suspected to be infected with the SARS-CoV-2 virus~~ suspected or confirmed COVID-19. Subcontractor, contract, or temporary employees ~~known or suspected to be infected with the SARS-CoV-2 virus~~ who are suspected or confirmed COVID-19 shall not report to or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their suspected or confirmed COVID-19 employees ~~known or suspected to be infected with the SARS-CoV-2 virus~~ to report to or be allowed to remain at work or on a job site until cleared for return to work.

7. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive ~~SARS-CoV-2~~ COVID-19 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being ~~known or suspected to be infected with SARS-CoV-2 virus~~ suspected or confirmed COVID-19) present at the place of employment within two days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test). Employers shall notify:

a. The employer's own employees who may have been exposed, within 24 hours of discovery of the employees' possible exposure, while keeping confidential the identity of the confirmed COVID-19 person ~~known to be infected with SARS-CoV-2 virus~~ in accordance with the requirements of the Americans with Disabilities Act (ADA) (42 USC § 1201 et seq.) and other applicable federal and Virginia laws and regulations;

b. In the same manner as subdivision 7 a of this subsection, other employers whose employees were present at the work site during the same time period;

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c. In the same manner as subdivision 7 a of this subsection, the building or facility owner. The building or facility owner will require all employer tenants to notify the owner of the occurrence of a ~~SARS-CoV-2~~ COVID-19 positive test for any employees or residents in the building. This notification will allow the owner to take the necessary steps to ~~sanitize~~ clean the common areas of the building. In addition, the building or facility owner will notify all employer tenants in the building that one or more cases have been discovered and the floor or work area where the case was located. The identity of the individual will be kept confidential in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations;

d. The Virginia Department of Health ~~during a declaration of an emergency by the Governor pursuant to § 44-146.17 of the Code of Virginia.~~ Every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health (VDH) when the work site has had two or more confirmed cases of COVID-19 of its own employees present at the place of employment within a 14-day period testing positive for ~~SARS-CoV-2 virus~~ COVID-19 during that 14-day time period. Employers shall make such a report in a manner specified by VDH, including name, date of birth, and contact information of each case, within 24 hours of becoming aware of such cases. Employers shall continue to report all cases until the local health department has closed the outbreak investigation. After the outbreak investigation is closed, subsequent identification of two or more confirmed cases of COVID-19 ~~during a declared emergency~~ shall be reported, as required by this subdivision B 7 d. The following employers are exempt from this provision because of separate outbreak reporting requirements contained in 12VAC5-90-90: any residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, school, child care center, or summer camp; and

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of ~~three~~ two or more of its own employees present at the place of employment within a 14-day period testing positive for ~~SARS-CoV-2 virus~~ COVID-19 during that 14-day time period. A reported positive ~~SARS-CoV-2 virus~~ COVID-19 test does not need to be reported more than once and will not be used for the purpose of identifying more than one grouping of ~~three~~ two or more cases, or more than one 14-day period.

8. Employers shall ensure employee access to the employee's own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with the standard applicable to its industry. Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employees' access to the employees' own SARS-CoV-2 virus and COVID-19 disease

related exposure and medical records in accordance with 16VAC25-90-1910.1020, Access to Employee Exposure and Medical Records.

C. Return to work. Employers shall develop and implement policies and procedures for ~~employees known or suspected to be infected with the SARS-CoV-2 virus~~ suspected or confirmed COVID-19 employees to return to work.

~~1. Symptomatic employees known or suspected to be infected with the SARS-CoV-2 virus are excluded from returning to work until all three of the following conditions have been met:~~

~~a. The employee is fever free (below 100.0° F) for at least 24 hours, without the use of fever reducing medications;~~

~~b. Respiratory symptoms, such as cough and shortness of breath have improved; and~~

~~c. At least 10 days have passed since symptoms first appeared.~~

~~However, a limited number of employees with severe illness may produce replication competent virus beyond 10 days that may warrant extending duration of isolation for up to 20 days after symptom onset. Employees who are severely immunocompromised may require testing to determine when they can return to work, and the employer shall consider consultation with infection control experts. VOSH will consult with VDH when identifying severe employee illnesses that may warrant extended duration of isolation or severely immunocompromised employees required to undergo testing.~~

~~2. Employees known to be infected with SARS-CoV-2 who never develop signs or symptoms are excluded from returning to work until 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.~~

~~3. 1. If the employer knows an employee is COVID-19 positive, regardless of vaccination status then the employer must immediately remove that employee from the work site and keep the employee removed until they meet the return to work criteria in subdivision C 3 of this section.~~

~~2. If the employer knows an employee is suspected COVID-19, regardless of vaccination status then the employer must immediately remove that employee from the work site and either:~~

~~a. Keep the employee removed until they meet the return to work criteria in subdivision C 3 of this section; or~~

~~b. Keep the employee removed and provide a COVID-19 polymerase chain reaction (PCR) test at no cost to the employee.~~

~~(1) If the test results are negative, the employee may return to work immediately.~~

~~(2) If the test results are positive, the employer must comply with subdivision C 1 of this section.~~

(3) If the employee refuses to take the test, the employer must continue to keep the employee removed from the workplace consistent with subdivision C 1 of this section. Absent undue hardship, employers must make reasonable accommodations for employees who cannot take the test for religious or disability-related medical reasons.

3. The employer must make decisions regarding an employee's return to work after a COVID-19-related workplace removal in accordance with guidance from a licensed health care provider, a VDH public health professional, or CDC's "Isolation Guidance" (hereby incorporated by reference); and CDC's "Return to Work Healthcare Guidance" (hereby incorporated by reference). If an employee has a known exposure to someone with COVID-19, the employee must follow any testing or quarantine guidance provided by a VDH public health professional.

4. For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. Employers shall not require employees to pay for the cost of COVID-19 testing for return to work determinations. If an employer's health insurance covers the entire cost of COVID-19 testing, use of the insurance coverage would not be considered a violation of this subdivision C 3 4.

D. Unless otherwise provided in this ~~standard~~ chapter, employers shall establish and implement policies and procedures that ensure employees who are not fully vaccinated and otherwise at-risk employees observe physical distancing while on the job and during paid breaks on the employer's property, including policies and procedures that:

1. Use verbal announcements, signage, or visual cues to promote physical distancing;
2. Decrease worksite density by limiting non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer's compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements in this subsection; and

3. Provide that such requirements do not apply to fully vaccinated employees.

E. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled. This subsection does not apply to fully vaccinated employees.

If the nature of an employer's work or the work area does not allow employees to consume meals in the employee's workspace while observing physical distancing, an employer may designate, reconfigure, and alternate usage of spaces where employees congregate, including lunch and break

rooms, locker rooms, time clocks, etc., with controlled access, provided the following conditions are met:

1. At the entrance of the designated common area or room, employers shall clearly post the policy limiting the occupancy of the space and requirements for physical distancing, hand washing and hand sanitizing, and cleaning ~~and disinfecting~~ of shared surfaces- for employees who are not fully vaccinated;

2. Employers shall limit occupancy of the designated common area or room so that occupants who are not fully vaccinated can maintain physical distancing from each other. Employers shall enforce the occupancy limit;

~~3. Employees shall be required to clean and disinfect the immediate area in which they were located prior to leaving, or employers may provide for cleaning and disinfecting of the common area or room at regular intervals throughout the day and between shifts of employees using the same common area or room (i.e., where an employee or groups of employees have a designated lunch period and the common area or room can be cleaned in between occupancies). When no suspected or confirmed COVID-19 persons are known to have been in a space, the employer shall clean the common area, breakroom, or lunchroom once per shift; and~~

4. Handwashing facilities, and hand sanitizer where feasible, are available to employees. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.

F. When ~~multiple employees are~~ an employee is occupying a vehicle or other form of transportation with one or more employees or other persons for work purposes, employers shall use the hierarchy of hazard controls to mitigate the hazards associated with SARS-CoV-2 and COVID-19 to prevent employee exposures in the following order. This subsection does not apply to fully vaccinated employees in areas of low to moderate community transmission and except as otherwise noted:

1. Eliminate the need for employees to share work vehicles or other transportation and arrange for alternative means for additional employees to travel to work sites.

2. Provide access to fresh air ventilation (e.g., windows). Do not recirculate cabin air.

3. When physical distancing cannot be maintained, establish procedures to maximize separation between employees as well as other persons during travel (e.g., setting occupancy limits, sitting in alternate seats, etc.).

4. When ~~employees~~ an employee who is not fully vaccinated must share a work ~~vehicles~~ vehicle or other transportation with one or more employees or other persons because no other alternatives are available, such employees shall be provided with and wear respiratory protection, such as an N95 filtering face piece respirator, or a face covering at the

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option of the employee. When an employee who is fully vaccinated must share work vehicles or other transportation with one or more employees or other persons in areas of substantial or high community transmission because no other alternatives are available, such employees shall be provided with and wear face coverings.

5. The employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry (e.g., when one or more employees is accompanying a suspected or confirmed COVID-19 person in an ambulance).

5-6. Until adequate supplies of respiratory protection and/or personal protective equipment become readily available for non-medical and non-first responder employers and employees, employers shall provide and employees shall wear face coverings while occupying a work vehicle or other transportation with other employees or persons.

Notwithstanding anything to the contrary in this standard chapter, the Secretary of Commerce and Trade Labor may exercise discretion in the enforcement of an employer's failure to provide PPE required by this standard chapter, if the employer demonstrates that the employer:

- a. Is exercising due diligence to come into compliance with such requirement; and
- b. Is implementing alternative methods and measures to protect employees that are satisfactory to the Secretary of Commerce and Trade Labor after consultation with the commissioner Commissioner of Labor and Industry and the Secretary of Health and Human Services.

7. For commercial motor vehicles or trucks, if the driver is the only person in the vehicle or truck, or the vehicle or truck is operated by a team who all live in the same household and are the only persons in the vehicle, an employer of such drivers would be considered to be in compliance with subdivisions F 1 through F 5 of this section.

G. Where the nature of an employee's work or the work area does not allow the employee to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. Employers shall provide and require employees that are not fully vaccinated, fully vaccinated employees in areas of substantial or high community transmission, and otherwise at-risk employees (because of a prior transplant or other medical condition) to wear face coverings or surgical masks while indoors, unless their work task requires a respirator or other PPE. Such employees shall wear a face covering or surgical mask that covers the nose and mouth to contain the wearer's respiratory droplets and help protect others and potentially themselves. This subsection does not apply to fully vaccinated employees in areas of low to moderate community transmission, and except as otherwise noted.

The following are exceptions to the requirements for face coverings, facemasks or surgical masks for employees that are not fully vaccinated and fully vaccinated employees in areas of substantial or high community transmission:

1. When an employee is alone in a room.

2. While an employee is eating and drinking at the workplace, provided each employee who is not fully vaccinated is at least six feet away from any other person, or separated from other people by a physical barrier.

3. When employees are wearing respiratory protection in accordance with 16VAC25-90-1910.134 or this chapter.

4. When it is important to see a person's mouth (e.g., communicating with an individual who is deaf or hard of hearing) and the conditions do not permit a facemask that is constructed of clear plastic or includes a clear plastic window. In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it. The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

5. When employees cannot wear facemasks due to a medical necessity, medical condition, or disability as defined in the Americans with Disabilities Act (ADA) (42 USC § 12101 et seq.), or due to a religious belief. Exceptions must be provided for a narrow subset of persons with a disability who cannot wear a facemask or cannot safely wear a facemask, because of the disability, as defined in the ADA, including a person who cannot independently remove the facemask. The remaining portion of the subset who cannot wear a facemask may be exempted on a case-by-case basis as required by the ADA and other applicable laws. In all such situations, the employer must ensure that any such employee wears a face shield for the protection of the employee, if their condition or disability permits it. Accommodations may also need to be made for religious beliefs consistent with Title VII of the Civil Rights Act (42 USC § 2000e et seq.). The employer may determine that the use of face shields without facemasks in certain settings is not appropriate due to other infection control concerns.

6. When the employer can demonstrate that the use of a facemask presents a hazard to an employee of serious injury or death (e.g., arc flash, heat stress, interfering with the safe operation of equipment). In such situations, the employer must ensure that each employee wears an alternative to protect the employee, such as a face shield, if the conditions permit it. Any employee not wearing a facemask must remain at least six feet away from all other people unless the employer can demonstrate it is not feasible. The employee must resume wearing a facemask when not engaged in the activity where the facemask presents a hazard. The employer may determine that the use of face shields without facemasks

in certain settings is not appropriate due to other infection control concerns.

7. Where a face shield is required to comply with this subsection or is otherwise required by the employer, the employer must ensure that face shields are cleaned at least daily and are not damaged. When an employee provides a face shield that meets the definition of that term in 16VAC25-220-30, the employer may allow the employee to use it and is not required to reimburse the employee for that face shield. Notwithstanding anything to the contrary in this chapter, the Secretary of Labor may exercise discretion in the enforcement of an employer's failure to provide PPE required by this chapter if the employer demonstrates that the employer:

- a. Is exercising due diligence to come into compliance with such requirement; and
- b. Is implementing alternative methods and measures to protect employees that are satisfactory to the Secretary of Labor after consultation with the Commissioner of Labor and Industry and the Secretary of Health and Human Services.

~~H. When it is necessary for employees solely exposed to lower risk hazards or job tasks to have brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet), a face covering is required. Reserved.~~

~~I. When required by this standard chapter, face coverings shall be worn over the wearer's nose and mouth and extend under the chin.~~

~~J. Nothing in this standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to the employee's health or safety because of a medical condition; however, nothing in this standard shall negate an employer's obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.~~

~~1. Although face shields are not considered a substitute for face coverings as a method of source control and not used as a replacement for face coverings among people without medical contraindications, face shields may provide some level of protection against contact with respiratory droplets. In situations where a face covering cannot be worn due to medical contraindications, employers shall provide and employees shall wear either:~~

- ~~a. A face shield that wraps around the sides of the wearer's face and extends below the chin; or~~
- ~~b. A hooded face shield.~~

~~2. To the extent feasible, employees wearing face shields in accordance with this subsection shall observe physical distancing requirements in this standard.~~

~~3. Face shield wearers shall wash their hands before and after removing the face shield and avoid touching their eyes, nose, and mouth when removing it.~~

~~4. Disposable face shields shall only be worn for a single use and disposed of according to manufacturer instructions.~~

~~5. Reusable face shields shall be cleaned and disinfected after each use according to manufacturer instructions. Reserved.~~

~~K. Requests to the Department of Labor and Industry for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, after Department of Labor and Industry consultation with the Office of the Attorney General. Reserved.~~

~~L. Sanitation and disinfecting.~~

~~1. In addition to the requirements contained in this standard chapter, employers shall comply with the VOSH sanitation standard applicable to its industry.~~

~~2. Employees that interact with customers, the general public, contractors, and other persons shall be provided with and immediately use supplies to clean and disinfectant surfaces contacted during the interaction where there is the potential for exposure to the SARS-CoV-2 virus by themselves or other employees. Reserved.~~

~~3. In addition to the requirements contained in this standard chapter, employers shall comply with the VOSH hazard communication standard applicable to the employers' industry for cleaning and disinfecting materials and hand sanitizers (e.g., 16VAC25-90-1910.1200, 16VAC25-175-1926.59).~~

~~4. Areas in the place of employment where employees or other persons known or suspected to be infected with the SARS-CoV-2 virus suspected or confirmed COVID-19 employees or other persons accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas. Where feasible, a period of 24 hours will be observed prior to cleaning and disinfecting. This requirement shall not apply if the areas in question have been unoccupied for seven or more days. as follows:~~

~~a. The provisions in subdivisions 4 b, 4 c, and 4 d of this subsection do not apply to health care settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.~~

~~b. If less than 24 hours have passed since the person who is sick or diagnosed with COVID-19 has been in the space, clean and disinfect the space.~~

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c. If more than 24 hours have passed since the person who is sick or diagnosed with COVID-19 has been in the space, cleaning is enough. Employers may choose to also disinfect depending on certain conditions or everyday practices required by the facility.

d. If more than three days have passed since the person who is sick or diagnosed with COVID-19 has been in the space, no additional cleaning or disinfecting beyond regular cleaning practices is needed.

5. All common spaces, including bathrooms (including port-a-johns, privies, etc.), frequently touched surfaces, and doors, shall at a minimum be cleaned ~~and disinfected~~ at least once during or at the end of the shift. ~~Where (where multiple shifts are employed, such spaces shall be cleaned and disinfected no less than once every 12 hours), except as provided in subdivisions 5 a and 5 b of this subsection.~~

a. The provision in subdivision 5 b of this subsection does not apply to health care settings or for operators of facilities such as food and agricultural production or processing workplace settings, manufacturing workplace settings, or food preparation and food service areas where specific regulations or practices for cleaning and disinfection may apply.

b. When no suspected or confirmed COVID-19 persons are known to have been in a space, clean once a day.

6. All shared tools, equipment, workspaces, and vehicles shall be cleaned ~~and disinfected~~ prior to transfer from one employee to another. This subsection does not apply when the transfer is from one fully vaccinated employee to another fully vaccinated employee.

7. Employers shall ensure that cleaning and disinfecting products are readily available to employees to accomplish the required cleaning and disinfecting. In addition, employers shall ensure use of only disinfecting chemicals and products indicated in the Environmental Protection Agency (EPA) List N for use against SARS-CoV-2, or non-EPA-registered disinfectants that otherwise meet the EPA criteria for use against SARS-CoV-2.

8. Employers shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are ~~complied with~~ (e.g., concentration, application method, contact time, PPE, etc.) followed.

9. Employees shall have easy, frequent access and permission to use soap and water, and hand sanitizer where feasible, for the duration of work. Employees assigned to a work station where job tasks require frequent interaction inside six feet with other persons shall be provided with hand sanitizer where feasible at the employees work station.

10. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site or client or customer location and shall have transportation immediately available to nearby toilet facilities and

handwashing facilities that meet the requirements of VOSH laws, standards, and regulations dealing with sanitation. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable, and use and storage in hot environments can result in a hazard.

~~11. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower as presenting potential exposure risk for purposes of application of the requirements of this standard. In situations other than emergencies, employers shall ensure that protective measures are put in place to prevent cross-contamination between tasks, areas, and personnel.~~

M. Unless otherwise provided in this ~~standard~~ chapter, when engineering, work practice, and administrative controls are not feasible or do not provide sufficient protection, employers shall provide personal protective equipment to their employees and ensure the equipment's proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

16VAC25-220-50. Requirements for hazards or job tasks classified as very high or high exposure risk health care services or health care support services.

A. Scope and application.

1. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502, et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board and take effect, application of this chapter, except for 16VAC25-220-40 B 7 d and B 7 e and 16VAC25-220-90, to such covered employers and employees subject to the chapter shall be suspended while the federal COVID-19 Emergency Temporary Standard remains in effect.

2. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502, et seq., applicable to settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed or invalidated by a state or federal court, the provisions of this chapter, including this section, shall immediately apply to such employers and employees in its place with no further action of the board required.

3. Should the federal COVID-19 Emergency Temporary Standard, 29 CFR 1910.502, et seq., applicable to all settings where any employee provides health care services or health care support services, be adopted by the Virginia Safety and Health Codes Board but later be stayed by federal OSHA, or otherwise revoked, repealed, declared unenforceable, or permitted to expire, the provisions of this chapter, including this section, shall immediately apply to such employers and

employees in its place with no further action of the board required. In addition, the Virginia Safety and Health Codes Board shall within 30 days, notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for this chapter or whether it should be maintained, modified, or revoked.

4. The requirements in this section for employers with hazards or job tasks classified as very high or high exposure risk apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-220-70, and 16VAC25-220-80.

5. Except as otherwise provided in this subsection, this section applies to all settings where any employee provides health care services or health care support services.

6. This section does not apply to the following:

a. The provision of first aid by an employee who is not a licensed health care provider;

b. The dispensing of prescriptions by pharmacists in retail settings;

c. Nonhospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;

d. Well-defined hospital ambulatory care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;

e. Home health care settings where all employees are fully vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;

f. Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing); or

g. Telehealth services performed outside of a setting where direct patient care occurs.

h. VOSH does not intend to preclude the employers of employees who are unable to be vaccinated from the scope exemption in subdivisions A 6 d and A 6 e of this section. Under various anti-discrimination laws, workers who cannot be vaccinated because of medical conditions, such as allergies to vaccine ingredients or certain religious beliefs may ask for a reasonable accommodation from their employer. Accordingly, where an employer reasonably accommodates an employee who is unable to be vaccinated in a manner that does not expose the employee to COVID-19 hazards (e.g., telework, working in isolation), that employer may be within the scope exemption in subdivisions A 6 d and A 6 e of this section.

7. Where a health care setting is embedded within a non-health care setting (e.g., medical clinic in a manufacturing facility, walk-in clinic in a retail setting), this section applies only to the embedded health care setting and not to the remainder of the physical location.

B. Engineering controls.

1. Employers shall ensure that appropriate air-handling systems under their control:

a. Are installed and maintained in accordance with the USBC and manufacturer's instructions in health care facilities and other places of employment treating, caring for, or housing ~~persons known or suspected persons to be infected with the SARS CoV 2 virus~~ suspected or confirmed COVID-19 persons; and

b. Where feasible and within the design parameters of the system, are utilized as follows:

(1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open);

(2) In ground transportation settings, use natural ventilation to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission to employees, and when environmental conditions and transportation safety and health requirements allow;

(3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;

(4) Increase air filtration to as high as possible in a manner that will still enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;

(5) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;

(6) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);

(7) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied;

(8) If the system's design can accommodate such an adjustment and is allowed by the air handler manufacturer's installation instructions and listing, improve central air filtration to MERV-13 and seal edges of the filter to limit bypass; and

(9) Check filters to ensure they are within service life and appropriately installed.

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- c. Comply with USBC and applicable referenced American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards.
 2. ~~For employers not covered by subdivision 1 of this subsection, ensure that air handling systems where installed and under their control are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:~~
 - a. ~~Are maintained in accordance with the manufacturer's instructions; and~~
 - b. ~~Comply with subdivisions 1 b and 1 c of this subsection.~~ Reserved.
 3. Hospitalized patients ~~known or suspected to be infected with the SARS-CoV-2 virus~~ who are suspected or confirmed COVID-19, where feasible and available, shall be placed in airborne infection isolation room (AIIRs).
 4. Employers shall use AIIRs when available for performing aerosol-generating procedures on suspected or confirmed COVID-19 patients with ~~known or suspected to be infected with the SARS-CoV-2 virus.~~
 5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of persons ~~known or suspected to be infected with the SARS-CoV-2 virus~~ suspected or confirmed COVID-19 at the time of their death.
 6. Employers shall use special precautions associated with Biosafety Level 3 (BSL-3), as defined by the U.S. Department of Health and Human Services Publication No. (CDC) 21-1112 "Biosafety in Microbiological and Biomedical Laboratories" (Dec. 2009), which is hereby incorporated by reference, when handling specimens from patients or persons ~~known or suspected to be infected with the SARS-CoV-2 virus~~ suspected or confirmed COVID-19. Diagnostic laboratories that conduct routine medical testing and environmental specimen testing for COVID-19 are not required to operate at BSL-3.
 7. To the extent feasible, employers shall install physical barriers, (e.g., clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission.
- C. Administrative and work practice controls.
1. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.
 2. In health care facilities, employers shall follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.
3. Employers shall limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer's compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements of this subdivision C 3.
 4. Employers shall post signs requesting patients and family members to immediately report signs or symptoms of respiratory illness on arrival at the health care facility and use disposable face coverings.
 5. Employers shall offer enhanced medical monitoring of employees during COVID-19 outbreaks.
 6. To the extent feasible, an employer shall ensure that psychological and behavioral support is available to address employee stress at no cost to the employee.
 7. In health care settings, employers shall provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol to employees at fixed work sites and to emergency responders and other personnel for decontamination in the field when working away from fixed work sites.
 8. Employers shall provide face coverings to suspected COVID-19 non-employees ~~suspected to be infected with SARS-CoV-2 virus~~ to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).
 9. Where feasible, employers shall:
 - a. Implement flexible work site (e.g., telework).
 - b. Implement flexible work hours (e.g., staggered shifts).
 - c. Increase physical distancing between employees at the work site to six feet.
 - d. Increase physical distancing between employees and other persons to six feet.
 - e. Implement flexible meeting and travel options (e.g., use telephone or video conferencing instead of in person meetings; postpone non-essential travel or events; etc.).
 - f. Deliver services remotely (e.g. phone, video, internet, etc.).
 - g. Deliver products through curbside pick-up.
- D. Personal protective equipment (PPE). ~~Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910.132), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease related hazard assessment and personal protective equipment selection:~~
1. ~~Employers shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). Employers~~

shall provide for employee and employee representative involvement in the assessment process. If such hazards or job tasks are present or likely to be present, employers shall:

- a. Except as otherwise required in the standard, select and have each affected employee use the types of PPE that will protect the affected employee from the SARS CoV 2 virus or COVID 19 disease hazards identified in the hazard assessment;
- b. Communicate selection decisions to each affected employee; and
- c. Select PPE that properly fits each affected employee.

2. Employers shall verify that the required SARS CoV 2 virus and COVID 19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated, the person certifying that the evaluation has been performed, the date of the hazard assessment, and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS COV 2 virus or COVID 19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915, 16VAC25-120-1917, or 16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. 1. Unless contraindicated by a hazard assessment and equipment selection requirements in subdivision 1 of this subsection 16VAC25-90-1910.132, employees classified as very high or high exposure risk of employers covered by this section shall be provided with and wear gloves, a gown, a face shield or goggles, and a respirator when in contact with or inside six feet of suspected or confirmed COVID-19 patients or other persons known to be or suspected of being infected with SARS CoV-2. Gowns shall be the correct size to assure protection.

2. In addition, hazard assessment and equipment selection requirements may determine that respirators or other PPE are necessary in other circumstances to reduce exposure. When respirators are required, 16VAC25-90-1910.134 shall apply to all employees for that purpose.

16VAC25-220-60. Requirements for hazards or job tasks classified at medium exposure risk higher-risk workplaces.

A. The requirements in this section for employers with hazards or job tasks classified as medium exposure risk higher-risk workplaces with mixed-vaccination status employees apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-70 16VAC25-220-70, and 16VAC25-80 16VAC25-220-80.

Employers shall take the additional steps in subsections B, C, and D of this section to mitigate the spread of COVID-19 for employees who are not fully vaccinated, employees who are fully vaccinated but work in a place of employment with substantial or high community transmission, and otherwise at-risk employees in workplaces (which include, but are not limited to, manufacturing, meat and poultry processing, high-volume retail and grocery, transit, seafood processing, correctional facilities, jails, detention centers, and juvenile detention centers) where there is heightened risk due to the following types of factors:

1. Where employees who are not fully vaccinated or otherwise at-risk employees are working close to one another, for example, on production or assembly lines. Such workers may also be near one another at other times, such as when clocking in or out, during breaks, or in locker or changing rooms.

2. Where employees who are not fully vaccinated or otherwise at-risk workers often have prolonged closeness to coworkers or potential frequent contact with members of the public who may not be fully vaccinated.

3. Where employees who are not fully vaccinated or otherwise at-risk workers work in enclosed indoor spaces with inadequate ventilation where other coworkers or members of the public are present.

4. Where employees who are not fully vaccinated or otherwise at-risk employees may be exposed to the infectious virus through respiratory droplets or aerosols in the air, for example, when working next to employees who are not fully vaccinated or otherwise at-risk employees in a manufacturing or factory setting who have the virus. It is also possible that exposure could occur from contact with contaminated surfaces or objects, such as tools, workstations, or break room tables. Shared spaces such as break rooms, locker rooms, and entrances or exits to the facility may contribute to their risk.

5. Other distinctive factors that may increase risk among these employees who are not fully vaccinated or otherwise at-risk employees include:

- a. A common practice at some workplaces of sharing employer-provided transportation such as ride-share vans or shuttle vehicles; and
- b. Communal housing or living quarters onboard vessels with other employees who are not fully vaccinated or otherwise at-risk individuals.

B. Engineering controls.

1. Employers shall ensure that air-handling systems under their control:

- a. Are maintained in accordance with the manufacturer's instructions; and

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b. Where feasible and within the design parameters of the system, are utilized as follows:

- (1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open);
- (2) In ground transportation settings, use natural ventilation to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 virus and COVID-19 disease transmission to employees and when environmental conditions and transportation safety and health requirements allow;
- (3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;
- (4) Increase air filtration to as high as possible in a manner that will still enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;
- (5) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;
- (6) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);
- (7) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied;
- (8) If the system's design can accommodate such an adjustment and is allowed by the air handler manufacturer's installation instructions and listing, improve central air filtration to MERV-13 and seal edges of the filter to limit bypass; and
- (9) Check filters to ensure they are within service life and appropriately installed.

c. Comply with USBC and applicable referenced American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards.

2. Where feasible, employers shall ~~install~~ install physical barriers (e.g., such as clear plastic sneeze guards, etc.) for employees who are not fully vaccinated or otherwise at-risk employees, where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission.

3. In workplaces (or well-defined work areas) with processing or assembly lines where there are employees who are not fully vaccinated or otherwise at-risk employees, working on food processing or assembly lines can result in virus exposure because these workplaces have often been designed for a number of employees to stand next to or across from each other to maximize productivity. Employers

shall ensure proper spacing of employee who are not fully vaccinated or otherwise at-risk employees (or if not possible, appropriate use of barriers).

C. Administrative and work practice controls. To the extent feasible, employers shall implement the following administrative and work practice controls in all higher-risk workplaces where there are employees who are not fully vaccinated or otherwise at-risk employees:

1. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.

2. Provide face coverings to suspected COVID-19 non-employees suspected to be infected with SARS CoV 2 to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).

3. ~~Implement flexible work site (e.g., telework)~~ Stagger break times or provide temporary break areas and restrooms to avoid groups of employees who are not fully vaccinated or otherwise at-risk employees congregating during breaks. Employees who are not fully vaccinated or otherwise at-risk employees shall maintain at least six feet of distance from others at all times, including on breaks.

4. ~~Implement flexible work hours (e.g., staggered shifts)~~ Stagger employee's arrival and departure times to avoid congregations of employees who are not fully vaccinated or otherwise at-risk in parking areas, locker rooms, and near time clocks.

5. ~~Increase physical distancing between employees at the work site to six feet.~~ Implement flexible work hours (e.g., staggered shifts).

6. ~~Increase physical distancing between employees and other persons, including customers, to six feet (e.g., drive-through physical barriers) where such barriers will aid in mitigating the spread of SARS CoV 2 virus transmission, etc~~ Provide visual cues (e.g., floor markings, signs) as a reminder to maintain physical distancing.

7. ~~Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in person meetings; postponing non-essential travel or events; etc.).~~ In retail workplaces (or well-defined work areas within retail) where there are employees who are not fully vaccinated, fully vaccinated employees in areas of substantial or high community transmission, or otherwise at-risk employees:

a. Post signage requiring face coverings for employees who are not fully vaccinated (or unknown-status) and fully vaccinated employees in areas of substantial or high community transmission and requesting face coverings for customers and other visitors.

b. Require physical distancing from other people who are not known to be fully vaccinated. If distancing is not possible, implement the use of barriers between work stations used by employees who are not fully vaccinated or otherwise at-risk employees and the locations customers will stand, with pass-through openings at the bottom, if possible.

c. Move the electronic payment terminal or credit card reader farther away from any employees who are not fully vaccinated or otherwise at-risk employees in order to increase the distance between customers and such employees, if possible.

d. Shift primary stocking activities of employees who are not fully vaccinated or otherwise at-risk employees to off-peak or after hours when possible to reduce contact between employees who are not fully vaccinated or otherwise at-risk employees and customers.

8. Deliver services remotely (e.g., phone, video, internet, etc.).

9. Deliver products through curbside pick-up or delivery.

~~10. Employers shall provide and require employees to wear face coverings who, because of job tasks, cannot feasibly practice physical distancing from another employee or other person if the hazard assessment has determined that personal protective equipment, such as respirators or surgical/medical procedure masks, was not required for the job task.~~

~~11. Employers shall provide and require employees in customer or other person facing jobs to wear face coverings.~~

D. Personal protective equipment. ~~Employers~~ This subsection does not apply to fully vaccinated employees. Otherwise, employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910.132) shall comply with the requirements of this subsection for a SARS-CoV-2 virus and COVID-19 disease related hazard assessment and personal protective equipment selection.

1. Employers shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). Employers shall provide for employee and employee representative involvement in the assessment process. If such hazards or job tasks are present or likely to be present, employers shall:

a. Except as otherwise required in the ~~standard chapter~~, select and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

b. Communicate selection decisions to each affected employee; and

c. Select PPE that properly fits each affected employee.

2. Employers shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date of the hazard assessment; and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the ~~SARS-CoV-2~~ SARS-CoV-2 virus or COVID-19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915, 16VAC25-120-1917, or 16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. PPE ensembles for employees ~~in the medium exposure risk category~~ will vary by work task, the results of the employer's hazard assessment, and the types of exposures employees have on the job.

16VAC25-220-70. Infectious disease preparedness and response plan.

A. ~~Employers with hazards or job tasks classified as~~ The following employers shall develop and implement a written Infectious Disease Preparedness and Response Plan:

~~1. Very high and high shall develop and implement a written Infectious Disease Preparedness and Response Plan~~ Employers covered by 16VAC25-220-50; and

~~2. Medium with 11 or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan~~ Employers covered by 16VAC25-220-60 with 11 or more employees. In counting the number of employees, the employer may exclude fully vaccinated employees.

B. The plan and training requirements tied to the plan shall ~~only apply to those employees classified as very high, high, and medium covered by this section.~~

1. Covered by 16VAC25-220-50; and

2. Covered by 16VAC25-220-60, unless such employees are fully vaccinated.

C. Employers shall designate a person to be responsible for implementing their plan. The plan shall:

1. Identify the name or title of the person responsible for administering the plan. This person shall be knowledgeable in infection control principles and practices as the principles and practices apply to the facility, service, or operation.

2. Provide for employee involvement in development and implementation of the plan.

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3. Consider and address the level of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to at those sites, and job tasks employees perform at those sites. Such considerations shall include:

a. Where, how, and to what sources of the SARS-CoV-2 virus or COVID-19 disease might employees be exposed at work, including:

(1) The general public, customers, other employees, patients, and other persons;

(2) Persons ~~known or suspected to be infected with the SARS-CoV-2 virus~~ suspected or confirmed COVID-19 or those at particularly high risk of COVID-19 infection (e.g., local, state, national, and international travelers who have visited locations with ongoing COVID-19 community transmission and health care employees who have had unprotected exposures to ~~persons known or suspected to be infected with SARS-CoV-2 virus~~ suspected or confirmed COVID-19 persons);

(3) Situations where employees work more than one job with different employers and encounter hazards or engage in job tasks that ~~present a very high, high, or medium level of exposure risk~~ involve potential exposure to sources of the SARS-CoV-2 virus or COVID-19 disease; and

(4) Situations where employees work during higher risk activities involving potentially large numbers of people or enclosed work areas such as at large social gatherings, weddings, funerals, parties, restaurants, bars, hotels, sporting events, concerts, parades, movie theaters, rest stops, airports, bus stations, train stations, cruise ships, river boats, airplanes, etc.

b. To the extent permitted by law, including HIPAA, employees' individual risk factors for severe disease. For example, people of any age with one or more of the following conditions are at increased risk of severe illness from COVID-19: chronic kidney disease; COPD (chronic obstructive pulmonary disease); immunocompromised state (weakened immune system) from solid organ transplant; obesity (body mass index or BMI of 30 or higher); serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; sickle cell disease; or type 2 diabetes mellitus. Also, for example, people with one or more of the following conditions might be at an increased risk for severe illness from COVID-19: asthma (moderate-to-severe); cerebrovascular disease (affects blood vessels and blood supply to the brain); cystic fibrosis; hypertension or high blood pressure; immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines; neurologic conditions, such as dementia; liver disease; pregnancy; pulmonary fibrosis (having damaged or scarred lung tissues); smoking; thalassemia (a type of blood disorder); type 1

diabetes mellitus; etc. The risk for severe illness from COVID-19 also increases with age.

c. Engineering, administrative, work practice, and personal protective equipment controls necessary to address those risks.

4. Consider and address contingency plans for situations that may arise as a result of outbreaks that impact employee safety and health, such as:

a. Increased rates of employee absenteeism (an understaffed business can be at greater risk for accidents);

b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination and substitution, engineering controls, administrative and work practice controls, and personal protective equipment (e.g., respirators, ~~surgical/medical procedure~~ surgical masks, etc.);

c. Options for conducting essential operations in a safe and healthy manner with a reduced workforce; and

d. Interrupted supply chains or delayed deliveries of safety and health related products and services essential to business operations.

5. Identify infection prevention measures to be implemented:

a. Promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons to the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

b. Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

c. Establish policies and procedures for managing and educating visitors about the infection prevention procedures at the place of employment.

6. Provide for the prompt identification and isolation of ~~employees known or suspected to be infected with the SARS-CoV-2 virus~~ suspected or confirmed COVID-19 employees away from work, including procedures for employees to report when they are experiencing signs or symptoms of COVID-19.

7. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors who enter the place of employment, businesses that provide contract or temporary employees to the employer, and other persons accessing the place of employment to comply with the requirements of this ~~standard~~ chapter and the employer's plan.

8. Identify the mandatory and non-mandatory recommendations in any CDC guidelines or Commonwealth of Virginia guidance documents the employer is complying

with, if any, in lieu of a provision of this ~~standard chapter~~, as provided for in 16VAC25-220-10 E, ~~F~~, and ~~G~~.

16VAC25-220-80. Training.

~~A. Employers with hazards or job tasks classified as very high, high, or medium exposure risk at a place of employment shall provide training on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease to all employees working at the place of employment regardless of employee risk classification.~~ The following employers shall provide training on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease to employees working at the place of employment:

1. Employers covered by 16VAC25-220-50; and
2. Employers covered by 16VAC25-220-60.

Employers may provide fully vaccinated employees with written information meeting the requirements of subsection F of this section in lieu of training. Where applicable, the training program shall enable each employee to recognize the hazards of the SARS-CoV-2 virus and signs and symptoms of COVID-19 disease and shall train each employee in the procedures to be followed in order to minimize these hazards.

B. The training required under subsection A of this section shall include:

1. The requirements of this ~~standard chapter~~;
2. The mandatory and non-mandatory provisions in any applicable CDC guidelines or Commonwealth of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this ~~standard chapter~~ as provided for in 16VAC25-220-10 E, ~~F~~, and ~~G~~;
3. The characteristics and methods of transmission of the SARS-CoV-2 virus;
4. The signs and symptoms of COVID-19 disease;
5. Risk factors for severe COVID-19 illness including underlying health conditions and advancing age;
6. Awareness of the ability of persons pre-symptomatically and asymptotically infected with SARS-CoV-2 to transmit the SARS-CoV-2 virus;
7. Safe and healthy work practices, including, but not limited to, physical distancing, the wearing of face coverings, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.;
8. Personal protective equipment (PPE):
 - a. When PPE is required;
 - b. What PPE is required;
 - c. How to properly don, doff, adjust, and wear PPE;
 - d. The limitations of PPE;

e. The proper care, maintenance, useful life, and disposal of PPE;

f. Strategies to extend PPE usage during periods when supplies are not available and no other options are available for protection, as long as the extended use of the PPE does not pose any increased risk of exposure. The training to extend PPE usage shall include the conditions of extended PPE use, inspection criteria of the PPE to determine whether it can or cannot be used for an extended period, and safe storage requirements for PPE used for an extended period; and

g. Heat-related illness prevention including the signs and symptoms of heat-related illness associated with the use of COVID-19 PPE and face coverings;

9. The anti-discrimination provisions in 16VAC25-220-90; and

10. The employer's Infectious Disease Preparedness and Response Plan, where applicable.

C. Employers covered by 16VAC25-220-50 shall verify compliance with 16VAC25-220-80 A by preparing a written certification record for ~~those employees exposed to hazards or job tasks classified as very high, high, or medium exposure risk levels~~ trained in accordance with this section.

1. The written certification record shall contain:

- a. The name or other unique identifier of the employee trained;
- b. The trained employee's physical or electronic signature;
- c. The date of the training; and
- d. The name of the person who conducted the training, or for computer-based training, the name of the person or entity that prepared the training materials.

2. A physical or electronic signature is not necessary if other documentation of training completion can be provided (e.g., electronic certification through a training system, security precautions that enable the employer to demonstrate that training was accessed by passwords and usernames unique to each employee, etc.).

3. If an employer relies on training conducted by another employer, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

4. The latest training or retraining certification shall be maintained.

D. When an employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by ~~16VAC25-220-80 subsection A of this section~~, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

Regulations

1. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;
2. Changes are made to the employer's Infectious Disease Preparedness and Response Plan; or
3. Inadequacies in an affected employee's knowledge or use of workplace control measures indicate that the employee has not retained the requisite understanding or skill.

E. Employers ~~with hazards or job tasks classified at lower risk not covered by 16VAC25-220-50 or 16VAC25-220-60~~ shall provide written or oral information to employees exposed to such hazards or engaged in such job tasks on the hazards and characteristics of ~~SARS-CoV-2 and the SARS-CoV-2 virus~~, the signs and symptoms of COVID-19, and measures to minimize exposure. The Department of Labor and Industry shall develop an information sheet containing information on the items listed in subsection F of this section, which an employer may utilize to comply with this subsection.

F. The information required under subsection E of this section shall include at a minimum:

1. The requirements of this ~~standard chapter~~;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The signs and symptoms of COVID-19 disease;
4. The ability of persons pre-symptomatically and asymptotically infected with SARS-CoV-2 to transmit the SARS-CoV-2 virus;
5. Safe and healthy work practices and control measures, including, but not limited to, physical distancing, the benefits of wearing face coverings, sanitation and disinfection practices; and
6. The anti-discrimination provisions ~~of this standard~~ in 16VAC25-220-90.

16VAC25-220-90. Discrimination against an employee for exercising rights under this ~~standard chapter~~ is prohibited.

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this ~~standard chapter~~, Title 40.1 of the Code of Virginia, and implementing regulations under 16VAC25-60-110 for themselves or others.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own personal protective equipment, including, but not limited to, a respirator, face shield, gown, or gloves, provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees. In situations where face coverings are not provided by the employer, no person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the

employee's own face covering that meets the requirements of this ~~standard chapter~~, provided that the face covering does not create a greater hazard to the employee or create a serious hazard for other employees. Nothing in this subsection shall be construed to prohibit an employer from establishing and enforcing legally permissible dress code or similar requirements addressing the exterior appearance of personal protective equipment or face coverings.

C. No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

D. Nothing in this ~~standard chapter~~ shall limit an employee from refusing to do work or enter a location because of a reasonable fear of illness or death. The requirements of 16VAC25-60-110 contain the applicable requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of illness or death.

DOCUMENTS INCORPORATED BY REFERENCE (16VAC25-220)

[List N Products with Emerging Viral Pathogens and Human Coronavirus claims for use against SARS-CoV-2](#), U.S. Environmental Protection Agency, Date Accessed July 20, 2020, www.epa.gov.

[Biosafety in Microbiological and Biomedical Laboratories](#), 5th Edition, HHS Publication No. (CDC) 21-112, revised December 2009, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institutes of Health

[Return to Work Criteria for Healthcare Personnel with SARS-CoV-2 Infection](#), Centers for Disease Control and Prevention, updated June 2, 2021, available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

[COVID-19 Quarantine and Isolation](#), Centers for Disease Control and Prevention, updated July 29, 2021, available at https://www.cdc.gov/coronavirus/2019-ncov/your-health/quarantine-isolation.html?CDC_AA_refVal=https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html

VA.R. Doc. No. R22-6924; Filed September 7, 2021; 3:30 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

DEPARTMENT OF HEALTH PROFESSIONS

Forms

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

Title of Regulation: 18VAC76-20. Regulations Governing the Prescription Monitoring Program.

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

FORMS (18VAC76-20)

[Request for a Waiver or an Exemption from Reporting \(rev. 10/2019\)](#)

[Request for a Waiver or an Exemption from Reporting: Veterinarian \(rev. 10/2019\)](#)

[Request to Register as an Authorized Agent to Receive Information from the Prescription Monitoring Program \(rev. 4/2018\)](#)

~~[Recipient Request for Discretionary Disclosure of Information from the Prescription Monitoring Program \(rev. 7/2017\)](#)~~

[Recipient Request for Discretionary Disclosure of Information from the Prescription Monitoring Program \(rev. 9/2021\)](#)

[Regulatory Authority Request for Discretionary Disclosure of Information from the Prescription Monitoring Program \(rev. 4/2018\)](#)

[Application to Register as a Virginia Medicaid Managed Care Authorized Agent Clinical Designee to Receive Information from the Prescription Monitoring Program \(rev. 4/2018\)](#)

[Application to Register as a Virginia Medicaid Managed Care Authorized Agent to Receive Information from the Prescription Monitoring Program \(rev. 4/2018\)](#)

[Account Development Form for Reporting to Virginia's Prescription Monitoring Program \(rev. 7/2018\)](#)

[Request to Register as an Authorized Parole or Probation Officer to Receive Information from the Prescription Monitoring Program \(rev. 4/2018\)](#)

[Request to Register as an Authorized Drug Diversion Investigator to Receive Information from the Prescription Monitoring Program \(rev. 4/2018\)](#)

[Request to Register as an Authorized Investigator for the Department of Corrections to Receive Information from the Prescription Monitoring Program \(eff. 8/2019\)](#)

VA.R. Doc. No. R22-6944; Filed September 3, 2021, 8:44 a.m.

BOARD OF PHARMACY

Forms

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

Titles of Regulations: 18VAC110-20. Regulations Governing the Practice of Pharmacy.

18VAC110-21. Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians.

18VAC110-30. Regulations for Practitioners of the Healing Arts to Sell Controlled Substances.

18VAC110-60. Regulations Governing Pharmaceutical Processors.

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

FORMS (18VAC110-20)

[Application for a Pharmacy Permit \(rev. 10/2020\)](#)

[Application for a Non-resident Pharmacy Registration \(rev. 10/2020\)](#)

[Application for a Non-Resident Wholesale Distributor Registration \(rev. 10/2020\)](#)

[Application for Registration as Nonresident Manufacturer \(rev. 10/2020\)](#)

[Application for a Non-Resident Third Party Logistics Provider Registration \(rev. 10/2020\)](#)

[Application for Registration as a Nonresident Warehouser \(rev. 10/2020\)](#)

[Application for a Non-resident Outsourcing Facility Registration \(rev. 10/2020\)](#)

[Application for an Outsourcing Facility Permit \(rev. 10/2020\)](#)

[Application for a Medical Equipment Supplier Permit \(rev. 10/2020\)](#)

Regulations

Application for a Permit as a Restricted Manufacturer (rev. 10/2020)

Application for a Permit as a Non-Restricted Manufacturer (rev. 10/2020)

Application for a License as a Wholesale Distributor (rev. 10/2020)

Application for a Permit as Warehouse (rev. 10/2020)

Application for a Permit as a Third-Party Logistics Provider (rev. 10/2020)

Application for Registration as a Non-resident Medical Equipment Supplier (rev. 10/2020)

Application for a Controlled Substances Registration Certificate (rev. 10/2020)

Closing of a Pharmacy (rev. 5/2018)

Application for Approval of an Innovative (Pilot) Program (rev. 10/2020)

Registration for a Pharmacy to be a Collection Site for Donated Drugs (rev. 5/2018)

Application for Approval of a Repackaging Training Program (rev. 10/2020)

Registration for a Facility to be an Authorized Collector for Drug Disposal (rev. 5/2018)

~~Application for a Re-Inspection of a Facility (rev. 10/2020)~~

Application for Re-inspection of Facility (rev. 3/2021)

Notification of Distribution Cessation due to Suspicious Orders (rev. 5/2018)

FORMS (18VAC110-21)

Application for Licensure as a Pharmacist by Examination (rev. 6/2021)

Application for Licensure as a Pharmacist by Endorsement (rev. 6/2021)

Instructions for Reinstating or Reactivating a Pharmacist License (rev. 6/2021)

Instructions for Reinstating a Pharmacy Technician Registration (rev. 6/2021)

Application for Registration as a Pharmacy Technician (eff. 6/2021)

Application for Registration as a Limited-Use Pharmacy Technician (for use exclusively in a free clinic) (rev. 6/2021)

Affidavit for Limited-use Pharmacy Technician (rev. 5/2018)

Application for Approval of Pharmacy Technician Training Program (rev. 10/2020)

Application for Registration as a Pharmacy Technician Trainee (rev. 6/2021)

Application for Registration as a Pharmacy Intern (eff. 6/2021)

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 6/2021)

Affidavit of Practical Experience as a Pharmacy Intern (rev. 3/2019)

Name Change Form for Individuals (rev. 3/2018)

~~Application for Approval of a Continuing Education Program (rev. 5/2018)~~

~~Application for Approval of an Innovative (PILOT) Program (rev. 10/2020)~~

Application for Approval of a Continuing Education Program (rev. 10/2020)

Application for Approval of an Innovative (PILOT) Program (rev. 6/2021)

Application for Approval of a Repackaging Training Program (rev. 10/2020)

Continuing Education (CE) Credit Form for Preceptors (rev. 7/2020)

Application for Approval of ACPE Accredited Pharmacy School Course(s) for Continuing Education Credit (rev. 6/2020)

Sponsor Certification for Volunteer Registration (rev. 4/2018)

Application for Volunteer Practice By a Pharmacist (rev. 4/2018)

Continuing Education (CE) Credit Form for Volunteer Practice (rev. 4/2018)

FORMS (18VAC110-30)

Application for a Controlled Substances Registration Certificate (rev. 10/2020)

Controlled Substances Registration Inspection Report (rev. 1/2020)

Application for a License to Sell Controlled Substances by a Practitioner of the Healing Arts (eff. 6/2021)

Application for Limited Use Facility Dispensing Permit for Nonprofit (rev. 1/2021)

Limited Use Practitioner Dispensing License for Nonprofit (rev. 1/2021)

FORMS (18VAC110-60)

Registration of Cannabis Products (rev. 9/2021)

[Application for Registration as a Patient for Cannabis Oil \(rev. 3/2021\)](#)

[Application for Registration as a Parent/Guardian for Cannabis Oil \(rev. 3/2021\)](#)

[Application for Registration as a Registered Agent for Cannabis Oil \(rev. 3/2021\)](#)

[How to Register with the Board as a Patient, Parent or Legal Guardian \(rev. 7/2020\)](#)

~~[Application for a Pharmaceutical Processor Permit \(rev. 1/2021\)](#)~~

[Application for a Pharmaceutical Processor Permit \(rev. 9/2021\)](#)

[Practitioner Reporting Requirements \(eff. 6/2019\)](#)

[Registration of CBD or THC-A Oil Products \(eff. 6/2019\)](#)

[Pharmaceutical Processor & Dispensing Facility Inspection Report \(rev. 3/2021\)](#)

[Application for Registration as a Registered Agent \(eff. 12/2019\)](#)

[Request for Visitor Approval \(eff. 5/2020\)](#)

VA.R. Doc. No. R22-6943; Filed September 3, 2021, 8:43 a.m.

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TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-319. Regulations Governing Accelerated Renewable Energy Buyers (adding 20VAC5-319-10 through 20VAC5-319-70).**

Statutory Authority: §§ 12.1-13 and 56-585.5 of the Code of Virginia.

Public Hearing Information: Hearing will be held upon request.

Public Comment Deadline: November 5, 2021.

Agency Contact: Allison Samuel, Manager, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 225-3177, FAX (804) 371-9350, or email allison.samuel@scc.virginia.gov.

Summary:

Pursuant to Chapters 1193 and 1194 of the 2020 Acts of Assembly, the proposed amendments add a new chapter that establishes procedures for certification of accelerated renewable energy buyers to conform to requirements of § 56-585.5 G of the Code of Virginia. Under the proposed new regulation, an accelerated renewable energy buyer may choose to certify through the Phase I or Phase II Utility in whose certificated service territory its accounts are located or through the commission procedures provided for in the regulation.

AT RICHMOND, AUGUST 25, 2021

CASE NO. PUR-2021-00089

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

Ex Parte: In the matter of establishing rules and regulations pursuant to § 56-585.5 G of the Code of Virginia related to accelerated renewable energy buyers

ORDER FOR NOTICE AND COMMENT

On May 12, 2021, the State Corporation Commission ("Commission") issued an Order Establishing Proceeding ("Initial Order") docketing this matter for the purpose of determining whether rules and regulations are necessary to implement the provisions of Code § 56-585.5 G and, if so, the appropriate rules and regulations that should be adopted. Enacted as part of the Virginia Clean Economy Act by the 2020 Virginia General Assembly,¹ Code § 56-585.5 G permits certain customers of Appalachian Power Company ("APCo") and Virginia Electric and Power Company ("Dominion") to be certified as accelerated renewable energy buyers ("ARBs"). Among other things, the Initial Order directed APCo and Dominion to submit comments and permitted any other interested person or entity to submit comments regarding specific issues identified therein. The Commission further permitted commenters to propose specific regulations.

The following entities filed comments: Dominion and APCo,² jointly; the Virginia Office of the Attorney General, Division of Consumer Counsel; Walmart, Inc. ("Walmart"); the Data Center Coalition ("DCC"); and the Advanced Energy Buyers Group ("AEBG").³ Dominion and APCo included draft proposed regulations with their joint comments. Among other things, the comments of the AEBG stated that "[i]n addition to providing responses below to the questions posed by the Commission, AEBG also requests the opportunity to reply to feedback submitted by [Dominion and APCo]."⁴

On July 7, 2021, the Commission issued an Order for Additional Comment permitting additional comments in response to comments previously filed in this matter on or before July 29, 2021. Additional comments were filed by Dominion and APCo, jointly; Walmart; DCC; and AEBG.⁵

Regulations

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds as follows. Based on comments and draft regulations filed in this proceeding, the Commission's Staff ("Staff") has prepared Proposed Rules which are appended to this Order. We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

The Commission takes judicial notice of the ongoing public health issues related to the spread of the coronavirus, or COVID-19. The Commission has taken certain actions, and may take additional actions going forward, which could impact the procedures in this proceeding.⁶ Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of comments.

Accordingly, IT IS ORDERED THAT:

(1) All pleadings, briefs, or other documents required to be served in this matter should be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure ("Rules of Practice").⁷ Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, Confidential information, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.⁸

(2) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment ("Order"), including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) An electronic copy of the Proposed Rules may be obtained by submitting a request to Allison F. Samuel in the Commission's Division of Public Utility Regulation at the following email address: Allison.Samuel@scc.virginia.gov. An electronic copy of the Proposed Rules can be found at the Division of Public Utility Regulation's website: scc.virginia.gov/pages/Rulemaking. Interested persons may also download unofficial copies of the Order and the Proposed Rules from the Commission's website: scc.virginia.gov/pages/Case-Information.

(4) Within five (5) business days of the date of this Order, APCo and Dominion shall transmit to each customer eligible to be certified as an ARB, by separate first class mailing, by electronic mail, or by bill insert, a copy of this Order.

(5) Within ten (10) business days of the date of this Order, APCo and Dominion shall file an affidavit of compliance with the requirement in Ordering Paragraph (4) with the Clerk of the Commission by filing electronically at scc.virginia.gov/clerk/efiling/. The affidavit shall not include the names or other identifying information of the notified customers, but each utility shall maintain a record of such information.

(6) The Commission's Division of Public Utility Regulation shall provide copies of this Order by electronic transmission, or when electronic transmission is not possible, by mail, to any additional individuals, organizations, and companies who have been identified by the Staff as having interest in this matter.

(7) On or before November 5, 2021, any interested person may file comments on the Proposed Rules by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. Those unable, as a practical matter, to submit comments electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Such comments may also include proposals and hearing requests. All comments shall refer to Case No. PUR-2021-00089. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(8) On or before November 19, 2021, the Staff shall file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(9) APCo's Motion is granted.

(10) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

¹Senate Bill 851, 2020 Va. Acts ch. 1194, and identical House Bill 1526, 2020 Va. Acts ch. 1193 (effective July 1, 2020).

²On June 21, 2021, APCo also filed a Motion to Accept Affidavit Out of Time ("Motion") related to requirements set forth in the Initial Order to transmit a copy of the Initial Order to customers eligible to be certified as ARBs. No responses to APCo's Motion were filed, and the Commission will grant the Motion herein.

³AEBG filed its comments on June 22, 2021. The Commission hereby exercises its discretion to accept AEBG's comments one day out of time.

⁴AEBG Comments at 2.

⁵AEBG filed its comments on July 30, 2021. The Commission hereby exercises its discretion to accept AEBG's comments one day out of time.

⁶See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic Service of Commission Orders, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020), extended by Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"), extended by Doc. Con. Cen. No. 200520105, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

⁷5 VAC 5-20-10 et seq.

⁸As noted in the Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may be subject to delayed processing due to the COVID-19 public health issues.

Chapter 319

Regulations Governing Accelerated Renewable Energy Buyers

20VAC5-319-10. Purpose and applicability.

This chapter is promulgated pursuant to § 56-585.5 G 2 of the Code of Virginia to implement the provisions of § 56-585.5 of the Code of Virginia related to accelerated renewable energy buyers.

20VAC5-319-20. Definitions.

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

"Aggregate load" means the combined electrical load associated with selected accounts of an ARB with the same legal entity name as, or in the names of affiliated entities that control, are controlled by, or are under common control of, such legal entity or are the names of affiliated entities under a common parent.

"ARB" means accelerated renewable energy buyer as defined in § 56-585.5 A of the Code of Virginia.

"Bundled contract" means a contract for the bundled capacity, energy, and RECs from solar or wind generation resources located within the PJM region and initially placed in commercial operation after January 1, 2015, including any contract with a utility for such generation resources that does not allocate to or recover from any other customer of the utility the cost of such resources.

"Commission" means the Virginia State Corporation Commission.

"Electrical load associated with the selected accounts of an accelerated renewable energy buyer" means the aggregate demand to be determined based on the sum of the maximum

non-coincident peak demand metered on the utility's distribution system for each customer account in the previous calendar year. The maximum non-coincident peak demand for each customer account is the highest average kilowatt measured during any 30-minute interval in the previous calendar year.

"Phase I Utility" has the same meaning as provided in § 56-585.1 A 1 of the Code of Virginia.

"Phase II Utility" has the same meaning as provided in § 56-585.1 A 1 of the Code of Virginia.

"REC" means renewable energy certificate.

"REC-only contract" means a contract for purchase of unbundled RECs from RPS eligible resources.

"RPS" means the renewable energy portfolio standard pursuant to § 56-585.5 of the Code of Virginia.

20VAC5-319-30. Certification of accelerated renewable energy buyers.

Any potential ARB must be certified annually either (i) through the Phase I or Phase II Utility in whose certificated service territory its accounts are located through the process established by that utility or (ii) through the commission pursuant to 20VAC5-319-40.

20VAC5-319-40. Commission certification process.

A. The commission establishes the following process for certification through the commission:

1. Any potential ARB that chooses to certify directly with the commission must submit to the director of the commission's Division of Public Utility Regulation an Accelerated Renewable Energy Buyer Certification Form by March 1 for the upcoming year, starting June 1 and concluding May 31, based on load data and information from the prior calendar year.

2. Upon receipt of a completed Accelerated Renewable Energy Buyer Certification Form pursuant to subdivision A 1 of this section, commission staff shall provide the appropriate Phase I or Phase II Utility with a copy of the completed Accelerated Renewable Energy Buyer Certification Form, excluding copies of any executed contracts provided to commission staff by the potential ARB, and set a deadline by which the utility shall submit comments to commission staff. The utility's comments shall include confirmation to commission staff that the potential ARB meets the aggregate load requirements of § 56-585.5 of the Code of Virginia. The utility shall also send a copy of its comments to the potential ARB.

3. Following receipt of a completed Accelerated Renewable Energy Buyer Certification Form pursuant to subdivision A 1 of this section, based on its review and the comments received, commission staff shall determine by May 1

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whether the potential ARB meets the requirements of § 56-585.5 G of the Code of Virginia and this chapter, the type of certification (i.e., REC-only contract or bundled contract), and the percentage exemption.

4. Within five business days of its certification decision, commission staff shall provide the appropriate Phase I or Phase II Utility with a list of customer accounts associated with each certified ARB, the type of certification (i.e., REC-only contract or bundled contract), and the percentage exemption. Commission staff shall also provide each Phase I Utility and Phase II Utility with the nameplate capacity of the solar and wind generation of certified ARBs with bundled contracts.

B. Any potential ARB or Phase I or Phase II Utility that contests the certification decision made by commission staff must file a formal complaint with the commission pursuant to 5VAC5-20-100 within five business days of the certification decision. Any statutorily exempt charges incurred by the potential ARB after June 1 are subject to collection or refund, depending on the certification decision.

C. Customers certified as ARBs through this process shall be exempt from the applicable charges for one year starting June 1 and concluding May 31 following certification.

D. For a potential ARB that seeks certification based on its load and renewable energy under contract for the 2020 calendar year, the ARB must submit an Accelerated Renewable Energy Buyer Certification Form by March 1, 2022, based on information for the 2020 calendar year. Customers that are certified as ARBs based on 2020 calendar year information will receive a refund of applicable charges for the period of June 1, 2021, to May 31, 2022.

20VAC5-319-50. Utility certification process.

A. Each Phase I Utility and Phase II Utility shall establish a process to certify ARBs based on receipt and review of Accelerated Renewable Energy Buyer Certification Forms submitted to the utility by potential ARBs. In reviewing the information submitted by potential ARBs required for certification, each Phase I Utility and Phase II Utility shall ensure that the appropriate internal protections are in place to protect the confidentiality of that information from those within the utility serving in marketing roles.

B. By May 1 annually, each Phase I Utility and Phase II Utility shall submit to commission staff a complete list of ARBs certified by the utility. Each Phase I Utility and Phase II Utility shall submit additional information to support its certification decisions to commission staff upon request. Any potential ARB that contests the certification decision made by a Phase I or Phase II Utility may file a formal complaint with the commission pursuant to 5VAC5-20-100 within five business days of the certification decision. Commission staff may contest the certification decision made by a Phase I or Phase II Utility by filing a motion with the commission

pursuant to 5VAC5-20-90, or, as appropriate, through other relevant proceedings before the commission.

C. Customers certified as ARBs through this process shall be exempt from the applicable charges for one year starting June 1 and concluding May 31 following certification.

D. For a potential ARB that seeks certification based on its load and renewable energy under contract for the 2020 calendar year, the ARB must submit an Accelerated Renewable Energy Buyer Certification Form by March 1, 2022, based on information for the 2020 calendar year. Customers that are certified as ARBs based on 2020 calendar year information will receive a refund of applicable charges for the period of June 1, 2021, to May 31, 2022.

20VAC5-319-60. Confidentiality.

Where any Accelerated Renewable Energy Buyer Certification Form or other information submitted to commission staff under this chapter, including any supporting documents, contains information that the ARB asserts is confidential, it shall be treated in accordance with 5VAC5-20-170.

20VAC5-319-70. Waiver.

The commission may waive any part or all parts of this chapter for good cause shown.

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 (20VAC5-319)

[Accelerated Renewable Energy Buyer Certification Form, \(draft 8/2021\)](#)

VA.R. Doc. No. R22-6301; Filed August 25, 2021, 3:01 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER EIGHTY-ONE (2021)

Declaration of a State of Emergency Due to Severe Weather

Importance of the Issue

On this date, August 31, 2021, I declare that a state of emergency exists in the Commonwealth of Virginia to prepare and coordinate our response to severe weather storms. The Virginia Emergency Operations Center has monitored severe weather and rain events that started moving through the western portion of the Commonwealth on August 30, 2021, to include Tropical Storm Ida, which will cover large portions of the entire state beginning today, August 31, 2021. The rainfall experienced so far, in conjunction with the amount forecast in coming days, presents significant resource and operational challenges.

The impacts of these weather systems have already caused flash flooding, downed trees, electrical outages, and significant impacts to roads and bridges. Given the storm's current forecast, the Commonwealth will assist localities, especially those with vulnerable populations, to provide support in response to a large-scale weather event during the COVID-19 pandemic. Pre-positioning response assets and supplies and activating the Virginia Emergency Support Team will be necessary to assist our localities.

The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

- Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.
- Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

- Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

- Activation of § 59.1-525 et seq. of the Code related to price gouging.

- Authorization of a maximum of \$1,000,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq. Included in this authorization is \$300,000 for the Department of Military Affairs.

- Activation of the Virginia National Guard to State Active Duty.

Effective Date of this Executive Order

This Executive Order shall be effective August 30, 2021, and shall remain in full force and in effect until September 28, 2021, unless sooner amended or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 31st day of August, 2021.

/s/ Ralph S. Northam, Governor

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.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Title of Document: [Inspections Without a Written Evaluation Report Conducted by a Home Inspector.](#)

Public Comment Deadline: October 27, 2021.

Effective Date: October 28, 2021.

Agency Contact: Tanya Pettus, Administrator, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-1795, or email alhi@dpor.virginia.gov.

DEPARTMENT OF TAXATION

Title of Document: [Guidelines for the Virginia Disposable Plastic Bag Tax.](#)

Public Comment Deadline: October 27, 2021.

Effective Date: October 28, 2021.

Agency Contact: Stephen Klos, Senior Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2336, or email stephen.klos@tax.virginia.gov.

GENERAL NOTICES

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Contact Information for the following Department of Medical Assistance Services general notices is provided at the end of the notices.

Draft Mental Health Services Provider Manual

The draft Mental Health Services Behavioral Therapy Program Supplement Provider Manual is now available on the Department of Medical Assistance Services (DMAS) website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 29, 2021.

Draft Mental Health Services Provider Manual

The draft Mental Health Services Provider Manual Chapters 2, 4, 5, and 6, and Appendices C, D, E, F, and G are now available on the DMAS website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 29, 2021.

Draft Physician Practitioner Appendix D Provider Manual

The draft Physician Practitioner Provider Manual Appendix D is now available on the DMAS website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/>.

Draft Telehealth Services Supplement

The draft Telehealth Services Supplement is now available on the DMAS website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 29, 2021.

Draft Temporary Detention Order Supplement

The draft Temporary Detention Order Supplement is now available on the DMAS website at <https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/> for public comment until September 29, 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.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Bristol Winterfield Partners LLC

The State Water Control Board proposes to issue a consent special order to Bristol Winterfield Partners LLC for alleged violation of the State Water Control Law at Winterfield Place - Phase II at the corner of Huguenot Trail and Winterfield Road in Powhatan 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 will accept comments by email or postal mail from September 27, 2021, to October 27, 2021.

Contact Information: Aree Reinhardt, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email aree.reinhardt@deq.virginia.gov.

Proposed Enforcement Action for Dayton Station Tanks 423 LLC

An enforcement action has been proposed for Dayton Station Tanks 423 LLC for violations at the Krossroads Kuntry Store in Rockingham County, Virginia. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to Dayton Station Tanks 423 LLC to address noncompliance with State Water Control Law. 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, fax, or postal mail from September 27, 2021, to October 27, 2021.

Contact Information: Eric Millard, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email eric.millard@deq.virginia.gov.

Proposed Enforcement Action for Matthews Sand and Gravel LLC

The State Water Control Board proposes to issue a consent special order to Matthews Sand and Gravel LLC for alleged violation of the State Water Control Law at 18702 Church Road, Stony Creek, 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 September 27, 2021, to October 28, 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.

General Notices

Proposed Enforcement Action for Mt. Jackson Bulk Plant Tanks 440 LLC

An enforcement action has been proposed for Mt. Jackson Bulk Plant Tanks 440 LLC for violations at the Mt. Jackson Bulk Tank Plant in Mount Jackson, Virginia. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to Mt. Jackson Bulk Plant Tanks 440 LLC to address noncompliance with State Water Control Law. 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, fax, or postal mail from September 27, 2021, to October 27, 2021.

Contact Information: Eric Millard, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email eric.millard@deq.virginia.gov.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

BOARD OF COUNSELING

Title of Regulation: 18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers.

Publication: 38:1 VA.R. 158-160 August 30, 2021.

Correction to Final Regulation:

Page 159, 18VAC115-40-20 A, row 4 of the table, after "check" add "or dishonored credit card or debit card" and change "\$35" to "\$50"

VA.R. Doc. No. R20-6208; Filed September 13, 2021, 4:23 p.m.

STATE CORPORATION COMMISSION

Title of Regulation: 20VAC5-360. Licensed Professional Engineer to Exercise Responsible Charge over Certain Natural Gas Engineering Projects.

Publication: 38:2 VA.R. 317 September 13, 2021.

Correction to Erratum:

Change "20VAC5-360-10" to "20VAC5-360-20"

VA.R. Doc. No. R21-6603; Filed September 13, 2021, 10:43 a.m.

Errata
