VIRGINIA REGISTER OF REGULATIONS

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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.virgina.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.

PUBLICATION SCHEDULE AND DEADLINES

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

November 2022 through November 2023

Volume: Issue	Material Submitted By Noon*	Will Be Published On
39:6	October 19, 2022	November 7, 2022
39:7	November 2, 2022	November 21, 2022
39:8	November 14, 2022 **(Monday)**	December 5, 2022
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39:10	December 13, 2022 **(Tuesday)**	January 2, 2023
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40:7	November 1, 2023	November 20, 2023

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PSYCHOLOGY

Initial Agency Notice

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

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

Name of Petitioner: Michael Moates.

Nature of Petitioner's Request: The petitioner requests that the Board of Psychology amend its regulations to register out-of-state providers from locations that do not participate in the Psychology Interjurisdictional Compact to engage in the practice of psychology via telehealth in Virginia.

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on October 24, 2022. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens October 24, 2022, and closes November 23, 2022. The board will consider the petition and all comments in support or opposition at the next meeting after the close of public comment, currently scheduled for December 6, 2022.

Public Comment Deadline: November 23, 2022.

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

VA.R. Doc. No. PFR23-09; Filed October 4, 2022, 8:24 a.m.

BOARD OF SOCIAL WORK

Agency Decision

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

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

Name of Petitioner: Joseph Lynch, LCSW.

Nature of Petitioner's Request: The petitioner requests that the Board of Social Work amend 18VAC140-20-50, which provides the experience requirements for a licensed clinical social worker, to require a supervisee working toward becoming a licensed clinical social worker to obtain licensure as a licensed master's social worker while obtaining required experience under supervision.

Agency Decision: Request denied.

Statement of Reason for Decision: The Board of Social Work considered this petition at its September 23, 2022, meeting. The board decided to take no action on the petition, finding that a requirement that individuals under supervision must obtain designation as a licensed master's social worker would create a barrier to increasing the workforce, a barrier to access to services, and would add regulatory and exam burdens to supervisees.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4441, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. PFR22-42; Filed September 23, 2022, 1:51 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Initial Agency Notice

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

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

Name of Petitioner: Cynthia Hites.

Nature of Petitioner's Request: "I, Cynthia Hites, a citizen of the Commonwealth of Virginia, pursuant to § 2.2-4007 of the Code of Virginia, do humbly submit this petition for verbiage removal to Virginia Administrative Code 24VAC35-60-20, Definitions., "Violations".

July 1, 2012*:* VASAP Interlock Inception. Paradoxically, the Virginia interlock performance standard was set as "alcohol specific", and the design standard was set as the fuel cell. (24VAC35-60-70 "the machines shall be specific to alcohol", 24VAC35-60-20 "Alcohol is defined as ethanol (C_2H_5OH)")

November 26, 2019: The NHTSA recognizes the usage of the term "ethanol specific" published in "Ignition Interlock - What you need to know. A toolkit for policy makers, highway safety professionals and advocates" is in error and amends it immediately.

January 29, 2020: Randolph Atkins of the NHTSA states in writing "BAIIDs are alcohol specific, but not ethanol specific."

January 21, 2021: Virginia Town Hall, Form TH-03 April 2020: "VASAP recognizes that ignition interlocks can detect alcohols other than ethanol..."

March 1, 2021: VASAP removes Virginia's interlock performance standard: "The term "alcohol specific" is being deleted to remove any suggested claim that interlocks will only detect ethanol", Virginia Register of Regulations Volume 37, Issue 14, page 674

December 10, 2021: Minutes of Quarterly VASAP Meeting, Chief Legislative Officer for Lifesafer, "Mr. Ken Denton clarified that ignition interlocks are screening devices unlike evidentiary breath alcohol machines..."

With the full understanding that Virginia's interlock design standard could not meet Virginia's interlock performance standard, VASAP removed the performance standard of "alcohol specific" for interlock devices in Virginia. The paradigm of the IID program has shifted, but VASAP administration has yet to adjust. The limited scope of this instrument renders it a screening tool, not evidential, and any "readings" stop at the pass or fail of the lockout device. This instrument is preliminary for the presence of ethanol and its results cannot be blanketly construed as drinking alcohol. The instrument can only corroborate sobriety. The interlock prevents a driver who has provided a failed breath test (>.02 BrAC) from starting a vehicle, and that is the end of its scope of functionality. An IID allows the car to either start or it locks the ignition, but IID readings do not meet the evidentiary standard of that of the Intox EC/IR II. The interlock is a lockout device, not an evidential breath test; its readings cannot be used in court, nor can they be used extrajudicially. The error lies in what VASAP considers a "violation". Defining a failed interlock reading as a "violation" for the presence of ethanol is not in accordance with the functionality of the fuel cell, as the instrument cannot distinguish between alcoholic compounds. Compliance should be defined as having the IID installed for the determined duration, regardless of the pass or fail of the machine. Failed readings are expected with non-alcohol specific instruments and should NOT constitute "violations" or VASAP program noncompliance. According to data received via FOIA requests and VASAP meeting materials, in 2021 there were 7889 interlock installations in Virginia and during that same timeframe 6,843 cases were received by VASAP for secondary interlock review. Non alcohol-specific sensors generate high numbers of false positives. The solution to the non alcohol-specific fuel cell is to stop considering failed interlock tests as "violations". The solution to alleviate the financial pressures felt by VASAP is to stop considering failed interlock tests as "violations". The solution to eliminate the punishment of false positives is to stop considering failed interlock tests as "violations". VASAP cannot continue to hold Virginians to a standard it has removed.

I hereby request the following bold-faced verbiage be omitted from 24VAC35-60-20:

Definitions., "Violation" means an event such as "a breath test indicating a BAC reaching the fail point upon initial startup"; a refusal to provide a rolling retest deep lung breath sample, "a rolling retest with a BAC reaching the fail point"; altering, concealing, hiding or attempting to hide one's identity from the ignition interlock system's camera while providing a breath sample; or tampering, that breaches the guidelines for use of the interlock device.

Correcting the interlock system as outlined in this petition will be a solution to a host of current problems.

Thank you for your consideration in this matter."

Agency Plan for Disposition of Request: This petition will be considered at the next commission meeting on December 9, 2022.

Public Comment Deadline: November 24, 2022.

Agency Contact: Christopher Morris, Special Programs Coordinator, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, or email chris.morris@vasap.virginia.gov.

VA.R. Doc. No. PFR23-08; Filed September 29, 2022, 2:23 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-280, Ground Water Standards**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated September 19, 2022, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare and is clearly written and easily understandable. The regulation establishes groundwater standards that prevent the degradation of groundwater. Groundwater is a valuable resource used as a public water supply in many communities.

The department is recommending to retain the regulation without change. The regulation is beneficial to the Commonwealth. The regulation establishes groundwater standards that prevent the degradation of groundwater quality. Groundwater is a primary source of drinking water for thousands of Virginians with individual homeowner wells and for 757 municipal public water supplies. High quality groundwater is the source of supply for 158 manufacturing facilities in Virginia that rely on water that requires minimal treatment.

The current regulation continues to be needed. This regulation establishes groundwater standards to protect the quality of groundwater in the Commonwealth. The one public comment received during the periodic review comment period was generally supportive of regulation to protect groundwater quality from pollution. The regulation establishes groundwater standards that are statewide, as well as specific standards that are applicable in the different physiographic provinces in the Commonwealth.

This regulation is a state-only regulation and does not overlap, duplicate, or conflict with federal or state law or regulation. This regulation was last amended in 2004. The last periodic review occurred in 2018. The groundwater standards in this regulation continue to be protective of groundwater quality with limited regulatory burden. The regulation establishes groundwater standards and does not directly impact small businesses.

Contact Information: Brian Campbell, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-6890.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-740, Water Reclamation and Reuse Regulation**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated September 1, 2022, to support this decision.

In accordance with State Water Control Law, specifically subdivision 15 of § 62.1-44.15 of the Code of Virginia, the regulation promotes and establishes requirements for the reclamation and reuse of wastewater that are protective of state waters and public health as an alternative to directly discharging pollutants into state waters. The regulation accomplishes this with commonsense, implementable reclaimed water standards and treatment, design, construction, operation, and maintenance requirements for the reclamation and reuse of wastewater. As water reclamation and reuse is not mandatory in Virginia, requirements of the regulation only apply where a locality or other entity chooses to implement water reclamation and reuse contingent upon the locality's unique water needs and resources, which may be for economic or other reasons.

This regulation, which is similar in content and organization to the water reuse regulations of many other states with successful, established water reclamation and reuse programs, is easy to read and understand. The agency recommends that the Water Reclamation and Reuse Regulation (9VAC25-740) be retained without change. This regulation is necessary to ensure that the reclamation and reuse of wastewater when implemented is conducted in a manner protective of the environment and public health and is essential to promoting and encouraging water reclamation and reuse by engendering and maintaining consumer confidence in reclaimed water as a safe, predictable, and reliable alternative water resource to support continued economic growth in Virginia.

Public comments were received during periodic review of this regulation and focused on the following:

• Develop a comprehensive framework for an indirect and direct potable reuse in Virginia. This would involve removing the prohibition on direct potable reuse (DPR) in the regulation and the likely addition of numerous and more stringent and complicated requirements specifically for DPR to the regulation.

• Make the education and notification program requirement unnecessary for the distribution of Level 1 reclaimed water to reuses that normally require the less highly treated and disinfected reclaimed water Level 2. The regulation already allows for the change proposed by the commenter; therefore, no changes are necessary.

• Make the messaging on signage for reclaimed water more positive while still informing people not to drink the water.

This can be addressed without changes to the regulation through existing variance provisions of the regulation that may allow deviations from existing messaging requirements. Although the messaging requirements could be amended, it is unknown as to whether this would result in more or fewer signage messaging requirements in the regulation.

• Provide a nonburdensome framework for public access to reclaimed water via filling stations. Such a framework already exists in the regulation and is further described in agency guidance available to the public on the Virginia Regulatory Town Hall.

• Amend the regulation to more effectively support groundwater aquifer replenishment. Any changes to the existing regulation to add requirements for direct injection of reclaimed water into an aquifer for groundwater replenishment would be redundant of the Environmental Protection Agency's Underground Injection Control Program (40 CRF Part 144). Such regulatory duplication is unwarranted; therefore, no changes are necessary.

None of the commenters indicated that their suggested change would minimize the impact of the regulation on small business. The regulation is technical in nature and contains requirements that are complex, frequently mirroring or referencing other similarly complicated state regulations for wastewater and water treatment and codes for indoor plumbing. The regulation also includes different reclaimed water standards and treatment requirements based on the type of wastewater to be reclaimed and the intended reuse of the reclaimed water. There are federal guidelines but no federal regulations for the reclamation and reuse of wastewater. Although changes in technology have occurred since the last amendment of the regulation in 2014, design and operational requirements of the regulation remain applicable and relevant. During this same period, more federal and state funding opportunities for water reuse have become available through the Water Infrastructure and Innovation Act and the Virginia Clean Water Revolving Loan Fund. Consistent with § 62.1-44.2 of the Code of Virginia, the regulation promotes and encourages the reclamation and reuse of wastewater in a manner protective of the environment and public health but does not require any person or party, including small businesses, to perform this activity. Consequently, the regulation does not adversely impact small businesses.

Contact Information: Valerie Rourke, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9126.

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TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Agency Notice

Pursuant to Executive Order 19 (2022) 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: **12VAC35-180, Regulations to Ensure the Protection of Subjects in Human Research**. The review will be guided by the principles in Executive Order 19 (2022). The purpose of a periodic 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 October 24, 2022, and ends November 21, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

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

Title of Regulation: **1VAC20-60. Election Administration (adding 1VAC20-60-80).**

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

Effective Date: October 6, 2022.

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

Summary:

The amendments establish the process through which a local electoral board may request a risk-limiting audit of a contested race in its jurisdiction, including requirements that (i) an electoral board must cast a majority vote at a public meeting to request an audit for a particular contested race; (ii) an electoral board must sign and complete the new Form SBE 671.2(D) and identify any race subject to the requested audit; (iii) the State Board of Elections will grant an audit request if the form is properly completed, all statutory requirements are met, and the request is submitted prior to the state board meeting that determines all the contested races for that election that will receive a risk-limiting audit; and (iv) the state board will grant a two-week extension to the electoral board's certification deadline under § 24.2-671 of the Code of Virginia to accommodate the conduct of the risk-limiting audit.

1VAC20-60-80. Request for a risk-limiting audit for a contested race within a jurisdiction.

Pursuant to § 24.2-671.2 D of the Code of Virginia, a local electoral board shall follow the process in this section to request a risk-limiting audit of a contested race within its jurisdiction:

1. At the public canvass meeting following the election, an electoral board may elect to request an audit of a contested race, or multiple races, within its jurisdiction (risk-limiting audit) by a majority vote.

2. If a question to request a risk-limiting audit achieves a majority vote, an electoral board must complete Form SBE 671.2(D) to request State Board of Elections (SBE) approval of the audit.

3. The SBE will grant a request for a risk-limiting audit within a locality's jurisdiction if:

a. The submitted Form SBE 671.2(D) contains sufficient information for the SBE to determine that the local electoral board members cast a majority vote in favor of the audit request;

b. The submitted Form SBE 671.2(D) contains sufficient information for the SBE to determine which contested races are subject to the requested audit and that those races are in fact within the jurisdiction of the local electoral board;

c. The SBE concludes that the audit is permissible under § 24.2-671.2 of the Code of Virginia and all other relevant provisions of law; and

d. The following conditions are met:

(1) The margin of the candidate with the most votes and the second most votes is equal to or greater than 1.0%; and

(2) The number of estimated ballots to be sampled exceeds 15% of the total number of ballots cast.

4. Upon granting an electoral board's request for a risk-limiting audit, the SBE may grant an extension not to exceed two weeks of the local electoral board's certification deadline pursuant to § 24.2-671 of the Code of Virginia if necessary for the conduct of the audit.

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 (1VAC20-60)

Commonwealth of Virginia Petition of Qualified Voters For Referendum, SBE-684.1(1) (rev. 5/2011)

Request for a Risk-Limiting Audit, SBE 671.2(D) (rev. 8/2022)

VA.R. Doc. No. R23-7363; Filed September 22, 2022, 6:57 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

Title of Regulation: **2VAC5-105. Regulations Pertaining to Pet Shops Selling Dogs or Cats (adding 2VAC5-105-10 through 2VAC5-105-60).**

Statutory Authority: §§ 3.2-6501 and 3.2-6501.1 of the Code of Virginia.

Public Hearing Information:

December 9, 2022 - 10 a.m. - Department of Agriculture and Consumer Services, Patrick Henry Building, East Reading Room, 1111 East Broad Street, Richmond, Virginia

Public Comment Deadline: December 23, 2022.

Agency Contact: Carolynn Bissett, Program Manager, Office of Veterinary Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, TDD (800) 828-1120, or email carolynn.bissett@vdacs.virginia.gov.

Basis: Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services as a policy board. Section 3.2-6501.1 of the Code of Virginia, which was established by Chapter 1284 of the 2020 Acts of Assembly, requires the board to adopt a regulation for the keeping of dogs and cats by a pet shop.

Purpose: Chapter 1284 of the 2020 Acts of Assembly requires the board to adopt a regulation for the keeping of dogs and cats by a pet shop. The general welfare of the public is protected when regulations are promulgated in compliance with statutory requirements. The goal of the statutory and regulatory requirements is to standardize welfare requirements for dogs and cats sold by retail pet shops.

Substance: Chapter 1284 of the 2020 Acts of Assembly establishes specific provisions the proposed regulation must include. The regulation requires (i) a regulated person or facility to register with the Virginia Department of Agriculture and Consumer Services (VDACS); (ii) establishes standards of adequate care, exercise, feed, shelter, space, treatment, water, proper cleaning, and lighting; (iii) requires at least one unannounced inspection by the State Animal Welfare Inspector annually; and (iv) establishes remedies for each finding in a given inspection.

Issues: The regulation will affect pet shops, which will now be regulated by VDACS. Certain pet shops that are currently in operation may not be in compliance with the requirements or may incur increased costs in order to come into compliance with the requirements and may view this as a disadvantage; however, pet shops may see a sales advantage if their marketing includes information regarding their operation being under inspection by a government agency.

The regulation will also affect VDACS, which will be responsible for ensuring compliance with the requirements established in the new regulation. The regulation has the advantage of bringing the department into compliance with the statutory requirement to inspect pet shops. A VDACS inspector will inspect all pet shops for compliance with Virginia's Comprehensive Animal Care Law, and once the proposed regulation becomes effective, the inspector will inspect for compliance with the regulation's requirements as well. The department does not anticipate any disadvantages as a result of this regulation but does anticipate receiving more complaints about pet shops as a result of the implementation of this new inspection program.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 1284 of the 2020 Acts of Assembly, the Board of Agriculture and Consumer Services (Board) proposes a new regulation governing pet shops selling dogs and cats.

Background. Chapter 1284 of the 2020 Acts of Assembly[2] requires the Board to adopt a regulation "governing the keeping of dogs and cats by any pet shop." VDACS relates that the references to the "keeping" of dogs and cats refers only to retail pet shops that sell dogs and cats, given the bill's definition of "pet shop" as a "retail establishment where companion animals are bought, sold, exchanged, or offered for sale or exchange to the general public." The legislation also identifies specific components that must be addressed by the regulation, such as a requirement that these pet shops register with the Department of Agriculture and Consumer Services (VDACS) in order to operate; the payment of a $250 annual registration fee by "any private, for-profit entity required to register"; the inclusion of standards for the keeping of animals; a requirement that a state animal welfare inspector annually conduct at least one unannounced drop-in inspection of each pet shop; and remedies for each finding in a given inspection.

Consequently, the Board proposes to establish a new regulation that includes a $250 annual registration fee for pet shops selling dogs and cats; standards of adequate care, exercise, feed, shelter, space, treatment, water, proper cleaning, and lighting; an annual unannounced inspection by a state animal welfare inspector; and remedies for each finding in a given inspection including the cancellation of the registration, the institution of a conditional probationary period, the renewal of registration for a limited period, or other actions.

Estimated Benefits and Costs. VDACS estimates that there are approximately 20 pet shops in Virginia that sell dogs and cats. This number does not include pet shops that keep dogs and cats

to facilitate adoptions on behalf of shelters because they would not be subject to this regulation. For example, most national pet store chains work with a local shelter to keep/display some of the dogs or cats that the shelter has available for adoption, but the store does not sell the animals. Similarly, VDACS has an existing animal shelter inspection program that oversees shelters and other entities involved in facilitating adoptions or other animal welfare issues. VDACS reports that the responsibility for inspecting pet shops that keep dogs and cats for adoption rests with local animal control officers. Thus this regulation would exclusively apply to private for-profit pet shops selling dogs and cats.

VDACS anticipates collecting approximately $5,000 in annual registration fee revenue from an estimated 20 affected pet shops. VDACS states that the new requirements would be handled by existing staff of the animal shelter inspection program by reprioritizing work assignments. The fees collected would be used to cover program costs related to annual unannounced inspections, the administrative costs involved in assessing and collecting the fee, and the administrative costs of corrective actions.

The primary intent of the legislation and the regulation appears to be enhancing the welfare of dogs and cats kept at pet shops while waiting to be sold. Thus, the main benefit of the proposal would be any incremental improvements in the welfare of affected animals. It is worth noting, however, that for-profit pet shops already have incentives to make the dogs and cats offered for sale look their best to prospective owners. Therefore, most shops may already provide adequate care in terms of exercise, feed, shelter, space, treatment, water, proper cleaning, and lighting. Furthermore, the Comprehensive Animal Care Law (§ 3.2-6500 et seq. of the Code of Virginia) addresses the keeping of animals by pet shops and authorizes animal control officers appointed by local governments to enforce these requirements. Although VDACS notes that the regulation is likely to improve the welfare of dogs and cats sold by these pet shops, VDACS does not have any data indicating any problems with care of dogs and cats at these shops in part because these shops are not currently under their purview. Thus, it is not clear whether the incremental effect of this action on any improvements to the welfare of affected animals is commensurate with the $250 annual registration fee and other costs imposed on pet shops.

Businesses and Other Entities Affected. VDACS estimates that the proposed regulation would apply to approximately 20 pet shops selling dogs and cats.

The Code of Virginia requires the DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted, the proposed action would impose a $250 annual registration fee on pet shops selling dogs and cats. Thus, an adverse impact is indicated.

Small Businesses[4] Affected.[5] As noted, the proposed action appears to adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected. VDACS estimates that most of the 20 affected pet shops are small businesses, but does not have any specific data.

Costs and Other Effects. The proposed action would establish a $250 registration fee on affected pet shops, many of which appear to fit the criteria for a small business. An adverse economic impact[6] on small pet shops selling dogs and cats is indicated.

Alternative Method that Minimizes Adverse Impact. The proposed $250 annual registration fee is mandated by the legislation. Thus, there is no alternative method that minimizes the adverse impact.

Localities[7] Affected.[8] The proposed action applies to all localities uniformly and does not introduce costs for local governments.

Projected Impact on Employment. As discussed above, existing staff of the VDACS animal shelter inspection program would administer this regulation by reprioritizing work assignments. Additionally, most pet shops are likely already providing adequate care for dogs and cats waiting to be sold. Thus, the proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposed $250 annual registration fee would add to the costs of operating a pet shop that sells dogs and cats. Consequently, the asset value of these pet shops may be moderately reduced. The proposed action does not affect real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1284

[3]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[5]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the

proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[6]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

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

[8]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 1284 of the 2020 Acts of Assembly, the proposed regulation establishes specific provisions governing the keeping of dogs and cats by a pet shop, including (i) a requirement that pet shops register with the Department of Agriculture and Consumer Services in order to operate; (ii) the payment of a $250 annual registration fee by any private, for-profit entity required to register; (iii) standards for the keeping of animals; (iv) a requirement that a state animal welfare inspector annually conduct at least one unannounced drop-in inspection of each pet shop; and (v) remedies for each finding in a given inspection.

Chapter 105

Regulations Pertaining to Pet Shops Selling Dogs or Cats

2VAC5-105-10. Definitions.

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

"Animal care inspector" means the animal welfare inspector employed pursuant to § 3.2-5901.1 of the Code of Virginia, or as designated by the State Veterinarian.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Pet shop" means any retail, commercial, private, for-profit establishment that sells dogs or cats to the public and shall not include breeders, dealers, public or private animal shelters, home-based rescues, or residential establishments. Each location will constitute a separate pet shop.

2VAC5-105-20. Registration.

A. Each existing pet shop shall register and pay a $250 registration fee with the department annually by July 1. A new pet shop that will sell dogs or cats shall register prior to offering dogs or cats for sale, and that registration shall be valid until July 1 of the following calendar year. A pet shop shall apply for a registration using a format developed by the State Veterinarian. A pet shop shall display its registration in a location visible to the public.

B. A pet shop that fails to register with or submit the registration fee to the department shall, upon written warning from the department, have a probationary period of 30 calendar days within which it must register with the department. If the pet shop fails to register with the department by the conclusion of the probationary period, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia.

2VAC5-105-30. Sale limitations.

No pet shop shall offer dogs or cats for sale to any research facility, as defined in § 3.2-6500 of the Code of Virginia.

2VAC5-105-40. Standards of care.

A. Each pet shop shall be kept in a clean, dry, and sanitary condition. Each pet shop shall provide enclosures that (i) can safely house dogs and cats and (ii) allow for adequate separation of animals of different sexes, ages, and temperaments. Each pet shop shall maintain dogs and cats in a manner that protects the animals against theft, injury, escape, and exposure to harmful substances.

B. Each pet shop shall ensure that all enclosures provide adequate shelter that is properly ventilated and that can be maintained at a comfortable temperature for the dogs and cats confined therein. An enclosure shall not be cleaned when occupied by a dog or cat unless the dog or cat can be further confined in a portion of the enclosure that precludes exposure to any cleaning agent, including water. The enclosure shall be thoroughly dry before it is returned to use. An enclosure shall be cleaned with a disinfectant or germicidal agent.

C. Each pet shop shall reasonably endeavor to ensure that drinking water is available to each dog or cat at all times unless otherwise ordered by a licensed veterinarian. Drinking water receptacles or bowls shall be secured to the enclosure in a fixed position or otherwise be of a design that cannot be tipped over by an animal and shall be maintained in sanitary condition.

D. Each pet shop shall ensure that dogs and cats are adequately and appropriately fed according to their age, and feed shall be stored in a manner that prevents spoilage, infestation, and contamination. All feed delivery utensils and receptacles shall be properly cleaned between uses.

E. Each pet shop shall ensure that each dog or cat is provided access to a resting platform or bedding as appropriate to its species, age, and condition.

F. Each pet shop shall provide adequate care to all dogs and cats offered for sale, including adequate exercise, adequate feed, adequate shelter, adequate space, treatment, adequate water, proper lighting, and proper cleaning, as these terms are defined in § 3.2-6500 of the Code of Virginia.

2VAC5-105-50. Inspection.

A. Each pet shop is subject to at least one unannounced annual inspection of dogs and cats during normal department business hours conducted by the animal care inspector.

B. The animal care inspector shall be granted access to the entire pet shop facility and any requested records.

C. Each pet shop shall be inspected for compliance with this chapter and Chapter 65 (§ 3.2-6500 et seq.) of Title 3.2 of the Code of Virginia.

2VAC5-105-60. Compliance.

A. A pet shop shall immediately correct any noncompliance that the animal care inspector identifies during an inspection. If the pet shop is not able to correct a noncompliance during the inspection, then a probationary period shall commence. If the animal care inspector identifies a noncompliance, the animal care inspector will provide the pet shop written notification within a reasonable time after the inspection. The notification will include a copy of the inspection report and an explanation of the cited noncompliance, including the relevant section of the Code of Virginia or Virginia Administrative Code. The pet shop shall correct the noncompliance to the satisfaction of the animal care inspector.

B. Upon gross, repeated violations or any noncompliance not corrected during a probationary period, the department may revoke a pet shop's registration following reasonable notice to the registration holder and an opportunity for an informal fact finding proceeding pursuant to § 2.2-4019 of the Code of Virginia. If the department revokes a pet shop's registration, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia and must post publicly visible signage provided by the department. The revocation of registration shall remain in effect until the pet shop corrects the noncompliance to the satisfaction of the animal care inspector.

C. The department may immediately temporarily suspend a pet shop's registration whenever the department has reason to believe that an animal health hazard exists or is imminent or when a pet shop willfully refuses to permit authorized inspection. If the department suspends a pet shop's registration, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia and must post publicly visible signage provided by the department. The revocation of registration shall remain in effect until the pet shop corrects the noncompliance to the satisfaction of the animal care inspector.

VA.R. Doc. No. R21-6715; Filed September 22, 2022, 7:50 a.m.

Final Regulation

Title of Regulation: **2VAC5-405. Regulations for the Application of Fertilizer to Nonagricultural Lands (amending 2VAC5-405-110).**

Statutory Authority: § 3.2-3602.1 of the Code of Virginia.

Effective Date: November 24, 2022.

Agency Contact: David Gianino, Program Manager, Office of Plant Industry Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-3515, FAX (804) 371-7793, TDD (800) 828-1120, or email david.gianino@vdacs.virginia.gov.

Summary:

The amendments (i) change the responsible party to the contractor-applicator or licensee who employs an individual who must be certified; (ii) replace the existing civil penalty that is assessed when a person offers services as a certified fertilizer applicator without obtaining such certification from the Department of Agriculture and Consumer Services with a penalty that increases with repeat violations; (iii) establish a penalty for a contractor-applicator or licensee who does not maintain records or fails to submit the annual report for fertilizer applied to more than 50 acres of nonagricultural lands; and (iv) establish a penalty for a contractor-applicator or licensee who fails to apply fertilizer in compliance with the Department of Conservation and Recreation's nutrient management standards.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

2VAC5-405-110. Violations and penalties for noncompliance.

A. Any contractor-applicator or licensee that employs an individual who offers his services as a certified fertilizer applicator or who supervises the application of any fertilizer on nonagricultural land without obtaining prior registration certification from the commissioner shall be assessed a penalty of (i) $250 for the first offense, (ii) $500 for the second offense within any five-year period, and (iii) $1,000 for the third offense within any five-year period.

B. Any contractor-applicator or licensee that does not maintain records as required by this chapter or submit the required annual report to the commissioner in accordance with 2VAC5-405-100 shall be (i) issued a warning for the first offense, (ii) assessed a penalty of $250 for the second offense within any five-year period, (iii) assessed a penalty of $500 for the third offense within any five-year period, and (iv) assessed a penalty of $1,000 for the fourth offense within any five-year period.

C. Any contractor-applicator or licensee that applies lawn fertilizer or lawn maintenance fertilizer at a rate, time, or method inconsistent with the standards and criteria for nutrient management promulgated pursuant to § 10.1-104.2 of the Code of Virginia shall be (i) issued a warning for the first offense, (ii) assessed a penalty of $250 for the second offense within any five-year period, (iii) assessed a penalty of $500 for the third offense within any five-year period, and (iv) assessed a penalty of $1,000 for the fourth offense within any five-year period.

D. Violations of the provisions of ~~these regulations~~ this chapter shall be handled in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~C.~~ E. Any penalties assessed for violations of this ~~regulation~~ chapter shall be handled in accordance with a board-approved administrative process.

~~D.~~ F. In addition to any monetary penalties provided in this section, certified fertilizer applicators who violate any provision of this ~~regulation~~ chapter may also be subject to the provisions of § 3.2-3621 of the Code of Virginia regarding the cancellation of certification.

VA.R. Doc. No. R21-6716; Filed September 22, 2022, 1:24 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

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

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

Effective Date: October 1, 2022.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road Building 96, Fort Monroe, VA 23651, telephone (757) 247-2248, FAX (757) 247-2002, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment increases the spiny dogfish commercial trip limit to 7,500 pounds for federal waters.

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

A. The fishing year for spiny dogfish shall be from May 1 of the current calendar year through April 30 of the following calendar year. For the fishing year, the commercial spiny dogfish landings quota shall be limited to annual quota except as specified in subsection B of this section.

B. If a quota transfer occurs between Virginia and another state or region participating in the Interstate Fishery Management Plan for spiny dogfish, Virginia's annual quota for the fishing year shall be limited to the annual quota amount as adjusted for transfers.

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

D. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia more than ~~6,000~~ 7,500 pounds of spiny dogfish per day for commercial purposes.

E. It shall be unlawful for any person to take, harvest, or possess aboard any vessel or to land in Virginia any spiny dogfish for commercial purposes after the annual quota specified in subsections A and B of this section has been landed and announced as such.

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

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

VA.R. Doc. No. R23-7355; Filed September 27, 2022, 3:08 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education 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: **8VAC20-790. Child Care Program (amending 8VAC20-790-20, 8VAC20-790-40, 8VAC20-790-80).**

Statutory Authority: §§ 22.1-16 and 22.1-289.046 of the Code of Virginia.

Effective Date: November 25, 2022.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA

23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

Summary:

Pursuant to Items 129 P and Q of Chapter 2 of the 2022 Acts of Assembly, the amendments (i) base the duration of time that families may participate in the Child Care Subsidy Program only on available funds; (ii) make child care assistance available to parents or guardians who are searching for work; (iii) allow payments to be issued (a) to Child Care Subsidy Program vendors for authorized enrollment, subject to the attendance threshold established by the Department of Education; (b) to providers for up to 15 days of planned closure for all vendors in the Child Care Subsidy Program for holidays, vacations, and professional development or planning time; and (c) to family day homes in the Child Care Subsidy Program for up to three sick days to care for themselves or a family member; (iv) increase provider payment rates based on the cost methodology developed by the department in its Child Care Cost Estimation Report; (v) ensure Child Care Subsidy Program vendor payment rates for infants and toddlers fully reflect the cost of care; and (vi) eliminate copayments for families at or below 100% of the federal poverty guidelines and reduce copayments for families above 100% of the federal poverty guidelines.

8VAC20-790-20. Families and children to be served.

A. For an applicant to be eligible for child care subsidy and services, the applicant must have a child who, at the time of eligibility determination or redetermination:

1. Is younger than 13 years of age or is younger than the age of 18 years and physically or mentally unable to care for himself, or under court supervision;

2. Is a citizen or legal resident of the United States;

3. Is immunized according to requirements of the State Board of Health; however, families of a child experiencing homelessness that cannot provide documentation of their child's immunizations may be conditionally approved for services for a period not to exceed 90 days;

4. Is not eligible to attend public school during the part of the day when public education is available unless there is a documented reason for the child to be out of school;

5. Resides with the applicant or recipient for services;

6. Resides in the locality where application or redetermination for services is made;

7. Resides with a family whose income does not exceed the income limits established by the department in the current Child Care and Development Fund Plan for Virginia approved by the U.S. Department of Health and Human Services;

8. Resides with a family whose family assets do not exceed $1 million in value, as certified by the applicant; and

9. Resides with a family in which there is a need for child care services, arising from one of the following situations:

a. In a two-parent household, there must be a documented reason why one of the parents cannot provide the needed child care.

b. Parents who need child care to support the following approved activities:

(1) Employment or employment search;

(2) Education or training leading to employment;

(3) Child protective services; or

(4) Assigned VIEW or SNAPET activity.

B. At the option of the local department, a child born to a family 10 months or more after the initial date of approval for the Fee Program may receive child care services or be placed on the local department waiting list.

C. A child of an owner or operator of a family day home shall not be eligible to receive a child care subsidy if that child will be cared for in the home of the owner or operator.

8VAC20-790-40. Case management.

A. Applicants for child care subsidy and services must be at least 18 years of age unless they are an emancipated minor.

B. Applicants are required to sign an application, to provide verification of identity, and to cooperate with an assessment by the local department of social services.

C. At initial eligibility determination, a family with a child experiencing homelessness that cannot provide the required documentation may be conditionally approved for services for a period not to exceed 90 days. The final eligibility determination shall be completed once the 90 days has expired or full documentation is provided. Any payments made prior to the final eligibility determination shall not be considered an error or improper payment. Families with a child experiencing homelessness shall receive priority placement on the waiting list, if applicable.

D. Consumer education, including education on the selection and monitoring of quality child care and how to access information regarding their selected vendor as to the (i) health and safety requirements met by the vendor; (ii) licensing or regulatory requirements met by the vendor; (iii) date the vendor was last inspected and any history of violations; and (iv) any voluntary quality standards met by the vendor, must be provided to parents to assist them in gaining needed information about the availability of child care services and providers. Parents must also be provided information on how to obtain a developmental screening for their child.

E. The department shall establish scales for determining financial eligibility for the income eligible child care subsidy program categories in subdivision 2 of 8VAC20-790-30.

1. Recipients in the TANF child care program category shall be considered income eligible based on their receipt of TANF; the local department shall not be required to verify their income.

2. At initial eligibility determination, income eligibility shall be determined by measuring the family's countable income and size against the percentage of the federal poverty guidelines for their locality. The family's income cannot exceed 85% of the state median income.

3. At redetermination, if a recipient family's countable income exceeds the initial eligibility limit, they shall be considered income eligible until their countable income meets or exceeds the exit eligibility limit established by the department. The family's income cannot exceed 85% of the state median income.

F. Families receiving child care subsidy and services shall be required to pay a copayment unless their gross monthly income is at or below the federal poverty guidelines ~~and they are recipients of TANF, participants in the SNAPET program, or families where all children participate in the Head Start program~~. The copayment amount will be based on a scale set out in the current Child Care and Development Fund Plan for Virginia. Copayments may be increased at redetermination and during graduated phase out if the family's countable income exceeds the initial eligibility limit but is below the exit eligibility limit. Local departments shall be required to act on changes reported by the family that would reduce the family's copayment during the 12-month eligibility period.

G. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except the following:

1. Supplemental Security Income;

2. TANF benefits;

3. Transitional payments of $50 per month to former VIEW participants;

4. Diversionary assistance payments;

5. General relief;

6. SNAP benefits;

7. Value of U.S. Department of Agriculture donated food;

8. Benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965;

9. Value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act;

10. Earnings of a child younger than the age of 18 years;

11. Earned income tax credit;

12. Lump sum child support arrears payments;

13. Scholarships, loans, or grants for education except any portion specified for child care;

14. Basic allowance for housing for military personnel living on base;

15. Clothing maintenance allowance for military personnel;

16. Payments received by AmeriCorps volunteers;

17. Tax refunds;

18. Lump sum insurance payments;

19. Monetary gifts for one-time occasions or normal annual occasions;

20. Payments made by non-financially responsible third parties for household obligations, unless payment is made in lieu of wages;

21. Loans or money borrowed;

22. Money received from sale of property;

23. Earnings less than $25 a month;

24. Capital gains;

25. Withdrawals of bank deposits;

26. GI Bill benefits;

27. Reimbursements, such as for mileage;

28. Foreign government restitution payments to Holocaust survivors;

29. Payments from the Agent Orange Settlement Fund or any other fund established for settlement of Agent Orange product liability litigation; and

30. Monetary benefits provided to the children of Vietnam Veterans as described in 38 USC § 1823(c).

The amount of wages subject to garnishment and the amount of child support paid to another household shall be deducted from the family's income.

H. The eligibility period for TANF (nonVIEW), transitional child care, Fee Program, and Head Start begins with the effective date of the approval of the child care subsidy and services application. The eligibility period for VIEW and SNAPET participants begins with the date of referral from the VIEW or SNAPET program.

I. Recipients will be eligible for child care subsidy and services for a minimum of 12-months before eligibility is redetermined unless:

1. Their countable income exceeds 85% of state median income. Temporary increases in income will not affect eligibility or family copayments, including monthly income fluctuations, which when taken in isolation, may incorrectly indicate that a recipient's income exceeds 85% of state median income.

2. There is a finding that the recipient committed an intentional program violation.

3. The recipient is no longer a resident of Virginia.

4. The recipient requests that their child care subsidy and services case be closed.

5. The recipient is a family of a child experiencing homelessness that was approved as conditionally eligible and failed to provide necessary documentation to the local department within 90 days, or the recipient is determined ineligible after full documentation is provided.

J. Recipients will retain eligibility despite any change in residency within the state.

K. Recipients will retain eligibility despite any eligible child turning 13 years of age during the 12-month eligibility period.

L. The beginning date of service payment for TANF (nonVIEW), transitional child care, Fee Program, and Head Start participants may begin with the date the applicant is determined eligible and a vendor approved by the department is selected. The beginning date of service payment for VIEW or SNAPET participants may begin with the date of referral from the VIEW or SNAPET program if the applicant is determined eligible and a vendor approved by the department is selected.

1. Eligibility must be determined within 30 days of receipt of a signed application or referral from VIEW or SNAPET by the local department.

2. Payment cannot be made to any provider prior to the effective date of their approval by the department as a vendor.

M. Eligibility will be redetermined in the final month of the 12-month eligibility period described in subsection I of this section, at which time the recipient will be contacted in order to have all eligibility criteria be reevaluated. The local department's contact with the recipient should not unduly disrupt a parent's work schedule. Recipients shall not be required to appear in person for eligibility redetermination.

N. Child care case managers shall prepare a written service plan for each child care case with the applicant or recipient. The service plan shall state the activities and responsibilities of the local department and the parent in the provision of child care services. The VIEW Activity and Service Plan will serve as the service plan for parents active in VIEW. If the parents are SNAPET participants, the SNAPET Plan of Participation will serve as the service plan.

O. Recipients shall be required to:

1. Report to the local department the following changes within 10 calendar days of the change:

a. Countable income that exceeds 85% of the state median income.

b. Recipient is no longer a resident of Virginia or the county in which they are receiving services.

2. Pay all fees owed to the vendor not paid for under the Child Care Subsidy Program or reimbursements owed to the local department; failure to do so may result in case closure at redetermination.

3. Reimburse the local department for any overpayment made as a result of fraud, intentional program violation, or an inadvertent household error.

The local department shall inform recipients of child care subsidy and services of these responsibilities.

P. Adequate documentation supporting the reasons for termination must be filed in the case record. ~~Eligibility in the Fee Program is limited to a total of 72 months per family. Receipt of assistance in any other program category does not count toward the 72-month limitation.~~

Q. When sufficient funds are not available, local departments of social services must screen applicants for potential eligibility and place them on the department's waiting list unless the family declines placement.

R. Applicants and recipients will be afforded due process through timely written notices of any action determining or affecting their eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application. If a recipient requests an appeal prior to the effective date of any proposed action and if the continuation of services is requested by the parent, child care services will continue until a decision is rendered by a hearing officer. If the decision of the local department is upheld by the hearing officer, the recipient must repay the amount of services paid during the appeal process.

8VAC20-790-80. Determining payment amount.

A. Maximum reimbursable rates.

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care, level of regulatory oversight, age of child, and unit of service. Such rates shall be available in Appendices F and G of the Child Care Subsidy Program Guidance Manual on the department's website.

2. For children with special needs or disability, payment over the maximum reimbursable rate is allowed when this is appropriate as determined and documented by the local department. The maximum reimbursable rate for children with special needs may not exceed twice the rate for care of children who do not have special needs.

3. Vendors will be paid ~~for the amount of care approved up to the maximum reimbursable rate of the locality in which the vendor is located. The department will pay the rates~~

~~providers charge the general public, up to the maximum reimbursable rate. Level two vendors will be paid a higher maximum reimbursable rate established~~ based on the cost methodology developed by the department in its Child Care Cost Estimation Report.

4. Parents who choose a vendor that charges a rate higher than the maximum reimbursable rate set by the department shall be responsible for payment of the additional amount, if charged by the vendor, unless the local department elects to pay the additional amount out of local funds.

B. For in-home child care, the payment rate must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. A single annual registration fee, if charged, will be paid to level two vendors only. The registration fee must not exceed $100 nor be higher than the fee the vendor charges the general public. If the requirement for payment of another registration fee is beyond the control of the recipient or due to extenuating circumstances, an additional registration fee may be paid. The cost of transportation services provided by the vendor, if any, shall be included in the total cost of care. The total cost of care, excluding the single annual registration fee but including other fees and transportation, must not exceed the maximum reimbursable rate.

D. ~~Level two providers~~ Providers may be paid up to ~~10~~ 15 days of planned closure for holidays, vacations, and professional development or planning time on which no child care services are provided as identified in the vendor agreement. ~~Certified preschools, religious exempt centers, and voluntary registered family day homes that are classified as level one providers may be paid for holidays on which no child care services are provided in accordance with the provisions of the vendor agreement. All other level one providers will not receive payment for any holiday unless services are provided on such day.~~

E. ~~Level two providers may be paid for up to 36 days the child is absent per fiscal year~~ The department shall issue payments to Child Care Subsidy Program vendors for authorized enrollment, subject to the attendance threshold established by the department.

F. Family day home providers in the Child Care Subsidy Program may be paid for up to three sick days to care for themselves or a family member.

G. Child Care Subsidy Program vendor payment rates for infants and toddlers shall fully reflect the cost of care.

VA.R. Doc. No. R23-7208; Filed September 23, 2022, 4:36 a.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with (i) § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors and (ii) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **9VAC5-10. General Definitions (amending 9VAC5-10-20).**

9VAC5-80. Permits for Stationary Sources (amending 9VAC5-80-5, 9VAC5-80-15, 9VAC5-80-35, 9VAC5-80-50 through 9VAC5-80-170, 9VAC5-80-190 through 9VAC5-80-300, 9VAC5-80-360, 9VAC5-80-370, 9VAC5-80-390 through 9VAC5-80-530, 9VAC5-80-550 through 9VAC5-80-620, 9VAC5-80-640 through 9VAC5-80-700, 9VAC5-80-720 through 9VAC5-80-900, 9VAC5-80-930 through 9VAC5-80-1030, 9VAC5-80-1100 through 9VAC5-80-1210, 9VAC5-80-1230 through 9VAC5-80-1300, 9VAC5-80-1410 through 9VAC5-80-1500, 9VAC5-80-1530 through 9VAC5-80-1625, 9VAC5-80-1655 through 9VAC5-80-1695, 9VAC5-80-1715, 9VAC5-80-1735 through 9VAC5-80-1785, 9VAC5-80-1825 through 9VAC5-80-1985, 9VAC5-80-2000 through 9VAC5-80-2091, 9VAC5-80-2120, 9VAC5-80-2140 through 9VAC5-80-2180, 9VAC5-80-2195 through 9VAC5-80-2240, 9VAC5-80-2260; adding 9VAC5-80-37, 9VAC5-80-45; repealing 9VAC5-80-25, 9VAC5-80-1040).

9VAC5-85. Permits for Stationary Sources of Pollutants Subject to Regulation (amending 9VAC5-85-40, 9VAC5-85-50, 9VAC5-85-55).

9VAC5-170. Regulation for General Administration (amending 9VAC5-170-10 through 9VAC5-170-60, 9VAC5-170-80 through 9VAC5-170-170, 9VAC5-170-190, 9VAC5-170-200, 9VAC5-170-210; repealing 9VAC5-170-70, 9VAC5-170-180).

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

Effective Date: November 23, 2022.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments (i) limit the authority of the State Air Pollution Control Board to issuance of regulations and transfer the board's existing authority to issue permits, orders, and variances to the Department of Environmental Quality; (ii) add procedures for public comment on pending controversial permits; and (iii) make technical corrections.

9VAC5-10-20. Terms defined.

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

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

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

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

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

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

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

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

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

"Board" means the State Air Pollution Control Board or its designated representative. When used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "board" means the Department of Environmental Quality.

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

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

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

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

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

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

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

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

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

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

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

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

"Delayed compliance order" means any order of the board issued after an appropriate hearing to an owner which postpones the date by which a stationary source is required to comply with any requirement contained in the applicable implementation plan.

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

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

"Dispersion technique"

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

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

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

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

2. Subdivision 1 of this definition does not include:

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

b. The merging of exhaust gas streams where:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. For sources seeking credit for stack height exceeding that established under subdivision 2 of the GEP definition, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to the provisions of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this provision shall be prescribed by the new source performance standard that is applicable to the source category unless the owner demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the board, an alternative emission rate shall be established in consultation with the owner;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Hg = 2.5H,

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

b. For all other stacks,

Hg = H + 1.5L,

where:

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

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

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

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

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

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

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

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

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

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

"Mail" means electronic or postal delivery.

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

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

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

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

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

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

definition or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Stack in existence" means that the owner had:

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

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

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

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

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

"State enforceable" means all limitations and conditions which are enforceable by the board or department, including, but not limited to, those requirements developed pursuant to 9VAC5-170-160; requirements within any applicable regulation, order, consent agreement or variance; and any permit requirements established pursuant to 9VAC5-80 (Permits for Stationary Sources).

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

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

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

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

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

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

"Vapor pressure," except where specific test methods are specified, means true vapor pressure, whether measured directly, or determined from Reid vapor pressure by use of the applicable nomograph in American Petroleum Institute

publication, "Evaporative Loss from Floating-Roof Tanks" (see 9VAC5-20-21).

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

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

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

a. Methane;

b. Ethane;

c. Methylene chloride (dichloromethane);

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

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

f. Trichlorofluoromethane (CFC-11);

g. Dichlorodifluoromethane (CFC-12);

h. Chlorodifluoromethane (H CFC-22);

i. Trifluoromethane (H FC-23);

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

k. Chloropentafluoroethane (CFC-115);

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

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

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

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

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

q. Pentafluoroethane (HFC-125);

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

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

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

u. Parachlorobenzotrifluoride (PCBTF);

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

w. Acetone;

x. Perchloroethylene (tetrachloroethylene);

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

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

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

bb. Difluoromethane (HFC-32);

cc. Ethylfluoride (HFC-161);

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

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

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

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

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

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

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

kk. Chlorofluoromethane (HCFC-31);

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

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

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

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

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

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

rr. Methyl acetate;

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

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

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

vv. methyl formate ($HCOOCH_3$);

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

xx. propylene carbonate;

yy. dimethyl carbonate;

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

aaa. HCF_2OCF_2H (HFE-134);

bbb. $HCF_2OCF_2OCF_2H$ (HFE-236cal2);

ccc. $HCF_2OCF_2CF_2OCF_2H$ (HFE-338pcc13);

ddd. $HCF_2OCF_2OCF_2CF_2OCF_2H$ (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180));

eee. trans 1-chloro-3,3,3-trifluoroprop-1-ene;

fff. 2,3,3,3-tetrafluoropropene;

ggg. 2-amino-2-methyl-1-propanol;

hhh. t-butyl acetate;

iii. 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; and

jjj. Perfluorocarbon compounds that fall into these classes:

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

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

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

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

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

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

4. Exclusion of the compounds listed in subdivision 1 of this definition in effect exempts such compounds from the provisions of emission standards for volatile organic compounds. The compounds are exempted on the basis of being so inactive that they will not contribute significantly to the formation of ozone in the troposphere. However, this exemption does not extend to other properties of the exempted compounds which, at some future date, may require regulation and limitation of their use in accordance with requirements of the federal Clean Air Act.

5. Reserved.

"Welfare" means that language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

Part I

Certain Permit Actions Before the ~~Board~~ Department

9VAC5-80-5. Definitions.

A. For the purpose of applying this chapter in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the meaning given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units subject to this chapter (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, 111(d) or 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

2. Any term or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program. However, those terms or conditions designated as state-only enforceable shall not be applicable federal requirements.

3. Any emission standard, alternative emission standard, alternative emissions limitation, equivalent emissions limitation or other requirement established pursuant to § 112 or 129 of the federal Clean Air Act as amended in 1990.

4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

7. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a federal operating permit.

12. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of Part II of this chapter.

13. Any standard or other requirement under § 126(a)(1) and (c) of the federal Clean Air Act.

~~"Board" means, for the purposes of this chapter, the Department of Environmental Quality. "Board" shall mean the State Air Pollution Control Board only for the purposes of granting direct consideration of permit actions as provided in 9VAC5-80-25 and granting requests for public hearings to contest permit actions as provided in 9VAC5-80-35.~~

"Controversial permit" means an air permitting action for which a public hearing has been granted pursuant 9VAC5-80-35. "Controversial permit" also means an air permitting action where a public hearing is required for (i) the construction of a new major source or for a major modification to an existing source, (ii) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iv) a new fossil fuel-fired compressor station facility used to transport natural gas, or (v) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas.

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

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

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

3. All terms and conditions (unless expressly designated as state-only enforceable) in a federal operating permit, including any provisions that limit a source's potential to emit.

4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, 111(d) or 129 of the federal Clean Air Act.

5. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.

6. Limitations and conditions (unless expressly designated as state-only enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

a. The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.

b. The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

c. The operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."

d. The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

e. The permit in question was issued only after adequate and timely notice and opportunity for comment by EPA and the public.

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

8. Individual consent agreements that EPA has legal authority to create.

"Federal hazardous air pollutant new source review (NSR) program" means a program for the preconstruction review and approval of the construction, reconstruction or modification of any stationary source in accordance with regulations specified in subdivisions 1 through 3 of this definition and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act. Any permit issued under this program is a major NSR permit.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61.

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E.

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit.

"Federal hazardous air pollutant new source review (NSR) permit" means a permit issued under the federal hazardous air pollutant new source review program.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of Part II of this chapter.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II of this chapter.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of Part II of this chapter. The minor NSR program may also be used to implement the terms and conditions designated as state-only enforceable; however, those terms and conditions shall not be applicable federal requirements.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations, and (iii) Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II of this chapter. The NSR program may also be used to implement the terms and conditions designated as state-only enforceable; however, those terms and conditions shall not be applicable federal requirements.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-2000 et seq.) of Part II of this chapter. Any permit issued under this program is a major NSR permit.

"Nonattainment major new source review (NSR) permit" means a permit issued under the nonattainment major new source review program.

"Permit action" means the activities associated with, and preliminary to, a decision of the ~~board~~ department to approve, approve with conditions, or disapprove permit applications; actions to amend or modify permit terms or conditions; actions to renew, reopen, invalidate, suspend, revoke or enforce permit terms or conditions. The term "permit action" does not include actions to combine permit terms and conditions, provided there are no changes to any permit term or condition.

"Prevention of Significant Deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of Part II of this chapter. Any permit issued under this program is a major NSR permit.

"Prevention of Significant Deterioration permit" means a permit issued under the Prevention of Significant Deterioration program.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information (exclusive of confidential information) for a new stationary source or project, the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the ~~board~~ department regarding the permit application.

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-4007 of the Administrative Process Act, held to afford people an opportunity to submit views and data relative to a matter on which a decision of the ~~board~~ department is pending.

"Public participation process" means any element of a ~~board or~~ department decision-making process that provides an

opportunity to submit views and data relative to a matter on which a decision of the ~~board~~ department is pending.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of Part II of this chapter.

9VAC5-80-15. Applicability.

A. The provisions of this part, unless specified otherwise, shall apply to only permit actions subject to a public ~~participation process~~ comment period.

B. The provisions of this part do not apply to the appeal of the promulgation of regulations ~~or variances~~. Appeals of the promulgation of regulations ~~and variances~~ shall be pursued under § 10.1-1317 of the Virginia Air Pollution Control Law and § 2.2-4026 of the Administrative Process Act.

C. The provisions of this part do not apply to the appeal of case decisions and other actions or inactions of the board or the department.

9VAC5-80-25. ~~Direct consideration of permit actions by the board.~~ (Repealed.)

~~A. During the public hearing comment period on a permit action, interested persons may request that the board directly consider the permit action pursuant to the requirements of this section. The public participation process requirements for the permit programs subject to this section are specified in subdivisions 1 through 4 of this subsection.~~

~~1. 9VAC5-80-1170 for the minor new source review (minor NSR) program.~~

~~2. 9VAC5-80-1460 for the federal hazardous air pollutant new source review (NSR) program.~~

~~3. 9VAC5-80-1775 for the Prevention of Significant Deterioration (PSD) program.~~

~~4. 9VAC5-80-2070 for the nonattainment major new source review (NSR) program.~~

~~B. Requests for board consideration shall contain the following information:~~

~~1. The name, mailing address, and telephone number of the requester;~~

~~2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);~~

~~3. The reason why board consideration is requested;~~

~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, amendment, or revocation of the permit in question; and~~

~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.~~

~~C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for board consideration filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant board consideration after the public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:~~

~~1. That there is a significant public interest in the issuance, denial, amendment, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for board consideration;~~

~~2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, amendment, or revocation of the permit in question; and~~

~~3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the Virginia Air Pollution Control Law, federal law or any regulation promulgated thereunder.~~

~~D. Either the director or a majority of the board members, acting independently, may request a meeting of the board to be convened within 20 days of the director's decision pursuant to subsection C of this section in order to review such decision and determine by a majority vote of the board whether or not to grant board consideration, or to delegate the permit to the director for the director's decision. For purposes of this subsection, if a board meeting is held via electronic communication, the meeting shall be held in compliance with the provisions of § 2.2-3708 of the Virginia Freedom of Information Act, except that a quorum of the board is not required to be physically assembled at one primary or central meeting location. Discussions of the board held via such electronic communication means shall be specifically limited to a (i) review of the director's decision pursuant to subsection C of this section, (ii) determination of the board whether or not to grant board consideration, or (iii) delegation of the permit to the director for the director's decision. No other matter of~~

~~public business shall be discussed or transacted by the board during any such meeting held via electronic communication.~~

~~E. The director shall, forthwith, notify by mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny board consideration.~~

~~F. In addition to subsections C, D, and E of this section, the director may, in his discretion, submit a permit action to the board for its consideration.~~

~~G. After the close of the public hearing comment period, the board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the board or the director.~~

~~H. Persons who commented during the public comment period shall be afforded an opportunity at the board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the department for the board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the board.~~

~~I. In making its decision, the board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the board meeting, (iii) the comments and recommendation of the department, and (iv) the agency files. When the decision of the board is to adopt the recommendation of the department, the board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the board varies from the recommendation of the department, the board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the board. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.~~

9VAC5-80-35. Public hearings ~~to contest permit actions~~ for controversial permits.

A. During the public comment period on a permit action, in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing ~~on the permit action pursuant to the requirements of this section~~ to contest such action or the terms and conditions thereof. The public participation process requirements for the permit programs subject to this section are specified in subdivisions 1 and 2 of this subsection.

1. 9VAC5-80-270 and 9VAC5-80-670 for the federal (Title V) operating permit program.

2. 9VAC5-80-1020 for the state operating permit program.

B. Requests for a public hearing shall contain the following information:

1. The name~~,~~ and postal mailing or email address~~, and telephone number~~ of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative ~~(~~; for the purposes of this requirement, ~~an unincorporated association is a person);~~ a "person" includes an unincorporated association;

3. The reason ~~why a public hearing is requested~~ for the request for a public hearing;

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or ~~preliminary~~ tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, amendment, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

C. Upon completion of the public comment period on a permit action in accordance with subsection A of this section, the director shall review all timely requests for public hearing filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, amendment, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, amendment, modification, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the Virginia Air Pollution Control Law, federal law or any regulation promulgated thereunder.

D. ~~Either the director or a majority of the board members, acting independently, may request a meeting of the board to be convened within 20 days of the director's decision pursuant to subsection C of this section in order to review such decision and determine by a majority vote of the board whether or not to grant a public hearing. For purposes of this subsection, if a~~

~~board meeting is held via electronic communication, the meeting shall be held in compliance with the provisions of § 2.2-3708 of the Virginia Freedom of Information Act, except that a quorum of the board is not required to be physically assembled at one primary or central meeting location. Discussions of the board held via such electronic communication means shall be specifically limited to a (i) review of the director's decision pursuant to subsection C of this section, (ii) determination of the board whether or not to grant a public hearing, or (iii) delegation of the permit to the director for the director's decision. No other matter of public business shall be discussed or transacted by the board during any such meeting held via electronic communication.~~

~~E.~~ The director shall, forthwith, notify by email or postal mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

~~F.~~ E. In addition to subsections C~~,~~ and D~~, and E~~ of this section, the director may, in the director's discretion, convene a public hearing on a permit action.

~~G.~~ F. If ~~a determination is made to hold a public hearing~~ the request for a public hearing is granted, the director shall schedule the hearing at a time between 45 and 75 days after emailing or mailing ~~of~~ the notice ~~required by subsection E of this section~~ of the decision to grant the public hearing.

~~H.~~ G. The director shall cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

~~I. The director may, on the director's own motion or at the request of the applicant or permittee, for good cause shown, reschedule the date of the public hearing. In the event the director reschedules the date for the public hearing after notice has been published, the director shall, or require the applicant to, provide reasonable notice of the new date of the public hearing. Such notice shall be published once in the same newspaper where the original notice was published.~~

~~J. Public hearings held pursuant to these procedures may be conducted by (i) the board at a regular or special meeting of the board, or (ii) one or more members of the board. A member of the board shall preside over the public hearing.~~

~~K. The presiding board member shall have the authority to maintain order, preserve the impartiality of the decision process, and conclude the hearing process expeditiously. The presiding board member, in order to carry out his responsibilities under this subsection, is authorized to exercise the following powers, including but not limited to:~~

~~1. Prescribing the methods and procedures to be used in the presentation of factual data, arguments, and proof orally and in writing including the imposition of reasonable limitations on the time permitted for oral testimony;~~

~~2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive presentation of them;~~

~~3. Ruling on procedural matters; and~~

~~4. Acting as custodian of the record of the public hearing causing all notices and written submittals to be entered in it.~~

~~L. The public comment period will remain open for 15 days after the close of the public hearing if required by § 10.1-1307.01 of the Code of Virginia.~~

~~M. When the public hearing is conducted by less than a quorum of the board, the department shall, promptly after the close of the public hearing comment period, make a report to the board.~~

~~N. After the close of the public hearing comment period, the board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the board or the director.~~

~~O. When the public hearing was conducted by less than a quorum of the board, persons who commented during the public comment period shall be afforded an opportunity at the board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the department for the board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the board.~~

~~P. In making its decision, the board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the board meeting, (iii) the comments and recommendation of the department, and (iv) the agency files. When the decision of the board is to adopt the recommendation of the department, the board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the board varies from the recommendation of the department, the board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the board. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.~~

9VAC5-80-37. Notification of pending controversial permits by the department to the board.

At each regular meeting of the board, the department will provide an overview and update regarding any controversial permits pending before the department. Immediately after such presentation by the department, the board will have an opportunity to respond to the department's presentation and provide commentary regarding such pending permits.

9VAC5-80-45. Additional public hearing for controversial permits.

A. Before rendering a final decision on a controversial permit, the department shall hold an additional public hearing in accordance with subdivisions 1 through 3 of this subsection except as provided in subdivision 4 of this subsection:

1. Publish a summary of public comments received during the applicable public comment period and public hearing.

2. Publish responses to the public comment summary.

3. Hold a public hearing for the controversial permit for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at this public hearing for controversial permits.

4. Subdivisions 1 through 3 of this subsection shall not apply to controversial permits where no public comments were received at a public hearing or in writing during the applicable public comment period. These actions shall proceed with a final determination in accordance with the subsection B of this section and the applicable permit program regulations.

B. In making its decision, the department shall consider (i) the verbal and written comments received during the public comment period and public hearing made part of the record, (ii) comments made at the additional public hearing held to address the department's summary of comments as provided in subsection A of this section, (iii) commentary of the board, and (iv) the agency files.

9VAC5-80-50. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to the following stationary sources:

1. Any major source.

2. Any source, including an area source, subject to a standard, limitation, or other requirement under § 111 of the federal Clean Air Act.

3. Any source, including an area source, subject to a standard, limitation, or other requirement under § 112 of the federal Clean Air Act.

4. Any affected source or any portion of it not subject to Article 3 (9VAC5-80-360 et seq.) of this part.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Any source that would be subject to this article solely because it is subject to the provisions of 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters), as prescribed in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50.

2. Any source that would be subject to this article solely because it is subject to the provisions of 40 CFR 61.145, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos, Standard for Demolition and Renovation), as prescribed in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5 Chapter 60.

3. Any source that would be subject to this article solely because it is subject to regulations or requirements concerning prevention of accidental releases under § 112(r) of the federal Clean Air Act.

4. Any emissions unit that is determined to be shutdown under the provisions of 9VAC5-20-220.

D. Sources shall be deferred from initial applicability as follows:

1. Area sources subject to this article under subdivision A 2 or A 3 of this section shall be deferred from the obligation to obtain a permit under this article except as follows:

a. In cases for which EPA has promulgated a standard under § 111 or § 112 and has declared that the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

b. In cases for which EPA has promulgated a standard under § 111 or § 112 after July 21, 1992, and has failed to declare whether the facility or source category covered by the standard is subject to the Title V program, the facility or source category shall be subject to this article.

2. The following sources shall not be deferred from the obligation to obtain a permit under this article:

a. Major sources.

b. Solid waste incineration units subject to the provisions of 9VAC5 Chapter 40 (9VAC5-40-10 et seq.) and 9VAC5 Chapter 50 (9VAC5-50-10 et seq.) as adopted pursuant to § 129(e) of the federal Clean Air Act.

3. Any source deferred under subdivision 1 of this subsection may apply for a permit. The ~~board~~ department may issue the permit if the issuance of the permit does not interfere with the issuance of permits for sources that are not

deferred under this section or otherwise interfere with the implementation of this article.

E. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this article by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

F. Particulate matter emissions shall be used to determine the applicability of this article to major sources only if particulate matter (PM_{10}) emissions cannot be quantified in a manner acceptable to the ~~board~~ department.

9VAC5-80-60. Definitions.

A. For the purpose of Regulations for the Control and Abatement of Air Pollution and subsequent amendments, or any orders issued by the ~~board~~ department, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Part 72, 73, 75, 76, 77 or 78.

"Allowable emissions" means the emission rates of a stationary source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

a. Applicable emission standards.

b. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.

c. Any other applicable emission limitation, including those with a future compliance date.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future effective compliance dates):

a. Any standard or other requirement provided for in the implementation plan, including any source-specific provisions such as consent agreements or orders.

b. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to the state operating permit program, except for terms or conditions derived from applicable state requirements.

c. Any standard or other requirement prescribed under the Regulations for the Control and Abatement of Air Pollution, particularly the provisions of 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources), adopted pursuant to requirements of the federal Clean Air Act or under § 111, 112 or 129 of the federal Clean Air Act.

d. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

e. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or the Regulations for the Control and Abatement of Air Pollution.

f. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

g. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

h. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

i. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

j. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1700 et seq.) of this part.

"Applicable requirement" means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

a. Any standard or other requirement prescribed by any regulation of the board that is not included in the definition of applicable federal requirement.

b. Any regulatory provision or definition directly associated with or related to any of the specific state requirements listed in this definition.

"Area source" means any stationary source that is not a major source. For purposes of this article, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Complete application" means an application that contains all the information required pursuant to 9VAC5-80-80 and 9VAC5-80-90 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the ~~board~~ department from requesting or accepting additional information.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this regulation, it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program. Whenever the term "designated representative" is used in this regulation, the term shall be construed to include the alternate designated representative.

"Draft permit" means the version of a permit for which the ~~board~~ department offers public participation under 9VAC5-80-270 or affected state review under 9VAC5-80-290.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in 40 CFR Part 72.

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

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

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

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

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

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.

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

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

8. Individual consent agreements that the EPA has legal authority to create.

"Final permit" means the version of a permit issued by the ~~board~~ department under this article that has completed all review procedures required by 9VAC5-80-270 and 9VAC5-80-290.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-120.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated

under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Insignificant activity" means any emission unit listed in 9VAC5-80-720 A, any emissions unit that meets the emissions criteria described in 9VAC5-80-720 B, or any emissions unit that meets the size or production rate criteria in 9VAC5-80-720 C.

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plant.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category regulated under § 111 or § 112 of the federal Clean Air Act for which the administrator has made an affirmative determination under § 302(j) of the federal Clean Air Act.

c. For ozone nonattainment areas, any stationary source with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NO_x requirements for ozone nonattainment areas) do not apply.

d. For attainment areas in ozone transport regions, any stationary source with the potential to emit 50 tons per year or more of volatile organic compounds.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, lack of or poor preventative maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with

9VAC5-80-10 or Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1700 et seq.) or Article 9 (9VAC5-80-2000 et seq.) of this part, promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Permit," unless the context suggests otherwise, means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

"Permit modification" means a revision to a permit issued under this article that meets the requirements of 9VAC5-80-210 on minor permit modifications, 9VAC5-80-220 on group processing of minor permit modifications, or 9VAC5-80-230 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9VAC5-80-210, 9VAC5-80-220 or 9VAC5-80-230 or any administrative permit amendment that meets the requirements of 9VAC5-80-200.

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

"Proposed permit" means the version of a permit that the ~~board~~ department proposes to issue and forwards to the administrator for review in compliance with 9VAC5-80-290.

"Regulated air pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound.

b. Any pollutant for which an ambient air quality standard has been promulgated.

c. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.

d. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

e. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.

f. Any pollutant subject to an applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Research and development facility" means all the following as applied to any stationary source:

a. The primary purpose of the source is the conduct of either (i) research and development into new products or processes or into new uses for existing products or processes or into refining and improving existing products or processes or (ii) basic research to provide for education or the general advancement of technology or knowledge.

b. The source is operated under the close supervision of technically trained personnel.

c. The source is not engaged in the manufacture of products in any manner inconsistent with subdivision a (i) or (ii) of this definition.

An analytical laboratory that primarily supports a research and development facility is considered to be part of that facility.

"Responsible official" means one of the following:

a. For a business entity, such as a corporation, association or cooperative:

(1) The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision making functions for the business entity, or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the ~~board~~ department;

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

d. For affected sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative or any other person specified in this definition for any other purposes under this article.

"State enforceable" means all limitations and conditions which are enforceable by the ~~board~~ department, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9VAC5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see 9VAC5-20-21). At the request of the applicant, any research and development facility may be considered a separate stationary source from the manufacturing or other facility with which it is co-located.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or § 112(g) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in 40 CFR 61.07; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

9VAC5-80-70. General.

A. No permit may be issued pursuant to this article until the article has been approved by the administrator, whether full, interim, partial, for federal delegation purposes, or otherwise.

B. If requested in the application for a permit or permit renewal submitted pursuant to this article, the ~~board~~ department may combine the requirements of and the permit for a source subject to the state operating permit program with the requirements of and the permit for a source subject to this article provided the application contains the necessary information required for a permit under the state operating permit program.

C. For the purpose of this article, the phrase "Regulations for the Control and Abatement of Air Pollution" means 9VAC5 Chapter 10 (9VAC5-10-10 et seq.) through 9VAC5 Chapter 80 (9VAC5-80-10 et seq.). For purposes of implementing and enforcing those provisions of this article associated with applicable federal requirements as well as those provisions of this article intended to implement Title V of the federal Clean Air Act, the phrase "Regulations for the Control and Abatement of Air Pollution" means only those provisions that have been approved by EPA as part of the implementation plan or otherwise have been approved by or found to be acceptable by EPA for the purpose of implementing requirements of the federal Clean Air Act. For the purpose of this article, terms and conditions relating to applicable federal requirements shall be derived only from provisions that qualify as applicable federal requirements.

9VAC5-80-80. Applications.

A. A single application is required identifying each emission unit subject to this article. The application shall be submitted according to the requirements of this section, 9VAC5-80-90 and procedures approved by the ~~board~~ department. Where several units are included in one stationary source, a single application covering all units in the source shall be submitted. A separate application is required for each stationary source subject to this article.

B. For each stationary source, the owner shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. 1. The owner of a stationary source applying for a permit under this article for the first time shall submit an application within 12 months after the source becomes subject to this article, except that stationary sources not deferred under 9VAC5-80-50 D shall submit their applications on a schedule to be determined by the department but no later than 12 months following the effective date of approval of this article by the administrator, to include approval for federal delegation purposes.

2. The owner of a source subject to the requirements of the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of the new source review program.

3. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than 18 months prior to the date of permit expiration.

D. The following requirements concerning the completeness of the permit application apply to sources subject to this article:

1. To be determined complete, an application shall contain all information required pursuant to 9VAC5-80-90.

2. Applications for permit revision or for permit reopening shall supply information required under 9VAC5-80-90 only if the information is related to the proposed change.

3. Within 60 days of receipt of the application, the ~~board~~ department shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the ~~board~~ department shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the ~~board~~ department does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the ~~board~~ department finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under the new source review program.

8. Upon notification by the ~~board~~ department that the application is complete or after 60 days following receipt of the application by the ~~board~~ department, the applicant shall submit three additional copies of the complete application to the ~~board~~ department.

E. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. The following requirements concerning the application shield apply to sources subject to this article:

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this article until the ~~board~~ department takes final action on the application under 9VAC5-80-150.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this article.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either 9VAC5-80-210 F or 9VAC5-80-220 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this article until the ~~board~~ department takes final action on the application under 9VAC5-80-150.

4. If the source notifies the ~~board~~ department that it wants to make an operational flexibility permit change under 9VAC5-80-280 B, the failure of the source to have a permit modification or operation of the source without a permit modification for the permit change shall not be a violation of this article unless the ~~board~~ department notifies the source that the change is not a permit change as specified in 9VAC5-80-280 B 1 a.

5. If an applicant submits a timely and complete application under this section for a permit renewal but the ~~board~~ department fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9VAC5-80-140, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subdivisions 1 and 5 (ii) of this subsection shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the ~~board~~ department any additional information identified as being needed to process the application.

G. Any application form, report, compliance certification, or other document submitted to the ~~board~~ department shall meet the requirements of 9VAC5-20-230.

9VAC5-80-90. Application information required.

A. The ~~board~~ department shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information as follows shall be included:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

D. Emissions-related information as follows shall be included:

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit with the following exceptions:

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level or size of the unit is deemed to be insignificant under 9VAC5-80-720 B or C shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in 9VAC5-80-720 A.

(2) Regardless of the emissions units designated in 9VAC5-80-720 A or C or the emissions levels listed in 9VAC5-80-720 B, the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination of the applicability of this article, the determination or imposition of any applicable requirement or the calculation of permit fees.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent quantifiable regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

2. Additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part as required by the ~~board~~ department. Identification and description of all points of emissions described in subdivision 1 of this subsection in sufficient detail to establish the basis for fees and applicability of requirements of the Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

7. Other information required by any applicable requirement (including information related to stack height limitations required under 9VAC5-40-20 I or 9VAC5-50-20 H).

8. Calculations on which the information in subdivisions D 1 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

E. Air pollution control requirements as follows shall be included:

1. Citation and description of all applicable requirements, including those covering activities deemed insignificant under Article 4 (9VAC5-80-710 et seq.) of this part.

2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information that may be necessary to implement and enforce other requirements of the Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act or to determine the applicability of such requirements.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the ~~board~~ department to define alternative operating scenarios identified by the source pursuant to 9VAC5-80-110 J or to define permit terms and conditions implementing operational flexibility under 9VAC5-80-280.

I. Compliance plan as follows shall be included:

1. A description of the compliance status of the source with respect to all applicable requirements.

2. A description as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

3. A compliance schedule as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the ~~board~~ department if no specific requirement exists.

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or ~~board~~ department order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

4. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

J. Compliance certification information as follows shall be included:

1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the ~~board~~ department.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112(r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part.

9VAC5-80-100. Emission caps.

A. The ~~board~~ department may establish an emission cap for sources or emissions units applicable under this article when the applicant requests that a cap be established.

B. The criteria in subdivisions 1 through 5 of this subsection shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in the Regulations for the Control and Abatement of Air Pollution prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this article.

2. A permit issued under this article may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in the Regulations for the Control and Abatement of Air Pollution prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination of them. The emission standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

C. Using the significant modification procedures of 9VAC5-80-230, an emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subdivisions B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to the new source review program.

9VAC5-80-110. Permit content.

A. General information applies as follows:

1. For major sources subject to this article, the ~~board~~ department shall include in the permit all applicable requirements for all emissions units in the major source.

2. For any source other than a major source subject to this article, the ~~board~~ department shall include in the permit all applicable requirements that apply to emissions units that cause the source to be subject to this article.

3. For all sources subject to this article, the ~~board~~ department shall include in the permit applicable requirements that apply to fugitive emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

4. Each permit issued under this article shall include the elements listed in subsections B through N of this section.

B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

3. If applicable requirements contained in the Regulations for the Control and Abatement of Air Pollution allow a determination of an alternative emission limit at a source, equivalent to that contained in the Regulations for the Control and Abatement of Air Pollution, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

C. Each permit shall contain terms and conditions identifying equipment specifications and operating parameters in accordance with the following:

1. Each permit shall contain terms and conditions setting out the following elements identifying equipment specifications and operating parameters:

a. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

b. Specifications for air pollution control equipment installed or to be installed.

c. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved.

2. The information on any specification required in subdivisions 1 a and b of this subsection may be included in the permit for informational purposes only and does not form an enforceable term or condition of the permit except in the following cases:

a. The specification is an applicable federal requirement.

b. The specification is derived from and necessary to enforce an applicable federal requirement.

c. The operation of the source contrary to the specification would violate an applicable federal requirement.

d. The owner voluntarily takes the specification as a state enforceable term or condition of the permit pursuant to 9VAC5-80-300.

D. Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specific monitoring or testing is adequate to assure compliance at least to the same extent as the applicable requirements relating to monitoring or testing that are not included in the permit as a result of such streamlining.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subdivision F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subdivision.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. Recordkeeping and reporting requirements apply as follows:

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements.

(2) The dates analyses were performed.

(3) The company or entity that performed the analyses.

(4) The analytical techniques or methods used.

(5) The results of such analyses.

(6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 9VAC5-80-80 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The ~~board~~ department shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

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

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in subsection L of this section, 9VAC5-80-240 and 9VAC5-80-260. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the ~~board~~ department, within a reasonable time, any information that the ~~board~~ department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the ~~board~~ department copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the ~~board~~ department along with a claim of confidentiality.

H. Each permit shall contain a condition setting out the requirement to pay permit fees consistent with the fee schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part.

I. Emissions trading information as follows shall be included:

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that the Regulations for the Control and Abatement of Air Pollution provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

a. All terms and conditions required under this section except subsection N of this section shall be included to determine compliance.

b. The permit shield described in 9VAC5-80-140 shall extend to all terms and conditions that allow such increases and decreases in emissions.

c. The owner shall meet all applicable requirements including the requirements of this article.

J. Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the ~~board~~ department. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.

2. The permit shield described in 9VAC5-80-140 shall extend to all terms and conditions under each such operating scenario.

3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this article.

K. Consistent with subsections E and F of this section, each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the ~~board~~ department shall contain a certification by a responsible official that meets the requirements of 9VAC5-80-80 G.

2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the ~~board~~ department to perform the following:

a. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.

c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with 9VAC5-80-90 I.

4. Progress reports consistent with an applicable schedule of compliance and 9VAC5-80-90 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the ~~board~~ department. Such progress reports shall contain the following:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.

b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the ~~board~~ department) of submissions of compliance certifications.

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under subsection E of this section. If necessary, the owner or operator shall also identify any other material information that must be included in the certification to comply with § 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information.

(3) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in subdivision 5 c (2) of this subsection. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred.

(4) Such other facts as the ~~board~~ department may require to determine the compliance status of the source.

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the ~~board~~ department.

6. Such other provisions as the ~~board~~ department may require.

L. Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened by the ~~board~~ department if additional applicable federal requirements become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable

requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to 9VAC5-80-80 F.

2. The permit shall be reopened if the ~~board~~ department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the ~~board~~ department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

4. The permit shall not be reopened by the ~~board~~ department if additional applicable state requirements become applicable to a major source prior to the expiration date established under subsection D of this section.

M. The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with the Regulations for the Control and Abatement of Air Pollution, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. Federal enforceability requirements apply as follows:

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subdivision 2 of this subsection.

2. The ~~board~~ department shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of 9VAC5-80-290 concerning review of proposed permits by EPA and draft permits by affected states.

3. The ~~board~~ department may specifically designate as state enforceable any applicable state requirement that has been submitted to the administrator for review to be approved as part of the implementation plan and that has not yet been approved. The permit shall specify that the provisions will become federally enforceable upon approval of the provisions by the administrator and through an administrative permit amendment.

9VAC5-80-120. General permits.

A. Requirements for board issuance of a general permit regulation apply as follows:

1. The board may issue a general permit regulation covering a source category containing numerous similar sources that meet the following criteria:

a. All sources in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Sources shall not be subject to case-by-case standards or requirements.

c. Sources shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Sources subject to a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General ~~permits~~ permit regulations shall (i) identify the criteria by which sources may qualify for the general permit and (ii) describe the process to use in applying for the general permit.

4. The board shall not issue a general permit regulation until the requirements concerning notice and opportunity for public participation under 9VAC5-80-270 and affected state and EPA review under 9VAC5-80-290 have been met. However, requirements concerning content of the notice shall replace those specified in 9VAC5-80-270 C and shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit regulation.

b. The criteria to be used in determining which sources qualify for the general permit.

c. A brief description of the source category that the department believes qualifies for the general permit including, but not limited to, an estimate of the number of individual sources in the category.

d. A narrative statement of the estimated air quality impact contributed by the source category covered by the general permit including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable.

e. A brief description of the application process to be used by sources to request coverage under the general permit regulation.

f. A brief description of the comment procedures required by 9VAC5-80-270.

g. A brief description of the procedures to be used to request a hearing as required by 9VAC5-80-270 or the time and place of the public hearing if the ~~board~~ department determines to hold a hearing under ~~9VAC5-80-270 E 9~~ 9VAC5-80-35 E.

B. Application requirements for a general permit apply as follows:

1. Sources that would qualify for a general permit shall apply to the ~~board~~ department for coverage under the terms of the general permit regulation. Sources that do not qualify for a general permit shall apply for coverage under a permit issued under the other provisions of this article.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Sources that become subject to the general permit after it is issued to other sources in the category addressed by the general permit shall file an application with the ~~board~~ department using the application process described in the general permit. The ~~board~~ department shall issue the general permit to the source if it determines that the source meets the criteria set out in the general permit.

C. Conditions of issuance of a general permit apply as follows:

1. The ~~board~~ department shall grant the conditions and terms of the general permit to sources that meet the criteria set out in the general permit covering the specific source category.

2. The issuance of a permit to a source covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-270 and affected state and EPA review under 9VAC5-80-290.

3. A response to each general permit application may not be provided. The general permit regulation may specify a reasonable time period after which a source that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Sources covered under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the source is covered by the general permit.

5. Provided the letter, certificate, summary or other document is located at the source, the source may not be required to have a copy of the general permit. In this case, a copy of the general permit shall be retained by the ~~board~~ department or at the source's corporate headquarters in the case of franchise operations.

D. Enforcement conditions apply as follows:

1. Regardless of the permit shield provisions in 9VAC5-80-140, the source shall be subject to enforcement action under 9VAC5-80-260 for operation without a permit issued under this article if the source is later determined by the ~~board~~ department or the administrator not to qualify for the conditions and terms of the general permit.

2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.

9VAC5-80-130. Temporary sources.

A. The ~~board~~ department may issue a single permit authorizing emissions from similar operations by the same owner at multiple temporary locations.

B. The operation shall be temporary and involve at least one change of location during the term of the permit.

C. Permits for temporary sources shall include the following:

1. Conditions that assure compliance with all applicable requirements at all authorized locations.

2. A condition that the owner shall notify the ~~board~~ department not less than 15 days in advance of each change in location.

3. Conditions that ensure compliance with all other provisions of this article.

9VAC5-80-140. Permit shield.

A. The ~~board~~ department shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.

2. Any other applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Nothing in this section or in any permit issued under this article shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.

2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.

3. The ability to obtain information from a source by the ~~(i)~~ (i) administrator pursuant to § 114 of the federal Clean Air Act (inspections, monitoring, and entry); or (ii) ~~board~~ department pursuant to § 10.1-1307.3 or 10.1-1315 of the Virginia Air Pollution Control Law ~~or (iii) department pursuant to § 10.1-1307.3 of the Virginia Air Pollution Control Law~~.

9VAC5-80-150. Action on permit application.

A. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The ~~board~~ department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 9VAC5-80-120.

2. Except for modifications qualifying for minor permit modification procedures under 9VAC5-80-210 or 9VAC5-80-220, the ~~board~~ department has complied with the requirements for public participation under 9VAC5-80-270.

3. The ~~board~~ department has complied with the requirements for notifying and responding to affected states under 9VAC5-80-290.

4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Article 2 (9VAC5-80-310 et seq.) of this part, and the requirements of this article.

5. The administrator has received a copy of the proposed permit and any notices required under 9VAC5-80-290 A and 9VAC5-80-290 B and has not objected to issuance of the permit under 9VAC5-80-290 C within the time period specified therein.

B. Except for permit revisions, as required by the provisions of 9VAC5-80-200, 9VAC5-80-210, 9VAC5-80-220 or 9VAC5-80-230, the ~~board~~ department shall take final action on each permit application (including a request for permit modification or renewal) no later than 18 months after a complete application is received by the ~~board~~ department, except in cases where a public hearing to provide the opportunity for interested persons to contest the application is granted pursuant to 9VAC5-80-35 or 9VAC5-80-45. The ~~board~~ department will review any request made under 9VAC5-80-270 E 2, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

C. Issuance of permits under this article shall not take precedence over or interfere with the issuance of preconstruction permits under the new source review program.

D. The ~~board~~ department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The ~~board~~ department shall send this statement to the administrator and to any other person who requests it.

E. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the ~~board~~ department upon request.

F. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit pursuant to this section, the department shall in consultation with legal counsel provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC5-80-160. Transfer of permits.

A. No person shall transfer a permit from one location to another, unless authorized under 9VAC5-80-130, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9VAC5-80-200.

C. In the case of a name change of a stationary source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change and shall comply with the requirements of 9VAC5-80-200.

9VAC5-80-170. Permit renewal and expiration.

A. Permits being renewed shall be subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this article.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with 9VAC5-80-80.

C. If the ~~board~~ department fails to act in a timely way on a permit renewal, the administrator may invoke his authority under § 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

9VAC5-80-190. Changes to permits.

A. Changes to emissions units that pertain to applicable federal requirements at a source with a permit issued under this article shall be made as specified under subsections B through D of this section and 9VAC5-80-200 through 9VAC5-80-240. Changes to emissions units that pertain to applicable state requirements at a source with a permit issued under this article shall be made as specified under subsection E of this section. Changes to a permit issued under this article and during its five-year term that pertain to applicable federal requirements may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department or administrator as specified in subsection C of this section.

B. The following requirements apply with respect to changes initiated by the permittee:

1. The permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in 9VAC5-80-200 through 9VAC5-80-230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The administrator or the ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-240.

D. Changes to permits shall not be used to extend the term of the permit.

E. The following changes apply with respect to changes at a source and applicable state requirements:

1. Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9VAC5-80-200 through 9VAC5-80-240.

2. The permittee may initiate a change pertaining only to applicable state requirements (i) if the change does not violate applicable requirements and (ii) if applicable, the requirements of the new source review program have been met.

3. Incorporation of permit terms and conditions into a permit issued under this article shall be as follows:

a. Permit terms and conditions pertaining only to applicable state requirements and issued under the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

b. Permit terms and conditions for changes to emissions units pertaining only to applicable state requirements and exempt from the requirements of the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

4. The source shall provide contemporaneous written notice to the ~~board~~ department of the change. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable state requirement that would apply as a result of the change.

5. The change shall not qualify for the permit shield under 9VAC5-80-140.

9VAC5-80-200. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.

4. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-160 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under the new source review program when the new source review program meets (i) procedural requirements substantially equivalent to the requirements of 9VAC5-80-270 and 9VAC5-80-290 that would be applicable to the change if it were subject to review as a permit modification and (ii) compliance requirements substantially equivalent to those contained in 9VAC5-80-110.

6. Change in the enforceability status from state-only requirements to federally enforceable requirements for provisions that have been approved through rulemaking by the administrator to be a part of the implementation plan.

B. Administrative permit amendment procedures shall be required for and limited to the following:

1. The ~~board~~ department shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department shall incorporate the changes without providing notice to the public or affected states under 9VAC5-80-270 and 9VAC5-80-290. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The ~~board~~ department shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The ~~board~~ department shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield provisions of 9VAC5-80-140 for amendments made pursuant to subdivision A 5 of this section.

9VAC5-80-210. Minor permit modifications.

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not Title I modifications; and

6. Are not required to be processed as a significant modification under 9VAC5-80-230 or as an administrative permit amendment under 9VAC5-80-200.

B. Notwithstanding subsection A of this section and 9VAC5-80-220 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Regulations for the Control and Abatement of Air Pollution or a federally approved program.

C. An application requesting the use of minor permit modification procedures shall meet the requirements of 9VAC5-80-90 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9VAC5-80-80 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. Within five working days of receipt of a permit modification application that meets the requirements of subsection C of this section, the ~~board~~ department shall meet its obligation under 9VAC5-80-290 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The ~~board~~ department shall promptly send any notice required under 9VAC5-80-290 B 2 to the administrator. The public participation requirements of 9VAC5-80-270 shall not extend to minor permit modifications.

E. The timetable for issuance of permit modifications shall be follows:

1. The ~~board~~ department may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the ~~board~~ department that he will not object to issuance of the permit modification, whichever occurs first, although the ~~board~~ department can approve the permit modification prior to that time.

2. Within 90 days of receipt by the ~~board~~ department of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under 9VAC5-80-290 C, whichever is later, the ~~board~~ department shall do one of the following:

a. Issue the permit modification as proposed.

b. Deny the permit modification application.

c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.

d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by 9VAC5-80-290 A.

F. The following requirements apply with respect to the ability of an owner to make minor permit modification changes:

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.

2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable federal requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. The permit shield under 9VAC5-80-140 shall not extend to minor permit modifications.

9VAC5-80-220. Group processing of minor permit modifications.

A. Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under 9VAC5-80-210 A.

2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in 9VAC5-80-60, or five tons per year, whichever is least.

B. An application requesting the use of group processing procedures shall meet the requirements of 9VAC5-80-90 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9VAC5-80-80 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision A 2 of this section.

5. Certification, consistent with 9VAC5-80-80 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the ~~board~~ department to use to notify the administrator and affected states as required under 9VAC5-80-290.

C. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subdivision A 2 of this section, whichever is earlier, the ~~board~~ department promptly shall meet its obligation under 9VAC5-80-290 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The ~~board~~ department shall send any notice required under 9VAC5-80-290 B 2 to the administrator. The public participation requirements of 9VAC5-80-270 shall not extend to group processing of minor permit modifications.

D. The provisions of 9VAC5-80-210 E shall apply to modifications eligible for group processing, except that the ~~board~~ department shall take one of the actions specified in 9VAC5-80-210 E 2 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under 9VAC5-80-290 C, whichever is later.

E. The provisions of 9VAC5-80-210 F shall apply to modifications eligible for group processing.

F. The permit shield under 9VAC5-80-140 shall not extend to minor permit modifications.

9VAC5-80-230. Significant modification procedures.

A. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under 9VAC5-80-210 or 9VAC5-80-220 or as administrative amendments under 9VAC5-80-200. Significant modification procedures shall be used for those permit modifications that:

1. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

2. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or 9VAC5-60 (Hazardous Air Pollutant Sources), or a visibility or increment analysis carried out under this chapter.

3. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification.

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. An application for a significant permit modification shall meet the requirements of 9VAC5-80-80 and 9VAC5-80-90 for permit issuance and renewal for the modification proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Completed forms for the ~~board~~ department to use to notify the administrator and affected states as required under 9VAC5-80-290.

C. The provisions of 9VAC5-80-290 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9VAC5-80-270 shall apply to applications made under this section.

E. The ~~board~~ department shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. The owner shall not make the change applied for in the significant modification application until the modification is approved by the ~~board~~ department under subsection E of this section.

G. The provisions of 9VAC5-80-140 shall apply to changes made under this section.

9VAC5-80-240. Reopening for cause.

A. A permit shall be reopened and revised under any of the conditions stated in 9VAC5-80-110 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

D. Provisions for reopenings for cause by EPA shall be as follows:

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the ~~board~~ department and the permittee of such finding in writing.

2. The ~~board~~ department shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the ~~board~~ department must require the permittee to submit additional information.

3. The administrator shall review the proposed determination from the ~~board~~ department within 90 days of receipt.

4. The ~~board~~ department shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

5. If the ~~board~~ department fails to submit a proposed determination pursuant to subdivision 2 of this subsection or fails to resolve any objection pursuant to subdivision 4 of this subsection, the administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subdivisions 1 through 4 of this subsection.

b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

9VAC5-80-250. Malfunction.

A. In the event of a malfunction, the owner may demonstrate that the conditions of subsection B of this section are met.

B. The permittee may, through properly signed, contemporaneous operating logs, or other relevant evidence, show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.

2. The permitted facility was at the time being properly operated.

3. During the period of the malfunction, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.

4. The permittee notified the ~~board~~ department of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification should include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing by any method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9VAC5-80-110 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9VAC5-20-180 C.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

9VAC5-80-260. Enforcement.

A. General provisions shall be as follows:

1. Pursuant to § 10.1-1322 of the Code of Virginia, failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:

a. Knowingly makes material misstatements in the permit application or any amendments of it.

b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this article.

3. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any permit for any of the grounds for revocation or termination contained in subdivision 2 of this subsection or for any other violations of the Regulations for the Control and Abatement of Air Pollution.

B. Penalties shall be as follows:

1. An owner who violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.

2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

C. Provisions for appeals shall be as follows:

1. The ~~board~~ department shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

2. Appeal from any decision of the ~~board~~ department under subdivision 1 of this subsection may be taken pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5 Chapter 170, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.

D. The existence of a permit under this article shall constitute a defense to a violation of any applicable requirement if the permit contains a condition providing the permit shield as specified in 9VAC5-80-140 and if the requirements of 9VAC5-80-140 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this article shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or the Regulations for the Control and Abatement of Air Pollution and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. Provisions for inspections and right of entry shall be as follows:

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and 9VAC5-20-150, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this article.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the ~~board~~ department or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the ~~board~~ department shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. The ~~board~~ department may enforce permits issued under this article through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9VAC5-20-20 and 9VAC5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

9VAC5-80-270. Public participation.

A. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The ~~board~~ department shall notify the public using the procedures in subsection B of this section.

B. The ~~board~~ department shall notify the public of the draft permit or draft permit modification (i) by advertisement in a newspaper of general circulation in the area where the source is located and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

C. Provisions for the content of the public notice and availability of information shall be as follows:

1. The notice shall include, but not be limited to, the following:

a. The source name, address and description of specific location.

b. The name and address of the permittee.

c. The name and address of the regional office processing the permit.

d. The activity or activities for which the permit action is sought.

e. The emissions change that would result from the permit issuance or modification.

f. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, and all relevant supporting materials, including the compliance plan.

g. A brief description of the comment procedures required by this section.

h. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the ~~board~~ director determines to hold a hearing under ~~subdivision E 3 of this section~~ 9VAC5-80-35 E.

2. Information on the permit application (exclusive of confidential information under 9VAC5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. The ~~board~~ department shall provide such notice and opportunity for participation by affected states as is provided for by 9VAC5-80-290.

E. Provisions for public hearing shall be as follows:

1. The ~~board~~ department shall provide an opportunity for a public hearing as described in subdivisions 2 through 6 of this subsection.

2. Following the initial publication of the notice required under subsection B of this section, the ~~board~~ department will receive written requests for a public hearing to contest the draft permit or draft permit modification pursuant to the requirements of 9VAC5-80-35. In order to be considered, the request shall be submitted no later than the end of the comment period. ~~Request~~ Requests for a public hearing shall contain the following information:

a. The name~~,~~ and postal mailing or email address ~~and telephone number of the requester.~~;

b. The names and addresses of all persons for whom the requester is acting as a representative ~~(~~; for the purposes of this requirement, ~~an unincorporated association is a person).~~ "person" includes an unincorporated association;

c. The reason ~~why a public hearing is requested.~~ for the request for public hearing;

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the draft permit or draft permit modification, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question~~.~~; and

e. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

3. The ~~board~~ department will review any request made under subdivision 2 of this subsection, and will take final action on the request as provided in 9VAC5-80-150 B.

F. The ~~board~~ department shall keep a record of the commenters and a record of the issues raised during the public participation process so that the administrator may fulfill the administrator's obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted. Such records shall be made available to the public upon request.

9VAC5-80-280. Operational flexibility.

A. The ~~board~~ department shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term or (ii) those that are not addressed or prohibited by the permit. The conditions under which the ~~board~~ department shall allow these changes to be made are specified in subsections B and C of this section, respectively.

B. The following requirements apply with respect to changes that contravene an express permit term:

1. The following general requirements apply:

a. The ~~board~~ department shall allow a change at a stationary source that changes a permit condition with the exception of the following:

(1) A Title I modification.

(2) A change that would exceed the emissions allowable under the permit.

(3) A change that would violate applicable requirements.

(4) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), record keeping, reporting, compliance schedule dates, or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The owner, ~~board~~ department and the administrator shall attach the notice described in subdivision 1 b of this subsection to their copy of the relevant permit.

d. The permit shield under 9VAC5-80-140 shall not extend to any change made pursuant to subdivision 1 of this subsection.

2. The following requirements apply with respect to emission trades within permitted facilities provided for in the Regulations for the Control and Abatement of Air Pollution:

a. With the exception of the changes listed in subdivision 1 a of this subsection, the ~~board~~ department shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where the Regulations for the Control and Abatement of Air Pollution provide for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in the Regulations for the Control and Abatement of Air Pollution authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the Regulations for the Control and Abatement of Air Pollution and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the Regulations for the Control and Abatement of Air Pollution and which provide for the emissions trade.

c. The permit shield described in 9VAC5-80-140 shall not extend to any change made under subdivision 2 of this subsection. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the Regulations for the Control and Abatement of Air Pollution.

3. Emission trades within stationary sources to comply with an emissions cap in the permit.

a. If a permit applicant requests it, the ~~board~~ department shall issue permits that contain terms and conditions, including all terms required under 9VAC5-80-110 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable federal requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The ~~board~~ department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The ~~board~~ department shall not allow a change to be made under subdivision 3 of this subsection if it is a change listed in subdivision 1 of this subsection.

c. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under 9VAC5-80-140 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. The following requirements apply with respect to changes that are not addressed or prohibited by the permit:

1. The ~~board~~ department shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are Title I modifications or are subject to requirements under Title IV.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition which is based on applicable federal requirements.

3. Sources shall provide contemporaneous written notice to the ~~board~~ department and the administrator of each change, except for changes to emissions units deemed insignificant and listed in 9VAC5-80-720 A. Such written notice shall describe each change, including the date, any change in

emissions, pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under 9VAC5-80-140.

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable federal requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

9VAC5-80-290. Permit review by EPA and affected states.

A. The following requirements apply with respect to transmission of information to the administrator:

1. The ~~board~~ department shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this article.

2. The ~~board~~ department shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. The following requirements apply with respect to review by affected states:

1. The ~~board~~ department shall give notice of each draft permit to any affected state on or before the time that the ~~board~~ department provides this notice to the public under 9VAC5-80-270, except to the extent that 9VAC5-80-210 or 9VAC5-80-220 requires the timing of the notice to be different.

2. The ~~board~~ department, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under 9VAC5-80-210 or 9VAC5-80-220), shall notify the administrator and any affected state in writing of any refusal by the ~~board~~ department to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons the ~~board~~ department will not accept a recommendation. The ~~board~~ department shall not be obligated to accept recommendations that are not based on applicable federal requirements or the requirements of this article.

C. The following requirements apply with regard to objections by EPA:

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subdivision 1 of this subsection shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.

3. Failure of the ~~board~~ department to do any of the following also shall constitute grounds for an objection:

a. Comply with subsection A or B of this section or both.

b. Submit any information necessary to review adequately the proposed permit.

c. Process the permit under the public comment procedures in 9VAC5-80-270 except for minor permit modifications.

4. If, within 90 days after the date of an objection under subdivision 1 of this subsection, the ~~board~~ department fails to revise and submit a proposed permit in response to the objection, the administrator will issue or deny the permit in accordance with the requirements of 40 CFR Part 71.

D. The following requirements apply with respect to public petitions to the administrator:

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 9VAC5-80-270, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

3. If the administrator objects to the permit as a result of a petition filed under subdivision 1 of this subsection, the ~~board~~ department shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the ~~board~~ department has issued a permit prior to receipt of an objection by the administrator under subdivision 1 of this subsection, the administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 9VAC5-80-240 D 4 or D 5 a and b except in unusual circumstances, and the ~~board~~ department may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

E. No permit (including a permit renewal or modification) shall be issued by the ~~board~~ department until affected states

and the administrator have had an opportunity to review the proposed permit as required under this section.

9VAC5-80-300. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.

A. Upon the request of an applicant, any requirement of any regulation of the board (other than any requirement that is a federal applicable requirement) may be included as an applicable state requirement in a permit issued under this article.

B. If the applicant chooses to make a request under subsection A of this section, the provisions of this article pertaining to applicable state requirements shall apply.

C. The request under subsection A of this section shall be made by including the citation and description of any applicable requirement not defined as such in this article in the permit application submitted to the ~~board~~ department under 9VAC5-80-90 E.

9VAC5-80-360. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to any affected source that has an affected unit under the provisions of 9VAC5-80-380.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. The provisions of this article shall not apply to the following:

1. Any new unit exempted under 9VAC5-80-390.

2. Any affected unit exempted under 9VAC5-80-400.

3. Any emissions unit that is determined to be shutdown under the provisions of 9VAC5-20-220.

D. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this article by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

E. Particulate matter emissions shall be used to determine the applicability of this article to major sources only if particulate matter (PM_{10}) emissions cannot be quantified in a manner acceptable to the ~~board~~ department.

9VAC5-80-370. Definitions.

As used in this article and related permits and orders issued by the ~~board~~ department, all words and terms not defined herein shall have the meaning given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless the context clearly indicates otherwise; otherwise, words and terms shall have the following meanings:

"Acid rain compliance option" means one of the methods of compliance used by an affected unit under the acid rain program as described in a compliance plan submitted and approved in accordance with 9VAC5-80-450 or 40 CFR Part 76.

"Acid rain compliance plan" means the document submitted for an affected source in accordance with 9VAC5-80-430 specifying the method or methods (including one or more acid rain compliance options under 9VAC5-80-450 or 40 CFR Part 76) by which each affected unit at the source will meet the applicable acid rain emissions limitation and acid rain emissions reduction requirements.

"Acid rain emissions limitation" means:

1. For the purposes of sulfur dioxide emissions:

a. The tonnage equivalent of the allowances authorized to be allocated to an affected unit for use in a calendar year under §§ 404(a)(1), (a)(3), and (h) of the federal Clean Air Act, or the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year, or the allowances authorized to be allocated to an opt-in source under § 410 of the federal Clean Air Act for use in a calendar year;

b. As adjusted:

(1) By allowances allocated by the administrator pursuant to §§ 403, 405(a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and 406 of the federal Clean Air Act;

(2) By allowances allocated by the administrator pursuant to Subpart D of 40 CFR Part 72; and thereafter

(3) By allowance transfers to or from the compliance subaccount for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34(c); and

2. For purposes of nitrogen oxides emissions, the applicable limitation established by 40 CFR Part 76, as modified by an acid rain permit application submitted to the ~~board~~ department, and an acid rain permit issued by the ~~board~~ department, in accordance with 40 CFR Part 76.

"Acid rain emissions reduction requirement" means a requirement under the acid rain program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.

"Acid rain permit" or "permit" means the legally binding written document, or portion of such document, issued by the ~~board~~ department (following an opportunity for appeal pursuant to 40 CFR Part 78 or the Administrative Process Act), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and

operators and the designated representative of the affected source or the affected unit.

"Acid rain program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the federal Clean Air Act, 40 CFR Parts 73, 74, 75, 76, 77, and 78, and this article.

"Acid rain program regulations" means regulations implementing Title IV of the federal Clean Air Act, including 40 CFR Parts 73, 74, 75, 76, 77, and 78, and this article.

"Actual sulfur dioxide emissions rate" means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the NADB, the "1985 actual sulfur dioxide emissions rate" for the unit shall be the rate specified by the administrator in the NADB under the data field "SO2RTE."

"Administrative record" means the written documentation that supports the issuance or denial of the acid rain permit and that contains the following:

1. The permit application and any supporting or supplemental data submitted by the designated representative.

2. The draft permit.

3. The statement of basis.

4. Copies of any documents cited in the statement of basis and any other documents relied on by the ~~board~~ department in issuing or denying the draft permit (including any records of discussions or conferences with owners, operators, or the designated representative of affected units at the source or interested persons regarding the draft permit), or, for any such documents that are readily available, a list of those documents and a statement of their location.

5. Copies of all written public comments submitted on the draft permit or denial of a draft permit.

6. The record of any public hearing on the draft permit or denial of a draft permit.

7. The acid rain permit.

8. Any response to public comments submitted on the draft permit or denial of a draft permit and copies of any documents cited in the response and any other documents relied on by the ~~board~~ department to issue or deny the acid rain permit, or, for any such documents that are readily available, a list of those documents and a statement of their location.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation. Affected units are specifically designated in 9VAC5-80-380.

"Allocate" or "allocation" means the initial crediting of an allowance by the administrator to an allowance tracking system unit account or general account.

"Allowable emissions" means the emission rates of an affected source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation of both) and the most stringent of the following:

1. Applicable emission standards.

2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.

3. Any other applicable emission limitation, including those with a future compliance date.

"Allowance" means an authorization by the administrator under the acid rain program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

"Allowance deduction" or "deduct" (when referring to allowances) means the permanent withdrawal of allowances by the administrator from an allowance tracking system compliance subaccount, or future year subaccount, to account for the number of the tons of sulfur dioxide emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR Part 75, or for any other allowance surrender obligations of the acid rain program.

"Allowances held" or "hold allowances" means the allowances recorded by the administrator, or submitted to the administrator for recordation in accordance with 40 CFR 73.50, in an allowance tracking system account.

"Allowance tracking system" means the acid rain program system by which the administrator allocates, records, deducts, and tracks allowances.

"Allowance tracking system account" means an account in the allowance tracking system established by the administrator for purposes of allocating, holding, transferring, and using allowances.

"Allowance transfer deadline" means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected

unit's compliance subaccount for the purposes of meeting the unit's acid rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future effective compliance dates):

1. Any standard or other requirement provided for in the implementation plan, including any source-specific provisions such as consent agreements or orders.

2. Any term or condition of any preconstruction permit issued pursuant to the new source review program or of any operating permit issued pursuant to the state operating permit program, except for terms or conditions derived from applicable state requirements.

3. Any standard or other requirement prescribed under the Regulations for the Control and Abatement of Air Pollution, particularly the provisions of 9VAC5 Chapter 40 (9VAC5-40-10 et seq.), 9VAC5 Chapter 50 (9VAC5-50-10 et seq.), or 9VAC5 Chapter 60 (9VAC5-60-10 et seq.), adopted pursuant to requirements of the federal Clean Air Act or under § 111, 112 or 129 of the federal Clean Air Act.

4. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

5. Any standard or other requirement of the acid rain program under Title IV of the federal Clean Air Act or the acid rain program regulations.

6. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act or the Regulations for the Control and Abatement of Air Pollution.

7. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

8. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

9. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

10. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

"Applicable requirement" means any applicable federal requirement or any applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-700.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

1. Any standard or other requirement prescribed by any regulation of the board that is not included in the definition of applicable federal requirement.

2. Any regulatory provision or definition directly associated with or related to any of the state requirements listed in this definition.

"Authorized account representative" means a responsible natural person who is authorized, in accordance with 40 CFR Part 73, to transfer and otherwise dispose of allowances held in an allowance tracking system general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

"Basic Phase II allowance allocations" means:

1. For calendar years 2000 through 2009 inclusive, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

2. For each calendar year beginning in 2010, allocations of allowances made by the administrator pursuant to § 403 (sulfur dioxide allowance program for existing and new units) and §§ 405(b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) (Phase II sulfur dioxide requirements) of the federal Clean Air Act.

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

"Certificate of representation" means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source or sources and of the affected units at such source or sources with regard to matters under the acid rain program.

"Certifying official" means:

1. For a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;

2. For partnership or sole proprietorship, a general partner or the proprietor, respectively; and

3. For a local government entity or state, federal, or other public agency, either a principal executive officer or ranking elected official.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials publication, "Standard Classification of Coals by Rank" (see 9VAC5-20-21).

"Coal-derived fuel" means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquified or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

"Coal-fired" means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where:

1. For purposes of 40 CFR Part 75 (continuous emissions monitoring), a unit is "coal-fired" independent of the percentage of coal or coal-derived fuel consumed in any calendar year (expressed in mmBtu); and

2. For all other purposes under the acid rain program, except for purposes of applying 40 CFR Part 76, a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMFUEL."

"Cogeneration unit" means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

"Commence commercial operation" means to have begun to generate electricity for sale, including the sale of test generation.

"Commence construction" means that an owner or operator has either undertaken a continuous program of construction or has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

"Common stack" means the exhaust of emissions from two or more units through a single flue.

"Complete application" means an application that contains all the information required pursuant to 9VAC5-80-430 and 9VAC5-80-440 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the ~~board~~ department from requesting or accepting additional information.

"Compliance certification" means a submission to the administrator or ~~board~~ department, as appropriate, that is required by the acid rain program regulations to report an affected source or an affected unit's compliance or noncompliance with a provision of the acid rain program and that is signed and verified by the designated representative in accordance with Subparts B and I of 40 CFR Part 72, 9VAC5-80-470 and 9VAC5-80-490 P, and the acid rain program regulations.

"Compliance plan" means the document submitted for an affected source in accordance with 9VAC5-80-430 specifying the method or methods by which each emissions unit at the source will meet applicable requirements.

"Compliance subaccount" means the subaccount in an affected unit's allowance tracking system account, established pursuant to 40 CFR 73.31(a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35(b), allowances available for use by the unit in the preceding calendar year, for the purpose of meeting the unit's acid rain emissions limitation for sulfur dioxide.

"Compliance use date" means the first calendar year for which an allowance may be used for purposes of meeting a unit's acid rain emissions limitation for sulfur dioxide.

"Construction" means fabrication, erection, or installation of a unit or any portion of a unit.

"Customer" means a purchaser of electricity not for the purpose of retransmission or resale. For generating rural electrical cooperatives, the customers of the distribution cooperatives served by the generating cooperative will be considered customers of the generating cooperative.

"Designated representative" means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source or by the owners and operators of a combustion source or process source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term "responsible official" is used in this article, it shall be deemed to refer to the "designated representative" with regard to all matters under the acid rain program.

"Diesel fuel" means a low sulfur fuel oil of grades 1-D or 2-D, as defined in the American Society for Testing and Materials publication, "Standard Specification for Diesel Fuel Oils" (see 9VAC5-20-21), grades 1-GT or 2-GT, as defined by ASTM D2990-90a, "Standard Specification for Gas Turbine

Fuel Oils," or grades 1 or 2, as defined by ASTM D396-90, "Standard Specifications for Fuel Oils" (incorporated by reference in 40 CFR 72.13).

"Direct public utility ownership" means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

"Draft permit" or "draft acid rain permit" means the version of a permit, or the acid rain portion of a federal operating permit, for which the ~~board~~ department offers public participation under 9VAC5-80-670 or affected state review under 9VAC5-80-690.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the designated representative and as determined by the administrator, in accordance with the emissions monitoring requirements of 40 CFR Part 75.

"Emissions allowable under the permit" means a federally and state enforceable or state-only enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of an affected source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in this article or 40 CFR Part 72.

"EPA" means the United States Environmental Protection Agency.

"Excess emissions" means:

1. Any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the acid rain emissions limitation for sulfur dioxide for the unit; and

2. Any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the acid rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

"Existing unit" means a unit (including a unit subject to § 111 of the federal Clean Air Act) that commenced commercial operation before November 15, 1990, and that on or after November 15, 1990, served a generator with a nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990, served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an "existing unit."

"Facility" means any institutional, commercial, or industrial structure, installation, plant, source, or building.

"Federal operating permit" means a permit issued under this article, Article 1 (9VAC5-80-50 et seq.) of this part, 40 CFR Part 72, or any other regulation implementing Title V of the federal Clean Air Act.

"Federal Power Act" means 16 USC § 791a et seq.

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

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

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

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

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

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review program permit issued under regulations approved by the EPA into the implementation plan.

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

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

8. Individual consent agreements that the EPA has legal authority to create.

"Final permit" means the version of a permit issued by the ~~board~~ department under this article that has completed all

review procedures required by 9VAC5-80-670 and 9VAC5-80-690.

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

"Fossil fuel-fired" means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year (expressed in mmBtu).

"Fuel oil" means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined in the American Society for Testing and Materials publication, "Standard Specification for Fuel Oils" (see 9VAC5-20-21), and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state; provided that for purposes of monitoring requirements, "fuel oil" shall be limited to the petroleum-based fuels for which applicable ASTM methods are specified in Appendices D, E, or F of 40 CFR Part 75.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Gas-fired" means:

1. The combustion of:

a. Natural gas or other gaseous fuel (including coal-derived gaseous fuel), for at least 90% of the unit's average annual heat input during the previous three calendar years and for at least 85% of the annual heat input in each of those calendar years; and

b. Any fuel other than coal or coal-derived fuel (other than coal-derived gaseous fuel) for the remaining heat input, if any; provided that for purposes of 40 CFR Part 75, any fuel used other than natural gas shall be limited to:

(1) Gaseous fuels containing no more sulfur than natural gas; or

(2) Fuel oil.

2. For purposes of 40 CFR Part 75, a unit may initially qualify as gas-fired under the following circumstances:

a. If the designated representative provides fuel usage data for the unit for the three calendar years immediately prior to submission of the monitoring plan, and if the unit's fuel usage is projected to change on or before January 1, 1995, the designated representative submits a demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using the years 1995 through 1997 as the three-calendar-year period; or

b. If a unit does not have fuel usage data for one or more of the three calendar years immediately prior to submission of the monitoring plan, the designated representative submits:

(1) The unit's designated fuel usage;

(2) Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;

(3) The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and

(4) Demonstration satisfactory to the administrator that the unit will qualify as gas-fired under the first sentence of this definition using those three consecutive calendar years as the three-calendar-year period.

"General account" means an allowance tracking system account that is not a unit account.

"Generator" means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

"Generator output capacity" means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by 40 CFR 63.60.

"Heat input" means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, which has been approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated under § 110(c) of the federal Clean Air Act, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and which implements the relevant requirements of the federal Clean Air Act.

"Independent power production facility" means a source that:

1. Is nonrecourse project-financed, as defined by the Secretary of Energy at 10 CFR Part 715;

2. Is used for the generation of electricity, 80% or more of which is sold at wholesale; and

3. Is a new unit required to hold allowances under Title IV of the federal Clean Air Act; but only if direct public utility ownership of the equipment comprising the facility does not exceed 50%.

"Insignificant activity" means any emissions unit listed in 9VAC5-80-720 A, any emissions unit that meets the emissions criteria described in 9VAC5-80-720 B, or any emissions unit

that meets the size or production rate criteria in 9VAC5-80-720 C. An emissions unit is not an insignificant activity if it has any applicable requirements unless those requirements apply identically to all emissions units at the facility.

"Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;

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

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

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by improperly designed equipment, poor maintenance, careless or improper operation, operator error, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Nameplate capacity" means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

"National allowance data base" or "NADB" means the data base established by the administrator under § 402(4)(C) of the federal Clean Air Act.

"Natural gas" means a naturally occurring fluid mixture of hydrocarbons (e.g., methane, ethane, or propane) containing one grain or less hydrogen sulfide per 100 standard cubic feet, and 20 grains or less total sulfur per 100 standard cubic feet, produced in geological formations beneath the earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure under ordinary conditions.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with 9VAC5-80-10, or Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1700 et seq.) or Article 9 (9VAC5-80-2000 et seq.) of this part promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas), 173 (relating to permits in nonattainment areas), and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"New unit" means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

"Nonrecourse project-financed" means when being financed by any debt, such debt is secured by the assets financed and the revenues received by the facility being financed including, but not limited to, part or all of the revenues received under one or more agreements for the sale of the electric output from the facility, and which neither an electric utility with a retail service territory, nor a public utility as defined by § 201(e) of the Federal Power Act, as amended, 16 USC § 824(e), if any of its facilities are financed with general credit, is obligated to repay in whole or in part. A commitment to contribute equity or the contribution of equity to a facility by an electric utility shall not be considered an obligation of such utility to repay the debt of a facility. The existence of limited guarantees, commitments to pay for cost overruns, indemnity provisions, or other similar undertakings or assurances by the facility's owners or other project participants shall not disqualify a facility from being "nonrecourse project-financed" as long as, at the time of the financing for the facility, the borrower is obligated to make repayment of the term debt from revenues generated by the facility, rather than from other sources of funds. Projects that are 100% equity financed are also considered "nonrecourse project-financed" for purposes of § 416(a)(2)(B) of the federal Clean Air Act.

"Offset plan" means a plan pursuant to 40 CFR Part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

"Oil-fired" means:

1. The combustion of fuel oil for more than 10% of the average annual heat input during the previous three calendar years or for more than 15% of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel (including coal-derived gaseous fuel), other than coal or any other coal-derived fuel, for the remaining heat input, if any; provided that for purposes of 40 CFR Part 75, any fuel used other than fuel oil shall be limited to gaseous fuels containing no more sulfur than natural gas.

2. For purposes of 40 CFR Part 75, a unit that does not have fuel usage data for one or more of the three calendar years

immediately prior to submission of the monitoring plan may initially qualify as oil-fired if the designated representative submits:

a. The unit design fuel usage;

b. The unit's designed fuel usage;

c. Any fuel usage data, beginning with the unit's first calendar year of commercial operation following 1992;

d. The unit's projected fuel usage for any remaining future period needed to provide fuel usage data for three consecutive calendar years; and

e. A demonstration satisfactory to the administrator that the unit will qualify as oil-fired under the first sentence of this definition using those three consecutive calendar years as the three-calendar-year period.

"Owner," with respect to affected units, combustion sources, or process sources, means any of the following persons:

1. Any holder of any portion of the legal or equitable title in an affected unit, a combustion source, or a process source;

2. Any holder of a leasehold interest in an affected unit, a combustion source, or a process source;

3. Any purchaser of power from an affected unit, a combustion source, or a process source under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit; or

4. With respect to any allowance tracking system general account, any person identified in the submission required by 40 CFR 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

"Owner or operator" means any person who is an owner or who operates, controls, or supervises an affected unit, affected source, combustion source, or process source, and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit, affected source, combustion source, or process source.

"Permit" (unless the context suggests otherwise) means any permit or group of permits covering a source subject to this article that is issued, renewed, amended, or revised pursuant to this article.

"Permit modification" means a revision to a permit issued under this article that meets the requirements of 9VAC5-80-570 on minor permit modifications, 9VAC5-80-580 on group processing of minor permit modifications, or 9VAC5-80-590 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of 9VAC5-80-570, 9VAC5-80-580, or 9VAC5-80-590 or any administrative permit amendment that meets the requirements of 9VAC5-80-560.

"Permit revision for affected units" means a permit modification, fast track modification, administrative permit amendment for affected units, or automatic permit amendment, as provided in 9VAC5-80-600 through 9VAC5-80-630.

"Phase II" means the acid rain program period beginning January 1, 2000, and continuing into the future thereafter.

"Potential electrical output capacity" means the MWe capacity rating for the units which shall be equal to 33% of the maximum design heat input capacity of the steam generating unit, as calculated according to Appendix D of 40 CFR Part 72.

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

"Power distribution system" means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

"Power purchase commitment" means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

1. A power sales agreement;

2. A state regulatory authority order requiring a utility to (i) enter into a power sales agreement with the facility; (ii) purchase from the facility; or (iii) enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power;

3. A letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source executed within the time frame established by the terms of the letter of intent but no later than November 15, 1993, or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source executed on or before November 15, 1993; or

4. A utility competitive bid solicitation that has resulted in the selection of the qualifying facility or independent power production facility as the winning bidder.

"Power sales agreement" means a legally binding agreement between a qualifying facility, independent power production facility or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

"Primary fuel" or "primary fuel supply" means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

"Proposed permit" means the version of a permit that the ~~board~~ department proposes to issue and forwards to the administrator for review in compliance with 9VAC5-80-690.

"Qualifying facility" means a "qualifying small power production facility" within the meaning of § 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of § 3(18)(B) of the Federal Power Act.

"Qualifying power purchase commitment" means a power purchase commitment in effect as of November 15, 1990, without regard to changes to that commitment so long as:

1. The identity of the electric output purchaser, or the identity of the steam purchaser and the location of the facility remain unchanged as of the date the facility commences commercial operation; and

2. The terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the acid rain program to be shifted to the purchaser.

"Qualifying repowering technology" means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990; or

2. Any oil- or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

"Receive" or "receipt of" means the date the administrator or the ~~board~~ department comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the administrator or the ~~board~~ department in the regular course of business.

"Recordation," "record," or "recorded" means, with regard to allowances, the transfer of allowances by the administrator from one allowance tracking system account or subaccount to another.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.

2. Any pollutant for which an ambient air quality standard has been promulgated.

3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.

4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR Part 68.

6. Any pollutant subject to an applicable state requirement included in a permit issued under this article as provided in 9VAC5-80-300.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association or cooperative:

a. The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the business entity; or

b. A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(2) The authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the ~~board~~ department;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For affected sources:

a. The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the federal Clean Air Act or the regulations promulgated thereunder are concerned; and

b. The designated representative or any other person specified in this definition for any other purposes under this article or 40 CFR Part 70.

"Schedule of compliance" means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct noncompliance, with an applicable requirement of the acid rain program, including any applicable acid rain permit requirement.

"Secretary of Energy" means the Secretary of the United States Department of Energy or the secretary's duly authorized representative.

"Simple combustion turbine" means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

"Solid waste incinerator" means a source as defined in § 129(g)(1) of the federal Clean Air Act.

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the federal Clean Air Act. For purposes of § 502(c) of the federal Clean Air Act, a source, including a source with multiple units, shall be considered a single facility.

"Stack" means a structure that includes one or more flues and the housing for the flues.

"State enforceable" means all limitations and conditions which are enforceable by the ~~board~~ department, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit program" means a program for issuing limitations and conditions for stationary sources in accordance with Article 5 (9VAC5-80-800 et seq.) of this part, promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

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

1. In person;

2. By United States Postal Service; or

3. By other equivalent means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title I modification" means any modification under Parts C and D of Title I or §§ 111(a)(4), 112(a)(5), or § 112(g) of the federal Clean Air Act; under regulations promulgated by the U.S. Environmental Protection Agency thereunder or in 40 CFR 61.07; or under regulations approved by the U.S. Environmental Protection Agency to meet such requirements.

"Ton" or "tonnage" means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR Part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

"Total planned net output capacity" means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990.

"Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

"Unit" means a fossil fuel-fired combustion device.

"Unit account" means an allowance tracking system account, established by the administrator for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

"Utility" means any person that sells electricity.

"Utility competitive bid solicitation" means a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility, or new independent power production facility may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

"Utility regulatory authority" means an authority, board, commission, or other entity (limited to the local, state, or federal level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

"Utility unit" means a unit owned or operated by a utility:

1. That serves a generator in any state that produces electricity for sale; or

2. That during 1985, served a generator in any state that produced electricity for sale.

Notwithstanding subdivisions 1 and 2 of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990, is not a utility unit for purposes of the acid rain program.

Notwithstanding subdivisions 1 and 2 of this definition, a unit that cogenerates steam and electricity is not a utility unit for purposes of the acid rain program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

9VAC5-80-390. New units exemption.

A. This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05% or less by weight, as determined in accordance with subdivision D 1 of this section.

B. The designated representative, authorized in accordance with Subpart B of 40 CFR Part 72, of a source that includes a unit under subsection A of this section may petition the ~~board~~ department for a written exemption, or to renew a written exemption, for the unit from the requirements of the acid rain program as described in subdivision C 1 of this section. The petition shall be submitted on a form approved by the ~~board which~~ department that includes the following elements:

1. Identification of the unit.

2. The nameplate capacity of each generator served by the unit.

3. A list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with subsection A of this section.

4. A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.

5. The special provisions in subsection D of this section.

C. The ~~board~~ department shall issue, for any unit meeting the requirements of subsections A and B of this section, a written exemption from the requirements of the acid rain program except for the requirements specified in this section, 40 CFR 72.2 through 72.7, and 40 CFR 72.10 through 72.13 (general provisions); provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the administrator deducts from the unit's allowances tracking system account, allowances pursuant to 40 CFR 72.7(c)(1)(i) and (d)(1) (new units exemption).

1. The exemption shall take effect on January 1 of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with subdivision 2 of this subsection, provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the acid rain program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the acid rain program whether the violation occurs before or after the exemption takes effect.

2. In considering and issuing or denying a written exemption under this subsection, the ~~board~~ department shall apply the permitting procedures in 9VAC5-80-510 C by:

a. Treating the petition as an acid rain permit application under such provisions;

b. Issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions; and

c. Issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under such provisions, provided that no provision under 9VAC5-80-510 C concerning the content, effective date, or term of an acid rain permit shall apply to the written exemption or proposed written exemption under this section.

3. A written exemption issued under this section shall have a term of five years from its effective date, except as provided in subdivision D 3 of this section.

D. The following provisions apply to units exempted under this section:

1. The owners and operators of each unit exempted under this section shall determine the sulfur content by weight of its fuel as follows:

a. For petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using methods found in the following American Society for Testing and Materials (ASTM) publications: "Standard Practice for Manual Sampling of Petroleum and Petroleum Products" and "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)," "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Spectrometry" or "Standard Test Method for Sulfur in Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy" (see 9VAC5-20-21).

b. For natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05% or less by weight.

c. For gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of

each delivery of such fuel shall be tested using methods found in the following ASTM publications: "Standard Test Method for Total Sulfur in Fuel Gases" and "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)" (see 9VAC5-20-21); provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using the method found in ASTM publication, "Standard Test Method for Total Sulfur in Fuel Gases" (see 9VAC5-20-21).

2. The owners and operators of each unit exempted under this section shall retain at the source that includes the unit, the records of the results of the tests performed under subdivisions 1 a and 1 c of this subsection and a copy of the purchase agreements for the fuel under subdivision 1 of this subsection, stating the sulfur content of such fuel. Such records and documents shall be retained for five years from the date they are created.

3. On the earlier of the date the written exemption expires, the date a unit exempted under this section burns any fuel with a sulfur content in excess of 0.05% by weight (as determined in accordance with subdivision 1 of this subsection), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the unit shall no longer be exempted under this section and shall be subject to all requirements of the acid rain program, except that:

a. Notwithstanding 9VAC5-80-430 C, the designated representative of the source that includes the unit shall submit a complete acid rain permit application on the later of January 1, 1998, or the date the unit is no longer exempted under this section.

b. For purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements of subsection A of this section.

9VAC5-80-400. Retired units exemption.

A. This section applies to any affected unit (except for an opt-in source) that is permanently retired.

B. The following provisions apply:

1. Any affected unit (except for an opt-in source) that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, 40 CFR 72.2 through 72.6, 72.10 through 72.13, and Subpart B of 40 CFR Part 73.

2. The exemption under subdivision 1 of this subsection shall become effective on January 1 of the first full calendar year during which the unit is permanently retired. By December 31 of the first year that the unit is to be exempt under this section, the designated representative (authorized in accordance with this subsection), or, if no designated representative has been authorized, a certifying official of each owner of the unit shall submit a statement to the ~~board~~ department otherwise responsible for administering a Phase II acid rain permit for the unit. A copy of the statement shall also be submitted to the administrator. The statement shall state (in a format prescribed by the administrator) that the unit is permanently retired and will comply with the requirements of paragraph (d) of 40 CFR 72.8.

3. After receipt of the notice under subdivision 2 of this subsection, the ~~board~~ department shall amend the federal operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under subdivision 1 of this subsection and subsection D of this section.

C. A unit that was issued a written exemption under this section and that is permanently retired shall be exempt from the acid rain program, except for the provisions of this section, 40 CFR 72.2 through 72.6, 72.10 through 72.13, and Subpart B of 40 CFR Part 73, and shall be subject to the requirements of subsection D of this section in lieu of the requirements set forth in the written exemption. The ~~board~~ department shall amend the federal operating permit covering the source at which the unit is located, if the source has such a permit, to add the provisions and requirements of the exemption under this subsection and under subsection D of this section.

D. The following special provisions apply:

1. A unit exempt under this section shall not emit any sulfur dioxide and nitrogen oxides starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with Subpart B of 40 CFR Part 73. If the unit is a Phase I unit, for each calendar year in Phase I, the designated representative of the unit shall submit a Phase I permit application in accordance with Subparts C and D of 40 CFR Part 72 and an annual certification report in accordance with 40 CFR 72.90 through 72.92 and is subject to 40 CFR 72.95 and 72.96.

2. A unit exempt under this section shall not resume operation unless the designated representative of the source that includes the unit submits a complete acid rain permit application under 40 CFR 72.31 for the unit not less than 24 months prior to the later of January 1, 2000, or the date on which the unit is first to resume operation.

3. The owners and operators and, to the extent applicable, the designated representative of a unit exempt under this section shall comply with the requirements of the acid rain program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

4. For any period for which a unit is exempt under this section, the unit is not an affected unit under the acid rain

program and 40 CFR Parts 70 and 71 and is not eligible to be an opt-in source under 40 CFR Part 74. As an unaffected unit, the unit shall continue to be subject to any other applicable requirements under 40 CFR Parts 70 and 71.

5. For a period of five years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the administrator or the permitting authority. The owners and operators bear the burden of proof that the unit is permanently retired.

6. The following provisions apply to the loss of exemption:

a. On the earlier of the following dates, a unit exempt under subsection B or C of this section shall lose its exemption and become an affected unit under the acid rain program and 40 CFR Parts 70 and 71:

(1) The date on which the designated representative submits an acid rain permit application under subdivision D 2 of this section; or

(2) The date on which the designated representative is required under subdivision D 2 of this section to submit an acid rain permit application.

b. For the purpose of applying monitoring requirements under 40 CFR Part 75, a unit that loses its exemption under this section shall be treated as a new unit that commenced commercial operation on the first date on which the unit resumes operation.

9VAC5-80-410. General.

A. No permit may be issued pursuant to this article until the article has been approved by the administrator, whether full, interim, partial, for federal delegation purposes, or otherwise.

B. If requested in the application for a permit or permit renewal submitted pursuant to this article, the ~~board~~ department may combine the requirements of and the permit for a source subject to the state operating permit program with the requirements of and the permit for a source subject to this article provided the application contains the necessary information required for a permit under the state operating permit program.

C. For the purpose of this article, the phrase " the Regulations for the Control and Abatement of Air Pollution" means 9VAC5 Chapter 10 (9VAC5-10-10 et seq.) through 9VAC5 Chapter 80 (9VAC5-80-10 et seq.). For purposes of implementing and enforcing those provisions of this article associated with applicable federal requirements as well as those provisions of this article intended to implement Title V of the federal Clean Air Act, the phrase " the Regulations for the Control and Abatement of Air Pollution" means only those provisions that have been approved by EPA as part of the implementation plan or otherwise have been approved by or found to be acceptable by EPA for the purpose of implementing requirements of the federal Clean Air Act. For the purpose of this article, terms and conditions relating to applicable federal requirements shall be derived only from provisions that qualify as applicable federal requirements.

9VAC5-80-420. Standard requirements.

A. The following requirements apply to affected sources and affected units subject to this article:

1. The designated representative of each affected source and each affected unit at the source shall:

a. Submit a complete acid rain permit application (including a compliance plan) under this article in accordance with the deadlines specified in 9VAC5-80-430 C; and

b. Submit in a timely manner a complete reduced utilization plan if required under 40 CFR 72.43; and

c. Submit in a timely manner any supplemental information that the ~~board~~ department determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

2. The owners and operators of each affected source and each affected unit at the source shall:

a. Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the ~~board~~ department; and

b. Have an acid rain permit.

B. The following monitoring requirements apply to affected sources and affected units subject to this article:

1. The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR Part 75 and § 407 of the federal Clean Air Act.

2. The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and § 407 of the federal Clean Air Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

3. The requirements of 40 CFR Parts 75 and 76 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the federal Clean Air Act and other provisions of the federal operating permit for the source.

C. The following requirements regarding sulfur dioxide limitations and allowances apply to affected sources and affected units subject to this article:

1. The owners and operators of each source and each affected unit at the source shall:

a. Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount after deductions under 40 CFR 73.34(c) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

b. Comply with the applicable acid rain emissions limitation for sulfur dioxide.

2. Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the federal Clean Air Act.

3. An affected unit shall be subject to the requirements under subdivision 1 of this subsection as follows:

a. Starting January 1, 1995, an affected unit under 9VAC5-80-380 A 2; or

b. Starting on or after January 1, 1995, in accordance with 40 CFR 72.41 and 72.43, an affected unit under 40 CFR 72.6(a)(2) or (3) that is a substitution or compensating unit; or

c. Starting January 1, 2000, an affected unit under 40 CFR 72.6(a)(2) that is not a substitution or compensating unit; or

d. Starting on the later of January 1, 2000, or the deadline for monitor certification under 40 CFR Part 75, an affected unit under 9VAC5-80-380 A 3 that is not a substitution or compensating unit.

4. Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

5. An allowance shall not be deducted, in order to comply with the requirements under subdivision 1 a of this subsection, prior to the calendar year for which the allowance was allocated.

6. An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under 9VAC5-80-390 and 9VAC5-80-400 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

7. An allowance allocated by the administrator under the acid rain program does not constitute a property right.

D. The owners and operators of the source and each affected unit at the source shall comply with the acid rain applicable emissions limitation for nitrogen oxides.

E. The following excess emissions requirements apply to affected sources and affected units subject to this article:

1. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and to the ~~board~~ department.

2. The owners and operators of an affected unit that has excess emissions in any calendar year shall:

a. Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and

b. Comply with the terms of an approved offset plan as required by 40 CFR Part 77.

F. The following recordkeeping and reporting requirements apply to affected sources and affected units subject to this article:

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

a. The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation in accordance with 40 CFR 72.24, provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

b. All emissions monitoring information in accordance with 40 CFR Part 75, provided that to the extent that 40 CFR Part 75 provides for a three-year period for recordkeeping, the three-year period shall apply.

c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

d. Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

2. The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under 9VAC5-80-470 and 9VAC5-80-490 P and 40 CFR Part 75.

G. The following requirements concerning liability apply to affected sources and affected units subject to this article:

1. Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under 9VAC5-80-390 or 9VAC5-80-400, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and by the ~~board~~ department pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.

2. Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to § 113(c) of the federal Clean Air Act and 18 USC § 1001 and by the ~~board~~ department pursuant to §§ 10.1-1316 and 10.1-1320 of the Code of Virginia.

3. No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

4. Each affected source and each affected unit shall meet the requirements of the acid rain program.

5. Any provision of the acid rain program that applies to an affected source including a provision applicable to the designated representative of an affected source shall also apply to the owners and operators of such source and of the affected units at the source.

6. Any provision of the acid rain program that applies to an affected unit including a provision applicable to the designated representative of an affected unit shall also apply to the owners and operators of such unit. Except as provided under 9VAC5-80-460 Phase II repowering extension plans, 40 CFR 72.41 (substitution plans), 72.43 (reduced utilization plans), 72.44 (Phase II repowering extensions), 74.47 (thermal energy plans), and 40 CFR Part 76 (NO_X averaging plans), and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 including 40 CFR 75.16, 75.17, and 75.18, the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

7. Each violation of a provision of the acid rain program regulations by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the federal Clean Air Act.

H. No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under 9VAC5-80-390 or 9VAC5-80-400 shall be construed as:

1. Except as expressly provided in Title IV of the federal Clean Air Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the federal Clean Air Act, including the provisions of Title I of the federal Clean Air Act relating to applicable National Ambient Air Quality Standards or the implementation plan;

2. Limiting the number of allowances a unit can hold, provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the federal Clean Air Act;

3. Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state regulation, or limiting such state regulation, including any prudence review requirements under such state law;

4. Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

5. Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

9VAC5-80-430. Applications.

A. A single application is required identifying each emission unit subject to this article. The application shall be submitted according to the requirements of this section, 9VAC5-80-440 and procedures approved by the ~~board~~ department. Where several emissions units are included in one affected source, a single application covering all units in the source shall be submitted. A separate application is required for each affected source subject to this article.

B. For each source subject to this article, the responsible official shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. The following requirements concerning timely applications apply to affected sources and affected units subject to this article:

1. No owner or operator of any affected source shall operate the source or affected unit without a permit that states its acid rain program requirements.

2. The designated representative of any affected source shall submit a complete acid rain permit application by the following applicable deadlines:

a. For any affected source with an existing unit described under 9VAC5-80-380 A 2, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department as follows:

(1) For sulfur dioxide, on or before January 1, 1996; and

(2) For nitrogen oxides, on or before January 1, 1998.

b. For any affected source with a new unit described under 9VAC5-80-380 A 3 a, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

c. For any affected source with a unit described under 9VAC5-80-380 A 3 b, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any affected source with a unit described under 9VAC5-80-380 A 3 c, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department at least 24 months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

e. For any affected source with a unit described under 9VAC5-80-380 A 3 d, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any affected source with a unit described under 9VAC5-80-380 A 3 e, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any affected source with a unit described under 9VAC5-80-380 A 3 f, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any affected source with a unit described under 9VAC5-80-380 A 3 g, the designated representative shall submit a complete acid rain permit application governing such unit to the ~~board~~ department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the incinerator consumed 20% or more fossil fuel (on a Btu basis).

3. The responsible official for an affected source applying for a permit under this article for the first time shall submit a complete application pertaining to all applicable requirements other than the acid rain program requirements on a schedule to be determined by the department but no later than 12 months following the effective date of approval of Article 1 (9VAC5-80-50 et seq.) of this part by the administrator, to include approval for federal delegation purposes.

4. The owner of a source subject to the requirements of the new source review program shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this article would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation. The owner of a source may file a complete application to obtain the permit or permit revision under this article on the same date the permit application is submitted under the requirements of the new source review program.

5. For purposes of permit renewal, the owner shall submit an application at least six months but no earlier than 18 months prior to the date of permit expiration.

D. The following requirements concerning the completeness of the permit application apply to affected sources and affected units subject to this article:

1. To be determined complete, an application shall contain all information required pursuant to 9VAC5-80-440.

2. Applications for permit revision or for permit reopening shall supply information required under 9VAC5-80-440 only if the information is related to the proposed change.

3. Within 60 days of receipt of the application, the ~~board~~ department shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the ~~board~~ department shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the ~~board~~ department does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications under 9VAC5-80-570, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the ~~board~~ department finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under the new source review program.

8. Upon notification by the ~~board~~ department that the application is complete or after 60 days following receipt of

the application by the ~~board~~ department, the applicant shall submit three additional copies of the complete application to the ~~board~~ department.

9. The ~~board~~ department shall submit a written notice of application completeness to the administrator within 10 working days following a determination by the ~~board~~ department that the acid rain permit application is complete.

E. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. The following requirements concerning the application shield apply to affected sources and affected units subject to this article:

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this article until the ~~board~~ department takes final action on the application under 9VAC5-80-510.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this article.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either 9VAC5-80-570 F or 9VAC5-80-580 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this article until the ~~board~~ department takes final action on the application under 9VAC5-80-510.

4. If the source notifies the ~~board~~ department that it wants to make an operational flexibility permit change under 9VAC5-80-680 B, the failure of the source to have a permit modification or operation of the source without a permit modification for the permit change shall not be a violation of this article unless the ~~board~~ department notifies the source that the change is not a permit change as specified in 9VAC5-80-680 B 1 a.

5. If an applicant submits a timely and complete application under this section for a permit renewal but the ~~board~~ department fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to 9VAC5-80-500, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subdivisions 1 and 5 (ii) of this subsection shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the ~~board~~ department any additional information identified as being needed to process the application.

7. Permit application shield and binding effect of acid rain permit application for the affected source.

a. Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under 9VAC5-80-420 A 2 and subsection C of this section.

b. The protection provided under subdivision 7 a of this subsection shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the designated representative fails to submit by the deadline specified in writing by the ~~board~~ department any supplemental information identified as being needed to process the application.

c. Prior to the earlier of the date on which an acid rain permit is issued subject to administrative appeal under 40 CFR Part 78 or is issued as a final permit, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.

d. A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

G. The responsibilities of the designated representative shall be as follows:

1. The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72 and, concurrently, shall submit a copy to the ~~board~~ department.

2. Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

3. In each submission under the acid rain program, the designated representative shall certify, by his signature:

a. The following statement, which shall be included verbatim in such submission: "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made."

b. The following statement, which shall be included verbatim in such submission: "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

4. The ~~board~~ department shall accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subdivisions 2 and 3 of this subsection.

5. The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

a. By the date of submission of any acid rain program submissions by the designated representative;

b. Within 10 business days of receipt of a determination of any written determination by the administrator or the ~~board~~ department; and

c. Provided that the submission or determination covers the source or the unit.

6. The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subdivision 5 of this subsection, unless the owner or operator expressly waives the right to receive such a copy.

H. Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the ~~board~~ department concerning the authorization, or any submission, action or inaction~~,~~ of the designated representative, shall affect any submission, action, or inaction of the designated representative~~,~~ or the finality of any decision by the ~~board,~~ department under the acid rain program. In the event of such communication, the ~~board~~ department is not required to stay any submission or the effect of any action or inaction under the acid rain program. The ~~board~~ department shall not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

I. The responsibilities of the responsible official shall be as follows:

1. Any application form, report, compliance certification, or other document required to be submitted to the ~~board~~ department under this article that concerns applicable requirements other than the acid rain program requirements may be signed by a responsible official other than the designated representative.

2. Any responsible official signing a document required to be submitted to the ~~board~~ department under this article shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

9VAC5-80-440. Application information required.

A. The ~~board~~ department shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information as follows shall be included:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

3. Identification of each affected unit at the source for which the permit application is submitted.

4. If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

D. Emissions related information as follows shall be included:

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit with the following exceptions:

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level or size of the unit is deemed to be insignificant under 9VAC5-80-720 B or C shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in 9VAC5-80-720 A.

(2) Regardless of the emissions units designated in 9VAC5-80-720 A or C or the emissions levels listed in 9VAC5-80-720 B, the emissions from any emissions unit shall be included in the permit application if the omission of those emissions units from the application would interfere with the determination of the applicability of this article, the determination or imposition of any applicable requirement, or the calculation of permit fees.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent that the emissions are quantifiable.

2. Additional information related to the emissions of air pollutants sufficient for the ~~board~~ department to verify which requirements are applicable to the source, and other information necessary to determine and collect any permit fees owed under Article 2 (9VAC5-80-310 et seq.) of this part. Identification and description of all points of emissions described in subdivision 1 of this subsection in sufficient detail to establish the basis for fees and applicability of requirements of the Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

7. Other information required by any applicable requirement (including information related to stack height limitations required under 9VAC5-40-20 I or 9VAC5-50-20 H).

8. Calculations on which the information in subdivisions 1 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

E. Air pollution control requirement information as follows shall be included:

1. Citation and description of all applicable requirements, including those covering activities deemed insignificant under Article 4 (9VAC5-80-710 et seq.) of this part.

2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information that may be necessary to implement and enforce other requirements of the Regulations for the Control and Abatement of Air Pollution and the federal Clean Air Act or to determine the applicability of such requirements.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the ~~board~~ department to define alternative operating scenarios identified by the source pursuant to 9VAC5-80-490 J or to define permit terms and conditions implementing operational flexibility under 9VAC5-80-680.

I. Compliance plan information as follows shall be included:

1. A description of the compliance status of the source with respect to all applicable requirements.

2. A description as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

3. A complete acid rain compliance plan for each affected unit in accordance with 9VAC5-80-450.

4. A compliance schedule as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed

schedule is expressly required by the applicable requirement or by the ~~board~~ department if no specific requirement exists.

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or ~~board~~ department order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

5. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

6. The requirements of this subsection shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the federal Clean Air Act with regard to the schedule and method or methods the source will use to achieve compliance with the acid rain emissions limitations.

J. Compliance certification information as follows shall be included:

1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the ~~board~~ department.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112(r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Article 2 (9VAC5-80-310 et seq.) of this part.

M. The use of nationally standardized forms for acid rain portions of permit applications and compliance plans as required by 40 CFR 72.72(b)(4).

N. The applicant shall meet the requirements of 9VAC5-80-420 concerning permit applications, operation of the affected source, monitoring, sulfur dioxide, nitrogen dioxide, excess emissions, recordkeeping and reporting, liability, and effect on other authorities.

9VAC5-80-450. Acid rain compliance plan and compliance options.

A. For each affected unit included in an acid rain permit application, a complete acid rain compliance plan shall include:

1. For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with this section and 9VAC5-80-460, one or more of the acid rain compliance options.

2. For nitrogen oxides emissions, a certification that the unit will comply with the applicable emission limitation in 40 CFR 76.5, 76.6, or 76.7 or shall specify one or more acid rain compliance options in accordance with the requirements of 40 CFR Part 76.

B. The acid rain compliance plan may include a multi-unit compliance option under 9VAC5-80-460 or § 407 of the federal Clean Air Act or 40 CFR Part 76.

1. A plan for a compliance option that includes units at more than one affected source shall be complete only if:

a. Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

b. A complete permit application is submitted covering each unit governed by such plan.

2. The ~~board's~~ department's approval of a plan under subdivision 1 of this subsection that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

C. In the compliance plan, the designated representative of an affected unit may propose, in accordance with this section and 9VAC5-80-460, any acid rain compliance option for

conditional approval, provided that an acid rain compliance option under § 407 of the federal Clean Air Act may be conditionally proposed only to the extent provided in 40 CFR Part 76.

1. To activate a conditionally approved acid rain compliance option, the designated representative shall notify the ~~board~~ department in writing that the conditionally approved compliance option will actually be pursued beginning January 1 of a specified year. Such notification shall be subject to the limitations on activation under 9VAC5-80-460 and 40 CFR Part 76. If the conditionally approved compliance option includes a plan described in subdivision B 1 of this section, the designated representative of each source governed by the plan shall sign and certify the notification.

2. The notification under subdivision 1 of this subsection shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

3. Upon submission of a notification meeting the requirements of subdivisions 1 and 2 of this subsection, the conditionally approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.

4. A notification meeting the requirements of subdivisions 1 and 2 of this subsection will revise the unit's permit in accordance with 9VAC5-80-620.

D. The following requirements concerning terminations of compliance options apply to affected sources and affected units subject to this article:

1. The designated representative for a unit may terminate an acid rain compliance option by notifying the ~~board~~ department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under 9VAC5-80-460 and 40 CFR Part 76. If the compliance option includes a plan described in subdivision B 1 of this section, the designated representative for each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations or terminations under Subpart D of 40 CFR Part 72 and regulations implementing § 407 of the federal Clean Air Act.

2. The notification under subdivision 1 of this subsection shall specify the calendar year for which the termination will take effect.

3. Upon submission of a notification meeting the requirements of subdivisions 1 and 2 of this subsection, the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

4. A notification meeting the requirements of subdivisions 1 and 2 of this subsection will revise the unit's permit in accordance with 9VAC5-80-620.

9VAC5-80-460. Repowering extensions.

A. This section shall apply to the designated representative of:

1. Any existing affected unit that is a coal-fired unit and has a 1985 actual sulfur dioxide emissions rate equal to or greater than 1.2 lbs/mmBtu; or

2. Any new unit that will be a replacement unit, as provided in subdivision B 2 of this section, for a unit meeting the requirements of subdivision 1 of this subsection; or

3. Any oil- or gas-fired unit or both that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Secretary of Energy.

A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's acid rain emissions limitations for sulfur dioxide.

B. The designated representative of any unit meeting the requirements of subdivision A 1 of this section may include in the unit's acid rain permit application a repowering extension plan that includes a demonstration that:

1. The unit will be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide; or

2. The unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

C. In order to apply for a repowering extension, the designated representative of a unit under subsection A of this section shall:

1. Submit to the ~~board~~ department, by January 1, 1996, a complete repowering extension plan;

2. Submit to the administrator before June 1, 1997, a complete petition for approval of repowering technology in

accordance with 40 CFR 72.44(d) and submit a copy to the ~~board~~ department; and

3. If the repowering extension plan is submitted for conditional approval, submit to the ~~board~~ department by December 31, 1997, a notification to activate the plan in accordance with 9VAC5-80-450 C.

D. A complete repowering extension plan shall include the following elements:

1. Identification of the existing unit governed by the plan.

2. The unit's sulfur dioxide emissions limitation in the implementation plan.

3. The unit's 1995 actual sulfur dioxide emissions rate.

4. A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under 40 CFR 72.44(d) with dates for the following milestones:

a. Completion of design engineering;

b. For a plan under subdivision B 1 of this section, removal of the existing unit from operation to install the qualified repowering technology;

c. Commencement of construction;

d. Completion of construction;

e. Start-up testing;

f. For a plan under subdivision B 2 of this section, shutdown of the existing unit; and

g. Commencement of commercial operation of the repowering technology.

5. For a plan under subdivision B 2 of this section:

a. Identification of the new unit. A new unit shall not be included in more than one repowering extension plan.

b. Certification that the new unit will replace the existing unit.

c. Certification that the new unit has the same designated representative as the existing unit.

d. Certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.

6. The special provisions of subsection G of this section.

E. The ~~board~~ department shall not approve a repowering extension plan until the administrator makes a conditional determination that the technology is a qualified repowering technology, unless the ~~board~~ department approves such plan subject to the conditional determination of the administrator.

1. Permit issuance shall be as follows:

a. Upon a conditional determination by the administrator that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the ~~board~~ department that such plan meets the requirements of this section, the ~~board~~ department shall issue the acid rain portion of the federal operating permit including:

(1) The approved repowering extension plan; and

(2) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section will be met.

b. Except as otherwise provided in subsection F of this section, the repowering extension shall be in effect starting January 1, 2000, and ending on the day before the date (specified in the acid rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology, provided that the repowering extension shall end no later than December 31, 2003.

c. The portion of the federal operating permit specifying the repowering extension and other requirements under subdivision 1 a of this subsection shall be subject to the administrator's final determination, under 40 CFR 72.44(d)(4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.

3. Allowances shall be allocated in accordance with 40 CFR 72.44(f)(3) and (g).

F. The following provisions apply with respect to failed repowering projects:

1. If, at any time before the end of the repowering extension under subdivision E 1 b of this section, the designated representative of a unit governed by an approved repowering extension plan submits the notification under 9VAC5-80-470 D that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of construction or start-up testing, the designated representative may submit to the ~~board~~ department a proposed permit modification demonstrating that such efforts were in good faith. If such demonstration is to the satisfaction of the administrator, the unit shall not be deemed in violation of the federal Clean Air Act because of such a termination and the ~~board~~ department shall revise the federal operating permit in accordance with subdivision 2 of this subsection.

2. Regardless of whether notification under subdivision 1 of this subsection is given, the repowering extension shall end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under 9VAC5-80-470 D. The administrator shall deduct allowances (including a pro rata

deduction for any fraction of a year) from the allowance tracking system account of the existing unit to the extent necessary to ensure that, beginning the day after the extension ends, allowances are allocated in accordance with 40 CFR 73.21(c)(1).

3. The designated representative of a unit governed by an approved repowering extension plan may submit to the ~~board~~ department a proposed permit modification demonstrating that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits, the unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. If such demonstration is to the satisfaction of the administrator, the following shall occur:

a. The unit shall not be deemed in violation of the federal Clean Air Act because of such failure to achieve the emissions reduction limitations;

b. The ~~board~~ department shall revise the acid rain portion of the federal operating permit in accordance with subdivisions 3 b and 3 c of this subsection;

c. The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and

d. The repowering extension shall continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 31, 2003. The ~~board~~ department shall allocate or deduct allowances as necessary to ensure that allowances are allocated in accordance with paragraph (f)(3) of 40 CFR 72.44.

G. 1. The following special provisions apply with regard to emissions limitations:

a. For sulfur dioxide, allowances allocated during the repowering extension under paragraphs (f)(3) and (g)(2)(iii) of 40 CFR 72.40 to a unit governed by an approved repowering extension plan shall not be transferred to any allowance tracking system account other than the unit accounts of other units at the same source as that unit.

b. For nitrogen oxides, any existing unit governed by an approved repowering extension plan shall be subject to the acid rain emissions limitations for nitrogen oxides in accordance with 40 CFR Part 76 beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

c. No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under § 111(j) of the federal Clean Air Act.

d. No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under § 111 of the federal Clean Air Act.

2. Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of 40 CFR 72.94.

3. The following provisions regarding liability apply:

a. The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan at that or any other unit governed by the plan, including liability for fulfilling the obligations specified in 40 CFR Part 77 and § 411 of the federal Clean Air Act.

b. The units governed by the plan under paragraph (b)(2) of 40 CFR 72.40 shall continue to have a common designated representative until the exiting unit is permanently retired under the plan.

4. Except as provided in paragraph (g) of 40 CFR 72.40, a repowering extension plan shall not be terminated after December 31, 1999.

9VAC5-80-470. Units with repowering extension plans.

A. No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the administrator and the ~~board~~ department:

1. Satisfactory documentation of a preliminary design and engineering effort.

2. A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the administrator under 40 CFR 72.44(d)(3).

3. The letter agreement under subdivision 2 of this subsection shall be signed and dated by each party and specify:

a. The parties to the contract;

b. The date each party executed the contract;

c. The unit to which the contract applies;

d. A brief list identifying each provision of the contract;

e. Any dates to which the parties agree, including construction completion date;

f. The total dollar amount of the contract; and

g. A statement that a copy of the contract is on site at the source and will be submitted upon written request of the administrator or the ~~board~~ department.

B. The designated representative of a unit governed by an approved repowering plan shall notify the administrator and the ~~board~~ department in writing at least 60 days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

C. Not later than 60 days after the units repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the administrator and the ~~board~~ department comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR Part 75.

D. If at any time before the end of the repowering extension and before completion of construction and start-up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved repowering plan, then the designated representative shall submit a notice to the administrator and the ~~board~~ department by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.

9VAC5-80-480. Emission caps.

A. The ~~board~~ department may establish an emission cap for sources or emissions units applicable under this article when the applicant requests that a cap be established.

B. The criteria in this subsection shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in the Regulations for the Control and Abatement of Air Pollution prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this article.

2. A permit issued under this article may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in the Regulations for the Control and Abatement of Air Pollution prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination thereof for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination thereof.

C. Using the significant modification procedures of 9VAC5-80-590, an emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subdivisions B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to the new source review program.

9VAC5-80-490. Permit content.

A. The following requirements apply to permit content:

1. The ~~board~~ department shall include in the permit all applicable requirements for all emissions units.

2. The ~~board~~ department shall include in the permit applicable requirements that apply to fugitive emissions.

3. Each permit issued under this article shall include the elements listed in subsections B through P of this section.

4. Each acid rain permit (including any draft or proposed acid rain permit) shall contain the following elements:

a. All elements required for a complete acid rain permit application under 9VAC5-80-440, as approved or adjusted by the ~~board~~ department;

b. The applicable acid rain emissions limitation for sulfur dioxide; and

c. The applicable acid rain emissions limitation for nitrogen oxides.

5. Each acid rain permit is deemed to incorporate the definitions of terms under 9VAC5-80-370.

B. Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. The permit shall specify and reference applicable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

2. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

3. If applicable requirements contained in the Regulations for the Control and Abatement of Air Pollution allow a determination of an alternative emission limit at a source, equivalent to that contained in the Regulations for the Control and Abatement of Air Pollution, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

C. Each permit shall contain terms and conditions setting out the following elements identifying equipment specifications and operating parameters:

1. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

2. Specifications for air pollution control equipment installed or to be installed.

3. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved.

The information on any specification required in subdivisions 1 and 2 of this subsection may be included in the permit for informational purposes only and does not form an enforceable term or condition of the permit unless: (i) the specification is an applicable federal requirement, (ii) the specification is derived from and necessary to enforce an applicable federal requirement, (iii) the operation of the source contrary to the specification would violate an applicable federal requirement, or (iv) the owner voluntarily takes the specification as a state-enforceable term or condition of the permit pursuant to 9VAC5-80-300.

D. Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specific monitoring or testing is adequate to assure compliance at least to the same extent as the applicable requirements relating to monitoring or testing that are not included in the permit as a result of such streamlining.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subdivision F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subdivision.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. The following requirements concerning recordkeeping and reporting apply:

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements.

(2) The date or dates analyses were performed.

(3) The company or entity that performed the analyses.

(4) The analytical techniques or methods used.

(5) The results of such analyses.

(6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with 9VAC5-80-430 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The ~~board~~ department shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

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

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in 9VAC5-80-490 L, 9VAC5-80-640 and 9VAC5-80-660. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the ~~board~~ department, within a reasonable time, any information that the ~~board~~ department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the ~~board~~ department copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the ~~board~~ department along with a claim of confidentiality.

H. Each permit shall contain a condition setting out the requirement to pay permit fees consistent with Article 2 (9VAC5-80-310 et seq.) of this part.

I. The following requirements concerning emissions trading apply:

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any federally approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that the Regulations for the Control and Abatement of Air Pollution provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

a. All terms and conditions required under this section except subsection N shall be included to determine compliance.

b. The permit shield described in 9VAC5-80-500 shall extend to all terms and conditions that allow such increases and decreases in emissions.

c. The owner shall meet all applicable requirements including the requirements of this article.

J. Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the ~~board~~ department. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.

2. The permit shield described in 9VAC5-80-500 shall extend to all terms and conditions under each such operating scenario.

3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this article.

K. Consistent with subsections E and F of this section, each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the ~~board~~ department shall contain a certification by a responsible official that meets the requirements of 9VAC5-80-430 G.

2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the ~~board~~ department to perform the following:

a. Enter upon the premises where the source is located or emissions related activity is conducted, or where records must be kept under the terms and conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.

c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with 9VAC5-80-440 I.

4. Progress reports consistent with an applicable schedule of compliance and 9VAC5-80-440 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the ~~board~~ department. Such progress reports shall contain the following:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.

b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the ~~board~~ department) of submissions of compliance certifications.

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following (provided that the identification of applicable information may cross reference the permit or previous reports, as applicable):

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data. Such methods and other means shall include, at a minimum, the methods and means required under subsection E of this section. If necessary, the owner or operator shall also identify any other material information that must be included in the certification to comply with § 113(c)(2) of the federal Clean Air Act, which prohibits knowingly making a false certification or omitting material information.

(3) The status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the method or means designated in 9VAC5-80-110 K 5 c (2). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exception to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred.

(4) Such other facts as the ~~board~~ department may require to determine the compliance status of the source.

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the ~~board~~ department.

6. Such other provisions as the ~~board~~ department may require.

L. Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened by the ~~board~~ department if additional applicable federal requirements become applicable to an affected source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to 9VAC5-80-430 F.

2. The permit shall be reopened if the ~~board~~ department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the ~~board~~ department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

4. The permit shall be reopened if additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

5. The permit shall not be reopened by the ~~board~~ department if additional applicable state requirements become

applicable to an affected source prior to the expiration date established under subsection D of this section.

M. The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with the Regulations for the Control and Abatement of Air Pollution, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. The following requirements concerning federal enforceability apply:

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subdivision 2 of this subsection.

2. The ~~board~~ department shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of 9VAC5-80-690 concerning review of proposed permits by EPA and draft permits by affected states.

3. The ~~board~~ department may specifically designate as state enforceable any applicable state requirement that has been submitted to the administrator for review to be approved as part of the implementation plan and that has not yet been approved. The permit shall specify that the provision will become federally enforceable upon approval of the provision by the administrator and through an administrative permit amendment.

O. Each permit shall include requirements with respect to allowances held by the source under Title IV of the federal Clean Air Act or 40 CFR Part 73. Such requirements shall include the following:

1. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the federal Clean Air Act or 40 CFR Part 73.

2. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program provided that such increases do not require a permit revision under any other applicable federal requirement.

3. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

4. Any such allowance shall be accounted for according to the procedures established in 40 CFR Part 73.

P. The following requirements concerning annual compliance certification reports apply:

1. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and to the ~~board~~ department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

2. The submission of complete compliance certifications in accordance with subsection A of this section and 40 CFR Part 75 shall be deemed to satisfy the requirement to submit compliance certifications under subdivision K 5 c of this section with regard to the acid rain portion of the source's federal operating permit.

9VAC5-80-500. Permit shield.

A. The ~~board~~ department shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.

2. Any other applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the federal Clean Air Act, as provided in the acid rain program regulations shall be deemed to be operating in compliance with the acid rain program, except as provided in 9VAC5-80-420 G 6.

D. Nothing in this section or in any permit issued under this article shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.

2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.

3. The ability to obtain information from a source by the (i) administrator pursuant to § 114 of the federal Clean Air Act (inspections, monitoring, and entry); or (ii) ~~board~~ department pursuant to § 10.1-1307.3, 10.1-1314, or 10.1-1315 of the Virginia Air Pollution Control Law ~~or (iii) department pursuant to § 10.1-1307.3 of the Virginia Air Pollution Control Law~~.

4. The applicable federal requirements of the acid rain program consistent with § 408(a) of the federal Clean Air Act.

9VAC5-80-510. Action on permit application.

A. The ~~board~~ department shall take final action on each permit application (including a request for permit modification or renewal) as follows:

1. The ~~board~~ department shall issue or deny all permits in accordance with the requirements of this article and this section, including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by 9VAC5-80-660 C.

2. For permit revisions, as required by the provisions of 9VAC5-80-500 through 9VAC5-80-630.

B. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The ~~board~~ department has received a complete application for a permit, permit modification, or permit renewal.

2. Except for modifications qualifying for minor permit modification procedures under 9VAC5-80-570 or 9VAC5-80-580, the ~~board~~ department has complied with the requirements for public participation under 9VAC5-80-670.

3. The ~~board~~ department has complied with the requirements for notifying and responding to affected states under 9VAC5-80-690.

4. The conditions of the permit provide for compliance with all applicable requirements, the requirements of Article 2 (9VAC5-80-310 et seq.) of this part, and the requirements of this article.

5. The administrator has received a copy of the proposed permit and any notices required under 9VAC5-80-690 A and B and has not objected to issuance of the permit under 9VAC5-80-690 C within the time period specified therein.

C. The issuance of the acid rain portion of the federal operating permit shall be as follows:

1. After the close of the public comment period, the ~~board~~ department shall incorporate all necessary changes and issue or deny a proposed acid rain permit.

2. The ~~board~~ department shall submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with 9VAC5-80-690, the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

3. Action by the administrator shall be as follows:

a. Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the ~~board~~ department or, under 9VAC5-80-690 C, the administrator shall incorporate any required changes and issue or deny the acid rain permit in accordance with 9VAC5-80-490 and 9VAC5-80-500.

b. No acid rain permit (including a draft or proposed permit) shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

4. Permit issuance deadlines and effective dates shall be as follows:

a. The ~~board~~ department shall issue an acid rain permit to each affected source whose designated representative submitted in accordance with 9VAC5-80-430 G a timely and complete acid rain permit application by January 1, 1996, that meets the requirements of this article. The permit shall be issued by the effective date specified in subdivision 4 c of this subsection.

b. Not later than January 1, 1999, the ~~board~~ department shall reopen the acid rain permit to add the acid rain program nitrogen oxides requirements, provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with 9VAC5-80-430 G. Such reopening shall not affect the term of the acid rain portion of a federal operating permit.

c. Each acid rain permit issued in accordance with subdivision 4 a of this subsection shall take effect by the later of January 1, 1998, or, where the permit governs a unit under 9VAC5-80-380 A 3, the deadline for monitor certification under 40 CFR Part 75.

d. Both the acid rain draft and final permit shall state that the permit applies on and after January 1, 2000. The draft and final permit shall also specify which applicable requirements are effective prior to January 1, 2000, and the effective date of those applicable requirements.

e. Each acid rain permit shall have a term of five years commencing on its effective date.

f. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

5. Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the federal operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

6. Invalidation of the acid rain portion of a federal operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the acid rain portion of the permit.

D. The ~~board~~ department shall take final action on each permit application (including a request for a permit

modification or renewal) no later than 18 months after a complete application is received by the ~~board~~ department, except in cases where a public hearing to provide the opportunity for interested persons to contest the application is granted pursuant to 9VAC5-80-35. The ~~board~~ department will review any request made under 9VAC5-80-670 E 2, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter. The initial permits issued under this article shall be issued by the effective date specified in subdivision C 4 c of this section.

E. Issuance of permits under this article shall not take precedence over or interfere with the issuance of preconstruction permits under the new source review program.

F. The ~~board~~ department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions) as follows. The ~~board~~ department shall send this statement to the administrator and to any other person who requests it.

1. The statement of basis shall briefly set forth significant factual, legal, and policy considerations on which the ~~board~~ department relied in issuing or denying the draft permit.

2. The statement of basis shall include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

3. The ~~board~~ department shall submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the federal operating permit that may affect the draft acid rain permit.

G. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the ~~board~~ department upon request.

H. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC5-80-520. Transfer of permits.

A. No person shall transfer a permit from one location to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of an affected source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer and shall comply with the requirements of 9VAC5-80-560.

C. In the case of a name change of an affected source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change and shall comply with the requirements of 9VAC5-80-560.

9VAC5-80-530. Permit renewal and expiration.

A. Permits being renewed shall be subject to the same procedural requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this article.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with 9VAC5-80-430.

C. If the ~~board~~ department fails to act in a timely way on a permit renewal, the administrator may invoke his authority under § 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

9VAC5-80-550. Changes to permits.

A. Changes to emissions units that pertain to applicable federal requirements at a source with a permit issued under this article shall be made as specified under subsections B and C of this section. Changes may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department or the administrator as specified in subsection C of this section. Changes to emissions units that pertain to applicable state requirements at a source with a permit issued under this article shall be made as specified under subsection E of this section.

B. The following requirements apply with respect to changes initiated by the permittee:

1. With regard to emissions units other than affected units, the permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in 9VAC5-80-560 through 9VAC5-80-590.

2. With regard to affected units, the permittee may initiate a change to a permit by requesting a permit modification, fast-track modification, administrative permit amendment or automatic permit amendment. The requirements for these permit revisions can be found in 9VAC5-80-600 through 9VAC5-80-630.

3. A request for a change by a permittee shall include a statement of the reason for the proposed change.

4. A permit revision may be submitted for approval at any time.

5. No permit revision shall affect the term of the acid rain permit to be revised.

6. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

7. The terms of the acid rain permit shall apply while the permit revision is pending.

8. Any determination or interpretation by the state (including the ~~board~~ department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 9VAC5-80-690 C as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with 9VAC5-80-620.

9. The standard requirements of 9VAC5-80-420 shall not be modified or voided by a permit revision.

10. Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under 9VAC5-80-460, § 407 of the federal Clean Air Act and 40 CFR Part 76.

11. For permit revisions not described in 9VAC5-80-600 and 9VAC5-80-610, the ~~board~~ department may, in its discretion, determine which of these sections is applicable.

C. The administrator or the ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-640.

D. Changes to permits shall not be used to extend the term of the permit.

E. The following requirements apply with respect to changes at a source and applicable state requirements:

1. Changes at a source that pertain only to applicable state requirements shall be exempt from the requirements of 9VAC5-80-560 through 9VAC5-80-630.

2. The permittee may initiate a change pertaining only to applicable state requirements (i) if the change does not violate applicable requirements and (ii) if applicable, the requirements of the new source review program have been met.

3. Incorporation of permit terms and conditions into a permit issued under this article shall be as follows:

a. Permit terms and conditions pertaining only to applicable state requirements and issued under the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

b. Permit terms and conditions for changes to emissions units subject only to applicable state requirements and exempt from the requirements of the new source review program shall be incorporated into a permit issued under this article at the time of permit renewal or at an earlier time, if the applicant requests it.

4. The source shall provide contemporaneous written notice to the ~~board~~ department of the change. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable state requirement that would apply as a result of the change.

5. The change shall not qualify for the permit shield under 9VAC5-80-500.

9VAC5-80-560. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.

4. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-520 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under the new source review program when the new source review program meets (i) procedural requirements substantially equivalent to the requirements of 9VAC5-80-670 and 9VAC5-80-690 that would be applicable to the change if it were subject to review as a permit modification, and (ii) compliance requirements substantially equivalent to those contained in 9VAC5-80-490.

6. Change in the enforceability status from state-only requirements to federally enforceable requirements for provision that have been approved through rulemaking by the administrator to be a part of the implementation plan.

B. Administrative permit amendments shall be made according to the following procedures:

1. The ~~board~~ department shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department shall incorporate the changes without providing notice to the public or affected states under 9VAC5-80-670 and 9VAC5-80-690. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The ~~board~~ department shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The ~~board~~ department shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield provisions of 9VAC5-80-500 for amendments made pursuant to subdivision A 5 of this section.

9VAC5-80-570. Minor permit modifications.

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not Title I modifications; and

6. Are not required to be processed as a significant modification under 9VAC5-80-590 or as an administrative permit amendment under 9VAC5-80-560.

B. Notwithstanding subsection A of this section and 9VAC5-80-580 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Regulations for the Control and Abatement of Air Pollution or a federally approved program.

C. An application requesting the use of minor permit modification procedures shall meet the requirements of 9VAC5-80-440 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9VAC5-80-430 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

D. Within five working days of receipt of a permit modification application that meets the requirements of subsection C of this section, the ~~board~~ department shall meet its obligation under 9VAC5-80-690 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The ~~board~~ department shall promptly send any notice required under 9VAC5-80-690 B 2 to the administrator. The public participation requirements of 9VAC5-80-670 shall not extend to minor permit modifications.

E. The timetable for issuance of permit modifications shall be as follows:

1. The ~~board~~ department may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the ~~board~~ department that he will not object to issuance of the permit modification, whichever occurs first, although the ~~board~~ department can approve the permit modification prior to that time.

2. Within 90 days of receipt by the ~~board~~ department of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under 9VAC5-80-600 C, whichever is later, the ~~board~~ department shall do one of the following:

a. Issue the permit modification as proposed.

b. Deny the permit modification application.

c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.

d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by 9VAC5-80-690 A.

F. The following requirements apply with respect to the ability of an owner to make minor permit modification changes:

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.

2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable federal requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. The permit shield under 9VAC5-80-500 shall not extend to minor permit modifications.

9VAC5-80-580. Group processing of minor permit modifications.

A. Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under 9VAC5-80-570 A.

2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in 9VAC5-80-370, or five tons per year, whichever is least.

B. An application requesting the use of group processing procedures shall meet the requirements of 9VAC5-80-440 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with 9VAC5-80-430 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision A 2 of this section.

5. Certification, consistent with 9VAC5-80-430 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the ~~board~~ department to use to notify the administrator and affected states as required under 9VAC5-80-690.

C. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subdivision A 2 of this section, whichever is earlier, the ~~board~~ department promptly shall meet its obligation under 9VAC5-80-690 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The ~~board~~ department shall send any notice required under 9VAC5-80-690 B 2 to the administrator. The public participation requirements of 9VAC5-80-670 shall not extend to group processing of minor permit modifications.

D. The provisions of 9VAC5-80-570 E shall apply to modifications eligible for group processing, except that the ~~board~~ department shall take one of the actions specified in 9VAC5-80-570 E 1 through E 4 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under 9VAC5-80-690 C, whichever is later.

E. The provisions of 9VAC5-80-570 F shall apply to modifications eligible for group processing.

F. The permit shield under 9VAC5-80-500 shall not extend to minor permit modifications.

9VAC5-80-590. Significant modification procedures.

A. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under 9VAC5-80-570 or 9VAC5-80-580 or as administrative amendments under 9VAC5-80-560. Significant modification procedures shall be used for those permit modifications that:

1. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

2. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under 9VAC5-40 (Existing Stationary Sources), 9VAC5-50 (New and Modified Stationary Sources), or

9VAC5-60 (Hazardous Air Pollutant Sources), or a visibility or increment analysis carried out under this chapter.

3. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable federal requirement and that the source has assumed to avoid an applicable federal requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a Title I modification.

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. An application for a significant permit modification shall meet the requirements of 9VAC5-80-430 and 9VAC5-80-440 for permit issuance and renewal for the modification proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable federal requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Completed forms for the ~~board~~ department to use to notify the administrator and affected states as required under 9VAC5-80-690.

C. The provisions of 9VAC5-80-690 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9VAC5-80-670 shall apply to applications made under this section.

E. The ~~board~~ department shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. The owner shall not make the change applied for in the significant modification application until the modification is approved by the ~~board~~ department under subsection E of this section.

G. The provisions of 9VAC5-80-500 shall apply to changes made under this section.

9VAC5-80-600. Permit modifications for affected units.

A. The following are permit modifications for affected units:

1. Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator.

2. Incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period.

3. Determinations concerning failed repowering projects under 9VAC5-80-460 F 1 and F 3.

4. At the option of the designated representative submitting the permit revision, the permit revisions listed in 9VAC5-80-610 A.

B. An application for a permit modification for an affected unit shall meet the requirements of 9VAC5-80-430 and 9VAC5-80-440 for permit issuance and renewal for the modification proposed.

C. The provisions of 9VAC5-80-690 shall be carried out for permit modifications for affected units in the same manner as they would be for initial permit issuance and renewal.

D. The provisions of 9VAC5-80-670 shall apply to applications made under this section.

E. The ~~board~~ department shall take final action on permit modifications for affected units within nine months after receipt of a complete application.

F. The owner shall not make the change applied for under this section until the modification is approved by the ~~board~~ department under subsection E of this section.

9VAC5-80-610. Fast-track modifications for affected units.

A. The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this section or permit modifications for affected units under 9VAC5-80-600:

1. Incorporation of a compliance option under 9VAC5-80-450 that the designated representative did not submit for approval and comment during the permit issuance process; except that incorporation of a reduced utilization plan that was not submitted during the permit issuance process, that does not designate a compensating unit, and that meets the requirements of 40 CFR 72.43 may use the administrative permit amendment procedures under 40 CFR 72.83.

2. Changes in a substitution plan or reduced utilization plan that result in the addition of a new substitution unit or a new compensating unit under the plan.

3. Addition of a nitrogen oxides averaging plan to a permit.

4. Changes in a Phase I extension plan, repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension; and

5. Changes in a thermal energy plan that result in any addition or subtraction of a replacement unit or any change affecting the number of allowances transferred for the replacement of thermal energy.

B. The following requirements apply with respect to service, notification, and public participation:

1. The designated representative shall serve a copy of the fast-track modification on the following at least five days prior to the public comment period specified in subdivisions 2 and 3 of this subsection:

a. The administrator;

b. The ~~board~~ department;

c. Affected states; and

d. Persons on a permit mailing list who have requested information on the opportunity for public comment.

2. Within five business days of serving copies of the fast-track modification under subdivision 1 of this subsection, the designated representative shall give public notice of the fast-track modification by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The notice shall contain the information listed in 9VAC5-80-670 C 1 a through C 1 h. The notice shall also state that a copy of the fast-track modification is available (i) from the designated representative and (ii) for public inspection during the entire public comment period at the regional office.

3. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the ~~board~~ department and to the designated representative.

C. The timetable for issuance shall be as follows:

1. Within 30 days of the close of the public comment period, the ~~board~~ department shall consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification.

2. A fast-track modification shall be effective immediately upon approval and issuance, in accordance with 9VAC5-80-510 B 5.

9VAC5-80-620. Administrative permit amendments for affected units.

A. The following permit revisions are administrative permit amendments for affected units:

1. Activation of a compliance option conditionally approved by the ~~board~~ department, provided that all requirements for activation under 9VAC5-80-450 C and 9VAC5-80-460 are met.

2. Changes in the designated representative or alternative designated representative, provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72.

3. Correction of typographical errors.

4. Changes in names, addresses, or telephone or facsimile numbers.

5. Changes in the owners or operators, provided that a new certificate of representation is submitted within 30 days to the administrator in accordance with Subpart B of 40 CFR Part 72.

6. Termination of a compliance option in the permit, provided that all requirements for termination under 9VAC5-80-450 D shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999.

7. Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with 9VAC5-80-420.

8. The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of the 40 CFR Part 76 are met.

9. The addition of a NO_X early election plan that was approved by the administrator under 40 CFR 76.8.

10. The addition of an exemption for which the requirements have been met under 40 CFR 72.7 or 40 CFR 72.8 or which was approved by the ~~board~~ department; and

11. Incorporation of changes that the administrator has determined to be similar to those in subdivisions 1 through 8 of this subsection.

B. The following provisions shall apply:

1. The ~~board~~ department shall take final action on an administrative permit amendment within 60 days, or, for the addition of an alternative emissions limitation demonstration period, within 90 days, of receipt of the requested amendment and may take such action without providing prior public notice. The source may implement any changes in the administrative permit amendment immediately upon submission of the requested amendment, provided that the requirements of subsection A of this section are met.

2. The ~~board~~ department may, on its own motion, make an administrative permit amendment at least 30 days after providing notice to the designated representative of the amendment and without providing any other prior public notice.

3. The ~~board~~ department shall designate the permit revision as having been made as an administrative permit amendment. The ~~board~~ department shall submit the revised portion of the permit to the administrator.

4. An administrative amendment shall not be subject to the provisions for review by the administrator applicable to a permit modification under 40 CFR 72.81.

9VAC5-80-640. Reopening for cause.

A. A permit shall be reopened and revised under any of the conditions stated in 9VAC5-80-490 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

D. In reopening an acid rain permit, the ~~board~~ department shall issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary.

E. The following requirements apply with respect to reopenings for cause by EPA:

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the ~~board~~ department and the permittee of such finding in writing.

2. The ~~board~~ department shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the ~~board~~ department must require the permittee to submit additional information.

3. The administrator shall review the proposed determination from the ~~board~~ department within 90 days of receipt.

4. The ~~board~~ department shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

5. If the ~~board~~ department fails to submit a proposed determination pursuant to subdivision 2 of this subsection or fails to resolve any objection pursuant to subdivision 4 of this subsection, the administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subdivisions 1 through 4 of this subsection.

b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

9VAC5-80-650. Malfunction.

A. In the event of a malfunction, the owner may demonstrate that the conditions of subsection B of this section are met.

B. The permittee may, through properly signed, contemporaneous operating logs, or other relevant evidence, show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.

2. The permitted facility was at the time being properly operated.

3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

4. The permittee notified the ~~board~~ department of the malfunction within two working days following the time when the emission limitations were exceeded due to the malfunction. This notification should include a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notification may be delivered either orally or in writing by any method that allows the permittee to comply with the deadline. This notification fulfills the requirements of 9VAC5-80-490 F 2 b to report promptly deviations from permit requirements. This notification does not release the permittee from the malfunction reporting requirements under 9VAC5-20-180 C.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

9VAC5-80-660. Enforcement.

A. The following general requirements apply:

1. Pursuant to § 10.1-1322 of the Code of Virginia, failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:

a. Knowingly makes material misstatements in the permit application or any amendments thereto.

b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this article.

3. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~

department may prescribe, any permit for any of the grounds for revocation or termination contained in subdivision 2 of this subsection or for any other violations of these regulations.

B. The following requirements apply with respect to penalties:

1. An owner who violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.

2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this article or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

C. The following requirements apply with respect to appeals:

1. The ~~board~~ department shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

2. Appeal from any decision of the ~~board~~ department under subdivision 1 of this subsection may be taken pursuant to 9VAC5-20-90, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.

3. Appeals of the acid rain portion of a federal operating permit issued by the ~~board~~ department that do not challenge or involve decisions or actions of the administrator under §§ 407 and 410 of the federal Clean Air Act and the acid rain program regulations shall be conducted according to the procedures in the Administrative Process Act. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and § 307 of the federal Clean Air Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

4. No administrative appeal or judicial appeal of the acid rain portion of a federal operating permit shall be allowed more than 90 days following issuance of the acid rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

5. The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

6. No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

b. Any standard requirement under 9VAC5-80-420;

c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR Part 75;

d. Uncontested provisions of the decision on appeal; and

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

7. The ~~board~~ department shall serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any federal operating permit or denial of an acid rain portion of any federal operating permit within 30 days of the filing of the appeal.

8. The ~~board~~ department shall serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator shall have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with 9VAC5-80-690.

D. The existence of a permit under this article shall constitute a defense to a violation of any applicable requirement if the permit contains a condition providing the permit shield as specified in 9VAC5-80-500 and if the requirements of 9VAC5-80-500 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this article shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or the Regulations for the Control and Abatement of Air Pollution and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. The following requirements apply with respect to inspections and right of entry:

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and 9VAC5-20-150, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records

and information as are deemed necessary for the proper enforcement of the permits issued under this article.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the ~~board~~ department or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the ~~board~~ department shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. The ~~board~~ department may enforce permits issued under this article through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in 9VAC5-20-20 and 9VAC5-20-30 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

9VAC5-80-670. Public participation.

A. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The ~~board~~ department shall notify the public using the procedures in subsection B of this section.

B. The ~~board~~ department shall notify the public of the draft permit or draft permit modification (i) by advertisement in a newspaper of general circulation in the area where the source is located and (ii) through a notice to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

C. The following requirements apply with respect to content of the public notice and availability of information:

1. The notice shall include, but not be limited to, the following:

a. The source name, address and description of specific location.

b. The name and address of the permittee.

c. The name and address of the regional office processing the permit.

d. The activity or activities for which the permit action is sought.

e. The emissions change that would result from the permit issuance or modification.

f. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, and all relevant supporting materials, including the compliance plan.

g. A brief description of the comment procedures required by this section.

h. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the ~~board~~ director determines to hold a hearing under ~~subdivision E 3 of this section~~ 9VAC5-80-35 E.

2. Information on the permit application (exclusive of confidential information under 9VAC5-20-150), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. The ~~board~~ department shall provide such notice and opportunity for participation by affected states as is provided for by 9VAC5-80-690.

E. The following requirements apply with respect to opportunity for public hearing:

1. The ~~board~~ department shall provide an opportunity for a public hearing as described in subdivisions 2 ~~through 6~~ and 3 of this subsection.

2. Following the initial publication of the notice required under subsection B of this section, the ~~board~~ department shall receive written requests for a public hearing to contest the draft permit or draft permit modification pursuant to the requirements of 9VAC5-80-35. In order to be considered, the request shall be submitted no later than the end of the comment period. ~~Request~~ Requests for a public hearing shall contain the following information:

a. The name~~,~~ and postal mailing or email address and telephone number of the requester~~.~~;

b. The names and addresses of all persons for whom the requester is acting as a representative ~~(~~; for the purposes of this requirement, ~~an unincorporated association is a person).~~ "person" means an unincorporated association;

c. The reason ~~why a public hearing is requested.~~ for the request for a public hearing;

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the draft permit or draft permit

modification, an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question.; and

e. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

3. The board department will review any request made under subdivision 2 of this subsection, and will take final action on the request as provided in 9VAC5-80-510 D.

F. The board department shall keep (i) a record of the commenters and (ii) a record of the issues raised during the public participation process so that the administrator may fulfill the administrator's obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted. Such records shall be made available to the public upon request.

9VAC5-80-680. Operational flexibility.

A. The board department shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term, or (ii) those that are not addressed or prohibited by the permit. The conditions under which the board department shall allow these changes to be made are specified in subsections B and C of this section, respectively.

B. The following requirements apply with respect to changes that contravene an express permit term:

1. The following general requirements apply:

a. The board department shall allow a change at an affected source that changes a permit condition with the exception of the following:

(1) A Title I modification or a change subject to requirements under Title IV.

(2) A change that would exceed the emissions allowable under the permit.

(3) A change that would violate applicable requirements.

(4) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), recordkeeping, reporting, compliance schedule dates or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the board department at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The owner, board department and the administrator shall attach the notice described in subdivision 1 b of this subsection to their copy of the relevant permit.

d. The permit shield under 9VAC5-80-500 shall not extend to any change made pursuant to subdivision 1 of this subsection.

2. The following requirements apply with respect to emission trades within permitted facilities provided for in the Regulations for the Control and Abatement of Air Pollution:

a. With the exception of the changes listed in subdivision 1 a of this subsection, the board department shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where the Regulations for the Control and Abatement of Air Pollution provide for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator and the board department at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in the Regulations for the Control and Abatement of Air Pollution authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the Regulations for the Control and Abatement of Air Pollution, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the Regulations for the Control and Abatement of Air Pollution and which provide for the emissions trade.

c. The permit shield described in 9VAC5-80-500 shall not extend to any change made under this subdivision. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the Regulations for the Control and Abatement of Air Pollution.

3. The following requirements apply with respect to emission trades within affected sources to comply with an emissions cap in the permit:

a. If a permit applicant requests it, the board department shall issue permits that contain terms and conditions, including all terms required under 9VAC5-80-490 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a

federally enforceable emissions cap that is established in the permit independent of otherwise applicable federal requirements. The permit applicant shall include in the application proposed replicable procedures and permit terms that ensure that the emissions trades are quantifiable and enforceable. The ~~board~~ department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The ~~board~~ department shall not allow a change to be made under subdivision 3 of this subsection if it is a change listed in subdivision 1 of this subsection.

c. The owner shall provide written notification to the administrator and the ~~board~~ department at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under 9VAC5-80-500 shall extend to terms and conditions that allow such increases and decreases in emissions.

C. The following requirements apply with respect to changes that are not addressed or prohibited by the permit:

1. The ~~board~~ department shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are subject to the requirements for Title I modifications or the requirements under Title IV.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition which is based on applicable federal requirements.

3. Sources shall provide contemporaneous written notice to the ~~board~~ department and the administrator of each change, except for changes to emissions units deemed insignificant and listed in 9VAC5-80-720 A. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable federal requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under 9VAC5-80-500.

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable federal requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

9VAC5-80-690. Permit review by EPA and affected states.

A. The following requirements apply with respect to transmission of information to the administrator:

1. The ~~board~~ department shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this article.

2. The ~~board~~ department shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. The following requirements apply with respect to review by affected states:

1. The ~~board~~ department shall give notice of each draft permit to any affected state on or before the time that the ~~board~~ department provides this notice to the public under 9VAC5-80-670, except to the extent that 9VAC5-80-570 or 9VAC5-80-580 requires the timing of the notice to be different.

2. The ~~board~~ department, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under 9VAC5-80-570 or 9VAC5-80-580), shall notify the administrator and any affected state in writing of any refusal by the ~~board~~ department to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons why the ~~board~~ department will not accept a recommendation. The ~~board~~ department shall not be obligated to accept recommendations that are not based on applicable federal requirements or the requirements of this article.

C. The following requirements apply with respect to objections by EPA:

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subdivision 1 of this subsection shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.

3. Failure of the ~~board~~ department to do any of the following also shall constitute grounds for an objection:

a. Comply with subsection A or B of this section or both.

b. Submit any information necessary to review adequately the proposed permit.

c. Process the permit under the public comment procedures in 9VAC5-80-670 except for minor permit modifications.

4. If, within 90 days after the date of an objection under subdivision 1 of this subsection, the ~~board~~ department fails to revise and submit a proposed permit in response to the objection, the administrator shall issue or deny the permit in accordance with the requirements of 40 CFR Part 71.

D. The following requirements apply with respect to public petitions to the administrator:

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 9VAC5-80-670, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

3. If the administrator objects to the permit as a result of a petition filed under subdivision 1 of this subsection, the ~~board~~ department shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the ~~board~~ department has issued a permit prior to receipt of an objection by the administrator under subdivision 1 of this subsection, the administrator shall modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 9VAC5-80-640 E 4 or E 5 a and b except in unusual circumstances, and the ~~board~~ department may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

E. No permit (including a permit renewal or modification) shall be issued by the ~~board~~ department until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

9VAC5-80-700. Voluntary inclusions of additional state-only requirements as applicable state requirements in the permit.

A. Upon the request of an applicant, any requirement of any regulation of the board (other than any requirement that is a federal applicable requirement) may be included as an applicable state requirement in a permit issued under this article.

B. If the applicant chooses to make a request under subsection A of this section, the provisions of this article pertaining to applicable state requirements shall apply.

C. The request under subsection A of this section shall be made by including the citation and description of any applicable requirement not defined as such in this article in the permit application submitted to the ~~board~~ department under 9VAC5-80-440 E.

9VAC5-80-720. Insignificant activities.

A. Insignificant activities include the following emissions units:

1. Gas flares or flares used solely to indicate danger to the public.

2. Ventilation systems not used to remove air contaminants generated by or released from specific units of equipment.

3. Air-conditioning units used for human comfort that do not have applicable requirements under Title VI of the Act.

4. Portable heaters which can reasonably be relocated through the manual labor of one person.

5. Portable electrical generators that can be moved by hand from one location to another.

6. Space heaters operating by direct heat or radiant heat transfer, or both.

7. Office activities and the equipment and implements used to carry out these activities, such as typewriters, printers, and pens.

8. Tobacco smoking rooms and areas.

9. Interior maintenance activities and the equipment and supplies used to carry out these activities, such as janitorial cleaning products and air fresheners, but not cleaning of production equipment.

10. Architectural maintenance and repair activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing and sandblasting, where no structural repairs are made in conjunction with the installation of new or permanent facilities.

11. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating or degreasing (solvent metal cleaning) activities, and not otherwise triggering a permit modification.

12. Exterior maintenance activities conducted to take care of the grounds of the source, including lawn maintenance.

13. Internal combustion engines used for dry-cleaning and steam boilers.

14. Laundry activities, except for dry-cleaning and steam boilers.

15. Bathroom and locker room ventilation and maintenance.

16. Copying and duplication activities for internal use and support of office activities at the source.

17. Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source.

18. Equipment used solely for the purpose of preparing food to be eaten on the premises of industrial and manufacturing operations.

19. Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

20. Safety devices.

21. Air contaminant detectors and test equipment.

22. Brazing, soldering or welding equipment used as an auxiliary to the principal equipment at the source.

23. The engine of any vehicle, including but not limited to any marine vessel, any vehicle running upon rails or tracks, any motor vehicle, any forklift, any tractor, or any mobile construction equipment, including any auxiliary engine that provides cooling or refrigeration of the vehicle.

24. Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

25. Emergency road flares.

26. Firefighting equipment and the equipment used to train firefighters.

27. Fire suppression systems.

28. Laboratories used solely for the purpose of quality control or environmental compliance testing that are associated with manufacturing, production or other industrial or commercial facilities.

29. Laboratories in primary and secondary schools and in schools of higher education used for instructional purposes.

30. Bench-scale laboratory equipment used for physical or chemical analysis, but no lab fume hoods or vents.

31. Routine calibration and maintenance of laboratory equipment or other analytical instruments.

32. Air compressors and pumps (engines for these emissions units are covered separately under subdivision C 1 of this section).

33. Pneumatically operated equipment, including hand tools.

34. Emergency (backup) electrical generators at residential locations.

35. Dumpster.

36. Grinding or abrasive blasting for nondestructive testing of metals.

37. Dryers and distribution systems for instrument air.

38. Parts washer (water-based).

39. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

40. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants.

41. Dispensing facilities for refueling diesel-powered vehicles or equipment, including any diesel fuel storage tank serving only such dispensing facility, to the extent that this activity is not regulated by § 111 or § 112 of the federal Clean Air Act.

42. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any volatile organic compound or hazardous air pollutant.

43. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

44. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

45. Laboratory analytical equipment and vents except at stationary sources primarily engaged in research and development.

46. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

47. Nonroutine clean out of tanks and equipment for the purposes of worker entry or in preparation for maintenance or decommissioning.

48. Sampling connections and systems used exclusively to withdraw materials for testing and analysis including air contaminant detectors and vent lines.

49. Vents from continuous emission monitors and other analyzers.

50. Maintenance activities such as hand-held or manually operated maintenance equipment, railroad track maintenance, repair and maintenance cleaning, and maintenance surface preparation activities.

51. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic.

52. Carbon monoxide lasers used only on metals and other materials which do not use hazardous air pollutants in the process.

53. Hand-held applicator equipment for hot melt adhesives with no volatile organic compounds in the adhesive formulation.

54. Equipment used for surface coating, painting, dipping, or spraying operations, except those that emit volatile organic compounds or hazardous air pollutants.

55. Drop hammers or hydraulic presses for forging or metalworking.

56. Blacksmith forges.

57. Solvent storage cabinet (containers covered).

58. Cooling ponds.

59. Coal pile run-off ponds.

60. Mechanical drive or gear boxes.

61. Equipment for steam cleaning or brushing dust off equipment.

62. Repair of residential units.

63. Farm equipment, with the exception of grain elevators or combustion devices not already listed as insignificant activities.

64. Water tanks.

65. Hydroblasting.

66. Hydraulic and hydrostatic testing equipment.

67. Process raw water treatment (e.g., phosphate).

68. Process water filtration systems and demineralizers.

69. Demineralized water tanks and demineralizer vents.

70. Ozone generators.

71. Water cooling tower except for systems including contact process water or water treated with chromium-based chemicals.

72. Spill collection tanks.

73. Steam vents and leaks from boilers and steam distribution systems.

74. Boiler water treatment operations, except cooling towers and those involving use of hydrazine.

75. Oxygen scavenging (de-aeration) of water.

76. Herbicide mixing and application activities not involving herbicide manufacture.

77. Nonhazardous boiler cleaning solutions.

78. Portable or mobile containers.

79. Vent or exhaust system for:

a. Transformer vaults and buildings;

b. Electric motor and control panel vents; and

c. Deaerators and decarbonators.

80. Vents or stacks for sewer lines or enclosed areas required for safety or by code.

81. Pump seals.

82. Rupture discs for gas handling systems.

83. Molasses storage tanks.

84. Storage of substances in closed drums, barrels or bottles.

85. Purging of natural gas lines.

86. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

87. Blanking, chopping, trimming, perforating, repacking, and inspecting in connection with plastics manufacturing processes.

88. Consumer use of paper trimmers/binders.

89. Laser trimmers using dust collection to prevent fugitive emissions.

90. Sealed batteries such as those used for emergency backup power supplies.

91. Batteries and battery charging stations, except at battery manufacturing plants.

92. Parking lot resurfacing.

93. Environmental chambers not using hazardous air pollutant gases.

94. Shock chambers.

95. Humidity chambers.

96. Solar simulators.

97. Relief valves, excluding air pollution equipment bypass valves.

98. Steam vents and safety relief valves.

99. Steam leaks.

100. Steam cleaning operations.

101. Steam sterilizers.

B. Insignificant activities include emissions units, other than those listed in subsection A of this section, with the following emissions levels:

1. Emissions units with uncontrolled emissions of less than five tons per year of nitrogen dioxide, sulfur dioxide, or particulate matter (PM_{10}). Particulate matter emissions shall be used to determine uncontrolled emissions for purposes of

this subsection only if particulate matter (PM_{10}) emissions cannot be quantified in a manner acceptable to the ~~board~~ department. If the particulate matter (PM_{10}) emissions for any unit can be quantified in a manner acceptable to the ~~board~~ department, that unit shall be deemed insignificant for particulate matter;

2. Emissions units with uncontrolled emissions of less than five tons per year of volatile organic compounds;

3. Emissions units with uncontrolled emissions of less than five tons per year of carbon monoxide;

4. Emissions units with uncontrolled emissions of less than 0.6 tons per year of lead;

5. Emissions units with uncontrolled emissions of hazardous air pollutants at or below 1,000 pounds per year;

6. Emissions units with uncontrolled emissions of any pollutant regulated under subpart C of 40 CFR Part 68 if those emissions are below the accidental release threshold levels set forth at 40 CFR 68.130 or 1,000 pounds per year, whichever is less.

C. Insignificant activities include emissions units, other than those listed in subsection A or B of this section, with the following sizes or production rates:

1. Internal combustion engines used for standby service, including compressors and pumps used for emergency replacement and portable generators, as follows:

a. Engines burning diesel fuel (maximum 0.5% sulfur) with 259,000 Btu per hour input or less;

b. Engines burning gasoline with 18,200 Btu per hour input or less.

2. Fuel burning equipment or combustion units with heat input levels less than:

a. 10 million Btu per hour rated input, using natural gas;

b. 1 million Btu per hour rated input, using distillate oil (maximum 0.5% sulfur).

3. Reservoirs and storage tanks for lubricant or used oil with a capacity of less than 1,000 gallons.

4. Internal combustion powered generators used at a facility only when power is unavailable to the facility from the utility as follows:

a. Diesel-fueled turbine emergency generators of 780 horsepower or less;

b. Diesel-fueled reciprocating emergency generators of 645 horsepower or less;

c. Natural gas-fueled turbine emergency generators of 1,240 horsepower or less;

d. Natural gas-fueled reciprocating emergency generators of 840 horsepower or less;

e. Dual-fueled reciprocating emergency generators of 840 horsepower or less.

9VAC5-80-800. Applicability.

A. Within the limits of subsection C of this section, the provisions of this article apply to the operation of any stationary source or emissions unit of a regulated air pollutant.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Permits may be issued under this article in situations including, but not limited to, the following:

1. At the request of any owner:

a. To designate a stationary source or emissions unit as a synthetic minor;

b. To combine a stationary source's or emissions unit's requirements under multiple permits into one permit; or

c. To implement emissions trading requirements.

2. At the discretion of the ~~board~~ department:

a. To cap the emissions of a stationary source or emissions unit contributing to a violation of any air quality standard; or

b. To establish a source-specific emission standard or other requirements necessary to implement the federal Clean Air Act or the Virginia Air Pollution Control Law.

D. A permit may be issued under this article regardless of other permits in force provided that it does not contravene any provision of any of the other permits.

E. For permits issued pursuant to the provisions of subdivision C 2 of this section, a permit application is not required from the stationary source or emissions unit, and the provisions of 9VAC5-80-830 and 9VAC5-80-860 do not apply.

9VAC5-80-810. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the ~~board~~ department, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this article, all terms not defined here shall have the meaning given them in ~~9VAC5 Chapter 10 (9VAC5-10-10 et seq.)~~ General Definitions (9VAC5-10), unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a pollutant from any stationary source or emissions unit. In general, actual emissions as of a particular date shall equal the highest annual rate, in tons per calendar year, at which the stationary source or emissions unit actually emitted a pollutant during the consecutive five-year period which precedes the

particular date and which is representative of normal stationary source or emissions unit operation. The ~~board~~ department may allow the use of a different historical time period upon a determination that it is more representative of normal stationary source or emissions unit operation. Actual emissions shall be calculated using the stationary source's or emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

"Allowable emissions" means the emission rates of a stationary source or emissions unit calculated by using the maximum rated capacity of the emissions units within the stationary source or emissions unit (unless the stationary source or emissions unit is subject to state or federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

1. Applicable emission standards;

2. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date; or

3. Any other applicable emission limitation, including those with a future compliance date.

"Complete application" or "complete request" means that the application or request contains all the information necessary for processing the application or request. Designating an application or request complete for purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting additional information.

"Contributing to a violation" means, in reference to the potential of a stationary source or emissions unit to emit any of the following pollutants, an air quality impact greater than any of the following amounts:

Carbon monoxide -- 500 $\mu g/m^3$, 8-hour average

Carbon monoxide -- 2,000 $\mu g/m^3$, 1-hour average

Nitrogen dioxide -- 1 $\mu g/m^3$, annual average

PM_{10} -- 1 $\mu g/m^3$, annual average

PM_{10} -- 5 $\mu g/m^3$, 24-hour average

Sulfur dioxide -- 1 $\mu g/m^3$, annual average

Sulfur dioxide -- 5 $\mu g/m^3$, 24-hour average

Sulfur dioxide -- 25 $\mu g/m^3$, 3-hour average

"Emissions cap" means any limitation on the rate of emissions of any regulated air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

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

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the ~~board or the~~ department and meet the following criteria:

1. Are permanent.

2. Contain a legal obligation for the owner to adhere to the terms and conditions.

3. Do not allow a relaxation of a requirement of the implementation plan.

4. Are technically accurate and quantifiable.

5. Identify an averaging time that allows at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance.

6. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

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

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

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

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

3. All terms and conditions in an operating permit issued pursuant to a program approved by the U.S. Environmental Protection Agency in accordance with 40 CFR Part 70, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

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

5. Limitations and conditions that are part of a permit issued under the new source review program.

6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by the U.S. Environmental Protection Agency into an implementation plan as meeting the U.S. Environmental Protection Agency's minimum criteria for federal enforceability, including

adequate notice and opportunity for the U.S. Environmental Protection Agency and public comment prior to issuance of the final permit and practicable enforceability.

7. Limitations and conditions in a regulation of the board or in a Virginia program that has been approved by the U.S. Environmental Protection Agency under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

8. Individual consent agreements that the U.S. Environmental Protection Agency has legal authority to create.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-1030.

"Major stationary source" means any stationary source which emits, or has the potential to emit, 100 tons or more per year of any regulated air pollutant.

"New source" means any stationary source (or portion of it), the construction or relocation of which commenced on or after March 17, 1972, and any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

"New source review program" means a program for the preconstruction review and permitting of new sources or emissions units or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act.

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or which is shown by an air quality impact analysis (using modeling or other methods determined by the ~~board~~ department to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or future emissions data.

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

"Potential to emit" means the maximum capacity of a stationary source or emissions unit to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source or emissions unit to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is state or federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source or emissions unit.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.

2. Any pollutant for which an ambient air quality standard has been promulgated.

3. Any pollutant subject to any standard promulgated under § 111 of the federal Clean Air Act.

4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants and any pollutant regulated under Subpart C of 40 CFR 68.

6. Any pollutant subject to a regulation adopted by the board.

7. Any pollutant subject to regulation under the Virginia Air Pollution Control Law.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source, but do not come from the major stationary source itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"State-enforceable" means all limitations and conditions which are enforceable as a practical matter, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order, regulation of the board, or variance, and any permit requirements established pursuant to 9VAC5 Chapter 80 (9VAC5-80-10 et seq.).

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

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable limits, by federally enforceable limits, or by both so as to place that stationary source below the threshold at which it would be subject to permit or other requirements in regulations of the board or in the federal Clean Air Act.

9VAC5-80-820. General.

A. The ~~board~~ department may issue permits whose applicability is limited to one specific pollutant or to multiple specific pollutants emitted by a stationary source or emissions unit. It may also issue permits whose applicability is limited to one specific emissions unit or multiple specific emissions units within a stationary source. The issuance of such permits may occur in any of the situations specified in 9VAC5-80-800 C.

B. The ~~board~~ department may combine the requirements of and the permits for emissions units within a stationary source or emissions unit subject to 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) into one permit. The ~~board~~ department may likewise combine the requirements of and applications for permits for emissions units within a stationary source or emissions unit required by 9VAC5 Chapter 80 (9VAC5-80-10 et seq.) into one application.

C. Permits issued under the provisions of ~~9VAC5-80-10 or~~ Article 6 (9VAC5-80-1100 et seq.), Article 8 (9VAC5-80-1700 et seq.), or Article 9 (9VAC5-80-2000 et seq.) of this part may be considered as having met the requirements of this article but shall be subject to the provisions of 9VAC5-80-950, 9VAC5-80-960, 9VAC5-80-970, 9VAC5-80-980, 9VAC5-80-990, 9VAC5-80-1000, and 9VAC5-80-1010.

D. No provision of regulations of the board shall limit the power of the ~~board~~ department to issue an operating permit pursuant to this article in order to remedy a condition that may cause or contribute to the endangerment of human health or welfare.

E. Any decisions of the ~~board~~ department made pursuant to this article may be appealed pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5 Chapter 170.

F. In order for a permit issued pursuant to this article to be federally enforceable, the following conditions shall be met:

1. The permit shall include a legal obligation that the permittee adhere to the terms and limitations of the permit.

2. The permit shall conform to the requirements of this article and to the requirements of any regulations of the U.S. Environmental Protection Agency that form the basis for this article.

3. The permit shall contain emission limits, controls, and other requirements that are at least as stringent as any applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan.

4. The emission limits, controls, and other requirements of the permit shall be permanent, quantifiable, and enforceable as a practical matter.

5. The permit shall be issued subject to the public participation requirements of 9VAC5-80-1020.

6. A copy of the proposed (draft) and final permit shall be sent to the U.S. Environmental Protection Agency on a timely basis.

G. Notwithstanding the provisions of subsection F of this section, no provision of this article shall be interpreted to prevent the ~~board~~ department from issuing a permit that is not federally enforceable and, if appropriate, seeking approval of the permit under the then-current regulations and policies of the U.S. Environmental Protection Agency.

9VAC5-80-830. Applications.

A. For permits issued under the provisions of 9VAC5-80-800 C 1, a single complete application is required identifying each emissions unit to be covered by the permit. The application shall be submitted according to procedures approved by the ~~board~~ department. Where several units are included in one stationary source, a single complete application shall be submitted covering all units which are to be permitted in the stationary source. A separate complete application is required for each stationary source.

B. Any application form, report, or compliance certification submitted to the ~~board~~ department shall meet the requirements of 9VAC5-20-230.

9VAC5-80-840. Application information required.

A. The ~~board~~ department shall furnish application forms to applicants.

B. Each application for a permit under the provisions of 9VAC5-80-800 C 1 shall include, but not be limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit to be covered by the permit.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent quantifiable.

4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

6. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

7. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any additional information or documentation that the ~~board~~ department deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the ~~board~~ department.

D. For permits issued pursuant to the provisions of 9VAC5-80-800 C 2, the provisions of subsections A and B of this section do not apply.

E. For permits issued pursuant to the provisions of 9VAC5-80-800 C 2, the ~~board~~ department may request any information or documentation that it deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit.

9VAC5-80-850. Standards and conditions for granting permits.

A. A permit may be granted pursuant to this article if it is shown to the satisfaction of the ~~board~~ department that the following standards and conditions will be met:

1. The stationary source or emissions unit shall operate without causing a violation of the applicable provisions of regulations of the board;

2. The stationary source or emissions unit shall be in compliance with all applicable emission standards or meet the provisions of any administrative enforcement mechanism issued pursuant to 9VAC5-170-120; and

3. The stationary source or emissions unit shall operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted so as not to prevent or interfere with the attainment or maintenance of any applicable ambient air quality standard.

B. Permits may be granted to stationary sources or emissions units located in nonattainment areas provided the requirements of subdivisions A 1 and 2 of this section are met.

C. Permits granted pursuant to this article may contain emission standards as necessary to implement the provisions of this article. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued; or

b. The emission rate based on the potential to emit of the emissions unit.

3. Emission standards shall only include limitations that are determined by the ~~board~~ department to be achievable through application of production processes or available methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, or substitution of less toxic or nontoxic materials.

4. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

D. In consideration of the factors specified below, the owner may propose and the ~~board~~ department may establish an alternative emission standard provided the owner demonstrates to the satisfaction of the ~~board~~ department that it meets the standards and conditions in subsection A and subdivision C 2 of this section and is enforceable as a practical matter.

1. The impact upon the ability of the stationary source or emissions unit to operate in a competitive and efficient manner.

2. The previous efforts to reduce actual emissions taken at the owner's initiative.

3. The technological and economic practicality of reducing emissions.

4. The impact upon the availability and cost of fuels and process materials.

E. An emission standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subsection A of this section and the increased emissions levels would not make the stationary source or emissions unit subject to the new source review program.

F. Operating permits issued under this article may contain, but not be limited to, any the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards as set out in this section.

2. Conditions necessary to enforce emission standards. Conditions to provide enforceability may include, but not be limited to, the following:

a. Limit on fuel sulfur content;

b. Limit on production rates with time frames as appropriate to support the emission standards in this section;

c. Limit on raw material usage rate; and

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

4. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

5. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, the following:

a. Pressure indicators and required pressure drop;

b. Temperature indicators and required temperature;

c. pH indicators and required pH; and

d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Compliance schedules.

11. Other requirements as may be necessary to ensure compliance with the applicable state and federal regulations.

G. Permits granted pursuant to this article shall contain terms and conditions to the extent necessary to ensure that:

1. The permit meets the requirements of this article;

2. The permit is enforceable as a practical matter; and

3. The permittee adheres to the terms and conditions of the permit.

9VAC5-80-860. Action on permit application.

A. After receipt of an application or any additional information, the ~~board~~ department shall advise the applicant in writing of any deficiency in such application or information no later than 30 days after receipt of the application or additional information.

B. The ~~board~~ department will normally process an application according to the steps specified in subdivisions 1 through 5 of this subsection. Processing time for these steps is normally 90 days following receipt of a complete application. If a public comment period is required, processing time is normally 180 days following receipt of a complete application. The ~~board~~ department may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-870 and the preliminary determination of the ~~board~~ department;

2. Inspect the stationary source or emissions unit, provided an inspection has not been conducted within the last six months;

3. When required, complete the public participation requirements in accordance with 9VAC5-80-1020;

4. Consider the public comments received in accordance with 9VAC5-80-1020; and

5. Complete the final review and analysis and the final determination of the ~~board~~ department.

C. The ~~board~~ department will normally take final action on an application after completion of the steps in subsection B of this section except in cases where a public hearing to provide the opportunity for interested persons to contest the application is granted pursuant to 9VAC5-80-35. The ~~board~~ department will review any request made under 9VAC5-80-1020 C, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

D. The ~~board~~ department shall issue the permit or notify the applicant in writing of its decision, with its reasons, not to issue the permit.

E. Within five days after receipt of the permit pursuant to subsection B of this section, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the ~~board~~ department upon request.

F. Appeals of decisions rendered pursuant to this article shall follow the procedures outlined in Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

G. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and

justification for the decision reached. When the decision of the department is to deny a permit pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC5-80-870. Application review and analysis.

A. No permit shall be granted pursuant to this article unless compliance with the standards in 9VAC5-80-850 is demonstrated to the satisfaction of the ~~board~~ department by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if each emissions unit that is to be permitted within the stationary source is equipped to comply with all applicable emission standards.

2. Applications may be subject to an air quality analysis to determine the impact of pollutant emissions.

B. If the ~~board~~ department has reason to believe that a source may be in violation of an air quality standard, it may require an air quality impact model. All applications of air quality modeling involved in any air quality analysis required by this article shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W to 40 CFR Part 51.

C. Where an air quality impact model specified in Appendix W to 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis, or, where appropriate, on a generic basis for a specific state program. Written approval of the ~~board~~ department must be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to notice and opportunity for public comment under 9VAC5-80-1020.

9VAC5-80-880. Compliance determination and verification by testing.

A. The ~~board~~ department may require owners of sources subject to this article to conduct such tests as are necessary to determine the type or amount or both of the pollutants emitted from the stationary source or emissions unit or whether the stationary source or emissions unit will be in compliance with any provisions of any regulation of the board. Such tests shall be conducted in a manner acceptable to the ~~board~~ department.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Part I (9VAC5-40-10 et seq.) of 9VAC5 Chapter 40, Part I (9VAC5-50-10 et seq.) of 9VAC5 Chapter 50, and Part I (9VAC5-60-10 et seq.) of 9VAC5 Chapter 60, as applicable, or by other means acceptable to the ~~board~~ department.

9VAC5-80-890. Monitoring requirements.

A. The ~~board~~ department may require owners of stationary sources subject to this article to install, calibrate, operate and maintain equipment for continuously monitoring and recording emissions or process parameters or both, and establish and maintain records, and make periodic emission reports as the ~~board~~ department may prescribe. These requirements shall be conducted in a manner acceptable to the ~~board~~ department.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Part I (9VAC5-40-10 et seq.) of 9VAC5 Chapter 40, Part I (9VAC5-50-10 et seq.) of 9VAC5 Chapter 50, and Part I (9VAC5-60-10 et seq.) of 9VAC5 Chapter 60, as applicable, or by other means acceptable to the ~~board~~ department.

9VAC5-80-900. Reporting requirements.

A. The ~~board~~ department may require owners of stationary sources subject to this article to establish and maintain records, provide notifications and reports, revise reports, report emission tests or monitoring results in a manner and form and using procedures as the ~~board~~ department may prescribe. Any records, notifications, reports, or tests required under this section shall be retained by the owner for at least three years following the date of such records, notifications, reports or tests. If an owner wishes to request the establishment of an average emissions baseline for a period longer than three years, that owner must maintain records for that period.

B. The requirements under subsection A of this section shall be carried out in accordance with the provisions contained in Part I (9VAC5-40-10 et seq.) of 9VAC5 Chapter 40, Part I (9VAC5-50-10 et seq.) of 9VAC5 Chapter 50, and Part I (9VAC5-60-10 et seq.) of 9VAC5 Chapter 60, as applicable, or by other means acceptable to the ~~board~~ department.

C. If a stationary source or emissions unit is shut down, the owner shall notify the ~~board~~ department within six months of the date the stationary source or emissions unit is shut down and the provisions of 9VAC5-80-950 shall apply.

9VAC5-80-930. Compliance with local zoning requirements.

No provision of this article or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the stationary source is located provided, however, that such compliance does not relieve the ~~board~~ department of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9VAC5-80-940. Transfer of permits.

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership or name change of a stationary source, the new owner shall abide by any current permit issued to the previous owner or to the same owner under the previous source name. The new owner shall notify the ~~board~~ department of the change in ownership or source name or both within 30 days of the transfer or name change.

9VAC5-80-950. Termination of permits.

A. A permit or any amendment thereof shall be valid for the life of the source unless the ~~board~~ department terminates the permit under the conditions of subsections B or C of this section.

B. The ~~board~~ department may terminate a permit with the consent of the owner for good cause shown by the owner or on its own motion provided that the termination is accomplished in accordance with the provisions of regulations of the board and the Administrative Process Act.

C. Upon a final determination that a stationary source or emissions unit is shut down permanently, the ~~board~~ department shall revoke any permits for that source or emissions unit in accordance with 9VAC5-20-220.

9VAC5-80-960. Changes to permits.

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-970 through 9VAC5-80-1000.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) of this part.

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the ~~board~~ department for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9VAC5-80-970 through 9VAC5-80-990.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-1000.

9VAC5-80-970. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-940 have been fulfilled.

4. The combining of permits as provided in 9VAC5-80-800 C 1 b.

B. The administrative permit amendment procedures are as follows:

1. The ~~board~~ department will normally take final action on a complete request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department shall incorporate the changes without providing notice to the public under 9VAC5-80-1020. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9VAC5-80-980. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable regulatory requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard;

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

a. An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act; and

6. Are not required to be processed as a significant amendment under 9VAC5-80-990; or as an administrative permit amendment under 9VAC5-80-970.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program. Minor permit amendment procedures may also be used to require more frequent monitoring or reporting by the permittee or to reduce the level of an emissions cap.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may by used for permit amendments involving the rescission of a provision of a permit provided there is made by the ~~board~~ department and the owner a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A request that such procedures be used.

E. The public participation requirements of 9VAC5-80-1020 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the complete request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

9VAC5-80-990. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requests for permit amendments that do not qualify as minor permit amendments under 9VAC5-80-980 or as administrative amendments under 9VAC5-80-970.

2. Significant amendment procedures shall be used for those permit amendments that:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a modification under the new source review program or § 112 of the federal Clean Air Act.

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

B. A request for a significant permit amendment shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

C. The provisions of 9VAC5-80-1020 shall apply to applications made under this section.

D. The ~~board~~ department will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public comment period is required, processing time for a request is normally 180 days following receipt of a complete request except in cases where a public hearing to provide the opportunity for interested persons to contest the request is granted pursuant to 9VAC5-80-35. The ~~board~~ department may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the ~~board~~ department under subsection D of this section.

9VAC5-80-1000. Reopening for cause.

A. A permit may be reopened and revised in any of the following situations:

1. Additional regulatory requirements or changes to existing requirements become applicable to emissions units or pollutants covered by the permit.

2. The ~~board~~ department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The ~~board~~ department determines that the permit must be revised to assure compliance with the applicable regulatory requirements or that the conditions of the permit will not be sufficient to meet all of the standards and requirements contained in this article.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

9VAC5-80-1010. Enforcement.

A. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the ~~board~~ department may deem necessary to ensure compliance with all applicable standards.

B. Regardless of the provisions of 9VAC5-80-950, the ~~board~~ department may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source or emissions unit which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of ~~9VAC5-80-10 and~~ Article 6 (9VAC5-80-1100 et seq.), Article 8 (9VAC5-80-1700 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of this part.

C. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any permit for any of the grounds for revocation contained in subsection B of this section or for any other violations of regulations of the board.

D. Violation of regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part I (9VAC5-20-10 et seq.) of 9VAC5 Chapter 20 and §§ 10.1-1309, 10.1-1311 and 10.1-1316 of the Virginia Air Pollution Control Law.

E. The ~~board~~ department shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit.

F. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department and the owner from making a mutual determination that a permit is invalid or revoked prior to any final decision rendered under subsection B of this section.

G. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department and the owner from making a mutual determination that a permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

9VAC5-80-1020. Public participation.

A. Prior to the decision of the ~~board~~ department, permit applications for permits containing provisions that are necessary for the permit to be federally enforceable shall be subject to a public comment period of at least 30 days.

B. When a public comment period is required, the ~~board~~ department shall notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for public comment on the information available for public inspection under the provisions of subsection A of this section. The notification shall be published at least 30 days prior to the day of the public hearing.

1. Information on the permit application (exclusive of confidential information under 9VAC5-170-60), as well as the preliminary review and analysis and preliminary determination of the ~~board~~ department, shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all affected local air pollution control agencies, to all states sharing the affected air quality control region, to the regional administrator of the U.S. Environmental Protection Agency, and to any other governmental entity required to be notified under state or federal law or regulation.

C. Following the initial publication of the notice required under subsection B of this section, the ~~board~~ department will receive written requests for a public hearing to contest the preliminary determination of the ~~board~~ department pursuant to the requirements of 9VAC5-80-35. In order to be considered, the request shall be submitted no later than the end of the comment period. ~~Request~~ Requests for a public hearing shall contain the following information:

1. The name~~,~~ and postal mailing or email address~~, and telephone number~~ of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative ~~(~~; for the purposes of this requirement, ~~an unincorporated association is a person)~~ "person" includes an unincorporated association;

3. The reason ~~why a public hearing is requested~~ for the request for a public hearing;

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or ~~preliminary~~ tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, amendment, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.

D. The ~~board~~ department will review any request made under subsection C of this section, and will take final action on the request as provided in 9VAC5-80-860 C.

9VAC5-80-1030. General permits.

A. The requirements for issuance of a general permit regulation are as follows:

1. The board may issue a general permit regulation covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:

a. All stationary sources or emissions units in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.

c. Stationary sources or emissions units shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Stationary sources or emissions units subject to a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General ~~permits~~ permit regulations shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.

4. General ~~permits~~ permit regulations shall be issued in accordance with ~~§ 9-6.14:4.1 C 11~~ § 2.2-4006 A 9 of the Administrative Process Act.

5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit regulation.

b. The criteria to be used in determining which stationary sources or emissions units qualify for the general permit.

c. A brief description of the stationary source or emissions unit category that the department believes qualifies for the general permit including, but not limited to, an estimate of

the number of individual stationary sources or emissions units in the category.

d. A narrative statement of the estimated air quality impact contributed by the stationary source or emissions unit category covered by the general permit including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable.

e. A brief description of the application process to be used by stationary sources or emissions units to request coverage under the general permit regulation.

f. A brief description of the comment procedures required by 9VAC5-80-1020.

B. The requirements for application for a general permit are as follows:

1. Stationary sources or emissions units that would qualify for a general permit shall apply to the ~~board~~ department for coverage under the terms of the general permit regulation. Stationary sources or emissions units that do not qualify for a general permit shall apply for coverage under a permit issued under the other provisions of this article.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Stationary sources or emissions units that become subject to the general permit after it is issued to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the ~~board~~ department using the application process described in the general permit. The ~~board~~ department shall issue the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.

C. The requirements for issuance of a general permit are as follows:

1. The ~~board~~ department shall grant the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.

2. The issuance of a permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-1020.

3. A response to each general permit application may not be provided. The general permit regulation may specify a reasonable time period after which a stationary source or emissions unit that has submitted a complete application shall be deemed to be authorized to operate under the general permit.

4. Stationary sources or emissions units covered under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is covered by the general permit.

5. The general permit regulation shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. The requirements for enforcement of a general permit are as follows:

1. The stationary source or emissions unit shall be subject to enforcement action under 9VAC5-80-1010 for operation without a permit issued under this article if the stationary source or emissions unit is later determined by the ~~board~~ department or the administrator not to qualify for the conditions and terms of the general permit.

2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.

9VAC5-80-1040. ~~Review and evaluation of article.~~ (Repealed.)

~~A. Prior to April 1, 2001, the department shall perform an analysis on this article and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the article; (ii) alternatives which would achieve the stated purpose of this article in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this article; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this article which are more stringent than federal requirements; and (v) the results of a review as to whether this article is clearly written and easily understandable by affected entities.~~

~~B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this article without amendment, (ii) repeal this article, or (iii) amend this article. If the board's decision is to repeal or amend this article, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

9VAC5-80-1100. Applicability.

A. Except as provided in subsection C of this section, the provisions of this article apply to (i) the construction of any new stationary source or any project (which includes any addition or replacement of an emissions unit, any modification to an emissions unit or any combination of these changes), and (ii) the reduction of any stack outlet elevation at any stationary source.

B. The provisions of this article apply throughout the Commonwealth of Virginia.

C. Except as provided in subdivision 3 of this subsection, the provisions of this article do not apply to any stationary source, emissions unit or facility that is exempt under the provisions of 9VAC5-80-1105.

1. Exemption from the requirement to obtain a minor NSR permit shall not relieve any owner of the responsibility to comply with any other applicable provisions of regulations of the board or any other applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

2. Any stationary source, emissions unit or facility which is exempt from the provisions of this article based on the criteria in 9VAC5-80-1105 but which exceeds the applicability thresholds for any applicable emission standard in 9VAC5-40 (Existing Stationary Sources) if it were an existing source or any applicable standard of performance in 9VAC5-50 (New and Modified Stationary Sources) shall be subject to the more restrictive of the provisions of either the emission standard in 9VAC5-40 (Existing Stationary Sources) or the standard of performance in 9VAC5-50 (New and Modified Stationary Sources).

3. Any new stationary source or project that would be subject to the provisions of this article except for being exempt based on one or more of the criteria in 9VAC5-80-1105 may opt to be subject to this article notwithstanding the exemptions in 9VAC5-80-1105. The provisions of this article shall apply to the new stationary source or project as if the applicable exemption criteria did not apply. Opting in to the minor NSR program shall not affect the applicability of such exemptions to any subsequent project.

D. Except as provided in 9VAC5-80-1105 C 3 and D 3, fugitive emissions of a stationary source, to the extent quantifiable, shall be included in determining whether it is subject to this article.

E. Where construction of a new stationary source or a project is accomplished in contemporaneous increments that individually are not subject to approval under this article and that are not part of a program of construction of a new stationary source or project in planned incremental phases approved by the ~~board~~ department, all such increments shall be added together for determining the applicability of any particular change under the provisions of this article. An incremental change is contemporaneous with the particular change only if it occurs between the date five years before commencing construction on the particular change and the date that the emissions increase from the particular change occurs.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a stationary source which, except for the pattern of ownership or development, would otherwise require a minor NSR permit.

G. No provision of this article shall be construed as exempting any stationary source or emissions unit from the provisions of the major new source review program. Accordingly, no provision of the major new source review program regulations shall be construed as exempting any stationary source or emissions unit from this article.

H. Unless specified otherwise, the provisions of this article are applicable to various sources as follows:

1. Provisions referring to "sources" or "stationary sources" are applicable to the construction, relocation, replacement, or modification of all stationary sources (including major stationary sources and major modifications) and the emissions from them to the extent that such sources and their emissions are not subject to the provisions of the major new source review program.

2. Provisions referring to "major stationary sources" are applicable to the construction, relocation, or replacement of all major stationary sources subject to this article. Provisions referring to "major modifications" are applicable to major modifications of major stationary sources subject to this article.

3. In cases where the provisions of the major new source review program conflict with those of this article, the provisions of the major new source review program shall prevail.

4. Provisions referring to "state and federally enforceable" or "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a minor NSR permit designated state-only enforceable under 9VAC5-80-1120 F.

I. For sources subject to the federal hazardous air pollutant new source review program, the provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and the applicable article of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources). Implementation of the federal hazardous air pollutant new source review program shall be independent of applicability and exemption criteria of this article. Additional details may be found in subdivisions 1, 2, and 3 of this subsection. Minor NSR permits shall be the administrative mechanism for issuing approvals under the provisions of federal hazardous air pollutant new source review program. Except as noted below, in cases where there are differences between the provisions of this article and the provisions of federal hazardous air pollutant new source review program, the more restrictive provisions shall apply. The provisions of 9VAC5-80-1150 and 9VAC5-80-1160 shall not apply to sources subject to the federal hazardous air pollutant new source review program. Other sections of this article also provide requirements relative to the application of this article to sources subject to the federal hazardous air pollutant new source review program, in which case those provisions shall prevail. This subsection applies

only to the extent that the provisions of the federal hazardous air pollutant new source review program are not being implemented by other new source review program regulations of the board.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 1 (9VAC5 60 60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D, and E. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit. These provisions of the federal hazardous air pollutant new source review program shall be implemented through this article and Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60. Any information regarding how minor NSR permits are to be issued to a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program under the provisions of this article may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. The provisions of 40 CFR 63.40 through 40 CFR 63.44 for issuing approvals to construct a new source or reconstruct a source listed in the source category schedule for standards and to construct a new major source or reconstruct a major source even if the source category is not listed in the source category schedule for standards. These provisions of the federal hazardous air pollutant new source review program shall not be implemented through this article but shall be implemented through Article 7 (9VAC5-80-1400 et seq.) of this part.

J. Unless otherwise approved by the ~~board~~ department or prescribed in the regulations of the board, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-1160 B prior to November 7, 2012,. Any minor NSR permit applications that have not been determined to be complete as of November 7, 2012, shall be subject to the new provisions of this article.

K. The provisions of 40 CFR Parts 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources) and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

L. The provisions of 40 CFR Parts 51, 58, 60, 61, and 63 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

M. Particulate matter ($PM_{2.5}$) emissions and particulate matter (PM_{10}) emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in minor NSR permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section.

9VAC5-80-1105. Permit exemptions.

A. The general requirements for minor NSR permit exemptions are as follows:

1. The provisions of this article do not apply to the following stationary sources or emissions units:

a. The construction of any stationary source or emissions unit that is exempt under the provisions of subsections B through F of this section. In determining whether a source is exempt from the provisions of this article, the provisions of subsections B through D of this section are independent from the provisions of subsections E and F of this section. A source must be determined to be exempt both under the provisions of subsections B through D of this section taken as a group and under the provisions of subsections E and F of this section to be exempt from this article.

b. Vegetative waste recycling/mulching operations that do not exceed 2100 hours of operation in any 12-month consecutive period at a single stationary source. To qualify as an exemption under this subdivision, the total rated capacity of all diesel engines at the source, including portable diesel engines temporarily located at the site, may not exceed 1200 brake horsepower (output).

c. The location of a portable emissions unit at a site subject to the following conditions:

(1) Any new emissions from the portable emissions unit are secondary emissions.

(2) The portable emissions unit is either subject to (i) a minor NSR permit authorizing the emissions unit as a portable emissions unit subject to this subdivision or (ii) a general permit.

(3) The emissions of the portable emissions unit at the site would be temporary.

(4) The portable emissions unit would not undergo modification or replacement that would be subject to this article.

(5) The portable emissions unit is suitable to the area in which it is to be located.

(6) Reasonable notice is given to the ~~board~~ department prior to locating the emissions unit to the site identifying the proposed site and the probable duration of operation at the site. Such notice shall be provided to the ~~board~~ department not less than 15 days prior to the date the emissions unit is to be located at the site unless a different notification schedule is previously approved by the ~~board~~ department.

d. The reactivation of a stationary source unless a determination concerning shutdown has been made pursuant to the provisions of 9VAC5-20-220.

e. The use by any existing stationary source or emissions unit of an alternative fuel or raw material, if the following conditions are met:

(1) The owner demonstrates to the ~~board~~ department that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

(2) The use of an alternative fuel or raw material would not be subject to review under this article as a project.

2. The provisions of this article do not apply to the following stationary sources or emissions units provided the stationary source or emissions unit is (i) exempt under the provisions of subsections E and F of this section and (ii) meets any other applicable criteria or conditions set forth in this subdivision.

a. Replacement of an emissions unit subject to the following criteria:

(1) The replacement emission unit is (i) of an equal or lesser size and (ii) of an equal or lesser rated capacity as compared to the replaced emissions unit.

(2) The replacement emissions unit is functionally equivalent to the replaced emissions unit.

(3) The replacement emissions unit does not change the basic design parameters of the process operation.

(4) The potential to emit of the replacement emissions unit does not exceed the potential to emit of the replaced emissions unit. If the replaced emissions unit is subject to terms and conditions contained in a minor NSR permit, the owner may, concurrently with the notification required in subdivision (6) of this subdivision, request a minor amendment as provided in 9VAC5-80-1280 B 4 to that permit to apply those terms and conditions to the replacement emissions unit. However, the replacement emissions unit's potential to emit is not limited for the purposes of this subdivision unless (and until) the requested minor permit amendment is granted by the ~~board~~ department.

(5) The replaced emissions unit is either removed or permanently shut down in accordance with the provisions of 9VAC5-20-220.

(6) The owner notifies the ~~board~~ department, in writing, of the proposed replacement at least 15 days prior to commencing construction on the replacement emissions unit. Such notification shall include the size, function, and rated capacity of the existing and replacement emissions units and the registration number of the affected stationary source.

b. A reduction in stack outlet elevation provided that the stack serves only facilities that have been previously determined to be exempt from the minor NSR program.

3. In determining whether a facility is exempt from the provisions of this article under the provisions of subsection B of this section, the definitions in 9VAC5-40 (Existing Stationary Sources) that would cover the facility if it were an existing source shall be used unless deemed inappropriate by the ~~board~~ department.

4. Any owner claiming that a facility is exempt from this article under the provisions of this section shall keep records as may be necessary to demonstrate to the satisfaction of the ~~board~~ department that the facility was exempt at the time a minor NSR permit would have otherwise been required under this article.

B. Facilities as specified below shall be exempt from the provisions of this article.

1. Fuel burning equipment units (external combustion units, not engines and turbines) and space heaters in a single application as follows:

a. Except as provided in subdivision b of this subdivision, the exemption thresholds in subdivisions (1) through (4) of this subdivision shall be applied on an individual unit basis for each fuel type.

(1) Using solid fuel with a maximum heat input of less than 1,000,000 Btu per hour.

(2) Using liquid fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(3) Using liquid and gaseous fuel with a maximum heat input of less than 10,000,000 Btu per hour.

(4) Using gaseous fuel with a maximum heat input of less than 50,000,000 Btu per hour.

b. In ozone nonattainment areas designated in 9VAC5-20-204 or ozone maintenance areas designated in 9VAC5-20-

203, the exemption thresholds in subdivision a of this subdivision shall be applied in the aggregate for each fuel type.

2. Engines and turbines that are used for emergency purposes only and that do not individually exceed 500 hours of operation per year at a single stationary source as follows. All engines and turbines in a single application must also meet the following criteria to be exempt.

a. Gasoline engines with an aggregate rated brake (output) horsepower of less than 910 hp and gasoline engines powering electrical generators having an aggregate rated electrical power output of less than 611 kilowatts.

b. Diesel engines with an aggregate rated brake (output) horsepower of less than 1,675 hp and diesel engines powering electrical generators having an aggregate rated electrical power output of less than 1125 kilowatts.

c. Combustion gas turbines with an aggregate of less than 10,000,000 Btu per hour heat input (low heating value).

3. Engines that power mobile sources during periods of maintenance, repair, or testing.

4. Volatile organic compound storage and transfer operations involving petroleum liquids and other volatile organic compounds with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions; and any operation specified below:

a. Volatile organic compound transfer operations involving:

(1) Any tank of 2,000 gallons or less storage capacity; or

(2) Any operation outside the volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Volatile organic compound storage operations involving any tank of 40,000 gallons or less storage capacity.

5. Vehicle customizing coating operations, if production is less than 20 vehicles per day.

6. Vehicle refinishing operations.

7. Coating operations for the exterior of fully assembled aircraft or marine vessels.

8. Petroleum liquid storage and transfer operations involving petroleum liquids with a vapor pressure less than 1.5 pounds per square inch absolute under actual storage conditions or, in the case of loading or processing, under actual loading or processing conditions (kerosene and fuel oil used for household heating have vapor pressures of less than 1.5 pounds per square inch absolute under actual storage conditions; therefore, kerosene and fuel oil are not subject to the provisions of this article when used or stored at ambient temperatures); and any operation or facility specified below:

a. Gasoline bulk loading operations at bulk terminals located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

b. Gasoline dispensing facilities.

c. Gasoline bulk loading operations at bulk plants:

(1) With an expected daily throughput of less than 4,000 gallons, or

(2) Located outside volatile organic compound emissions control areas designated in 9VAC5-20-206.

d. Account/tank trucks; however, permits issued for gasoline storage/transfer facilities should include a provision that all associated account/tank trucks meet the same requirements as those trucks serving existing facilities.

e. Petroleum liquid storage operations involving:

(1) Any tank of 40,000 gallons or less storage capacity;

(2) Any tank of less than 420,000 gallons storage capacity for crude oil or condensate stored, processed or treated at a drilling and production facility prior to custody transfer; or

(3) Any tank storing waxy, heavy pour crude oil.

9. Petroleum dry cleaning plants with a total manufacturers' rated solvent dryer capacity less than 84 pounds as determined by the applicable new source performance standard in 9VAC5-50-410.

10. Any addition of, relocation of, or change to a woodworking machine within a wood product manufacturing plant provided the system air movement capacity, expressed as the cubic feet per minute of air, is not increased and maximum control efficiency of the control system is not decreased.

11. Wood sawmills and planing mills primarily engaged in sawing rough lumber and timber from logs and bolts, or resawing cants and flitches into lumber, including box lumber and softwood cut stock; planing mills combined with sawmills; and separately operated planing mills that are engaged primarily in producing surfaced lumber and standard workings or patterns of lumber. This also includes facilities primarily engaged in sawing lath and railroad ties and in producing tobacco hogshead stock, wood chips, and snow fence lath. This exemption does not include any facility that engages in the kiln drying of lumber.

12. Exhaust flares at natural gas and coalbed methane extraction wells.

13. Temporary facilities subject to the following conditions:

a. The operational period of the temporary facility (the period from the date that the first pollutant-emitting operation is commenced to the date of shutdown of the temporary facility) is 12 months or less.

b. The uncontrolled emissions rate of any regulated air pollutant that would be emitted from the temporary facility during the operational period does not exceed the applicable exempt emission rate as set forth in 9VAC5-80-1105 C (exemption rates for new stationary sources) or 9VAC5-80-1105 D (exemption rates for projects). The uncontrolled emission rate may be calculated based upon the total number of hours in the operational period instead of 8760 hours. All temporary facilities that will be co-located at a stationary source shall be considered in the aggregate when calculating the uncontrolled emissions rate under this subdivision.

c. Upon completion of the operational period, the temporary facility shall be either (i) shut down in accordance with 9VAC5-20-220 or (ii) returned to its original state and condition unless, prior to the end of the operational period, the owner demonstrates in writing to the satisfaction of the ~~board~~ department that the facility is exempt under 9VAC5-80-1105 C (exemption rates for new stationary sources) or D (exemption rates for new stationary projects) using 8760 hours of operation per year.

d. Not less than 30 calendar days prior to commencing the operational period, the owner shall notify the ~~board~~ department in writing of the proposed temporary facility and shall provide (i) calculations demonstrating that the temporary facility is exempt under this subdivision and under 9VAC5-80-1105 E and F and (ii) proposed dates for commencing the first pollutant-emitting operation and shutdown of the temporary facility.

e. The owner shall provide written notifications to the ~~board~~ department of (i) the actual date of commencing the first pollutant-emitting operation and (ii) the actual date of shutdown of the temporary facility. Notifications shall be postmarked not more than 10 days after such dates.

14. Open pit incinerators subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the purpose of disposal of clean burning waste and debris waste.

15. Poultry or swine incinerators located on a farm where all of the following conditions are met:

a. Auxiliary fuels for the incinerator unit shall be limited to natural gas, liquid petroleum gas, and/or distilled petroleum liquid fuel. Solid fuels, waste materials, or residual petroleum oil products shall not be used to fire the incinerator.

b. The waste incinerated shall be limited to pathological waste (poultry or swine remains). Litter and animal bedding or any other waste materials shall not be incinerated.

c. The design burn rate or capacity rate of the incinerator shall be 400 pounds per hour or less of poultry or swine. This value shall apply only to the mass of the poultry or swine and shall not include the mass of the fuel.

d. The incinerator shall be used solely to dispose of poultry or swine originating on the farm where the incinerator is located.

e. The incinerator shall be owned and operated by the owner or operator of the farm where the incinerator is located.

f. The incinerator shall not be charged beyond the manufacturer's recommended rated capacity.

g. Records shall be maintained on site to demonstrate compliance with the conditions for this exemption, including but not limited to the total amount of pathological waste incinerated and the fuel usage on a calendar year quarterly basis.

C. The exemption of new stationary sources shall be determined as specified below:

1. New stationary sources with uncontrolled emission rates less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate of a new stationary source is the sum of the uncontrolled emission rates of the individual affected emissions units. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting new stationary sources under this subsection.

Pollutant	**Emissions Rate**
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Particulate Matter (PM_{10})	15 tpy
Particulate Matter ($PM_{2.5}$)	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H_2S)	9 tpy
Total Reduced Sulfur (including H_2S)	9 tpy
Reduced Sulfur Compounds (including H_2S)	9 tpy

Municipal waste combustor organics (measured as total tetra-throughocta-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10^{-6} tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM_{10} or $PM_{2.5}$) emissions for a stationary source can be determined in a manner acceptable to the ~~board~~ department and the stationary source is deemed exempt using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the ~~board~~ department, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a new stationary source if all of the emissions considered in calculating the uncontrolled emission rate of the new stationary source are fugitive emissions.

D. The exemption of projects shall be determined as specified below:

1. A project that would result in increases in uncontrolled emission rates at the stationary source less than all of the emission rates specified below shall be exempt from the provisions of this article. The uncontrolled emission rate increase of a project is the sum of the uncontrolled emission rate increases of the individual affected emissions units. Uncontrolled emissions rate decreases are not considered as part of this calculation. Facilities exempted by subsection B of this section shall not be included in the summation of uncontrolled emissions for purposes of exempting projects under this subsection.

Pollutant	**Emissions Rate**
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	10 tpy
Sulfur Dioxide	10 tpy
Particulate matter	15 tpy
Particulate matter PM_{10}	10 tpy
Particulate matter ($PM_{2.5}$)	6 tpy
Volatile organic compounds	10 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	6 tpy
Hydrogen Sulfide (H_2S)	9 tpy
Total Reduced Sulfur (including H_2S)	9 tpy
Reduced Sulfur Compounds (including H_2S)	9 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10-^{6} tpy
Municipal waste combustor metals (measured as particulate matter)	13 tpy
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	35 tpy
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	22 tpy

2. If the particulate matter (PM_{10} or $PM_{2.5}$) emissions for a stationary source can be determined in a manner acceptable to the ~~board~~ department and the stationary source is deemed exempt using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source shall be considered to be exempt for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the ~~board~~ department, the emission rate for particulate matter (PM) shall be used to determine the exemption status.

3. The provisions of this article do not apply to a project if all of the emissions considered in calculating the uncontrolled emission rate increase of the project are fugitive emissions.

E. Exemptions for stationary sources of toxic pollutants not subject to the federal hazardous air pollutant new source review program shall be as follows:

1. Stationary sources exempt from the requirements of Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) as provided in 9VAC5-60-300 C 1, C 2, C 7, D, or E shall be exempt from the provisions of this article.

2. Facilities as specified below shall not be exempt, regardless of size or emission rate, from the provisions of this article.

a. Incinerators, unless (i) the incinerator is used exclusively as air pollution control equipment, (ii) the incinerator is an open pit incinerator subject to 9VAC5-130 (Regulation for Open Burning) and used solely for the disposal of clean burning waste and debris waste, or (iii) the incinerator is a poultry or swine incinerator located on a farm and all of the conditions of subdivision B 15 of this section are met.

b. Ethylene oxide sterilizers.

c. Boilers, incinerators, or industrial furnaces as defined in 40 CFR 260.10 and subject to 9VAC20-60 (Hazardous Waste Regulations).

F. This subsection provides information on the extent to which any source category or portion of a source category subject to the federal hazardous air pollutant new source review program may be exempt from the provisions of this article.

1. This subdivision addresses those source categories subject to the provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08, and 40 CFR 61.15 that establish the requirements for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 61.

2. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.5 that establish the requirements for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D, and E. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article if specifically exempted from that program by 40 CFR Part 63.

3. This subdivision addresses those source categories subject to the provisions of 40 CFR 63.50 through 40 CFR 63.56 that establish the requirements for issuing notices of MACT approval prior to the construction of a new emissions unit listed in the source category schedule for standards. Any information regarding exemptions for a source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program may be found in Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

4. This subdivision addresses those source categories for which EPA has promulgated a formal determination that no regulations or other requirements need to be established pursuant to § 112 of the federal Clean Air Act in the source category schedule for standards. Any source category or portion of a source category subject to this element of the federal hazardous air pollutant new source review program shall be exempt from the provisions of this article.

9VAC5-80-1110. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. As used in this article, all terms not defined in subsection C of this section shall have the meanings given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

C. Terms defined.

"Addition" means the construction of a new emissions unit at or the relocation of an existing emissions unit to a stationary source.

"Affected emissions units" means the following emissions units, as applicable:

1. For a new stationary source, all emissions units.

2. For a project, the added, modified, and replacement emissions units that are part of the project.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to affected emissions units subject to this article, including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates:

1. Any standard or other requirement provided for in an implementation plan established pursuant to § 110, 111(d), or 129 of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

2. Any term or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

However, those terms or conditions designated as state-only enforceable pursuant to 9VAC5-80-1120 F or 9VAC5-80-820 G shall not be applicable federal requirements.

3. Any emission standard, alternative emission standard, alternative emissions limitation, equivalent emissions limitation, or other requirement established pursuant to § 112 or 129 of the federal Clean Air Act as amended in 1990.

4. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

5. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under Subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

6. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

7. Any compliance monitoring requirements established pursuant to either § 504(b) or 114(a)(3) of the federal Clean Air Act.

8. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

9. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

10. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a federal operating permit.

12. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

13. Any standard or other requirement under § 126 (a)(1) and (c) of the federal Clean Air Act.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes but is not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change. With respect to the initial location or relocation of a portable emissions unit, this term refers to the delivery of any portion of the portable emissions unit to the site.

"Clean wood" means uncontaminated natural or untreated wood. Clean wood includes (i) byproducts of harvesting activities conducted for forest management or commercial logging or (ii) mill residues consisting of bark, chips, edgings, sawdust, shavings, or slabs. "Clean wood" does not include wood that has been treated, adulterated, or chemically changed in some way; treated with glues, binders, or resins; or painted, stained, or coated.

"Commence," as applied to the construction of an emissions unit, means that the owner has all necessary preconstruction approvals or permits and has either:

1. Begun or caused to begin a continuous program of actual on-site construction of the unit, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the unit, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and that the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting additional information.

"Construction" means fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in the uncontrolled emission rate.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include but are not limited to, lumber, wire, sheetrock, broken brick, shingles, glass, pipe, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes.

"Debris waste" means wastes resulting from land clearing operations. Debris wastes include but are not limited to, stumps, wood, brush, leaves, soil, and road spoils.

"Demolition waste" means that solid waste that is produced by the destruction of structures or their foundations, or both, and includes the same materials as construction wastes.

"Diesel engine" means, for the purposes of 9VAC5-80-1105 A 1 b, any internal combustion engine that burns diesel or #2 fuel oil to provide power to processing equipment for a vegetative waste recycling/mulching operation.

"Emergency" means a condition that arises from sudden and reasonably unforeseeable events where the primary energy or power source is disrupted or disconnected due to conditions beyond the control of an owner or operator of a facility including:

1. A failure of the electrical grid;

2. On-site disaster or equipment failure;

3. Public service emergencies such as flood, fire, natural disaster, or severe weather conditions; or

4. An ISO-declared emergency, where an ISO emergency is:

a. An abnormal system condition requiring manual or automatic action to maintain system frequency, to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property;

b. Capacity deficiency or capacity excess conditions;

c. A fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel;

d. Abnormal natural events or man-made threats that would require conservative operations to posture the system in a more reliable state; or

e. An abnormal event external to the ISO service territory that may require ISO action.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions limitation" means a requirement established by the regulations of the board or by the department in a permit, order, or variance that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emissions reduction, and any design standard, equipment standard, work practice, operational standard, or pollution prevention technique.

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

"Enforceable as a practical matter" means that the permit contains emissions limitations that are enforceable by ~~the board or~~ the department and meet the following criteria:

1. Are permanent;

2. Contain a legal obligation for the owner to adhere to the terms and conditions;

3. Do not allow a relaxation of a requirement of the implementation plan;

4. Are technically accurate and quantifiable;

5. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

6. Require a level of recordkeeping, reporting, and monitoring sufficient to demonstrate compliance.

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

"Federal hazardous air pollutant new source review program" means a program for the preconstruction review and approval of the construction, reconstruction, or modification of any stationary source in accordance with regulations specified below and promulgated to implement the requirements of § 112 (relating to hazardous air pollutants) of the federal Clean Air Act.

1. The provisions of 40 CFR 61.05, 40 CFR 61.06, 40 CFR 61.07, 40 CFR 61.08 and 40 CFR 61.15 for issuing approvals of the construction of any new source or modification of any existing source subject to the provisions of 40 CFR Part 61.

2. The provisions of 40 CFR 63.5 for issuing approvals to construct a new source or reconstruct a source subject to the provisions of 40 CFR Part 63, except for Subparts B, D and E.

3. The provisions of 40 CFR 63.50 through 40 CFR 63.56 for issuing Notices of MACT Approval prior to the construction of a new emissions unit.

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

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

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

3. All terms and conditions , unless expressly designated as state-only enforceable, in a federal operating permit, including any provisions that limit a source's potential to emit.

4. Limitations and conditions that are part of an implementation plan established pursuant to § 110, 111(d) or 129 of the federal Clean Air Act.

5. Limitations and conditions , unless expressly designated as state-only enforceable, that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.

6. Limitations and conditions , unless expressly designated as state-only enforceable, that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

a. The operating permit program has been approved by EPA into the implementation plan under § 110 of the federal Clean Air Act.

b. The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not federally enforceable by EPA.

c. The operating permit program requires that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive or make less stringent any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise federally enforceable.

d. The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

e. The permit in question was issued only after adequate and timely notice and opportunity for comment by EPA and the public.

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

8. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fixed capital cost" means the capital needed to provide all the depreciable components.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this article that meets the requirements of 9VAC5-80-1250.

"Hazardous air pollutant" means (i) any air pollutant listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63, and (ii) incorporated by reference into the regulations of the board in subdivision 1 of 9VAC5-60-92.

"Independent system operator" or "ISO" means a person that may receive or has received by transfer pursuant to § 56-576 of the Code of Virginia any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Major modification" means any project at a major stationary source that would result in a significant emissions increase in any regulated air pollutant. For projects, the emissions increase may take into consideration any state and federally enforceable permit conditions that will be placed in a permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source" means any stationary source that emits or has the potential to emit 100 tons or more per year of any regulated air pollutant. For new stationary sources, the potential to emit may take into consideration any state and federally enforceable permit conditions that will be placed in a

permit resulting from a permit application deemed complete under the provisions of 9VAC5-80-1160 B.

"Minor new source review (NSR) permit" means a permit issued pursuant to this article.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in this article. The minor NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"Modification" means any physical change in, or change in the method of operation of an emissions unit that increases the uncontrolled emission rate of any regulated air pollutant emitted into the atmosphere by the unit or that results in the emission of any regulated air pollutant into the atmosphere not previously emitted. The following shall not be considered physical changes or changes in the method of operation under this definition:

1. Maintenance, repair, and replacement of components that the ~~board~~ department determines to be routine for a source type and which does not fall within the definition of "replacement";

2. An increase in the throughput or production rate of a unit , unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter, if that increase does not exceed the operating design capacity of that unit;

3. An increase in the hours of operation , unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter;

4. Use of an alternative fuel or raw material , unless previously limited by any state enforceable and federally enforceable permit conditions established pursuant to this chapter, if, prior to the date any provision of the regulations of the board becomes applicable to the source type, the emissions unit was designed to accommodate that alternative use. A unit shall be considered to be designed to accommodate an alternative fuel or raw material if provisions for that use were included in the final construction specifications;

5. Use of an alternative fuel or raw material that the emissions unit is approved to use under any new source review permit;

6. The addition, replacement, or use of any system or device whose primary function is the reduction of air pollutants, except when a system or device that is necessary to comply with applicable air pollution control laws, permit conditions, or regulations is replaced by a system or device that the ~~board~~ department considers to be less efficient in the control of air pollution emissions;

7. The removal of any system or device whose primary function is the reduction of air pollutants if the system or device is not (i) necessary for the source to comply with any applicable air pollution control laws, permit conditions, or regulations or (ii) used to avoid any applicable new source review program requirement; or

8. A change in ownership at a stationary source.

"Necessary preconstruction approvals or permits" means those permits or approvals required under the NSR program that is part of the implementation plan.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for regulated air pollutants from new stationary sources or projects (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in this article, Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part. The NSR program may also be used to implement the terms and conditions described in 9VAC5-80-1120 F 1; however, those terms and conditions shall be state-only enforceable and shall not be applicable federal requirements.

"New stationary source" means any stationary source to be constructed at or relocated to an undeveloped site.

"Nonroad engine" means any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function, such as garden tractors, off-highway mobile cranes and bulldozers;

2. In or on a piece of equipment that is intended to be propelled while performing its function , such as lawnmowers and string trimmers; or

3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be capable of being carried or moved from one location to another. Indications of transportability include but are not limited to, wheels, skids, carrying handles, dollies, trailers, or platforms.

An internal combustion engine is not a nonroad engine if (i) the engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated

under § 202 of the federal Clean Air Act; or (ii) the engine otherwise included in subdivision 3 of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source.

For purposes of this definition, a location is any single site at a building, structure, facility, or installation. Any engine or engines that replace an engine at a location and that are intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at the single location approximately three months or more each year. This subdivision does not apply to an engine after the engine is removed from the location.

"Plantwide applicability limitation" or "PAL" means an emissions limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865 or 9VAC5-80-2144.

"PAL permit" means the state operating permit issued by the ~~board~~ department that establishes a PAL for a major stationary source.

"Portable," in reference to emissions units, means an emissions unit that is designed to have the capability of being moved from one location to another for the purpose of operating at multiple locations and storage when idle. Indications of portability include but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or its effect on emissions is state and federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Precursor pollutant" means the following:

1. Volatile organic compounds and nitrogen oxides are precursors to ozone.

2. Sulfur dioxide is a precursor to $PM_{2.5}$.

3. Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$, unless the ~~board~~ department determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

4. Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5,}$ unless the ~~board~~ department determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

"Process operation" means any method, form, action, operation, or treatment of manufacturing or processing, including any storage or handling of materials or products before, during, or after manufacturing or processing.

"Project" means any change at an existing stationary source consisting of the addition, replacement, or modification of one or more emissions units.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information , exclusive of confidential information, for a new stationary source or project, the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the ~~board~~ department regarding the permit application.

"Reactivation" means beginning operation of an emissions unit that has been shut down.

"Reconstruction" means, for the sole purposes of 9VAC5-80-1210 A, B, and C, the replacement of an emissions unit or its components to such an extent that:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable entirely new unit;

2. The replacement significantly extends the life of the emissions unit; and

3. It is technologically and economically feasible to meet the applicable emission standards prescribed under regulations of the board.

Any determination by the ~~board~~ department as to whether a proposed replacement constitutes reconstruction shall be based on:

1. The fixed capital cost of the replacements in comparison to the fixed capital cost of the construction of a comparable entirely new unit;

2. The estimated life of the unit after the replacements compared to the life of a comparable entirely new unit;

3. The extent to which the components being replaced cause or contribute to the emissions from the unit; and

4. Any economic or technical limitations on compliance with applicable standards of performance that are inherent in the proposed replacements.

"Regulated air pollutant" means any of the following:

1. Nitrogen oxides or any volatile organic compound.

2. Any pollutant , including any associated precursor pollutant, for which an ambient air quality standard has been promulgated.

3. Any pollutant subject to any standard promulgated under 40 CFR Part 60.

4. Any pollutant subject to a standard promulgated under or other requirements established under 40 CFR Part 61 and any pollutant regulated under 40 CFR Part 63.

5. Any pollutant subject to a regulation adopted by the board.

"Relocation" means a change in physical location of a stationary source or an emissions unit from one stationary source to another stationary source.

"Replacement" means the substitution of an emissions unit for an emissions unit located at a stationary source, which will thereafter perform the same function as the replaced emissions unit.

"Secondary emissions" means emissions that occur or would occur as a result of the construction or operation of a new stationary source or an emissions unit, but do not come from the stationary source itself. For the purpose of this article, secondary emissions must be specific, well-defined, and quantifiable; and must affect the same general areas as the stationary source that causes the secondary emissions. Secondary emissions include emissions from any off site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source or emissions unit. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

1. In reference to an emissions increase, an increase in potential to emit that would equal or exceed any of the following rates:

a. In ozone nonattainment areas classified as serious or severe in 9VAC5-20-204:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (PM)	25 tpy
Particulate Matter (PM_{10})	15 tpy
Particulate Matter ($PM_{2.5}$)	10 tpy
Volatile organic compounds	25 tpy
Lead	0.6 tpy

b. In all other areas:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (PM)	25 tpy
Particulate Matter (PM_{10})	15 tpy
Particulate Matter ($PM_{2.5}$)	10 tpy
Volatile organic compounds	40 tpy
Lead	0.6 tpy

2. In reference to an emissions increase for a regulated air pollutant not listed in subdivision 1 of this definition, there is no emissions rate that shall be considered significant.

3. If the particulate matter (PM_{10} or $PM_{2.5}$) emissions for a stationary source or emissions unit can be determined in a manner acceptable to the ~~board~~ department and the emissions increase is determined to be significant using the emission rate for particulate matter (PM_{10} or $PM_{2.5}$), the stationary source or emissions unit shall be considered to be significant for particulate matter (PM). If the emissions of particulate matter (PM_{10} or $PM_{2.5}$) cannot be determined in a manner acceptable to the ~~board~~ department, the emission rate for particulate matter (PM) shall be used to determine whether the emissions increase is significant.

"Significant emissions increase" means, for a regulated air pollutant, an increase in emissions that is significant for that pollutant.

"Site" means one or more contiguous or adjacent properties under the control of the same person or of persons under common control.

"Source category schedule for standards" means the schedule (i) issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and (ii) incorporated by reference into the regulations of the board in subdivision 2 of 9VAC5-60-92.

"Space heater" means any fixed or portable, liquid or gaseous fuel-fired, combustion unit used to heat air in a space, or used to heat air entering a space, for the purpose of maintaining an air temperature suitable for comfort, storage, or equipment

operation. Space heaters do not include combustion units used primarily for the purpose of conditioning or processing raw materials or product, such as driers, kilns, or ovens.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

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

"Synthetic minor source" means a stationary source that otherwise has the potential to emit regulated air pollutants in amounts that are at or above those for major stationary sources, as applicable, but is subject to restrictions such that its potential to emit is less than such amounts for major stationary sources. Such restrictions must be enforceable as a practical matter. The term "synthetic minor source" applies independently for each regulated air pollutant that the source has the potential to emit.

"Temporary facility" means a facility that (i) is operated to achieve a specific objective (such as serving as a pilot test facility, a process feasibility project, or a remediation project) and (ii) does not contribute toward the commercial production of any product or service (including byproduct and intermediate product) during the operational period. Portable emissions units covered by the exemption under 9VAC5-80-1105 A 1 c and facilities used to augment or enable routine production are not considered temporary facilities for the purposes of this definition.

"Toxic pollutant" means any air pollutant (i) listed in § 112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63 and (ii) incorporated by reference into the regulations of the board at subdivision 1 of 9VAC5-60-92, or any other air pollutant that the ~~board~~ department determines, through adoption of regulation, to present a significant risk to public health. This term excludes asbestos, fine mineral fibers, radionuclides, and any glycol ether that does not have a TLV®.

"Uncontrolled emission rate" means the emission rate from an emissions unit when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment that is not vital to its operation, except that its use enables the owner to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the emissions unit, unless the emissions unit or stationary source is subject to state and federally enforceable permit conditions that limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted, stored, or processed may be used in determining the uncontrolled emission rate of an emissions unit or stationary source. The uncontrolled emission rate of a stationary source is the sum of the uncontrolled emission rates of the individual emissions units. Secondary emissions do not count in determining the uncontrolled emission rate of a stationary source.

"Undeveloped site" means any site or facility at which no emissions units are located at the time the permit application is deemed complete or at the time the owner begins actual construction, whichever occurs first. An undeveloped site also includes any site or facility at which all of the emissions units have been determined to be shut down pursuant to the provisions of 9VAC5-20-220.

"Vegetative waste" means decomposable materials generated by land clearing activities and includes shrub, bush and tree prunings, bark, brush, leaves, limbs, roots, and stumps. Vegetative waste does not include construction or demolition waste or any combination of them.

"Vegetative waste recycling/mulching operation" means any activity related to size reduction or separating, or both, of clean wood or vegetative waste, or both, by grinding, shredding, chipping, screening, or any combination of them.

9VAC5-80-1120. General.

A. No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the ~~board~~ department a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit.

B. Except as provided in 9VAC5-80-1105 A 1 c, no owner or other person shall relocate any stationary source or emissions unit from one stationary source to another without first obtaining from the ~~board~~ department a minor NSR permit to relocate the stationary source or unit.

C. Except as provided in 9VAC5-80-1105 A 2 b, no owner or other person shall reduce the outlet elevation of any stack or chimney which discharges any regulated air pollutant from an emissions unit without first obtaining a minor NSR permit from the ~~board~~ department.

D. The ~~board~~ department will take actions to combine permit terms and conditions as provided in 9VAC5-80-1255. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-1260 as explained in subsection E of this section.

E. The ~~board~~ department will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1260. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection D of this section.

F. All terms and conditions of any minor NSR permit shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any minor NSR permit shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of Part II of 9VAC5-50 (New and Modified Stationary Sources), or Article 4 (9VAC5-60-200 et seq.) or Article 5 (9VAC5-60-300 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any minor NSR permit that is not federally enforceable shall be marked in the permit as state-only enforceable and shall be enforceable only by the ~~board~~ department. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

G. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department from granting minor NSR permits for programs of construction of a new stationary source or project in planned incremental phases. In such cases, all uncontrolled emission rate increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9VAC5-80-1140. Applications.

A. A single application is required identifying at a minimum each emissions unit in the new stationary source or the project, or affected by the stack outlet elevation reduction. The application shall be submitted according to procedures acceptable to the ~~board~~ department.

B. A separate application is required for each new stationary source or project.

C. For new stationary sources or for projects with phased development, a single application should be submitted covering the entire new stationary source or project.

D. Any application, form, report, or certification submitted to the ~~board~~ department shall comply with the provisions of 9VAC5-20-230.

E. Any application submitted pursuant to this article shall contain a certification signed by the applicant as follows:

"I certify that I understand that the existence of a minor new source review permit does not shield the source from potential enforcement of any regulation of the board governing the major new source review program and does not relieve the source of the responsibility to comply with any applicable provision of the major new source review program regulations."

9VAC5-80-1150. Application information required.

A. The ~~board~~ department shall furnish application forms to applicants. Completion of these forms serves as initial registration of stationary sources and emissions units subject to this article.

B. Each application for a minor NSR permit shall include such information as may be required by the ~~board~~ department to determine the effect of the new stationary source or emissions unit on the ambient air quality and to determine compliance with any emission standards which are applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated air pollutants.

a. A minor NSR permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit or group of emissions units in the new stationary source or project or affected by the stack outlet elevation reduction. The permit application shall include a description of all changes in uncontrolled emissions from the project.

b. Emissions shall be calculated as required in the minor NSR permit application form or instructions or in a manner acceptable to the ~~board~~ department.

c. Fugitive emissions shall be included in the minor NSR permit application to the extent quantifiable.

4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

6. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

7. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

8. Calculations on which the information in subdivisions 3 through 7 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any additional information or documentation that the ~~board~~ department deems necessary to review and analyze the air pollution aspects of the new stationary source or the project, or the stack outlet elevation reduction, including the submission of measured air quality data at the proposed site prior to construction. Such measurements shall be accomplished using procedures acceptable to the ~~board~~ department.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the ~~board~~ department.

9VAC5-80-1160. Action on permit application.

A. Prior to submitting an application for processing under subsections B through F of this section, the owner may request a nonbinding applicability determination as to which particular provisions of the new source review program are applicable. The request for the applicability determination shall include sufficient information as may be necessary for the ~~board~~ department to make an applicability determination and may include the same information required for an application. Within 30 days after receipt of a request, the ~~board~~ department will (i) notify the applicant of the applicability determination or (ii) provide a determination that the information provided by the owner is insufficient to make an applicability determination, along with the identification of any deficiencies.

B. Within 30 days after receipt of an application, the ~~board~~ department will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the ~~board~~ department in writing and will include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the ~~board~~ department will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection C of this section shall be the date on which the ~~board~~ department received all required information, including any applicable permit fees, and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

C. The ~~board~~ department will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for these steps is normally 90 days following receipt of a complete application. If a public hearing is required, processing time is normally 180 days following receipt of a complete application. The ~~board~~ department may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-1190 and the preliminary determination of the ~~board~~ department. This step may constitute the final step if the provisions of 9VAC5-80-1170 concerning public participation are not applicable.

2. When required, complete the public participation requirements in accordance with 9VAC5-80-1170.

3. Consider the public comments received in accordance with 9VAC5-80-1170.

4. Complete the final review and analysis and the final determination of the ~~board~~ department.

D. The ~~board~~ department will normally take final action on an application after completion of the applicable steps in subsection C of this section~~, except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-1170 F, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter~~ and, if applicable, 9VAC5-80-45.

E. The ~~board~~ department shall notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission standards. These emission standards are applicable during any emission testing conducted in accordance with 9VAC5-80-1200.

F. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

G. Within five days after notification to the applicant pursuant to subsection E of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9VAC5-80-1170 E 1.

H. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC5-80-1170. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1160 B, the applicant for a minor NSR permit for a new major stationary source shall notify the public of the proposed major stationary source in accordance with subsection B of this section.

B. The public notice required by subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the ~~board~~ department and shall include the following:

1. The source name, location, and type;

2. The pollutants and the total quantity of each that the applicant estimates will be emitted and a brief statement of the air quality impact of such pollutants;

3. The control technology proposed to be used at the time of the publication of the notice; and

4. The name and telephone number of a contact person employed by the applicant who can answer questions about the proposed source.

C. Upon a determination by the ~~board~~ department that an alternative plan will achieve the desired results in an equally effective manner, an applicant for a minor NSR permit may implement an alternative plan for notifying the public to that required in subsections A and B of this section.

D. Prior to the decision of the ~~board~~ department, minor NSR permit applications as specified below shall be subject to a public comment period of at least 30 days. At the end of the public comment period, a public hearing shall be held in accordance with subsection E of this section.

1. Applications for stationary sources of hazardous air pollutants requiring a case-by-case maximum achievable control technology determination under Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Applications for new major stationary sources and major modifications.

3. Applications for projects that would result in an increase in the potential to emit of any regulated air pollutant that would equal or exceed 100 tons per year, considering any state and federally enforceable permit conditions that will be placed on the source by a minor NSR permit.

4. Applications for new stationary sources or projects that have the potential for public interest concerning air quality issues, as determined by the ~~board~~ department. The identification of such sources shall be made using the following nonexclusive criteria:

a. Whether the new stationary source or project is opposed by any person;

b. Whether the new stationary source or project has resulted in adverse media;

c. Whether the new stationary source or project has generated adverse comment through any public participation or governmental review process initiated by any other governmental agency; and

d. Whether the new stationary source or project has generated adverse comment by a local official, governing body, or advisory board.

5. Applications for stationary sources for which any provision of the minor NSR permit is to be based upon a good engineering practice (GEP) stack height that exceeds the height allowed by subdivisions 1 and 2 of the GEP definition. The demonstration specified in subdivision 3 of the GEP definition and required by 9VAC5-50-20 H 3 shall be included in the application.

E. When a public comment period and public hearing are required, the ~~board~~ department shall notify the public by advertisement in at least one newspaper of general circulation in the affected air quality control region of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. For permits subject to § 10.1-1307.01 A of the Code of Virginia, written comments will be accepted by the ~~board~~ department for at least 15 days after any hearing ~~unless the board votes to shorten the period~~.

1. Information on the minor NSR permit application , exclusive of confidential information under 9VAC5-170-60, as well as the preliminary review and analysis and preliminary determination of the ~~board~~ department shall be

available for public inspection during the entire public comment period in at least one location in the affected air quality control region. Any demonstration included in an application specified in subdivision D 5 of this section shall be available for public inspection during the public comment period.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

F. ~~Following the initial publication of the notice required under subsection E of this section, the board will receive written requests for direct consideration of the minor NSR permit application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:~~

~~1. The name, mailing address, and telephone number of the requester.~~

~~2. The names and addresses of all persons for whom the requester is acting as a representative; for the purposes of this requirement, an unincorporated association is a person.~~

~~3. The reason why direct consideration by the board is requested.~~

~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.~~

~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.~~ (Reserved.)

G. ~~The board~~ For permits under 9VAC5-80-1170 D 2 and I, the department will review any request made under subsection F of this section and will take final action on the request as provided in 9VAC5-80-1160 D.

H. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the ~~board~~ department shall process the minor NSR permit application using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

I. If the ~~board~~ department finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request board consideration~~ as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit unless the ~~board votes~~ director chooses to shorten the period.

9VAC5-80-1180. Standards and conditions for granting permits.

A. No minor NSR permit will be granted unless it is shown to the satisfaction of the ~~board~~ department that the source will comply with the following standards:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under

9VAC5-50 (New and Modified Stationary Sources) and with emission standards prescribed under 9VAC5-60 (Hazardous Air Pollutant Sources);

2. For sources subject to the federal hazardous air pollutant new source review program, the source shall be designed, built, and equipped to comply with the applicable emission standard and other requirements prescribed in 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), as applicable;

3. The source shall be designed, built and equipped to operate without preventing or interfering with the attainment or maintenance of any applicable ambient air quality standard and without causing or exacerbating a violation of any applicable ambient air quality standard; and

4. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.

B. Minor NSR permits may contain emission caps provided the caps are made enforceable as a practical matter using the elements set forth in subsection D of this section. The emission caps may be considered in determining whether a stationary source is a synthetic minor source.

C. Minor NSR permits may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-260. The following criteria apply in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include limits on the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.

3. The standard may prescribe, as an alternative to or a supplement to a limit prescribed under subdivision 1 of this subsection, equipment, work practice, fuels specification, process materials, maintenance, or operational standards, or any combination of them.

D. Minor NSR permits will contain, but need not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. Limits on fuel sulfur content.

b. Limits on production rates with time frames as appropriate to support the emission standards.

c. Limits on raw material usage rate.

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

4. Specifications for air pollution control equipment installed or to be installed. Specifications included in the permit under this subdivision are for informational purposes only and do not form enforceable terms or conditions of the permit unless the specifications are needed to form the basis for one or more of the other terms or conditions in the permit.

5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but need not be limited to, any of the following:

a. Pressure indicators and required pressure drop.

b. Temperature indicators and required temperature.

c. pH indicators and required pH.

d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Performance test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

9VAC5-80-1190. Application review and analysis.

No minor NSR permit shall be granted unless compliance with the standards in 9VAC5-80-1180 is demonstrated to the satisfaction of the ~~board~~ department by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications for new stationary sources and projects shall be subject to the following review and analysis:

a. A control technology review to determine if the emissions units will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9VAC5-50 (New and Modified Stationary Sources).

b. An air quality analysis to determine the impact of pollutant emissions as may be deemed appropriate by the ~~board~~ department.

2. Applications for stationary sources of toxic air pollutants shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9VAC5-60 (Hazardous Air Pollutant Sources).

3. Applications under 9VAC5-80-1120 C (concerning stack outlet elevation reduction) shall be subject to an air quality analysis to determine the impact of applicable criteria pollutant emissions as may be deemed appropriate by the ~~board~~ department.

4. Applications for sources subject to the federal hazardous air pollutant new source review program shall be subject to a control technology review to determine if the source will be designed, built and equipped to comply with all applicable emission standards prescribed under 40 CFR Part 61 or 63 or Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

9VAC5-80-1200. Compliance determination and verification by performance testing.

A. For stationary sources other than those specified in subsection B of this section, compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.

B. For stationary sources of toxic pollutants, compliance with emission standards shall be determined in accordance with the provisions of 9VAC5-60-20 and shall be verified by emission tests in accordance with the provisions of 9VAC5-60-30.

C. Testing required by subsections A and B of this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the ~~board~~ department shall be provided by the owner with one or, upon request, more copies of a written report of the results of the tests.

D. For sources subject to the provisions of 40 CFR Part 60, 61 or 63, the compliance determination and performance test requirements of subsections A, B and C of this section shall be met as specified in those parts of Title 40 of the Code of Federal Regulations.

E. For sources other than those specified in subsection D of this section, the requirements of subsections A, B and C of this section shall be met unless the ~~board~~ department:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

2. Approves the use of an equivalent method;

3. Approves the use of an alternative method, the results of which the ~~board~~ department has determined to be adequate for indicating whether a specific source is in compliance;

4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the ~~board~~ department reasonably expects the source to perform in compliance with applicable standards; or

5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the ~~board's~~ department's satisfaction that the source is in compliance with the applicable standard.

F. The provisions for the granting of waivers under subsection E of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the ~~board~~ department to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

G. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirement of the implementation plan, or any other applicable federal requirement promulgated under the federal Clean Air Act.

9VAC5-80-1210. Permit invalidation, suspension, revocation and enforcement.

A. In addition to the sources subject to this article, the provisions of this section shall apply to sources specified below:

1. Any stationary source (or portion of it), the construction, modification, or relocation of which commenced on or after March 17, 1972.

2. Any stationary source (or portion of it), the reconstruction of which commenced on or after December 10, 1976.

B. A minor NSR permit shall become invalid if a program of continuous construction, reconstruction or modification is not commenced within 18 months from the date the minor NSR permit is granted.

C. A minor NSR permit shall become invalid if a program of construction, reconstruction or modification is discontinued for a period of 18 months or more, or if a program of construction, reconstruction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of the

phased construction of a new stationary source or project; each phase must commence construction within 18 months of the projected and approved commencement date.

D. The ~~board~~ department may extend the periods prescribed in subsections B and C of this section upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the ~~board~~ department, such extensions may be granted using the procedures for minor amendments in 9VAC5-80-1280.

E. Any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source subject to this section who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

F. Minor NSR permits shall be subject to such terms and conditions set forth in the permit as the ~~board~~ department may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

G. The ~~board~~ department may revoke any minor NSR permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emissions limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

H. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any minor NSR permit for any of the grounds for revocation contained in subsection G of this section or for any other violations of the regulations of the board.

I. The permittee shall comply with all terms and conditions of the minor NSR permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) suspension or revocation.

J. Violation of the regulations of the board shall be grounds for revocation of minor NSR permits and are subject to the civil charges, penalties and all other relief contained in Part V (9VAC5-170-120 et seq.) of 9VAC5-170 (Regulation for General Administration) and the Virginia Air Pollution Control Law.

K. The ~~board~~ department shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a minor NSR permit, or to render a minor NSR permit invalid.

L. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department and the owner from making a mutual determination that a minor NSR permit is invalid or revoked prior to any final decision rendered under subsection K of this section.

M. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department and the owner from making a mutual determination that a minor NSR permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

N. Except with respect to minor NSR permits issued in accordance with Article 3 (9VAC5-60-120 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources), the provisions of subsections B, C, and D shall not apply to sources subject to the federal hazardous air pollutant new source review program.

9VAC5-80-1230. Compliance with local zoning requirements.

No provision of this part or any permit issued thereunder shall relieve any owner from the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the ~~board~~ department of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9VAC5-80-1240. Transfer of permits.

A. No person shall transfer a minor NSR permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current minor NSR permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current minor NSR permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a minor NSR permit from one location to another shall not apply to the relocation of portable emissions units that are exempt from the provisions of this article by 9VAC5-80-1105 A 1 c.

E. The provisions of this section concerning the transfer of a minor NSR permit from one piece of equipment to another shall not apply to the replacement of an emissions unit that is exempt from the provisions of this article by 9VAC5-80-1105 A 2 a.

9VAC5-80-1250. General permits.

A. The requirements for issuance of a general permit regulation are as follows:

1. The board may issue a general permit regulation covering a stationary source or emissions unit category containing numerous similar stationary sources or emissions units that meet the following criteria:

a. All stationary sources or emissions units in the category shall be essentially the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Stationary sources or emissions units shall not be subject to case-by-case standards or requirements.

c. Stationary sources or emissions units shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Stationary sources or emissions units operating under the authority of a general permit shall comply with all requirements applicable to other permits issued under this article.

3. General ~~permits~~ permit regulations shall (i) identify the criteria by which stationary sources or emissions units may qualify for the general permit and (ii) describe the process for stationary sources or emissions units to use in applying for the general permit.

4. General ~~permits~~ permit regulations shall be issued in accordance with § 2.2-4006 A 8 of the Administrative Process Act.

5. In addition to fulfilling the requirements specified by law, the notice of public comment shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit regulation;

b. The criteria to be used in determining which stationary sources or emissions units qualify for coverage under the general permit;

c. A brief description of the stationary source or emissions unit category that the department believes qualifies for coverage under the general permit including, but not limited to, an estimate of the number of individual stationary sources or emissions units in the category;

d. A brief description of the application process to be used by owners of stationary sources or emissions units to request coverage under the general permit regulation; and

e. A brief description of the public comment procedures.

B. The requirements for application for coverage under a general permit are as follows:

1. Stationary sources or emissions units which qualify for coverage under a general permit may apply to the ~~board~~ department for coverage under the terms of the general permit regulation. Stationary sources or emissions units that do not qualify for coverage under a general permit shall apply for a minor NSR permit.

2. The application shall meet the requirements of this article and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Stationary sources or emissions units that qualify for coverage under the general permit regulation after coverage is granted to other stationary sources or emissions units in the category addressed by the general permit shall file an application with the ~~board~~ department using the application process described in the general permit. The ~~board~~ department shall grant authority to operate under the general permit to the stationary source or emissions unit if it determines that the stationary source or emissions unit meets the criteria set out in the general permit.

C. The requirements for granting authority to operate under a general permit are as follows:

1. The ~~board~~ department shall grant authority to operate under the conditions and terms of the general permit to stationary sources or emissions units that meet the criteria set out in the general permit covering the specific stationary source or emissions unit category.

2. Granting authority to operate under a general permit to a stationary source or emissions unit covered by a general permit shall not require compliance with the public participation procedures under 9VAC5-80-1170.

3. A response to each general permit regulation application may be provided at the discretion of the ~~board~~ department. The general permit may specify a reasonable time period after which the owner of a stationary source or emissions unit that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Stationary sources or emissions units authorized to operate under a general permit may be issued a letter, a certificate, or a summary of the general permit provisions, limits, and requirements, or any other document which would attest that the stationary source or emissions unit is authorized to operate under the general permit.

5. The general permit regulation shall specify where the general permit and the letter, certificate, summary or other document shall be maintained by the source.

D. The stationary source or emissions unit shall be subject to enforcement action under 9VAC5-80-1210 for operation without a minor NSR permit if the stationary source or emissions unit is later determined by the ~~board~~ department not to qualify for the conditions and terms of the general permit.

9VAC5-80-1255. Actions to combine permit terms and conditions.

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the ~~board~~ department may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the ~~board~~ department.

3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

B. The ~~board~~ department may take actions to combine the terms and conditions of state operating permits and new source review permits, along with any changes to state operating permits and new source review permits.

C. If the ~~board~~ department and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the ~~board~~ department may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the ~~board~~ department may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.

4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:

a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.

b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the

applicable major NSR programs shall be the enabling permit program for that term or condition.

c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

9VAC5-80-1260. Actions to change permits.

A. The general requirements for actions to make changes to minor NSR permits are as follows:

1. Except as provided in subdivision 3 of this subsection, changes to a minor NSR permit shall be made as specified under subsections B and C of this section and 9VAC5-80-1270 through 9VAC5-80-1300.

2. Changes to a minor NSR permit may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department as specified in subsection C of this section.

3. Changes to a minor NSR permit and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

4. This section shall not be applicable to general permits.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a minor NSR permit by submitting a written request to the ~~board~~ department for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit changes can be found in 9VAC5-80-1270 through 9VAC5-80-1290.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The ~~board~~ department may initiate a change to a minor NSR permit through the use of permit reopenings as specified in 9VAC5-80-1300.

9VAC5-80-1270. Administrative permit amendments.

A. Administrative permit amendments shall be used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-1240 have been fulfilled.

B. The administrative permit amendment procedures are as follows:

1. The ~~board~~ department will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department will incorporate the changes without providing notice to the public under 9VAC5-80-1170 and designate in the permit amendment that such permit revisions have been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9VAC5-80-1280. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement.

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

3. Do not require or change a case-by-case determination of an emissions limitation or other requirement.

4. Except as provided in subdivision C 2 of this section, do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

a. An emissions cap assumed to avoid classification as a project subject to the new source review program or as a modification under § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

5. Are not modifications under the new source review program or under § 112 of the federal Clean Air Act that would otherwise require a permit under the new source review program.

6. Are not required to be processed as a significant amendment under 9VAC5-80-1290 or as an administrative permit amendment under 9VAC5-80-1270.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require new or more frequent monitoring or reporting by the permittee or a reduction in the level of an emissions cap.

3. Designate any minor NSR permit term or condition that meets the criteria in 9VAC5-80-1120 F 1 as state-only enforceable as provided in 9VAC5-80-1120 F 2 for any minor NSR permit or any repealed or amended regulation from which this article is derived.

4. Apply any minor NSR permit term or condition that is applicable to an existing emissions unit to its replacement emissions unit that otherwise meets the requirements for exemption from the minor new source review permit program requirements under the provisions of 9VAC5-80-1105 A 2 a.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a minor NSR permit if the ~~board~~ department and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

1. In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated air pollutant.

2. Any emissions cap contained in the permit shall be adjusted downward appropriately so that the emissions unit's potential to emit does not reflect any compound no longer considered a regulated air pollutant.

D. A request for the use of minor permit amendment procedures shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs, accompanied by a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-1170 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed amendment.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions he seeks to modify if the applicant has submitted a suggested proposed permit amendment pursuant to subsection D of this section. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

9VAC5-80-1290. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1280 or as administrative amendments under 9VAC5-80-1270.

2. Significant amendment procedures shall be used for those permit amendments that meet any one of the following criteria:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emissions limitation or other requirement.

c. Seek to establish or change a minor NSR permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a project subject to the new source review program or as a modification under § 112 of the federal Clean Air Act; and

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

3. Significant amendment procedures may not be used to bypass the public participation requirements in 9VAC5-80-1170 for an application for a project that would be subject to the minor new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. At the discretion of the ~~board~~ department, the provisions of 9VAC5-80-1170 D and E shall apply to requests made under this section if the emissions unit subject to the request under this section was subject to review in any previous permit application that was subject to 9VAC5-80-1170.

D. The ~~board~~ department will normally take final action on significant permit amendments within 90 days after receipt of a complete request. If a public hearing is required, processing time for a permit amendment is normally 180 days following receipt of a complete request except in cases where ~~direct consideration of the request by the board is granted pursuant to 9VAC5-80-25~~ the permit must be processed according to 9VAC5-80-45. The ~~board~~ department may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the ~~board~~ department under subsection D of this section.

9VAC5-80-1300. Reopening for cause.

A. A minor NSR permit may be reopened and revised under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The ~~board~~ department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit.

3. The ~~board~~ department determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the requirements contained in this article.

4. A new emission standard prescribed under 40 CFR Part 60, 61 or 63 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a minor NSR permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

9VAC5-80-1410. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the ~~board~~ department, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this section, all terms not defined in subsection C of this section shall have the meaning given them in 9VAC5 Chapter 10 (9VAC5-10-10 et seq.), unless otherwise required by context.

C. Terms defined.

"Affected source" means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a MACT standard.

"Affected states" are all states:

1. Whose air quality may be affected and that are contiguous to the Commonwealth; or

2. Whose air quality may be affected and that are within 50 miles of the major source for which a case-by-case MACT determination is made in accordance with this article.

"Available information" means, for purposes of identifying control technology options for the stationary source, information contained in the following information sources as of the date of approval of the permit:

1. A relevant proposed regulation, including all supporting information.

2. Background information documents for a draft or proposed regulation.

3. Data and information available from the Control Technology Center developed pursuant to § 113 of the federal Clean Air Act.

4. Data and information contained in the Aerometric Informational Retrieval System including information in the MACT database.

5. Any additional information that can be expeditiously provided by the administrator.

6. For the purpose of determinations by the ~~board~~ department, any additional information provided by the

applicant or others, and any additional information considered available by the ~~board~~ department.

"Begin actual construction" means initiation of permanent physical on-site construction of an emissions unit. This includes installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Begin actual reconstruction" means initiation of permanent physical on-site reconstruction of an emissions unit. This includes installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.

"Best controlled similar source" means a stationary source that (i) has comparable emissions and is structurally similar in design and capacity to other stationary sources such that the stationary sources could be controlled using the same control technology and (ii) uses a control technology that achieves the lowest emission rate among all other similar sources in the United States.

"Case-by-case MACT determination" means a determination by the ~~board~~ department, pursuant to the requirements of this article, that establishes a MACT emission limitation, MACT work practice standard, or other MACT requirements for a stationary source subject to this article.

"Commenced" means, with respect to construction or reconstruction of a stationary source, that the owner has undertaken a continuous program of construction or reconstruction or that an owner has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting additional information.

"Construct a major source" means:

1. To fabricate, erect, or install a major source at any undeveloped site; or

2. To fabricate, erect, or install a major process or production unit at any site.

"Construction" means:

1. The fabrication, erection, or installation of a major source at any undeveloped site; or

2. The fabrication, erection, or installation of a major process or production unit at any site.

"Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including but not limited to, measures that:

1. Reduce the quantity of or eliminate emissions of such pollutants through process changes, substitution of materials, or other modifications;

2. Enclose systems or processes to eliminate emissions;

3. Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

4. Are design, equipment, work practice, or operational standards , including requirements for operator training or certification; or

5. Are a combination of subdivisions 1 through 4 of this definition.

"Electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

"Emergency" means, in the context of 9VAC5-80-1580 C, a situation where immediate action on the part of a source is needed and where the timing of the action makes it impractical to meet the requirements of this article, such as sudden loss of power, fires, earthquakes, floods, or similar occurrences.

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

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the ~~board or the~~ department and meet the following criteria:

1. Are permanent.

2. Contain a legal obligation for the owner to adhere to the terms and conditions.

3. Do not allow a relaxation of a requirement of the state implementation plan.

4. Are technically accurate and quantifiable.

5. Include averaging times or other provisions that allow at least monthly , or a shorter period if necessary to be consistent with the emission standard, checks on compliance. This may include but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with 9VAC5-80-1490 and other regulations of the board.

6. Require a level of recordkeeping, reporting, and monitoring sufficient to demonstrate compliance.

"EPA" means the U.S. Environmental Protection Agency.

"Federal operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include the following:

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

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

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

4. Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP).

5. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51. This does not include limitations and conditions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

6. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into a SIP as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability. This does not include limitations and conditions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

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

8. Individual consent agreements that EPA has legal authority to create.

"Fixed capital cost" means the capital needed to provide all the depreciable components of an existing source.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Hazardous air pollutant" means any air pollutant listed in § 112(b) of the federal Clean Air Act as amended by ~~40 CFR 63.60~~ 40 CFR Part 63, Subpart C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"MACT standard" means (i) an emission standard; (ii) an alternative emission standard; or (iii) an alternative emission limitation promulgated in 40 CFR Part 63 that applies to the stationary source, the group of stationary sources, or the portion of a stationary source regulated by such standard or limitation. A MACT standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique , including prohibition of emissions, that the administrator establishes for new or existing sources to which such standard or limitation applies. Every MACT standard established pursuant to § 112 of the federal Clean Air Act includes subpart A of 40 CFR Part 63 and all applicable appendices of 40 CFR Part 63 or of other parts of Title 40 of the Code of Federal Regulations that are referenced in that standard.

"Major process or production unit" means any process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

"Major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the ~~board~~ department establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this definition.

"Maximum achievable control technology (MACT) emission limitation" means the emission limitation that is not less stringent than the emission limitation achieved in practice by the best controlled similar source and that reflects the maximum degree of reduction in emissions that the ~~board~~ department, taking into consideration the cost of achieving such emission reduction and any nonair quality health and environmental impacts and energy requirements, determines is achievable by the constructed or reconstructed major source.

"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110(a)(2)(C), 165 (relating to permits in prevention of significant deterioration areas) and 173 (relating to permits in

nonattainment areas) and 112 (relating to permits for hazardous air pollutants) of the federal Clean Air Act.

"Permit" means a document issued pursuant to this article containing all federally enforceable conditions necessary to enforce the application and operation of any maximum achievable control technology or other control technologies such that the MACT emission limitation is met.

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

"Presumptive MACT" means a preliminary MACT determination made by EPA, in consultation with states and other stakeholders, after data on a source category's emissions and controls have been collected and analyzed, but before the MACT standard has been promulgated.

"Process or production unit" means any collection of structures or equipment or both, that processes, assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product. A single facility may contain more than one process or production unit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the permit application information~~,~~, exclusive of confidential information, the preliminary review and analysis, and the preliminary decision of the ~~board~~ department regarding the permit application.

"Reconstruct a major source" means to replace components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new process or production unit; and

2. It is technically and economically feasible for the reconstructed major source to meet the applicable standard for new sources established in a permit.

"Reconstruction" means the replacement of components at an existing major process or production unit whenever:

1. The fixed capital cost of the new components exceeds 50% of the fixed capital cost that would be required to construct a comparable new process or production unit; and

2. It is technologically and economically feasible for the reconstructed process or production unit to meet the applicable standard for new sources established in a permit.

"Research and development activities" means activities conducted at a research or laboratory facility whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for sale or exchange for commercial profit, except in a de minimis manner.

"Similar source" means a stationary source or process that has comparable emissions and is structurally similar in design and capacity to a constructed or reconstructed major source such that the source could be controlled using the same control technology.

"Source category list" means the list and schedule issued pursuant to § 112(c) and (e) for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 63 FR 7155, February 12, 1998.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant.

"Uncontrolled emission rate" means the emission rate from a source when operating at maximum capacity without air pollution control equipment. Air pollution control equipment is equipment that enables the source to conform to applicable air pollution control laws and regulations and that is not vital to its operation.

9VAC5-80-1420. General.

A. No owner or other person shall begin actual construction or reconstruction of any major source of hazardous air pollutants without first obtaining from the ~~board~~ department a permit to construct and operate or to reconstruct and operate such source.

B. The ~~board~~ department may combine the requirements of and the permits for emissions units within a stationary source subject to the new source review program into one permit. Likewise the ~~board~~ department may require that applications for permits for emissions units within a stationary source required by any provision of the new source review program be combined into one application.

C. All provisions contained in the permit shall be federally enforceable upon the effective date of issuance of the permit, except for those provisions that are established to address plans, programs, or regulatory requirements that are enforceable only by the Commonwealth.

D. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department from granting permits for

programs of construction or reconstruction in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

E. The MACT emission limitations and requirements established according to this article shall be effective as required by 9VAC5-80-1450 I, consistent with the principles established in subsection F of this section, and supported by the information listed in 9VAC5-80-1440. The owner shall comply with the requirements in 9VAC5-80-1450 J and 9VAC5-80-1490, and with all applicable requirements in Subpart A of 40 CFR Part 63.

F. The following general principles shall govern preparation by the owner of each permit application or other application for stationary sources requiring a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the ~~board~~ department:

1. The MACT emission limitation or MACT requirements recommended by the applicant and approved by the ~~board~~ department shall not be less stringent than the emission control which is achieved in practice by the best controlled similar source, as determined by the ~~board~~ department.

2. Based upon available information, the MACT emission limitation and control technology (including any requirements under subdivision 3 of this subsection) recommended by the applicant and approved by the ~~board~~ department shall achieve the maximum degree of reduction in emissions of hazardous air pollutants which can be achieved by utilizing those control technologies that can be identified from the available information, taking into consideration the costs of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements associated with the emission reduction.

3. The applicant may recommend a specific design, equipment, work practice, or operational standard, or a combination thereof, and the ~~board~~ department may approve such a standard if the ~~board~~ department specifically determines that it is not feasible to prescribe or enforce an emission limitation. The phrase "not feasible" means any situation in which the ~~board~~ department determines that:

a. A hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with the Regulations for the Control and Abatement of Air Pollution.

b. The application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

4. If the administrator has either proposed a MACT emission standard or made a presumptive MACT determination for the source category which includes the constructed or reconstructed major source, the ~~board~~ department shall consider the MACT emission limitations and requirements of the proposed standard or presumptive MACT determination in determining the MACT emission limitation applicable to the constructed or reconstructed major source.

G. The provisions of subsection F of this section shall not apply to new, major process or production units, provided the process or production unit satisfies the criteria in subdivisions 1 through 6 of this subsection:

1. All hazardous air pollutants emitted by the process or production unit that would otherwise be controlled under the requirements of this article will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

2. a. The ~~board~~ department has determined within a period of five years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT) or lowest achievable emission rate (LAER), determined in accordance with 9VAC5-50-280 (BACT) or 9VAC5-50-270 (LAER), for the category of pollutants which includes those hazardous air pollutants to be emitted by the process or production unit; or

b. The ~~board~~ department determines that the control of hazardous air pollutant emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);

3. The ~~board~~ department determines that the percent control efficiency for emissions of hazardous air pollutants from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

4. The ~~board~~ department has provided notice and an opportunity for public comment concerning its determination that criteria in subdivisions 1 through 3 of this subsection apply and concerning the continued adequacy of any prior BACT or LAER determination;

5. If any commenter has asserted that a prior BACT or LAER determination is no longer adequate, the ~~board~~ department has determined that the level of control required by that prior determination remains adequate; and

6. Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the ~~board~~ department are predicated will be construed by the ~~board~~ department as applicable requirements under the federal operating permit program

and either have been incorporated into any existing federal operating permit for the stationary source or will be incorporated into such permit upon issuance.

9VAC5-80-1430. Applications.

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures approved by the ~~board~~ department. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted.

B. A separate application is required for each major source.

C. For projects with phased development, a single application should be submitted covering the entire project.

D. Any application form, report, or compliance certification submitted to the ~~board~~ department shall comply with the provisions of 9VAC5-20-230.

9VAC5-80-1440. Application information required.

A. The ~~board~~ department shall furnish application forms to applicants. Completion of these forms serves as initial registration of new and reconstructed sources.

B. Each application for a permit shall include such information as may be required by the ~~board~~ department to determine compliance with the MACT emission limitation established under this article. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A brief description of the major source, including a description of the source's processes and products (by Standard Industrial Classification Code), to be constructed or reconstructed and identification of any listed source category or categories in which it is included.

3. All emissions of hazardous air pollutants.

a. A permit application shall describe all emissions of hazardous air pollutants emitted from any emissions unit to be covered by the permit.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent quantifiable.

4. The hazardous air pollutants emitted by the constructed or reconstructed major source and the estimated emission rate for each such hazardous air pollutant. Emissions rates shall be expressed in tons per year and in such other terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. The maximum and expected utilization of capacity of the constructed or reconstructed major source and the associated uncontrolled emission rates for that source.

6. The controlled emissions for the constructed or reconstructed major source in tons per year at expected and maximum utilization of capacity.

7. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all hazardous air pollutants at the source.

9. Calculations on which the information in subdivisions 3 through 8 of this subsection is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

10. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source.

11. The expected commencement date for the construction or reconstruction of the major source.

12. The expected completion date for construction or reconstruction of the major source.

13. The anticipated date of startup for the constructed or reconstructed major source.

14. Any additional information or documentation that the ~~board~~ department deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit.

C. In each instance where a stationary source would require additional control technology or a change in control technology to be in compliance with the MACT emission limitation established under this article, the application shall contain the following information:

1. Information described in subsection B of this section.

2. The control technology selected by the owner and compliance monitoring devices or activities that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in 9VAC5-80-1420 F.

3. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 9VAC5-80-1420 F.

4. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the ~~board~~ department).

5. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health and environmental impacts or energy requirements for the selected control technology.

6. Any other relevant information required pursuant to Subpart A of 40 CFR Part 63.

D. In each instance where the owner contends that a stationary source will be in compliance, upon startup, with the MACT emission limitation established under this article without a change in control technology, the application shall contain:

1. Information described in subsections B and C of this section; and

2. Documentation of the control technology in place.

E. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the ~~board~~ department.

9VAC5-80-1450. Action on permit application.

A. Within 45 days after receipt of an application, the ~~board~~ department shall notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the ~~board~~ department in writing and shall include: (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the ~~board~~ department shall notify the applicant of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the ~~board~~ department received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met.

B. The ~~board~~ department will normally process an application according to the steps specified in subdivisions 1 through 5 of this subsection. Processing time for these steps is normally 180 days following receipt of a complete application. The ~~board~~ department may extend this time period if additional information is needed.

1. Complete the application review and analysis in accordance with 9VAC5-80-1480 and the preliminary decision of the ~~board~~ department;

2. Complete the emission limitation review (if any);

3. Complete the public participation requirements in 9VAC5-80-1460;

4. Consider the public comments received in accordance with 9VAC5-80-1460; and

5. Completion of the final review and analysis and the final determination of the ~~board~~ department.

C. At its discretion, the ~~board~~ department may undertake the following steps prior to commencing with the public participation requirements of 9VAC5-80-1460:

1. The ~~board~~ department shall initially approve the recommended emission limitation and other terms set forth in the application, or the ~~board~~ department shall notify the owner in writing of its intent to disapprove the application, within 30 calendar days after the owner is notified in writing that the application is complete.

2. The owner may present, in writing, within 60 calendar days after receipt of notice of the ~~board's~~ department's intent to disapprove the application, additional information or arguments pertaining to, or amendments to, the application for consideration by the ~~board~~ department before it decides whether to finally disapprove the application.

3. The ~~board~~ department shall either initially approve or issue a final disapproval of the application within 90 days after it notifies the owner of an intent to disapprove or within 30 days after the date additional information is received from the owner, whichever is earlier.

D. The ~~board~~ department will normally take final action on an application after completion of the steps in subsections B and C of this section~~, except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-1460 G, and will take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter~~ and, if applicable, 9VAC5-80-45.

E. The ~~board~~ department shall notify the applicant in writing of its final decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9VAC5-80-1490.

F. A final decision by the ~~board~~ department to disapprove any application shall be in writing and shall specify the grounds on which the disapproval is based. If any application is finally disapproved, the owner may submit a subsequent application concerning construction or reconstruction of the same major source, provided that the subsequent application has been amended in response to the stated grounds for the prior disapproval.

G. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

H. Within five days after notification to the applicant pursuant to subsection B of this section, the notification and any

comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9VAC5-80-1460 H 1.

I. The ~~board~~ department shall send a copy of any final permit issued to a stationary source to the administrator through the appropriate regional office and to all other state and local air pollution control agencies having jurisdiction in affected states. Within 60 days of the issuance of the final permit, the ~~board~~ department shall provide a copy of such permit to the administrator, and shall provide a summary in a compatible electronic format for inclusion in the MACT database.

J. The effective date of a case-by-case MACT determination shall be the date the permit becomes final.

K. On and after the date of startup, a constructed or reconstructed major source which is subject to the requirements of this article shall be in compliance with all applicable requirements specified in the permit.

L. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC5-80-1460. Public participation.

A. No later than 15 days after receiving the initial determination notification required under 9VAC5-80-1450 A, the applicant for a permit for a major source of hazardous air pollutants shall notify the public of the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the ~~board~~ department and shall include the following:

1. The source name, location, and type;

2. The applicable pollutants and the total quantity of each that the applicant estimates will be emitted and a brief statement of the air quality impact of such pollutants;

3. The control technology proposed to be used at the time of the publication of the notice;

4. The date, time, and place of the informational briefing; and

5. The name and telephone number of a contact person employed by the applicant who can answer questions about the proposed source.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the ~~board~~ department shall attend and provide information and answer questions on the permit application review process.

D. Upon a determination by the ~~board~~ department that an alternative plan will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the ~~board~~ department, all permit applications shall be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period a public hearing will be held with notice in accordance with subsection F of this section.

F. The ~~board~~ department shall notify the public by advertisement in at least one newspaper of general circulation in the area affected of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the ~~board~~ department for at least 15 days after any hearing ~~unless the board votes to shorten the period~~.

1. Information on the permit application, exclusive of confidential information under 9VAC5-170-60, as well as the preliminary review and analysis and preliminary determination of the ~~board~~ department shall be available for public inspection during the entire public comment period in at least one location in the affected area.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator.

3. Notices of public hearings published under this section shall meet the requirements of § 10.1-1307.01 (A) of the Virginia Air Pollution Control Law.

G. ~~Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:~~

~~1. The name, mailing address, and telephone number of the requester.~~

~~2. The names and addresses of all persons for whom the requester is acting as a representative ; for the purposes of this requirement, an unincorporated association is a person.~~

~~3. The reason why direct consideration by the board is requested.~~

~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.~~

~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.~~ Reserved.

H. The ~~board~~ department will ~~review any request made under subsection G of this section and will~~ take final action on the ~~request~~ application as provided in 9VAC5-80-1450 D.

I. In order to facilitate the efficient issuance of permits under Articles 1 and 3 of this chapter, upon request of the applicant the ~~board~~ department shall process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

J. If appropriate, the ~~board~~ department may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the ~~board~~ department provides a public briefing, the requirements of subsection F of this section concerning public notification will be followed.

K. If the ~~board~~ department finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request board consideration~~ as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action~~. The department shall post such notice on the department website and on a department social media account~~; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit unless the ~~board votes~~ director chooses to shorten the period.

9VAC5-80-1470. Standards and conditions for granting permits.

A. No permit shall be granted pursuant to this article unless it is shown to the satisfaction of the ~~board~~ department that the source will be designed, built and equipped to operate without causing a violation of the applicable provisions of the regulations of the board and that the following standards have been met:

1. The source shall be designed, built and equipped to comply with applicable emission standards and other requirements prescribed under 9VAC5 Chapter 60 (9VAC5-60-10 et seq.).

2. The source shall be designed, built and equipped to comply with the MACT emission limitation and other requirements prescribed in the permit.

3. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board.

B. Permits granted pursuant to this article shall:

1. Contain a MACT emission limitation (or a MACT work practice standard if the ~~board~~ department determines it is not feasible to prescribe or enforce an emission limitation) to control the emissions of hazardous air pollutants which is determined by the ~~board~~ department and conforms to the principles set forth in 9VAC5-80-1420 F.

2. Specify any notification, operation and maintenance, performance testing, monitoring, reporting and recordkeeping requirements.

3. Include the following:

a. In addition to the MACT emission limitation or MACT work practice standard established under this article, additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation.

b. Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with the requirements of 9VAC5-80-110 K.

c. Monitoring capable of demonstrating continuous compliance during the applicable reporting period. Such monitoring data shall be of sufficient quality to be used as a basis for enforcing all applicable requirements established under this article, including emission limitations.

d. A statement requiring the owner to comply with all applicable requirements contained in this article.

C. Permits granted pursuant to this article shall contain emission standards as necessary to implement the provisions of this article. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emission levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions which would exceed the emissions rate based on the potential to emit of the emissions unit.

3. Standards shall only include limitations that are determined by the ~~board~~ department to be achievable through application of production processes or available methods, systems, and techniques, including, but not limited to, any of the following: emissions control equipment, fuel cleaning or treatment, fuel combustion techniques, or substitution of less toxic or nontoxic materials.

4. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

D. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. Limit on production rates with time frames as appropriate to support the emission standards.

b. Limit on raw material usage rate.

c. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

4. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

5. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:

a. Pressure indicators and required pressure drop.

b. Temperature indicators and required temperature.

c. pH indicators and required pH.

d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

9VAC5-80-1480. Application review and analysis.

A. No permit shall be granted pursuant to this article unless compliance with the standards in 9VAC5-80-1470 is

demonstrated to the satisfaction of the ~~board~~ department by a review and analysis of the application performed on a source-by-source basis.

B. Applications for stationary sources of hazardous air pollutants shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable emission standards prescribed under 9VAC5-80-1470.

9VAC5-80-1490. Compliance determination and verification by performance testing.

A. An owner of a constructed or reconstructed major source shall comply with all requirements in the final permit issued pursuant to this article, including but not limited to any emission limitation or work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements.

B. An owner of a constructed or reconstructed major source which has obtained a permit shall be deemed to be in compliance with the Virginia Air Pollution Control Law only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the permit issued pursuant to this article. Any violation of such requirements by the owner or any other person shall be deemed by the ~~board~~ department to be a violation of the prohibition on construction or reconstruction in this article for whatever period the owner is determined to be in violation of such requirements, and shall subject the owner to appropriate enforcement action under the Virginia Air Pollution Control Law.

C. Compliance with emission standards shall be determined in accordance with the provisions of 9VAC5-60-20 and shall be verified by emission tests in accordance with the provisions of 9VAC5-60-30.

D. Testing required by this section shall be conducted by the owner within 60 days after achieving the maximum production rate at which the new or reconstructed source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the ~~board~~ department shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

E. The requirements of subsections C and D of this section shall be met unless the ~~board~~ department:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

2. Approves the use of an equivalent method;

3. Approves the use of an alternative method, the results of which the ~~board~~ department has determined to be adequate for indicating whether a specific source is in compliance;

4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the ~~board~~ department reasonably expects the new or reconstructed source to perform in compliance with applicable standards; or

5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the ~~board's~~ department's satisfaction that the source is in compliance with the applicable standard.

F. The provisions for the granting of waivers under subsection E of this section are intended for use in determining the initial compliance status of a source, and the granting of a waiver does not obligate the ~~board~~ department to do so for determining compliance once the source has been in operation for more than one year beyond the initial startup date.

9VAC5-80-1500. Permit invalidation, rescission, revocation and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction or reconstruction is not commenced within the latest of the following time frames:

1. Eighteen months from the date the permit is granted;

2. Nine months from the date of the issuance of the last permit or other authorization (other than permits granted pursuant to this article) from any governmental entity; or

3. Nine months from the date of the last resolution of any litigation concerning any such permits or authorizations (including permits granted pursuant to this article).

B. A permit granted pursuant to this article shall become invalid if a program of construction or reconstruction is discontinued for a period of 18 months or more, or if a program of construction or reconstruction is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

C. The ~~board~~ department may extend the periods prescribed in subsections A and B of this section, by no more than 12 months, upon a satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the ~~board~~ department, such extensions may be granted without being subject to the requirements of 9VAC5-80-1460.

D. Any owner who constructs or operates a new or reconstructed source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or reconstructed source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement

action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the ~~board~~ department may deem necessary to ensure compliance with all applicable requirements of the regulations.

F. The ~~board~~ department may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments to it;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit; or

4. Fails to comply with the applicable provisions of this article.

G. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any permit for any of the grounds for revocation contained in subsection F of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. A permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and may be grounds for (i) enforcement action or (ii) termination or revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part V (9VAC5-170-120 et seq.) of 9VAC5 Chapter 170 and the Virginia Air Pollution Control Law.

J. The ~~board~~ department shall notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit, or to render a permit invalid.

K. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department and the owner from making a mutual determination that a permit is invalid or revoked prior to any final decision rendered under subsection J of this section.

L. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department and the owner from making a mutual determination that a permit is rescinded because all of the statutory or regulatory requirements (i) upon which the permit is based or (ii) that necessitated issuance of the permit are no longer applicable.

9VAC5-80-1530. Transfer of permits.

A. No persons shall transfer a permit from one location to another or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change.

9VAC5-80-1540. Changes to permits.

A. The general requirements for making changes to permits are as follows:

1. Changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-1550 through 9VAC5-80-1580 of this article.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) of this part shall be made as specified in Article 1 of this part.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the ~~board~~ department for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit revisions can be found in 9VAC5-80-1550 through 9VAC5-80-1570.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-1580.

9VAC5-80-1550. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current

and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-1420 have been fulfilled.

4. The combining of permits under the new source review program as provided in 9VAC5-80-1420 B.

B. The administrative permit amendment procedures are as follows:

1. The ~~board~~ department will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department shall incorporate the changes without providing notice to the public under 9VAC5-80-1460. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9VAC5-80-1560. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard;

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

a. An emissions cap assumed to avoid classification as a modification subject to the new source review program or § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not a result of modifications subject to the new source review program; and

6. Are not required to be processed as a significant amendment under 9VAC5-80-1570; or as an administrative permit amendment under 9VAC5-80-1550.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally approved program. Minor permit amendment procedures may also be used to require more frequent monitoring or reporting by the permittee.

C. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the ~~board~~ department and the owner make a mutual determination that the provision is rescinded because all of the statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable.

D. A request for the use of minor permit amendment procedures shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs.

2. A request that such procedures be used.

E. The public participation requirements of 9VAC5-80-1460 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department shall do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follow:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions that the owner seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the

existing permit terms and conditions that the owner seeks to modify may be enforced against the owner.

9VAC5-80-1570. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1560 or as administrative amendments under 9VAC5-80-1550.

2. Significant amendment procedures shall be used for those permit amendments that:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) An emissions cap assumed to avoid classification as a modification subject to the new source review program or § 112 of the federal Clean Air Act.

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act.

d. Result from modifications subject to the new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. The provisions of 9VAC5-80-1460 shall apply to requests made under this section.

D. The ~~board~~ department will normally take final action on significant permit amendments within 90 days after receipt of a complete request.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the ~~board~~ department under subsection D of this section.

9VAC5-80-1580. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emission units covered by the permit after a permit is issued but prior to commencement of construction.

2. The ~~board~~ department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The ~~board~~ department determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the conditions of the permit are not sufficient to meet all of the standards and requirements contained in this article.

4. A new emission standard prescribed under Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5 Chapter 60 becomes applicable after a permit is issued but prior to initial startup.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

9VAC5-80-1590. Requirements for constructed or reconstructed major sources subject to a subsequently promulgated MACT standard or MACT requirements.

A. If the administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which would be deemed to be a constructed or reconstructed major source under this article before the date the owner has obtained a final and legally effective permit pursuant to this article, the owner shall comply with the promulgated standard by the compliance date in the promulgated standard.

B. If the administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which was deemed to be a constructed or reconstructed major source under this article and has been subject to a prior case-by-case MACT determination pursuant to this article, and the owner obtained a final and legally effective case-by-case MACT determination prior to the promulgation date of the MACT standard, the

~~board~~ department shall (if the initial federal operating permit has not yet been issued) amend the permit issued pursuant to this article in accordance with the reopening procedures of 9VAC5-80-1580 to incorporate the emission standard, or shall (if the initial federal operating permit has been issued) revise the federal operating permit according to the reopening procedures in 9VAC5-80-240 to incorporate the MACT standard.

1. The MACT standard established pursuant to § 112(d) or § 112(h) of the federal Clean Air Act may specify a compliance date for those sources which have obtained a final and legally effective case-by-case MACT determination under this article. In that event, the ~~board~~ department shall reopen the source's federal operating permit in accordance with the procedures in 9VAC5-80-240 to incorporate the applicable compliance date.

2. If no compliance date is specified in the MACT standard established pursuant to § 112(d) or § 112(h) of the federal Clean Air Act for those sources which have obtained a final and legally effective case-by-case MACT determination under this article, the ~~board~~ department shall establish a compliance date that assures the owner will comply with a promulgated MACT standard as expeditiously as practicable, but no longer than eight years after the standard is promulgated, and shall reopen the source's federal operating permit in accordance with procedures in 9VAC5-80-240 to incorporate that compliance date.

C. Notwithstanding the requirements of subsections A and B of this section, if the administrator promulgates a MACT standard under § 112(d) or § 112(h) of the federal Clean Air Act that is applicable to a stationary source, group of stationary sources, or portion of a stationary source which was deemed to be a constructed or reconstructed major source under this article and which is the subject of a prior case-by-case MACT determination pursuant to this article, and the level of control required by the MACT standard issued under § 112(d) or § 112(h) is less stringent than the level of control required by any emission limitation or standard in the prior case-by-case MACT determination, the ~~board~~ department is not required to incorporate any less stringent terms of the promulgated standard in the source's federal operating permit and may, in its discretion, consider any more stringent provisions of the prior case-by-case MACT determination to be applicable legal requirements when issuing or revising the federal operating permit.

9VAC5-80-1605. Applicability.

A. The provisions of this article apply to the construction of any new major stationary source or any project at an existing major stationary source.

B. The provisions of this article apply in prevention of significant deterioration areas designated in 9VAC5-20-205.

C. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not yet commenced on the source or modification.

D. Unless specified otherwise, the provisions of this article apply as follows:

1. Provisions referring to "sources," "new or modified sources" or "stationary sources" apply to the construction of all major stationary sources and major modifications.

2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), or Article 9 (9VAC5-80-2000 et seq.) of this part.

3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9VAC5-80-1625 G.

E. Unless otherwise approved by the ~~board~~ department or prescribed in these regulations, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-1775 A prior to September 1, 2006. Any permit applications that have not been determined to be complete as of September 1, 2006, shall be subject to the new provisions.

F. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this section by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

G. The requirements of this article will be applied in accordance with the following principles:

1. Except as otherwise provided in subsection H of this subsection, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e.,

the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 and 4 of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, is significant for that pollutant.

4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project is significant for that pollutant.

5. The hybrid test for projects that involve multiple types of emissions units shall be conducted as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 and 4 of this subdivision as applicable with respect to each emissions unit, for each type of emissions unit is significant for that pollutant. For example, if a project involves both an existing emissions unit and a new unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 4 of this subsection for the new unit.

H. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9VAC5-80-1865.

I. The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50 and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5 Chapter 60.

J. The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

9VAC5-80-1615. Definitions.

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

B. For the purpose of this article, 9VAC5-50-280, and applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section:

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a, b, and c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-1865. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The ~~board~~ department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

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

"Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal

class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

a. The applicable standards as set forth in 40 CFR Parts 60, 61, and 63;

b. The applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

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

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in this article.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the 10-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the ~~board~~ department for a permit required under this article, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the ~~board~~ department has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this subsection.

"Baseline area":

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: (i) for SO_2, NO_2, or PM_{10}, equal to or greater than 1 µg/m^3 (annual average); or (ii) for $PM_{2.5}$, equal to or greater than 0.3 µg/m^3 (annual average).

b. Area redesignations under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(1) Establishes a minor source baseline date; or

(2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the ~~board~~ department rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

"Baseline concentration"

a. Means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition; and

(2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

(1) In the case of PM_{10} and sulfur dioxide, January 6, 1975;

(2) In the case of nitrogen dioxide, February 8, 1988; and

(3) In the case of $PM_{2.5}$, October 20, 2010.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

(1) In the case of PM_{10} and sulfur dioxide, August 7, 1977;

(2) In the case of nitrogen dioxide, February 8, 1988; and

(3) In the case of $PM_{2.5}$, October 20, 2011.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(A)(ii) or (iii) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and

(2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the ~~board~~ department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the ~~board~~ department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" or "BACT" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the ~~board~~ department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the ~~board~~ department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

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

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for the purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this definition, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit is an existing emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the ~~board or the~~ department and meet the following criteria:

a. Are permanent;

b. Contain a legal obligation for the owner to adhere to the terms and conditions;

c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits on a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

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

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

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

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

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, 111(d) or 129 of the federal Clean Air Act.

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal

construction permit issued under 40 CFR 52.21 or a new source review permit issued under regulations approved by the EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act;

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable";

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

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

h. Individual consent agreements that the EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Lowest achievable emission rate" or "LAER" is as defined in 9VAC5-80-2010 C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant for nonattainment areas in an amount that is equal to or greater than the major source threshold for the PAL pollutant in subdivision a (1) of the definition of "major stationary source " in 9VAC5-80-2010 C.

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_X shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any

superseding legislation) or by reason of a natural gas curtailment plant pursuant to the federal Power Act.

(3) Use of an alternative fuel by reason of any order or rule under § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan; and

(b) Other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

(9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(10) The reactivation of a very clean coal-fired electric utility steam generating unit.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 9VAC5-80-1865 for a PAL for that pollutant. Instead, the definition of "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

(a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(b) Coal cleaning plants (with thermal dryers).

(c) Kraft pulp mills.

(d) Portland cement plants.

(e) Primary zinc smelters.

(f) Iron and steel mill plants.

(g) Primary aluminum ore reduction plants.

(h) Primary copper smelters.

(i) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(j) Hydrofluoric acid plants.

(k) Sulfuric acid plants.

(l) Nitric acid plants.

(m) Petroleum refineries.

(n) Lime plants.

(o) Phosphate rock processing plants.

(p) Coke oven batteries.

(q) Sulfur recovery plants.

(r) Carbon black plants (furnace process).

(s) Primary lead smelters.

(t) Fuel conversion plants.

(u) Sintering plants.

(v) Secondary metal production plants.

(w) Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(x) Fossil fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(z) Taconite ore processing plants.

(aa) Glass fiber processing plants.

(bb) Charcoal production plants;

(2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds or NO_X shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plants.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category that, as of August 7, 1980, is being regulated under 40 CFR Parts 60 and 61.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under NSR programs that are part of the applicable implementation plan.

"Net emissions increase" means:

a. With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-1605 G; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(1) The date five years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if (i) it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and (ii) the ~~board~~ department has not relied on it in issuing a permit for the source under this article (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs

before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

h. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"New source performance standard" or "NSPS" means the U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

"PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the ~~board~~ department that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that

regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner of the major stationary source:

a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved implementation plan;

b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

a. Has not been in operation for the two-year period prior to the enactment of the federal Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;

b. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

c. Is equipped with low-NOX burners prior to the time of commencement of operations following reactivation; and

d. Is otherwise in compliance with the requirements of the federal Clean Air Act.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means:

a. Any pollutant for which an ambient air quality standard has been promulgated. This includes, but is not limited to, the following:

(1) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} issued under this article. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this article.

(2) Any pollutant identified under this subdivision as a constituent or precursor to a pollutant for which an ambient air quality standard has been promulgated. Precursors identified for the purposes of this article shall be the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(b) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(c) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the ~~board~~ department determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(d) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the ~~board~~ department determines that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

b. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act.

c. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act.

d. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act; except that any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act or added to the list pursuant to § 112(b)(2), which have not been delisted pursuant to § 112(b)(3), are not regulated NSR pollutants unless the listed hazardous air pollutant is

also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Replacement unit" means an emissions unit for which all the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The replacement does not change the basic design parameters of the process unit.

d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Repowering" means:

a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

c. The ~~board~~ department may give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under § 409 of the federal Clean Air Act.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM_{10}	15 tpy
$PM_{2.5}$	10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of SO_2 emissions; 40 tpy of NO_X emissions unless demonstrated not to be a $PM_{2.5}$ precursor under the definition of "regulated NSR pollutant"
Ozone	40 tpy of volatile organic compounds or NO_X
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H_2S)	10 tpy
Total Reduced Sulfur (including H_2S)	10 tpy
Reduced Sulfur Compounds (including H_2S)	10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy

Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	40 tpy
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	50 tpy

b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a class I area and have an impact on such area equal to or greater than 1 μg/m^3 (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is significant for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

9VAC5-80-1625. General.

A. No owner or other person shall begin actual construction of any new major stationary source or major modification without first obtaining from the ~~board~~ department a permit to construct and operate such source. The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.

B. The requirements of this article apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this article otherwise provides.

C. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining a permit from the ~~board~~ department to relocate the unit.

D. Prior to the decision of the ~~board~~ department, all permit applications will be subject to a public comment period, a public hearing will be held as provided in 9VAC5-80-1775.

E. The ~~board~~ department will take actions to combine permit terms and conditions as provided in 9VAC5-80-1915. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-1925 as explained in subsection F of this section.

F. The ~~board~~ department will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1925. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection E of this section.

G. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of 9VAC5-50 (New and Modified Stationary Sources), Article 4 (9VAC5-60-200 et seq.) of

9VAC5-60 (Hazardous Air Pollutant Sources), or Article 5 (9VAC5-60-300) of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the ~~board~~ department. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

H. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9VAC5-80-1655. Applications.

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures acceptable to the ~~board~~ department. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted. A separate application is required for each location.

B. For projects with phased development, a single application may be submitted covering the entire project.

C. Any application form, report, or certification submitted to the ~~board~~ department shall comply with the provisions of 9VAC5-20-230.

9VAC5-80-1665. Compliance with local zoning requirements.

No provision of this part or any permit issued thereunder shall relieve an owner of the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the ~~board~~ department of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9VAC5-80-1675. Compliance determination and verification by performance testing.

A. Compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.

B. Testing required by this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the ~~board~~ department shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

C. The requirements of this section shall be met unless the ~~board~~ department:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

2. Approves the use of an equivalent method;

3. Approves the use of an alternative method, the results of which the ~~board~~ department has determined to be adequate for indicating whether a specific source is in compliance;

4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the ~~board~~ department reasonably expects the new or modified source to perform in compliance with applicable standards; or

5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the ~~board's~~ department's satisfaction that the source is in compliance with the applicable standard.

D. The provisions for the granting of waivers under subsection C of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the ~~board~~ department to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

E. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirements of the implementation plan, or any other applicable federal requirements promulgated under the federal Clean Air Act.

9VAC5-80-1685. Stack heights.

A. The provisions of 9VAC5-50-20 H apply.

B. Prior to issuing a permit with a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by subdivision 1 or 2 of the GEP definition in 9VAC5-10-20, the ~~board~~ department will notify the public of the availability of the demonstration study specified in subdivision 3 of the GEP definition and will provide opportunity for public hearing on it using the procedures set forth in 9VAC5-80-1775.

9VAC5-80-1695. Exemptions.

A. The requirements of this article shall not apply to a particular major stationary source or major modification if:

1. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and

the source does not belong to any of the following categories:

a. Coal cleaning plants (with thermal dryers).

b. Kraft pulp mills.

c. Portland cement plants.

d. Primary zinc smelters.

e. Iron and steel mills.

f. Primary aluminum ore reduction plants.

g. Primary copper smelters.

h. Municipal incinerators capable of charging more than 250 tons of refuse per day.

i. Hydrofluoric acid plants.

j. Sulfuric acid plants.

k. Nitric acid plants.

l. Petroleum refineries.

m. Lime plants.

n. Phosphate rock processing plants.

o. Coke oven batteries.

p. Sulfur recovery plants.

q. Carbon black plants (furnace process).

r. Primary lead smelters.

s. Fuel conversion plants.

t. Sintering plants.

u. Secondary metal production plants.

v. Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

w. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

y. Taconite ore processing plants.

z. Glass fiber processing plants.

aa. Charcoal production plants.

bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

cc. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60 or 61; or

2. The source or modification is a portable stationary source that has previously received a permit under this article, and

a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would affect no class I area and no area where an applicable increment is known to be violated; and

d. Reasonable notice is given to the ~~board~~ department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the ~~board~~ department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the ~~board~~ department.

B. The requirements of this article shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

C. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would affect no class I area and no area where an applicable increment is known to be violated; and

2. Would be temporary.

D. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E. The ~~board~~ department may exempt a proposed major stationary source or major modification from the requirements of 9VAC5-80-1735 with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide -- 575 $\mu g/m^3$, 8-hour average

Nitrogen dioxide -- 14 $\mu g/m^3$, annual average

$PM_{2.5}$ -- 0 $\mu g/m^3$, 24-hour average*

PM_{10} -- 10 $\mu g/m^3$, 24-hour average

Sulfur dioxide -- 13 $\mu g/m^3$, 24-hour average

Ozone**

Lead -- 0.1 $\mu g/m^3$, 3-month average

Fluorides -- 0.25 μg/m^3, 24-hour average

Total reduced sulfur -- 10 μg/m^3, 1-hour average

Hydrogen sulfide -- 0.2 μg/m^3, 1-hour average

Reduced sulfur compounds -- 10 μg/m^3, 1-hour average; or

*No exemption is available with regard to $PM_{2.5}$.

**No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or NO_X subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision 1 of this subsection, or the pollutant is not listed in subdivision 1 of this subsection.

F. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the ~~board~~ department that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

9VAC5-80-1715. Source impact analysis.

A. The owner of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of:

1. Any ambient air quality standard in any air quality control region; or

2. Any applicable maximum allowable increase over the baseline concentration in any area.

B. The following applies to any new major stationary source or major modification if it would cause or contribute to a violation of any ambient air quality standard.

1. A new major stationary source or major modification will be considered to cause or contribute to a violation of an ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable air quality standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO_2	1.0 μg/m^3	5.0 μg/m^3		25.0 μg/m^3	
PM_{10}	1.0 μg/m^3	5.0 μg/m^3			
$PM_{2.5}$	0.3 mg/m^3	1.2 mg/m^3			
NO_2	1.0 μg/m^3				
CO			500 μg/m^3		2000 μg/m^3

2. A proposed new major stationary source or major modification may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the new major stationary source or major modification would otherwise cause or contribute to a violation of any ambient air quality standard. In the absence of such emission reductions, the ~~board~~ department will deny the proposed construction.

3. The requirements of this subsection do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

9VAC5-80-1735. Air quality analysis.

A. Preapplication analysis shall be conducted as follows:

1. Any application for a permit under this article shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

a. For the source, each pollutant that it would have the potential to emit in a significant amount;

b. For the modification, each pollutant for which it would result in a significant net emissions increase.

2. With respect to any such pollutant for which no ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the ~~board~~ department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

3. With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

4. In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the ~~board~~ department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

5. The owner of a proposed stationary source or modification of volatile organic compounds who satisfies all conditions of §IV of Appendix S to 40 CFR Part 51 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under this subsection.

B. The owner of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the ~~board~~ department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

C. The owner of a major stationary source or major modification shall meet the requirements of Appendix B to 40 CFR Part 58 during the operation of monitoring stations for purposes of satisfying this section.

9VAC5-80-1745. Source information.

The owner of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this article.

A. With respect to a source or modification to which 9VAC5-80-1705, 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 apply, such information shall include:

1. A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

2. A detailed schedule for construction of the source or modification;

3. A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied.

B. Upon request of the ~~board~~ department, the owner shall also provide information on:

1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

2. The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth that has occurred since the baseline date in the area the source or modification would affect.

9VAC5-80-1755. Additional impact analyses.

A. The owner shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

B. The owner shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

C. The ~~board~~ department may require monitoring of visibility in any federal class I area near the proposed new stationary source or major modification for such purposes and by such means as the ~~board~~ department deems necessary and appropriate.

9VAC5-80-1765. Sources affecting federal class I areas -- additional requirements.

A. The ~~board~~ department shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of the following actions related to the consideration of such permit:

1. Notification of the permit application status as provided in 9VAC5-80-1773 A.

2. Notification of the public comment period on the application as provided in 9VAC5-80-1775 F 2.

3. Notification of the final determination on the application and issuance of the permit as provided in 9VAC5-80-1773 D.

4. Notification of any other action deemed appropriate by the ~~board~~ department.

B. The ~~board~~ department shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a class I area, to the federal land manager and the federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The ~~board~~ department shall also provide the federal land manager and such federal officials with a copy of the preliminary determination required under 9VAC5-80-1773 B, and shall make available to them any materials used in making

that determination, promptly after the ~~board~~ department makes such determination. Finally, the ~~board~~ department shall also notify all affected federal land managers within 30 days of receipt of any advance notification of any such permit application.

C. The federal land manager and the federal official charged with direct responsibility for management of such lands have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the ~~board~~ department, whether a proposed source or modification will have an adverse impact on such values.

D. The ~~board~~ department shall consider any analysis performed by the federal land manager, provided within 30 days of the notification required by subsection B of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any federal class I area. Where the ~~board~~ department finds that such an analysis does not demonstrate to the satisfaction of the ~~board~~ department that an adverse impact on visibility will result in the federal class I area, the ~~board~~ department shall, in the notice of public hearing on the permit application, either explain this decision or give notice as to where the explanation can be obtained.

E. The federal land manager of any such lands may demonstrate to the ~~board~~ department that the emissions from a proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of those lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the ~~board~~ department concurs with such demonstration, then it shall not issue the permit.

F. The owner of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality related values of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a class I area. If the federal land manager concurs with such demonstration and so certifies, the ~~board~~ department may, provided that the applicable requirements of this article are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, $PM_{2.5}$, PM_{10}, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants:

MAXIMUM ALLOWABLE INCREASE (micrograms per cubic meter)		
$PM_{2.5}$:		
	Annual arithmetic mean	4
	24 hour maximum	9
PM_{10}:		
	Annual arithmetic mean	17
	24 hour maximum	30
Sulfur dioxide:		
	Annual arithmetic mean	20
	24-hour maximum	91
	Three-hour maximum	325
Nitrogen dioxide:		
	Annual arithmetic mean	25

G. The owner of a proposed source or modification that cannot be approved under subsection F of this section may demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to the federal land manager's concurrence, may, after notice and public hearing, grant a variance from such maximum allowable increase. If such variance is granted, the ~~board~~ department shall issue a permit to such source or modification pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

H. In any case whether the governor recommends a variance in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president. The president may approve the governor's recommendation if he finds that the variance is in the national interest. If the variance is approved, the ~~board~~ department shall issue a permit pursuant to the requirements of subsection I of this section, provided that the applicable requirements of this article are otherwise met.

I. In the case of a permit issued pursuant to subsection G or H of this section the source or modification shall comply with such emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration

and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE (micrograms per cubic meter)		
Period of exposure	Low terrain areas	High terrain areas
24-hour maximum	36	62
3-hour maximum	130	221

9VAC5-80-1773. Action on permit application.

A. Within 30 days after receipt of an application, the ~~board~~ department will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application will be provided by the ~~board~~ department in writing and will include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the ~~board~~ department will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application shall be, for the purpose of this article, the date on which the ~~board~~ department received all required information and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. The ~~board~~ department will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for these steps is normally one year following receipt of a complete application. The ~~board~~ department may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-1705 and the preliminary determination whether construction should be approved, approved with conditions, or disapproved.

2. Complete the public participation requirements in accordance with 9VAC5-80-1775.

3. Consider the public comments received in accordance with 9VAC5-80-1775.

4. Complete the final review and analysis and the final determination of the ~~board~~ department.

C. The ~~board~~ department will consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing required by 9VAC5-80-1775 E in making a final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The ~~board~~ department will consider the applicant's response in making a final decision. The ~~board~~ department will make all comments available for public inspection in the same locations where the ~~board~~ department made available preconstruction information relating to the proposed source or modification.

D. ~~The board~~ After completion of the steps in subsections B and C of this section, the department will ~~make a final decision on an application after completion of the steps in subsections B and C of this section except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-1775 G, and will~~ take final action on the ~~request and~~ application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

E. The ~~board~~ department will notify the applicant in writing of the final decision and make such notification available for public inspection at the same location where the ~~board~~ department made available preconstruction information and public comments relating to the source or modification.

F. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5-170 (Regulation for General Administration).

G. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing will be made available for public inspection at the same location as was the information in 9VAC5-80-1775 F 1.

H. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC5-80-1775. Public participation.

A. No later than 30 days after receiving the initial determination notification required under 9VAC5-80-1773 A, the applicant shall notify the public about the proposed source as required in subsection B of this section. The applicant shall

also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the ~~board~~ department and shall include (i) the name, location, and type of the source and (ii) the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the ~~board~~ department will attend and provide information and answer questions on the permit application review process.

D. Upon a determination by the ~~board~~ department that an alternative plan will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. The ~~board~~ department will provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

F. The ~~board~~ department will notify the public by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at a public hearing as well as written public comment. The notification will contain a statement of the estimated local impact of the proposed source or modification, which at a minimum will provide information regarding specific pollutants and the total quantity of each that may be emitted, and will list the type and quantity of any fuels to be used. The notification will be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the board for at least 15 days after any hearing ~~unless the board votes to shorten the period~~.

1. All materials the applicant submitted, exclusive of confidential information under 9VAC5-170-60; a copy of the preliminary determination; and a copy or summary of other materials, if any, considered in making the preliminary determination will be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice will be sent to the applicant, the administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: (i) local air pollution control agencies, (ii) the chief elected official and chief administrative officer of the city and county where the source or modification would be located and of any other locality particularly affected, (iii) the planning district commission, and (iv) any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

G. ~~Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:~~

~~1. The name, mailing address, and telephone number of the requester.~~

~~2. The names and addresses of all persons for whom the requester is acting as a representative ; for the purposes of this requirement, an unincorporated association is a person.~~

~~3. The reason why direct consideration by the board is requested.~~

~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.~~

~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.~~ Reserved.

H. The ~~board~~ department will ~~review any request made under subsection G of this section and will~~ take final action on the ~~request~~ application as provided in 9VAC5-80-1773 D.

I. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the ~~board~~ department will process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

J. If appropriate, the ~~board~~ department may hold a public briefing on the preliminary determination prior to the public comment period but no later than the day before the beginning of the public comment period. The ~~board~~ department will notify the public of the time and place of the briefing by advertisement in a newspaper of general circulation in the air quality control region in which the proposed source or modification would be constructed. The notification will be published at least 30 days prior to the day of the briefing.

K. If the ~~board~~ department finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request board consideration~~ as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit, unless the ~~board votes~~ director chooses to shorten the period.

9VAC5-80-1785. Source obligation.

A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in 9VAC5-80-1985.

B. The provisions of this subsection apply to projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner elects to use the method specified in subdivisions a through c of the definition of "projected actual emissions" for calculating projected actual emissions.

1. Before beginning actual construction of the project, the owner shall document and maintain a record of the following information:

a. A description of the project;

b. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subdivision c of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. If the emissions unit is an existing electric utility steam generating unit, no less than 30 days before beginning actual construction, the owner shall provide a copy of the information set out in subdivision 1 of this subsection to the ~~board~~ department. Nothing in this subdivision shall be construed to require the owner of such a unit to obtain any determination from the ~~board~~ department before beginning actual construction.

3. The owner shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in

subdivision 1 b of this section; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner shall submit a report to the ~~board~~ department within 60 days after the end of each calendar year during which records must be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the calendar year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner shall submit a report to the ~~board~~ department if the annual emissions, in tons per year, from the project identified in subdivision 1 of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to subdivision 1 c of this subsection), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision 1 c of this subsection. Such report shall be submitted to the ~~board~~ department within 60 days after the end of such calendar year. The report shall contain the following:

a. The name, address and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to subdivision 3 of this subsection; and

c. Any other information that the owner wishes to include in the report (for example, an explanation as to why the emissions differ from the preconstruction projection).

C. The owner of the source shall make the information required to be documented and maintained pursuant to subsection B of this section available for review upon a request for inspection by the ~~board~~ department or the general public pursuant to the requirements contained in 9VAC5-170-60.

D. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

E. For each project subject to subsection B of this section, the owner shall provide notice of the availability of the information set out in subdivision B 1 of this section to the ~~board~~ department no less than 30 days before beginning actual construction. The notice shall include the location of the information and the name, address and telephone number of the contact from whom the information may be obtained. Should subsequent information become available to the ~~board~~ department to indicate that a given project subject to subsection B is a part of a major modification that resulted in a significant emissions increase, the ~~board~~ department will proceed as if the owner is in violation of 9VAC5-80-1625 A and may institute appropriate enforcement action as provided in subsection A of this section. Nothing in this subsection shall be construed to require the owner of the source to obtain any determination from the ~~board~~ department before beginning actual construction.

9VAC5-80-1825. Innovative control technology.

A. Prior to the close of the public comment period under 9VAC5-80-1775, an owner of a proposed major stationary source or major modification may request, in writing, that the ~~board~~ department approve a system of innovative control technology.

B. The ~~board~~ department, with the consent of the governor(s) of affected state(s), will determine that the source or modification may employ a system of innovative control technology, if:

1. The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

2. The owner agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under 9VAC5-80-1705 B by a date specified by the ~~board~~ department. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

3. The source or modification would meet the requirements of 9VAC5-80-1705 and 9VAC5-80-1715 based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the ~~board~~ department;

4. The source or modification would not, before the date specified by the ~~board~~ department:

a. Cause or contribute to a violation of an applicable ambient air quality standard; or

b. Affect any area where an applicable increment is known to be violated;

5. All other applicable requirements including those for public participation have been met; and

6. The provisions of 9VAC5-80-1765 (relating to class I areas) have been satisfied with respect to all periods during the life of the source or modification.

C. The ~~board~~ department will withdraw any approval to employ a system of innovative control technology made under this article, if:

1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

3. The ~~board~~ department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

D. If a source or modification fails to meet the requirement level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection C of this section, the ~~board~~ department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

9VAC5-80-1865. Actuals plantwide applicability limits (PALs).

A. The ~~board~~ department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

1. Any physical change in or change in the method of operation of a major stationary source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

a. Is not a major modification for the PAL pollutant;

b. Does not have to be approved through this article; and

c. Is not subject to the provisions in 9VAC5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

2. Except as provided under subdivision 1 c of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source shall submit the following information to the ~~board~~ department for approval:

1. A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

3. The calculation procedures that the major stationary source owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

C. The general requirements set forth in this subsection shall apply to the establishment of PALs.

1. The ~~board~~ department may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:

a. The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

b. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

c. The PAL permit shall contain all the requirements of subsection F of this section.

d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

e. Each PAL shall regulate emissions of only one pollutant.

f. Each PAL shall have a PAL effective period of 10 years.

g. The owner of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections M, N, and O of this section for each emissions unit under the PAL through the PAL effective period.

2. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 9VAC5-80-2120 F through N unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

D. PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures prescribed in the applicable permit programs identified in the definition of PAL permit. In no case

may the ~~board~~ department issue a PAL permit unless the ~~board~~ department provides the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The ~~board~~ department will address all material comments before taking final action on the permit.

E. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant (as reflected in the definition of "significant") level for the PAL pollutant. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period shall be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period shall be added to the PAL level in an amount equal to the potential to emit of the units. The ~~board~~ department will specify a reduced PAL level or levels (in tons per year) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirements that the ~~board~~ department is aware of prior to issuance of the PAL permit. For instance, if the source owner will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if a major stationary source owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the ~~board~~ department, or until the ~~board~~ department determines that the revised PAL permit will not be issued.

4. A requirement that emission calculations for compliance purposes shall include emissions from startups, shutdowns, and malfunctions.

5. A requirement that, once the PAL expires, the major stationary source is subject to the requirements of subsection I of this section.

6. The calculation procedures that the major stationary source owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision N 1 of this section.

7. A requirement that the major stationary source owner monitor all emissions units in accordance with the provisions under subsection M of this section.

8. A requirement to retain the records required under subsection N of this section on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subsection O of this section by the required deadlines.

10. Any other requirements that the ~~board~~ department deems necessary to implement and enforce the PAL.

G. The PAL effective period shall be 10 years.

H. The requirements for the reopening of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. During the PAL effective period, the ~~board~~ department will reopen the PAL permit to:

a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

b. Reduce the PAL if the owner of the major stationary source creates creditable emissions reductions for use as offsets under 9VAC5-80-2120 F through N; and

c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.

2. The ~~board~~ department may reopen the PAL permit for any of the following reasons:

a. Reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) with compliance dates after the PAL effective date.

b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the ~~board~~ department may impose on the major stationary source.

c. Reduce the PAL if the ~~board~~ department determines that a reduction is necessary to avoid causing or contributing to a violation of an ambient air standard or ambient air increment in 9VAC5-80-1635, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL that is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the time frame specified for PAL renewals in subdivision J 2 of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the ~~board~~ department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision K 4 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The ~~board~~ department will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the ~~board~~ department determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The ~~board~~ department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the ~~board~~ department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change in or change in the method of operation at the major stationary source will be subject to major NSR program requirements if such change meets the definition of "major modification."

5. The major stationary source owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, or NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9VAC5-80-1605 C, but were eliminated by the PAL in accordance with the provisions in subdivision A 1 c of this section.

J. The requirements for the renewal of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The ~~board~~ department will follow the procedures specified in subsection D of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the ~~board~~ department.

2. A major stationary source owner shall submit a timely application to the ~~board~~ department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued, or until the ~~board~~ department determines that the revised permit with the renewed PAL will not be issued, and a permit is issued pursuant to subsection I of this section.

3. The application to renew a PAL permit shall contain the following information:

a. The information required in subsection B of this section.

b. A proposed PAL level.

c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

d. Any other information the owner wishes the ~~board~~ department to consider in determining the appropriate level for renewing the PAL.

K. The requirements for the adjustment of the PAL set forth in this subsection shall apply to actuals PALs. In determining whether and how to adjust the PAL, the ~~board~~ department will consider the options outlined in subdivisions 1 and 2 of this subsection. However, in no case may any such adjustment fail to comply with subdivision 3 of this subdivision.

1. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the ~~board~~ department may renew the PAL at the same level without considering the factors set forth in subdivision 2 of this subsection; or

2. The ~~board~~ department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the ~~board~~ department in a written rationale.

3. Notwithstanding subdivisions 1 and 2 of this subsection:

a. If the potential to emit of the major stationary source is less than the PAL, the ~~board~~ department will adjust the PAL to a level no greater than the potential to emit of the source; and

b. The ~~board~~ department will not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of subsection L of this section.

4. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the ~~board~~ department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

L. The requirements for increasing a PAL during the PAL effective period set forth in this subsection shall apply to actuals PALs.

1. The ~~board~~ department may increase a PAL emission limitation only if the owner of the major stationary source complies with the following provisions:

a. The owner of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

b. As part of this application, the major stationary source owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 a of this subsection, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the major NSR program process (e.g., BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The ~~board~~ department will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

M. The requirements for monitoring the PAL set forth in this subsection apply to actuals PALs.

1. The general requirements for monitoring a PAL set forth in this subdivision apply to actuals PALs.

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subdivision and must be approved by the ~~board~~ department.

c. Notwithstanding subdivision 1 b of this subdivision, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the ~~board~~ department.

d. Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

2. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 3 through 9 of this subsection:

a. Mass balance calculations for activities using coatings or solvents;

b. CEMS;

c. CPMS or PEMS; and

d. Emission factors.

3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the ~~board~~ department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. CEMS shall comply with applicable Performance Specifications found in 40 CFR Part 60, Appendix B; and

b. CEMS shall sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the ~~board~~ department, while the emissions unit is operating.

6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the ~~board~~ department determines that testing is not required.

7. A source owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the ~~board~~ department will, at the time of permit issuance:

a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the ~~board~~ department. Such testing shall occur at least once every five years after issuance of the PAL.

N. The requirements for recordkeeping in the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The PAL permit shall require an owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require an owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

a. A copy of the PAL permit application and any applications for revisions to the PAL; and

b. Each annual certification of compliance pursuant to the federal operating permit and the data relied on in certifying the compliance.

O. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the ~~board~~ department in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the ~~board~~ department within 30 days of the end of each reporting period. This report shall contain the following information:

a. The identification of owner and operator and the permit number.

b. Total annual emissions (tons per year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision N 1 of this section.

c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

d. A list of any emissions units modified or added to the major stationary source during the preceding six-month period.

e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision M 7 of this section.

g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The major stationary source owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9VAC5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9VAC5-80-110 F 2 b. The reports shall contain the following information:

a. The identification of owner and operator and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official (as defined by the applicable federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the ~~board~~ department the results of any revalidation test or method within three months after completion of such test or method.

P. The ~~board~~ department will not issue a PAL that does not comply with the requirements of this section after September 1, 2006. The ~~board~~ department may supersede any PAL that was established prior to September 1, 2006, with a PAL that complies with the requirements of this section.

9VAC5-80-1915. Actions to combine permit terms and conditions.

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the ~~board~~ department may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the ~~board~~ department.

3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

d. To take an action to issue a permit or change a permit for any physical change in or change in the method of operation of a major stationary source that is subject to the provisions in 9VAC5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

B. The ~~board~~ department may take actions to combine the terms and conditions of state operating permits and new source review permits along with any changes to state operating permits and new source review permits.

C. If the ~~board~~ department and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the ~~board~~ department may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the ~~board~~ department may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.

4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:

a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.

b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.

c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

9VAC5-80-1925. Actions to change permits.

A. The general requirements for actions to make changes to permits issued under this article are as follows:

1. Except as provided in subdivision 3 of this subsection changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-1935 through 9VAC5-80-1965.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the ~~board~~ department for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit changes can be found in 9VAC5-80-1935 through 9VAC5-80-1955.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-1965.

9VAC5-80-1935. Administrative permit amendments.

A. Administrative permit amendments shall be used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-2170 have been fulfilled.

B. The administrative permit amendment procedures are as follows:

1. The ~~board~~ department will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department will incorporate the changes without providing notice to the public under 9VAC5-80-1775. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9VAC5-80-1945. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement.

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

3. Do not require or change a case-by-case determination of an emissions limitation or other requirement.

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

5. Are not required to be processed as a significant amendment under 9VAC5-80-1955; or as an administrative permit amendment under 9VAC5-80-1935.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require new or more frequent monitoring or reporting by the permittee.

3. Designate any term or permit condition that meets the criteria in 9VAC5-80-1625 G 1 as state-only enforceable as provided in 9VAC5-80-1625 G 2 for any permit issued under this article or any regulation from which this article is derived.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the ~~board~~ department and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. In order for the underlying statutory or regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.

D. A request for the use of minor permit amendment procedures shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs, along with a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-1775 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit amendment.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify if the applicant has submitted a proposed permit amendment. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

9VAC5-80-1955. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1945 or as administrative amendments under 9VAC5-80-1935.

2. Significant amendment procedures shall be used for those permit amendments that meet any of the following criteria:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emissions limitation or other requirement.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. The provisions of 9VAC5-80-1775 shall apply to requests made under this section.

D. The ~~board~~ department will normally take final action on significant permit amendments within 180 days after receipt of a complete request~~, except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25~~. The ~~board~~ department may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the ~~board~~ department under subsection D of this section.

9VAC5-80-1965. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The ~~board~~ department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The ~~board~~ department determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the requirements contained in this article.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

9VAC5-80-1975. Transfer of permits.

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change.

D. The provisions of this section concerning the transfer of a permit from one location to another shall not apply to the relocation of portable facilities that are exempt from the provisions of this article by 9VAC5-80-1695 A 2.

9VAC5-80-1985. Permit invalidation, suspension, revocation, and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction or modification is not commenced within 18 months from the date the permit is granted.

B. A permit granted pursuant to this article shall become invalid if a program of construction or modification is discontinued for a period of 18 months or more or if a program of construction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase shall commence construction within 18 months of the projected and approved commencement date.

C. The ~~board~~ department may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is

no substantive change to the application information, the review and analysis, and the decision of the ~~board~~ department, such extensions may be granted using the procedures for minor amendments in 9VAC5-80-1945.

D. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article, or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the ~~board~~ department may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

F. The ~~board~~ department may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source that result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

G. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any permit for any of the grounds for revocation contained in subsection B of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in 9VAC5 Chapter 20 (9VAC5-20) and the Virginia Air Pollution Control Law.

J. The ~~board~~ department will notify the applicant in writing of its decision, with its reasons to change, suspend or revoke a permit, or to render a permit invalid.

9VAC5-80-2000. Applicability.

A. The provisions of this article apply to the construction of any new major stationary source or a major modification that is major for the pollutant for which the area is designated as nonattainment. Different pollutants, including individual precursors, are not summed to determine applicability of a major stationary source or major modification.

B. The provisions of this article apply in (i) nonattainment areas designated in 9VAC5-20-204 or (ii) the Ozone Transport Region as defined in 9VAC5-80-2010 C. This article applies to all localities in the Ozone Transport Region regardless of a locality's nonattainment status.

C. If the Ozone Transport Region is designated attainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements for areas classified as moderate in 9VAC5-80-2120 B 2. If the Ozone Transport Region is designated nonattainment for ozone, sources located or planning to locate in the region shall be subject to the offset requirements of 9VAC5-80-2120 B depending on the classification except if the classification is marginal or there is no classification, the classification shall be moderate for purpose of applying 9VAC5-80-2120 B.

D. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this article shall apply to the source or modification as though construction had not commenced on the source or modification.

E. Unless specified otherwise, the provisions of this article apply as follows:

1. Provisions referring to "sources," "new and/or modified sources" or "stationary sources" apply to the construction of all major stationary sources and major modifications.

2. Any emissions units or pollutants not subject to the provisions of this article may be subject to the provisions of Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), or Article 8 (9VAC5-80-1605 et seq.) of this part.

3. Provisions referring to "state and federally enforceable" and "federally and state enforceable" or similar wording shall mean "state-only enforceable" for terms and conditions of a permit designated state-only enforceable under 9VAC5-80-2020 E.

F. Unless otherwise approved by the ~~board~~ department or prescribed in these regulations, when this article is amended, the previous provisions of this article shall remain in effect for all applications that are deemed complete under the provisions of 9VAC5-80-2060 A prior to September 1, 2006. Any permit applications that have not been determined to be complete as of September 1, 2006, shall be subject to the new provisions.

G. Regardless of the exemptions provided in this article, no owner or other person shall circumvent the requirements of this article by causing or allowing a pattern of ownership or development over a geographic area of a source which, except for the pattern of ownership or development, would otherwise require a permit.

H. The requirements of this article will be applied in accordance with the following principles:

1. Except as otherwise provided in subsection I of this section, and consistent with the definition of "major modification," a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases: (i) a significant emissions increase and (ii) a significant net emissions increase. A project is not a major modification if it does not cause a significant emissions increase. If a project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

2. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subdivisions 3 and 4 of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the source (i.e., the second step of the process) is contained in the definition of "net emissions increase." Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

3. The actual-to-projected-actual applicability test for projects that only involve existing emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

4. The actual-to-potential test for projects that only involve construction of a new emissions unit shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

5. The hybrid test for projects that involve multiple types of emissions units shall be as provided in this subdivision. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subdivisions 3 and 4 of this subsection as applicable with respect to each emissions unit, for each type of emissions unit is significant for that pollutant. For example, if a project involves both an existing emissions unit and a new unit, the projected increase is determined by summing the values determined using the method specified in subdivision 3 of this subsection for the existing unit and using the method specified in subdivision 4 of this subsection for the new unit.

I. For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with the requirements under 9VAC5-80-2144.

J. The provisions of 40 CFR Part 60, Part 61 and Part 63 cited in this article apply only to the extent that they are incorporated by reference in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5 Chapter 50 and Article 1 (9VAC5-60-60 et seq.) and Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5 Chapter 60.

K. The provisions of 40 CFR Part 51 and Part 58 cited in this article apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

9VAC5-80-2010. Definitions.

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

B. For the purpose of this article, 9VAC5-50-270, and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a, b, and c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-2144. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal

source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The ~~board~~ department may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

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

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

a. The applicable standards set forth in 40 CFR Parts 60, 61, and 63;

b. Any applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation, or other requirement established pursuant to § 112 or 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

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

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The ~~board~~ department may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the 10-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the ~~board~~ department for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990. The ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source shall currently comply, had such source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this definition.

"Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit that are of a permanent nature. Such activities include installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those onsite activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" or "BACT" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the ~~board~~ department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the ~~board~~ department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable

by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting additional information.

"Construction" means any physical change in or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter values on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25-megawatt electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this article, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit is an existing emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by ~~the board or~~ the department and meet the following criteria:

a. Are permanent;

b. Contain a legal obligation for the owner to adhere to the terms and conditions;

c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include the following:

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

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

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

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, 111(d), or 129 of the federal Clean Air Act.

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by EPA into the implementation plan under § 110 of the federal Clean Air Act.

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by EPA and the public.

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

h. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Lowest achievable emissions rate" or "LAER" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation that is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation that is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified

stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas in subdivision a (1) of the definition of "major stationary source."

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in (i) a significant emissions increase of a regulated NSR pollutant; and (ii) a significant net emissions increase of that pollutant from the source.

b. Any significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change in or change in the method of operation shall not include the following:

(1) Routine maintenance, repair, and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(3) Use of an alternative fuel by reason of an order or rule § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter.

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan; and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the source is complying with the requirements under 9VAC5-80-2144 for a PAL for that pollutant. Instead, the definition for "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any stationary source of air pollutants that emits, or has the potential to emit, (i) 100 tons per year or more of a regulated NSR pollutant, (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9VAC5-20-204, (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9VAC5-20-204, or (iv) 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the Ozone Transport Region; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140).

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category, which as of August 7, 1980, is being regulated under 40 CFR Part 60, 61, or 63.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under the NSR program that are part of the applicable implementation plan.

"Net emissions increase" means:

a. With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-2000 H; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9VAC5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and

(2) The ~~board~~ department has not relied on it in issuing a permit for the source pursuant to this article which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) The ~~board~~ department has not relied on it in issuing any permit pursuant to this chapter or the ~~board~~ department has not relied on it in demonstrating attainment or reasonable further progress in the implementation plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"New source performance standard" or "NSPS" means the U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources, as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-2000 et seq.) of this part. Any permit issued under such a program is a major NSR permit.

"Nonattainment pollutant" means, within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

"Ozone transport region" means the area established by § 184(a) of the federal Clean Air Act or any other area established by the administrator pursuant to § 176A of the federal Clean Air Act for purposes of ozone. For the purposes of this article, the Ozone Transport Region consists of the following localities: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

"Plantwide applicability limitation" or "PAL" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-2144.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase," any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the state operating permit issued by the ~~board~~ department that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas

flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (e.g., pounds per hour) on a continuous basis.

"Prevention of significant deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Project" means a physical change in or change in the method of operation of an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source. In determining the projected actual emissions before beginning actual construction, the owner shall:

a. Consider all relevant information, including but not limited to historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan;

b. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

c. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a, b, and c of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined under the definition of "potential to emit."

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and the preliminary decision of the ~~board~~ department regarding the permit application.

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of an implementation plan and regular reductions thereafter) that are sufficient in the judgment of the ~~board~~ department to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the implementation plan for such area.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound.

b. Any pollutant for which an ambient air quality standard has been promulgated.

c. Any pollutant that is identified under this subdivision as a constituent or precursor of a general pollutant listed under subdivision a or b of this definition, provided that such constituent or precursor pollutant may only be regulated under this article as part of regulation of the general pollutant. Precursors identified for purposes of this article shall be the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(2) Sulfur dioxide, nitrogen oxides, volatile organic compounds, and ammonia are precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area.

(3) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the ~~board~~ department determines that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(4) Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the ~~board~~ department determines that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

d. $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in

permits issued under this article. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this article.

"Replacement unit" means an emissions unit for which all the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

c. The replacement does not alter the basic design parameters of the process unit.

d. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

a. Ozone nonattainment areas classified as serious or severe in 9VAC5-20-204.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
PM_{10}	15 tpy
$PM_{2.5}$	10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under the definition of "regulated NSR pollutant"
Ozone	25 tpy of volatile organic compounds
Lead	0.6 tpy

b. Other nonattainment areas.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
PM_{10}	15 tpy
$PM_{2.5}$	10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under the definition of "regulated NSR pollutant"
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9VAC5-80-2020. General.

A. No owner or other person shall begin actual construction or modification of any new major stationary source or major modification without first obtaining from the ~~board~~ department a permit to construct and operate such source. The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.

B. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining from the ~~board~~ department a permit to relocate the unit.

C. The ~~board~~ department will take actions to combine permit terms and conditions as provided in 9VAC5-80-2195. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-2200 as explained in subsection D of this section.

D. The ~~board~~ department will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-2200. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection C of this section.

E. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of 9VAC5-50 (New and Modified Stationary Sources), Article 4 (9VAC5-60-200 et seq.) of 9VAC5-60 (Hazardous Air Pollutant Sources), or Article 5 (9VAC5-60-300) of 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the ~~board~~ department. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

F. Nothing in the regulations of the board shall be construed to prevent the ~~board~~ department from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9VAC5-80-2030. Applications.

A. A single application is required identifying at a minimum each emissions unit subject to the provisions of this article. The application shall be submitted according to procedures acceptable to the ~~board~~ department. However, where several emissions units are included in one project, a single application covering all units in the project may be submitted.

B. A separate application is required for each stationary source.

C. For projects with phased development, a single application should be submitted covering the entire project.

D. Any application form, report, or certification submitted to the ~~board~~ department shall comply with the provisions of 9VAC5-20-230.

9VAC5-80-2040. Application information required.

A. The ~~board~~ department will furnish application forms to applicants. Completion of these forms serves as initial registration of new and modified sources.

B. Each application for a permit shall include such information as may be required by the ~~board~~ department to determine the effect of the proposed source on the ambient air quality and to determine compliance with the emissions standards which are applicable. The information required shall include, but is not limited to, the following:

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code).

3. All emissions of regulated NSR pollutants.

a. A permit application shall describe all emissions of regulated NSR pollutants emitted from any emissions unit or group of emissions units to be covered by the permit.

b. Emissions shall be calculated as required in the permit application form or instructions.

c. Fugitive emissions shall be included in the permit application to the extent quantifiable.

4. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

5. Actual emission rates in tons per year and other information as may be necessary to determine the net emissions increase of actual emissions.

6. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, loading rates, and operating schedules.

7. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

8. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated NSR pollutants at the source.

9. Calculations on which the information in subdivisions 3 through 8 of this subsection are based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

10. Any additional information or documentation that the ~~board~~ department deems necessary to review and analyze the air pollution aspects of the stationary source or emissions unit, including the submission of measured air quality data at the proposed site prior to construction or modification. Such measurements shall be accomplished using procedures acceptable to the ~~board~~ department.

11. For major stationary sources, the location and registration number for all stationary sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control with the applicant) in the Commonwealth.

12. For major stationary sources, the analyses required by 9VAC5-80-2090 2 shall be provided by the applicant. Upon request, the ~~board~~ department will advise an applicant of the reasonable geographic limitation on the areas to be subject to an analysis to determine the air quality impact at the proposed source.

C. The above information and analysis shall be determined and presented according to procedures and using methods acceptable to the ~~board~~ department.

9VAC5-80-2050. Standards and conditions for granting permits.

A. No permit will be granted pursuant to this article unless it is shown to the satisfaction of the ~~board~~ department that the following standards and conditions have been met:

1. The source shall be designed, built and equipped to comply with standards of performance prescribed under 9VAC5 Chapter 50 (9VAC5-50).

2. The source shall be designed, built and equipped to operate without causing a violation of the applicable provisions of regulations of the board or the applicable control strategy portion of the implementation plan.

3. The ~~board~~ department determines that the following occurs:

a. By the time the source is to commence operation, sufficient offsetting emissions reductions shall have been obtained in accordance with 9VAC5-80-2120 such that total allowable emissions of qualifying nonattainment pollutants from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources, as determined in accordance with the requirements of this article, prior to the application for such permit to construct or modify so as to represent (when considered together with any applicable control measures in the implementation plan) reasonable further progress; or

b. In the case of a new or modified major stationary source which is located in a zone, within the nonattainment area, identified by the administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source shall not cause or

contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources in the implementation plan; and

c. Any emission reductions required as a precondition of the issuance of a permit under subdivision a or b of this subdivision shall be state and federally enforceable before such permit may be issued.

4. The applicant shall demonstrate that all major stationary sources owned or operated by such applicant (or by any entity controlling, controlled by, or under common control with such applicant) in the Commonwealth are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under these regulations.

5. The administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this article.

6. The applicant shall demonstrate, through an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source, that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

B. Permits granted pursuant to this article may contain emissions standards as necessary to implement the provisions of this article and 9VAC5-50-270. The following criteria shall be met in establishing emission standards to the extent necessary to assure that emissions levels are enforceable as a practical matter:

1. Standards may include the level, quantity, rate, or concentration or any combination of them for each affected pollutant.

2. In no case shall a standard result in emissions that would exceed the emissions rate based on the potential to emit of the emissions unit.

3. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination of them.

C. Permits issued under this article shall contain, but not be limited to, any of the following elements as necessary to ensure that the permits are enforceable as a practical matter:

1. Emission standards.

2. Conditions necessary to enforce emission standards. Conditions may include, but not be limited to, any of the following:

a. Limit on fuel sulfur content.

b. Limit on production rates with time frames as appropriate to support the emission standards.

c. Limit on raw material usage rate.

d. Limits on the minimum required capture, removal and overall control efficiency for any air pollution control equipment.

3. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

4. Specifications for air pollution control equipment installed or to be installed.

5. Specifications for air pollution control equipment operating parameters and the circumstances under which such equipment shall be operated, where necessary to ensure that the required overall control efficiency is achieved. The operating parameters may include, but not be limited to, any of the following:

a. Pressure indicators and required pressure drop.

b. Temperature indicators and required temperature.

c. pH indicators and required pH.

d. Flow indicators and required flow.

6. Requirements for proper operation and maintenance of any pollution control equipment, and appropriate spare parts inventory.

7. Stack test requirements.

8. Reporting or recordkeeping requirements, or both.

9. Continuous emission or air quality monitoring requirements, or both.

10. Other requirements as may be necessary to ensure compliance with the applicable regulations.

9VAC5-80-2060. Action on permit application.

A. Within 30 days after receipt of an application, the ~~board~~ department will notify the applicant of the status of the application. The notification of the initial determination with regard to the status of the application shall be provided by the ~~board~~ department in writing and shall include (i) a determination as to which provisions of the new source review program are applicable, (ii) the identification of any deficiencies, and (iii) a determination as to whether the application contains sufficient information to begin application review. The determination that the application has sufficient information to begin review is not necessarily a determination that it is complete. Within 30 days after receipt of any additional information, the ~~board~~ department will notify the applicant in writing of any deficiencies in such information. The date of receipt of a complete application for processing under subsection B of this section shall be the date on which the ~~board~~ department received all required information and the

provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met, if applicable.

B. The ~~board~~ department will normally process an application according to the steps specified in subdivisions 1 through 4 of this subsection. Processing time for these steps is normally 180 days following receipt of a complete application. The ~~board~~ department may extend this time period if additional information is needed.

1. Complete the preliminary review and analysis in accordance with 9VAC5-80-2090 and the preliminary determination of the ~~board~~ department.

2. Complete the public participation requirements in accordance with 9VAC5-80-2070.

3. Consider the public comments received in accordance with 9VAC5-80-2070.

4. Complete the final review and analysis and the final determination of the ~~board~~ department.

C. ~~The board~~ After completion of the steps in subsection B of this section, the department will ~~normally take final action on an application after completion of the steps in subsection B of this section, except in cases where direct consideration of the application by the board is granted pursuant to 9VAC5-80-25. The board will review any request made under 9VAC5-80-2070 G, and will~~ take final action on the request and application as provided in Part I (9VAC5-80-5 et seq.) of this chapter.

D. The ~~board~~ department will notify the applicant in writing of its decision on the application, including its reasons, and shall also specify the applicable emission limitations. These emission limitations are applicable during any emission testing conducted in accordance with 9VAC5-80-2080.

E. The applicant may appeal the decision pursuant to Part VIII (9VAC5-170-190 et seq.) of 9VAC5 Chapter 170.

F. Within five days after notification to the applicant pursuant to subsection C of this section, the notification and any comments received pursuant to the public comment period and public hearing shall be made available for public inspection at the same location as was the information in 9VAC5-80-2070 F 1.

G. In granting a permit pursuant to this section, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit pursuant to this section, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC5-80-2070. Public participation.

A. No later than 30 days after receiving the initial determination notification required under 9VAC5-80-2060 A, the applicant shall notify the public about the proposed source as required in subsection B of this section. The applicant shall also provide an informational briefing about the proposed source for the public as required in subsection C of this section.

B. The public notice required under subsection A of this section shall be placed by the applicant in at least one newspaper of general circulation in the affected air quality control region. The notice shall be approved by the ~~board~~ department and shall include (i) the name, location, and type of the source and (ii) the time and place of the informational briefing.

C. The informational briefing shall be held in the locality where the source is or will be located and at least 30 days, but no later than 60 days, following the day of the publication of the public notice in the newspaper. The applicant shall inform the public about the operation and potential air quality impact of the source and answer any questions concerning air quality about the proposed source from those in attendance at the briefing. At a minimum, the applicant shall provide information on and answer questions about (i) specific pollutants and the total quantity of each which the applicant estimates will be emitted and (ii) the control technology proposed to be used at the time of the informational briefing. Representatives from the ~~board~~ department will attend and provide information and answer questions on the permit application review process.

D. Upon determination by the ~~board~~ department that an alternative plan will achieve the desired results in an equally effective manner, an applicant for a permit may implement an alternative plan for notifying the public as required in subsection B of this section and for providing the informational briefing as required in subsection C of this section.

E. Prior to the decision of the ~~board~~ department, all permit applications will be subject to a public comment period of at least 30 days. In addition, at the end of the public comment period, a public hearing shall be held with notice in accordance with subsection F of this section.

F. The ~~board~~ department will notify the public by advertisement in at least one newspaper of general circulation in the affected air quality control region of the opportunity for public comment and the public hearing on the information available for public inspection under the provisions of subdivision 1 of this subsection. The notification shall be published at least 30 days prior to the day of the public hearing. Written comments will be accepted by the ~~board~~ department for at least 15 days after any hearing ~~unless the board votes to shorten the period~~.

1. Information on the permit application; exclusive of confidential information under 9VAC5-170-60, as well as the preliminary review and analysis and preliminary determination of the ~~board~~ department shall be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

2. A copy of the notice shall be sent to all local air pollution control agencies having jurisdiction in the affected air quality control region, all states sharing the affected air quality control region, and to the regional EPA administrator U.S. Environmental Protection Agency.

3. Notices of public comment periods and public hearings for major stationary sources and major modifications published under this section shall meet the requirements of § 10.1-1307.01 of the Virginia Air Pollution Control Law.

G. ~~Following the initial publication of the notice required under subsection F of this section, the board will receive written requests for direct consideration of the application by the board pursuant to the requirements of 9VAC5-80-25. In order to be considered, the request must be submitted no later than the end of the public comment period. A request for direct consideration of an application by the board shall contain the following information:~~

~~1. The name, mailing address, and telephone number of the requester.~~

~~2. The names and addresses of all persons for whom the requester is acting as a representative ; for the purposes of this requirement, an unincorporated association is a person.~~

~~3. The reason why direct consideration by the board is requested.~~

~~4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or preliminary determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, or revision of the permit in question.~~

~~5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the Virginia Air Pollution Control Law.~~ Reserved.

H. The ~~board~~ department will ~~review any request made under subsection G of this section and will~~ take final action on the ~~request~~ application as provided in 9VAC5-80-2060 C.

I. In order to facilitate the efficient issuance of permits under Articles 1 (9VAC5-80-50 et seq.) and 3 (9VAC5-80-360 et seq.) of this part, upon request of the applicant the ~~board~~ department will process the permit application under this article using public participation procedures meeting the requirements of this section and 9VAC5-80-270 or 9VAC5-80-670, as applicable.

J. If appropriate, the ~~board~~ department may provide a public briefing on its review of the permit application prior to the public comment period but no later than the day before the beginning of the public comment period. If the ~~board~~ department provides a public briefing, the requirements of subsection F of this section concerning public notification shall be followed.

K. If the ~~board~~ department finds that there is a locality particularly affected by (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request board consideration~~ as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit, unless the ~~board votes~~ director chooses to shorten the period.

9VAC5-80-2080. Compliance determination and verification by performance testing.

A. Compliance with standards of performance shall be determined in accordance with the provisions of 9VAC5-50-20 and shall be verified by performance tests in accordance with the provisions of 9VAC5-50-30.

B. Testing required by this section shall be conducted within 60 days by the owner after achieving the maximum production rate at which the new or modified source will be operated, but not later than 180 days after initial startup of the source; and 60 days thereafter the ~~board~~ department shall be provided by the owner with two or, upon request, more copies of a written report of the results of the tests.

C. The requirements of this section shall be met unless the ~~board~~ department:

1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;

2. Approves the use of an equivalent method;

3. Approves the use of an alternative method, the results of which the ~~board~~ department has determined to be adequate for indicating whether a specific source is in compliance;

4. Waives the requirement for testing because, based upon a technical evaluation of the past performance of similar source types, using similar control methods, the ~~board~~ department reasonably expects the new or modified source to perform in compliance with applicable standards; or

5. Waives the requirement for testing because the owner of the source has demonstrated by other means to the ~~board's~~ department's satisfaction that the source is in compliance with the applicable standard.

D. The provisions for the granting of waivers under subsection C of this section are intended for use in determining the initial compliance status of a source. The granting of a waiver does not obligate the ~~board~~ department to grant any waivers once the source has been in operation for more than one year beyond the initial startup date.

E. The granting of a waiver under this section does not shield the source from potential enforcement of any permit term or condition, applicable requirements of the implementation plan, or any other applicable federal requirements promulgated under the federal Clean Air Act.

9VAC5-80-2090. Application review and analysis.

No permit shall be granted pursuant to this article unless compliance with the standards in 9VAC5-80-2050 is demonstrated to the satisfaction of the ~~board~~ department by a review and analysis of the application performed on a source-by-source basis as specified below:

1. Applications shall be subject to a control technology review to determine if such source will be designed, built and equipped to comply with all applicable standards of performance prescribed under 9VAC5 Chapter 50 (9VAC5-50).

2. Applications shall be subject to an air quality analysis to determine the impact of nonattainment pollutant emissions.

9VAC5-80-2091. Source obligation.

A. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in 9VAC5-80-2180.

B. The following provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase and the owner elects to use the method specified in subdivisions a through c of the definition of "projected actual emissions" for calculating projected actual emissions:

1. Before beginning actual construction of the project, the owner shall document and maintain a record of the following information:

a. A description of the project;

b. Identification of the emissions units whose emissions of a regulated NSR pollutant could be affected by the project; and

c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under subdivision c of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

2. If the emissions unit is an existing electric utility steam generating unit, no less than 30 days before beginning actual construction, the owner shall provide a copy of the information set out in subdivision 1 of this subsection to the ~~board~~ department. Nothing in this subdivision shall be construed to require the owner of such a unit to obtain any determination from the ~~board~~ department before beginning actual construction.

3. The owner shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subdivision 1 b of this subsection; and calculate and maintain a record of the annual emissions, in tons per year

on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

4. If the unit is an existing electric utility steam generating unit, the owner shall submit a report to the ~~board~~ department within 60 days after the end of each year during which records shall be generated under subdivision 3 of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

5. If the unit is an existing unit other than an electric utility steam generating unit, the owner shall submit a report to the ~~board~~ department if the annual emissions, in tons per year, from the project identified in subdivision 1 of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to subdivision 1 c of this subsection) by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subdivision 1 c of this subsection. Such report shall be submitted to the ~~board~~ department within 60 days after the end of such year. The report shall contain the following:

a. The name, address and telephone number of the major stationary source;

b. The annual emissions as calculated pursuant to subdivision 3 of this subsection; and

c. Any other information that the owner wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

C. The owner shall make the information required to be documented and maintained pursuant to subsection A of this section available for review upon a request for inspection by the ~~board~~ department or the general public pursuant to the requirements contained in 9VAC5-80-270 or 9VAC5-80-670.

D. Approval to construct shall not relieve any owner of the responsibility to comply fully with applicable provisions of the implementation plan and any other requirements under local, state or federal law.

E. For each project subject to subsection B of this section, the owner shall provide notice of the availability of the information set out in subdivision B 1 of this section to the ~~board~~ department no less than 30 days before beginning actual construction. The notice shall include the location of the information and the name, address and telephone number of the contact from whom the information may be obtained. Should subsequent information become available to the ~~board~~ department to indicate that a given project subject to subsection B of this section is a part of a major modification that resulted in a significant emissions increase, the ~~board~~ department will proceed as if the owner is in violation of 9VAC5-80-1625 A and may institute appropriate enforcement action as provided in subsection A of this section. Nothing in this subsection shall be construed to require the owner of the source to obtain any determination from the ~~board~~ department before beginning actual construction.

9VAC5-80-2120. Offsets.

A. Owners shall comply with the offset requirements of this article by obtaining emission reductions from the same source or other sources in the same nonattainment area, except that for ozone precursor pollutants the ~~board~~ department may allow the owner to obtain such emission reductions in another nonattainment area if (i) the other area has an equal or higher nonattainment classification than the area in which the source is located and (ii) emissions from such other area contribute to a violation of the ambient air quality standard in the nonattainment area in which the source is located. By the time a new or modified source begins operation, such emission reductions shall (i) be in effect, (ii) be state and federally enforceable and (iii) assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the nonattainment area.

B. The (i) ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds or (ii) the ratio of total emission reductions of nitrogen oxides to total increased emissions of nitrogen oxides in ozone nonattainment areas designated in 9VAC5-20-204 shall be at least the following:

1. Nonattainment areas classified as marginal	1.1 to one.
2. Nonattainment areas classified as moderate	1.15 to one.
3. Nonattainment areas classified as serious	1.2 to one.
4. Nonattainment areas classified as severe	1.3 to one.
5. Nonattainment areas with any other classification or no classification	1 to one.

The ratio of total actual emissions reductions of the nonattainment pollutant to the emissions increase shall be at least 1 to one unless an alternative ratio is provided above for the applicable nonattainment area designated in 9VAC5-20-204.

C. Emission reductions otherwise required by these regulations shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by these regulations shall be creditable as emission reductions for such

purposes if such emission reductions meet the requirements of subsection A of this section.

D. The ~~board~~ department will allow an owner to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

1. Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

2. The source demonstrates to the satisfaction of the ~~board~~ department that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

3. The source has obtained a written finding from the U.S. Department of Defense, U.S. Department of Transportation, National Aeronautics and Space Administration, or other appropriate federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

4. The owner will comply with an alternative measure, imposed by the ~~board~~ department, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the ~~board~~ department may impose an emissions fee to be paid to the ~~board~~ department which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that nonattainment area during the previous three years. The ~~board~~ department will utilize the fees in a manner that maximizes the emissions reductions in that nonattainment area.

E. For sources subject to the provisions of this article, the baseline for determining credit for emissions reduction is the emissions limit under the applicable implementation plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

1. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area; or

2. The applicable implementation plan does not contain an emissions limitation for that source or source category.

F. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

G. For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the owner of the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The ~~board~~ department will ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

H. Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally and state enforceable. In addition, the shutdown or curtailment is creditable only if it occurred on or after January 1, 1991.

I. No emissions credit may be allowed for replacing one volatile organic compound with another of lesser reactivity.

J. Where this article does not adequately address a particular issue, the provisions of Appendix S to 40 CFR Part 51 shall be followed to the extent that they do not conflict with this section. The provisions of Appendix S to 40 CFR Part 51 apply only to the extent that they are incorporated by reference in 9VAC5-20-21.

K. Credit for an emissions reduction can be claimed to the extent that the ~~board~~ department has not relied on it in issuing any permit under this chapter or has not relied on it in demonstrating attainment or reasonable further progress.

L. The total tonnage of increased emissions, in tons per year, resulting from a major modification that shall be offset in accordance with § 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

M. In meeting the emissions offset requirements of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this subsection.

1. The offset requirements in this section for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ may be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under subdivision c of the definition of "regulated NSR pollutant" if such offsets comply with the interprecursor trading hierarchy and ratio established for a particular nonattainment area. The ~~board~~ department may allow the offset requirement of this section for direct $PM_{2.5}$ emissions or

precursors of $PM_{2.5}$ to be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor using a ratio approved by the ~~board~~ department for the nonattainment area after public review and comment as provided in subsections N and O of this section.

2. The offset requirements of this section for emissions of the ozone precursors NO_X and VOC may be satisfied, where appropriate, by offsetting reductions in actual emissions of either of those precursors if the requirements for such offsets under subdivision 3 of this subsection and all other requirements for such offsets are also satisfied.

3. For any case-specific permit ratio for ozone proposed by a permit applicant to be used for a particular permit, the following information shall be submitted to the ~~board~~ department to support approval of the ratio:

a. The description of the air quality model used to propose a case-specific ratio;

b. The proposed ratio for the precursor substitution and accompanying calculations; and

c. A modeling demonstration showing that such ratios as applied to the proposed project and credit source will provide an equivalent or greater air quality benefit with respect to ground level concentrations in the ozone nonattainment area than an offset of the emitted precursor would achieve.

N. Prior to the decision of the ~~board~~ department, the offsetting ratio will be subject to a public comment period of at least 30 days. The ~~board~~ department will notify the public~~,~~ by notice on the department webpage ~~"Public Notices for Air Regulations,"~~ of the opportunity for public comment on the offsetting ratio and supporting information as available for public inspection under the provisions of subsection O of this section. The notification shall be published at least 30 days prior to the close of the public comment period.

O. Information on the offsetting ratio and supporting information, as well as the preliminary determination of the ~~board~~ department, shall be available for public inspection during the entire public comment period on the department webpage ~~"Public Notices for Air Regulations."~~.

9VAC5-80-2140. Exemptions.

A. The provisions of this article do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric acid plants;

10. Sulfuric acid plants;

11. Nitric acid plants;

12. Petroleum refineries;

13. Lime plants;

14. Phosphate rock processing plants;

15. Coke oven batteries;

16. Sulfur recovery plants;

17. Carbon black plants (furnace process);

18. Primary lead smelters;

19. Fuel conversion plants;

20. Sintering plants;

21. Secondary metal production plants;

22. Chemical process plants (which shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);

23. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input;

24. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

25. Taconite ore processing plants;

26. Glass fiber processing plants;

27. Charcoal production plants;

28. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

29. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Parts 60, 61 or 63.

B. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the ~~board~~ department that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed

animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

9VAC5-80-2144. Actuals plantwide applicability limits (PALs).

A. The ~~board~~ department may approve the use of an actuals PAL for any existing major stationary source (except as provided in subdivision 1 of this subsection) if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

1. No PAL shall be allowed for VOC or NO_X for any source located in an extreme ozone nonattainment area.

2. Any physical change in or change in the method of operation of a source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

a. Is not a major modification for the PAL pollutant;

b. Does not have to be approved through this article; and

c. Is not subject to the provisions in 9VAC5-80-2000 D (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

3. Except as provided under subdivision 2 c of this subsection, a source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source shall submit the following information to the ~~board~~ department for approval:

1. A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

3. The calculation procedures that the owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

C. The general requirements set forth in this subsection shall apply to the establishment of PALs.

1. The ~~board~~ department may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met:

a. The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month rolling average). For each month during the first 11 months from the PAL effective date, the owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

b. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

c. The PAL permit shall contain all the requirements of subsection F of this section.

d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant.

e. Each PAL shall regulate emissions of only one pollutant.

f. Each PAL shall have a PAL effective period of 10 years.

g. The owner shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections M, N, and O of this section for each emissions unit under the PAL through the PAL effective period.

2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 9VAC5-80-2120 F through N unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

D. PALs for existing major stationary sources shall be established, renewed, or increased through the public participation procedures prescribed in the applicable permit programs identified in the definition of PAL permit. In no case may the ~~board~~ department issue a PAL permit unless the ~~board~~ department provides the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The ~~board~~ department will address all material comments before taking final action on the permit.

E. The actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant or under the federal Clean Air Act, whichever is

lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period shall be subtracted from the PAL level. Emissions from units on which actual construction began after the 24-month period shall be added to the PAL level in an amount equal to the potential to emit of the units. The ~~board~~ department will specify a reduced PAL level (in tons per year) in the PAL permit to become effective on the future compliance dates of any applicable federal or state regulatory requirements that the ~~board~~ department is aware of prior to issuance of the PAL permit. For instance, if the source owner will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_X to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such units.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if an owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the ~~board,~~ department or until the ~~board~~ department determines that the revised PAL permit will not be issued.

4. A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

5. A requirement that, once the PAL expires, the source is subject to the requirements of subsection I of this section.

6. The calculation procedures that the owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision N 1 of this section.

7. A requirement that the owner monitor all emissions units in accordance with the provisions under subsection M of this section.

8. A requirement to retain the records required under subsection N of this section on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subsection O of this section by the required deadlines.

10. Any other requirements that the ~~board~~ department deems necessary to implement and enforce the PAL.

G. The PAL effective period shall be 10 years.

H. The requirements for reopening of a PAL permit set forth in this section shall apply to actuals PALs.

1. During the PAL effective period, the ~~board~~ department will reopen the PAL permit to:

a. Correct typographical and calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

b. Reduce the PAL if the owner creates creditable emissions reductions for use as offsets under 9VAC5-80-2120 F through N; and

c. Revise the PAL to reflect an increase in the PAL as provided under subsection L of this section.

2. The ~~board~~ department may reopen the PAL permit for any of the following reasons:

a. Reduce the PAL to reflect newly applicable federal requirements (e.g., NSPS) with compliance dates after the PAL effective date.

b. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the ~~board~~ department may impose on the major stationary source.

c. Reduce the PAL if the ~~board~~ department determines that a reduction is necessary to avoid causing or contributing to a violation of an ambient air quality standard or ambient air increment in 9VAC5-80-1635, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical and calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL which is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the timeframe specified for PAL renewals in subdivision J 2 of this section, the source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the ~~board~~ department) by distributing the PAL allowable emissions

for the source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision K 4 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The ~~board~~ department will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the ~~board~~ department determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The ~~board~~ department may approve the use of monitoring systems (such as source testing or emission factors) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the ~~board~~ department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the source will be subject to the nonattainment major NSR requirements if such change meets the definition of "major modification."

5. The owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, or NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9VAC5-80-2000 D, but were eliminated by the PAL in accordance with the provisions in subdivision A 2 c of this section.

J. The requirements for the renewal of the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The ~~board~~ department will follow the procedures specified in subsection D of this section in approving any request to renew a PAL, and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the ~~board~~ department.

2. The owner shall submit a timely application to the ~~board~~ department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued, or until the ~~board~~ department determines that the revised permit with the renewed PAL will not be issued, and a permit is issued pursuant to subsection I of this section.

3. The application to renew a PAL permit shall contain the following information:

a. The information required in subsection B of this section.

b. A proposed PAL level.

c. The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.

d. Any other information the owner wishes the ~~board~~ department to consider in determining the appropriate level for renewing the PAL.

K. The requirements for the adjustment of the PAL set forth in this subsection shall apply to actuals PALs. In determining whether and how to adjust the PAL, the ~~board~~ department will consider the options outlined in subdivisions 1 and 2 of this subsection. However, in no case may any such adjustment fail to comply with subdivision 3 of this subsection.

1. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the ~~board~~ department may renew the PAL at the same level without considering the factors set forth in subdivision 2 of this subsection; or

2. The ~~board~~ department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the ~~board~~ department in its written rationale.

3. Notwithstanding subdivisions 1 and 2 of this subsection:

a. If the potential to emit of the source is less than the PAL, the ~~board~~ department will adjust the PAL to a level no greater than the potential to emit of the source; and

b. The ~~board~~ department will not approve a renewed PAL level higher than the current PAL, unless the source has complied with the provisions for increasing a PAL under subsection L of this section.

4. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the ~~board~~ department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

L. The requirements for increasing a PAL during the PAL effective period set forth in this subsection shall apply to actuals PALs.

1. The ~~board~~ department may increase a PAL emission limitation only if the owner of the major stationary source complies with the following provisions:

a. The owner shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the source's emissions to equal or exceed its PAL.

b. As part of this application, the owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 a of this subsection, regardless of the magnitude of the emissions increase resulting from them (i.e., no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the nonattainment major NSR program process (e.g., LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The ~~board~~ department will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

M. The requirements for monitoring the PAL set forth in this subsection apply to actuals PALs.

1. The general requirements for monitoring a PAL set forth in this subdivision apply to actuals PALs.

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subsection and must be approved by the ~~board~~ department.

c. Notwithstanding subdivision 1 b of this subsection, the owner may also employ an alternative monitoring approach that meets subdivision 1 a of this subsection if approved by the ~~board~~ department.

d. Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

2. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subdivisions 3 through 9 of this subsection:

a. Mass balance calculations for activities using coatings or solvents;

b. CEMS;

c. CPMS or PEMS; and

d. Emission factors.

3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the ~~board~~ department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. CEMS shall comply with applicable performance specifications found in 40 CFR Part 60, appendix B; and

b. CEMS shall sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the ~~board~~ department, while the emissions unit is operating.

6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the ~~board~~ department determines that testing is not required.

7. The owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the ~~board~~ department will, at the time of permit issuance:

a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the ~~board~~ department. Such testing shall occur at least once every five years after issuance of the PAL.

N. The requirements for recordkeeping in the PAL permit set forth in this subsection shall apply to actuals PALs.

1. The PAL permit shall require the owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require an owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

a. A copy of the PAL permit application and any applications for revisions to the PAL; and

b. Each annual certification of compliance pursuant to the federal operating permit and the data relied on in certifying the compliance.

O. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the ~~board~~ department in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the ~~board~~ department within 30 days of the end of each reporting period. This report shall contain the following information:

a. Identification of the owner and the permit number.

b. Total annual emissions in tons per year based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision N 1 of this section.

c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

d. A list of any emissions units modified or added to the source during the preceding six-month period.

e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision M 7 of this section.

g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods

where no monitoring is available. A report submitted pursuant to 9VAC5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by 9VAC5-80-110 F 2 b. The reports shall contain the following information:

a. Identification of the owner and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the ~~board~~ department the results of any revalidation test or method within three months after completion of such test or method.

P. The ~~board~~ department will not issue a PAL that does not comply with the requirements of this section after September 1, 2006. The ~~board~~ department may supersede any PAL that was established prior to September 1, 2006, with a PAL that complies with the requirements of this section.

9VAC5-80-2150. Compliance with local zoning requirements.

No provision of this part or any permit issued thereunder shall relieve an owner of the responsibility to comply in all respects with any existing zoning ordinances and regulations in the locality in which the source is located or proposes to be located; provided, however, that such compliance does not relieve the ~~board~~ department of its duty under 9VAC5-170-170 and § 10.1-1307 E of the Virginia Air Pollution Control Law to independently consider relevant facts and circumstances.

9VAC5-80-2170. Transfer of permits.

A. No person shall transfer a permit from one location to another, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall abide by any current permit issued to the previous owner. The new owner shall notify the ~~board~~ department of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall abide by any current permit issued under the previous source name. The owner shall notify the ~~board~~ department of the change in source name within 30 days of the name change.

9VAC5-80-2180. Permit invalidation, suspension, revocation, and enforcement.

A. A permit granted pursuant to this article shall become invalid if a program of continuous construction or modification is not commenced within 18 months from the date the permit is granted.

B. A permit granted pursuant to this article shall become invalid if a program of construction or modification is discontinued for a period of 18 months or more or if a program of construction or modification is not completed within a reasonable time. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase shall commence construction within 18 months of the projected and approved commencement date.

C. The ~~board~~ department may extend the periods prescribed in subsections A and B of this section upon satisfactory demonstration that an extension is justified. Provided there is no substantive change to the application information, the review and analysis, and the decision of the ~~board~~ department, such extensions may be granted using the procedures for minor amendments in 9VAC5-80-2220.

D. Any owner who constructs or operates a source or modification not in accordance (i) with the application submitted pursuant to this article, or (ii) with the terms and conditions of any permit to construct or operate, or any owner of a source or modification subject to this article who commences construction or operation without applying for and receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

E. Permits issued under this article shall be subject to such terms and conditions set forth in the permit as the ~~board~~ department may deem necessary to ensure compliance with all applicable requirements of the regulations of the board.

F. The ~~board~~ department may revoke any permit if the permittee:

1. Knowingly makes material misstatements in the permit application or any amendments thereto;

2. Fails to comply with the terms or conditions of the permit;

3. Fails to comply with any emission standards applicable to an emissions unit included in the permit;

4. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the implementation plan in effect at the time that an application is submitted; or

5. Fails to comply with the applicable provisions of this article.

G. The ~~board~~ department may suspend, under such conditions and for such period of time as the ~~board~~ department may prescribe, any permit for any of the grounds for revocation

contained in subsection F of this section or for any other violations of the regulations of the board.

H. The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Virginia Air Pollution Control Law and is grounds for (i) enforcement action or (ii) revocation.

I. Violation of the regulations of the board shall be grounds for revocation of permits issued under this article and are subject to the civil charges, penalties and all other relief contained in Part V (9VAC5-170-120 et seq.) of 9VAC5 Chapter 170 and the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia).

J. The ~~board~~ department will notify the applicant in writing of its decision, with its reasons, to change, suspend or revoke a permit or to render a permit invalid.

9VAC5-80-2195. Actions to combine permit terms and conditions.

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the ~~board~~ department may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the ~~board~~ department.

3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

d. To take an action to issue a permit or change a permit for any physical change in or change in the method of operation of a major stationary source that is subject to the provisions in 9VAC5-80-2000 D (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

B. The ~~board~~ department may take actions to combine the terms and conditions of state operating permits and new source review permits, along with any changes to state operating permits and new source review permits.

C. If the ~~board~~ department and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the ~~board~~ department may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the ~~board~~ department may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or

conditions is removed, the provisions of subdivision 4 of this subsection apply.

4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:

a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.

b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.

c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

9VAC5-80-2200. Actions to change permits.

A. The general requirements for actions to make changes to permits issued under this article are as follows:

1. Except as provided in subdivision 3 of this subsection, changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-2210 through 9VAC5-80-2240.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the ~~board~~ department as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the ~~board~~ department for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit changes can be found in 9VAC5-80-2210 through 9VAC5-80-2230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The ~~board~~ department may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-2240.

9VAC5-80-2210. Administrative permit amendments.

A. Administrative permit amendments shall be used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity that does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the ~~board~~ department and the requirements of 9VAC5-80-2170 have been fulfilled.

B. The administrative permit amendment procedures are as follows:

1. The ~~board~~ department will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The ~~board~~ department will incorporate the changes without providing notice to the public under 9VAC5-80-2070. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9VAC5-80-2220. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement.

2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements.

3. Do not require or change a case-by-case determination of an emissions limitation or other requirement.

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions

cap assumed to avoid classification as a modification under the new source review program.

5. Are not required to be processed as a significant amendment under 9VAC5-80-2230 or as an administrative permit amendment under 9VAC5-80-2210.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require new or more frequent monitoring or reporting by the permittee.

3. Designate any term or permit condition that meets the criteria in 9VAC5-80-2020 E 1 as state-only enforceable as provided in 9VAC5-80-2020 E 2 for any permit issued under this article or any regulation from which this article is derived.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the ~~board~~ department and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.

D. A request for the use of minor permit amendment procedures shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs, along with a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-2070 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the ~~board~~ department of a complete request under minor permit amendment procedures, the ~~board~~ department will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the ~~board~~ department takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit amendment.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify if the applicant has submitted a proposed permit amendment. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

9VAC5-80-2230. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-2220 or as administrative amendments under 9VAC5-80-2210.

2. Significant amendment procedures shall be used for those permit amendments that meet any of the following criteria:

a. Involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emissions limitation or other requirement.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. The provisions of 9VAC5-80-2070 shall apply to requests made under this section.

D. The ~~board~~ department will normally take final action on significant permit amendments within 180 days after receipt of a complete request ~~except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25~~. The ~~board~~ department may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the ~~board~~ department under subsection D of this section.

9VAC5-80-2240. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The ~~board~~ department determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The ~~board~~ department determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the requirements contained in this article.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the ~~board~~ department at least 30 days in advance of the date that the permit is to be reopened, except that the ~~board~~ department may provide a shorter time period in the case of an emergency.

9VAC5-80-2260. Definitions.

A. For the purpose of applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in subsection D of this section.

B. As used in this article, all words and terms not defined in subsection D of this section shall have the meanings given them in 9VAC5-80-60 C, 9VAC5-80-370, 9VAC5-80-810 C, 9VAC5-80-1110 C, 9VAC5-80-1410 C, 9VAC5-80-1615 C, 9VAC5-80-2010 C, 9VAC5-85-30 C, 9VAC5-85-50 C, or 9VAC5-85-70 C, as may apply, unless otherwise required by context.

C. All words and terms not defined in subsection D of this section and not defined as provided in subsection B of this section shall have the meanings given them in 9VAC5-80-5 or 9VAC5-10 (General Definitions), unless otherwise required by context.

D. Terms defined.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application. Designating an application complete for the purposes of permit processing does not preclude the ~~board~~ department from requesting or accepting any additional information.

"Major new source review permit" or "major NSR permit" means a permit that is issued under the major new source review (major NSR) program or a permit that is issued pursuant to the minor new source review (minor NSR) program in which one or more of the provisions have been combined from a permit issued under the major NSR program. A major NSR permit may contain provisions that are subject to the requirements of the minor NSR program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 112, 165, and 173 of the federal Clean Air Act and associated regulations; and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), and Article 9 (9VAC5-80-2000 et seq.) of this part and Part III (9VAC5-85-40 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Minor new source review permit" or "minor NSR permit" means a permit that is issued pursuant to the minor new source review (minor NSR) program in which none of the provisions have been combined from a major NSR permit.

"Permit amendment" means (i) a change to a permit that was issued pursuant to Article 5 (9VAC5-80-800 et seq.), Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.), or Article 9 (9VAC5-80-2000 et seq.) of this part; (ii) an administrative change to a permit issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part; or (iii) a change to a permit issued pursuant to Part III (9VAC5-85-40 et seq.) or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Permit modification" means a change, other than an administrative permit amendment, to a permit that was issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or pursuant to Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"State major permit" means a minor NSR permit that is issued for a stationary source having the potential to emit 100 tons per

year or more of any air pollutant, considering the state enforceable and federally enforceable permit limits in that permit.

"State operating permit" means a permit issued pursuant to Article 5 (9VAC5-80-800 et seq.) of this part or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Synthetic minor permit" means a permit that is issued under the provisions of Article 5 (9VAC5-80-800 et seq.) or Article 6 (9VAC5-80-1100 et seq.) of this part or Part IV (9VAC5-85-60 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) for a stationary source that would otherwise be subject to permit requirements under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) except for state enforceable and federally enforceable permit limits in that permit.

"Title V permit" means a federal operating permit issued pursuant to Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation).

"Title V general permit" means a general permit issued pursuant to the provisions of 9VAC5-80-120.

"True minor source" means a stationary source that would not be subject to permit requirements under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part or Part II (9VAC5-85-20 et seq.) of 9VAC5-85 (Permits for Stationary Sources of Pollutants Subject to Regulation) even without considering any state enforceable or federally enforceable permit limitations.

9VAC5-85-40. Prevention of significant deterioration area permit actions.

The requirements of Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 shall apply, with the following exceptions:

1. The terms defined shall have the meaning given to them in this part.

2. The ~~board~~ department, at its discretion, may apply the provisions of 9VAC5-85-55 in lieu of 9VAC5-80-1865 (Actuals plantwide applicability limits (PALs)).

9VAC5-85-50. Definitions.

A. For the purpose of applying this part in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meanings given them in 9VAC5-80-1615 (Definitions), except for the terms defined in subsection C of this section.

B. Unless otherwise required by context, all terms not defined herein shall have the meanings given them in 9VAC5-10 (General Definitions) or 9VAC5-80-5 (Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Actuals PAL" means (i) for major stationary sources, a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant or (ii) for GHG-only sources, a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit GHGs.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits that restrict the operating rate or hours of operation, or both) and the most stringent of the following:

1. The allowable emissions for any emissions unit as calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit; or

2. An emissions unit's potential to emit.

"Baseline actual emissions for a GHG PAL" means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner within the 10-year period immediately preceding either the date the owner begins actual construction of the project or the date a complete permit application is received by the ~~board~~ department for a permit required under this part. For any existing electric utility steam generating unit, baseline actual emissions for a GHG PAL means the average rate, in tons per year CO_2e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner within the five-year period immediately preceding the date the owner begins actual construction of the project, except that the ~~board~~ department will allow the use of a different time period upon a determination that it is more representative of normal source operation.

1. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

2. The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

3. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source shall currently comply, had such stationary source been required to comply

with such limitations during the consecutive 24-month period.

4. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by subdivisions 2 and 3 of this definition.

"Emissions unit" means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of 9VAC5-85-55, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is or will be newly constructed and that has existed for less than two years from the date such emissions unit first operated, and (ii) an existing emissions unit is any emissions unit that does not meet the definition of a new emissions unit. A replacement unit is an existing emissions unit.

"GHG-only source" means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under the definition of "major stationary source" and the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under the definition of "subject to regulation" at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under 9VAC5-85-55.

"Greenhouse gases" or "GHGs" means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Major emissions unit" means (i) for any major stationary source obtaining a GHG PAL issued on a mass basis, a major emissions unit as defined in 9VAC5-80-1615 C or (ii) for a GHG PAL issued on a CO_2e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO_2e basis that would be sufficient for a new source to trigger permitting requirements under the definition of "subject to regulation" at the time the PAL permit is being issued.

"Major stationary source" means a major stationary source that is defined in and subject to Article 8 (9VAC5-80-1605 et seq.) of 9VAC5-80 (Permits for Stationary Sources) and that meets the definition of "subject to regulation."

"Minor source" means any stationary source that does not meet either (i) the definition of "major stationary source" for any pollutant at the time the PAL is issued or (ii) the definition of "subject to regulation."

"Plantwide applicability limitation" or "PAL" means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e for a CO_2e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-85-55.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase" as defined in 9VAC5-80-1615 C and the definition of "subject to regulation" of this section, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the major NSR permit, the state operating permit, or the federal operating permit that establishes a PAL for a major stationary source or a GHG-only source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Regulated NSR pollutant" means:

1. Any pollutant for which an ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and NO_X are precursors for ozone);

2. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act;

3. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act; or

4. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act as defined in the definition of "subject to regulation."

5. Notwithstanding subdivisions 1 through 4 of this definition, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act, or added to the list pursuant to § 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to § 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Replacement unit" means an emissions unit for which all the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not change the basic design parameters of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Significant emissions unit" means (i) for a GHG PAL issued on a mass basis, an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit or (ii) for a GHG PAL issued on a CO_2e basis, any emissions unit that emits or has the potential to emit GHGs on a CO_2e basis in amounts equal to or greater than the amount that would qualify the unit as small emissions unit, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means (i) for a GHG PAL issued on a mass basis, an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in this section or in the federal Clean Air Act, whichever is lower or (ii) for a GHG PAL issued on a CO_2e basis, an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO_2e basis defined as "significant" for the purposes of subdivision 3 of the definition of "subject to regulation" at the time the PAL permit is being issued.

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. The following exceptions shall apply:

1. GHGs shall not be subject to regulation except as provided in subdivisions 4 and 5 of this definition and shall not be subject to regulation if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements of 9VAC5-85-55, and complies with the PAL permit containing the GHG PAL. A GHG-only source with a valid CO_2e-based GHG PAL shall be considered to be a minor source for GHG.

2. For purposes of subdivisions 3, 4, and 5 of this definition, the term "tpy CO_2 equivalent emissions (CO_2e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

a. Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98. For purposes of this subdivision, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of nonfossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, byproducts, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

b. Sum the resultant value from subdivision a of this subdivision for each gas to compute a tpy CO_2e.

3. The term "emissions increase" as used in subdivisions 4 and 5 of this definition shall mean that both a significant emissions increase (as calculated using the procedures in 9VAC5-80-1605 G) and a significant net emissions increase (as defined in 9VAC5-80-1615 C) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as

75,000 tpy CO_2e instead of applying the value in subdivision b of the definition of "significant" in 9VAC5-80-1615 C.

4. Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

a. The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO_2e or more; or

b. The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO_2e or more.

5. Beginning July 1, 2011, in addition to the provisions in subdivision 4 of this definition, the pollutant GHGs shall also be subject to regulation:

a. At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e; or

b. At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

9VAC5-85-55. Actuals plantwide applicability limits (PALs).

A. The following applicability requirements shall apply:

1. The ~~board~~ department may approve the use of an actuals PAL for GHGs on either a mass basis or a CO_2e basis for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

2. Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total sourcewide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

a. Is not a major modification for the PAL pollutant;

b. Does not have to be approved through Article 8 (9VAC5-80-1605 et seq.) of Part II of 9VAC5-80 (Permits for Stationary Sources) or this part;

c. Is not subject to the provisions of 9VAC5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and

d. Does not make GHGs subject to regulation.

3. Except as provided under subdivision 2 c of this subsection, a major stationary source or a GHG-only source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. As part of a permit application requesting a PAL, the owner of a major stationary source or a GHG-only source shall submit the following information to the ~~board~~ department for approval:

1. A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

2. Calculations of the baseline actual emissions, with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

3. The calculation procedures that the owner proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subdivision M 1 of this section.

4. As part of a permit application requesting a GHG PAL, the owner of a major stationary source or a GHG-only source shall submit a statement by the owner that clarifies whether the source is an existing major source as defined in the definition of "major stationary source" or a GHG-only source.

C. The ~~board~~ department may establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the following requirements are met. At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 9VAC5-80-2120 F through L unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

1. The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO_2e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

2. The PAL shall be established in a PAL permit that meets the public participation requirements in subsection D of this section.

3. The PAL permit shall contain all the requirements of subsection F of this section.

4. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

5. Each PAL shall regulate emissions of only one pollutant.

6. Each PAL shall have a PAL effective period of 10 years.

7. The owner of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections L, M, and N of this section for each emissions unit under the PAL through the PAL effective period.

D. PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased through the public participation procedures prescribed in the applicable permit programs identified in the definition of "PAL permit." This includes the requirement that the ~~board~~ department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The ~~board~~ department will address all material comments before taking final action on the permit.

E. Setting the 10-year actuals PAL level shall be accomplished as follows:

1. Except as provided in subdivisions 2 and 3 of this subsection, the actuals PAL level on a mass basis for a major stationary source or a GHG-only source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source, plus an amount equal to the applicable significant level for the PAL pollutant under the definition of "significant" in 9VAC5-80-1615 C.

2. For newly constructed units, which do not include modifications to existing units, on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subdivision 1 of this subsection, the emissions shall be added to the PAL level in an amount equal to the potential to emit of the units.

3. For a CO_2e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as significant on a CO_2e basis for the purposes of subdivision 3 of the definition of "subject to regulation" at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO_2e-based PAL, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period shall be subtracted from the PAL level. The ~~board~~ department will specify a reduced PAL level (in tons per year CO_2e) in the PAL permit to become effective on the future compliance date of any applicable federal or state regulatory requirement that the ~~board~~ department is aware of prior to issuance of the PAL permit.

F. The PAL permit shall contain, at a minimum, the following information:

1. The PAL pollutant and the applicable sourcewide emission limitation in tons per year CO_2e.

2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).

3. Specification in the PAL permit that if a major stationary source or a GHG-only source owner applies to renew a PAL in accordance with subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the ~~board~~ department.

4. A requirement that emission calculations for compliance purposes shall include emissions from startups, shutdowns, and malfunctions.

5. A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of subdivision I of this section.

6. The calculation procedures that the major stationary source or GHG-only source owner shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subdivision M 1 of this section.

7. A requirement that the GHG-only source owner shall monitor all emissions units in accordance with the provisions under subsection L of this section.

8. A requirement to retain the records required under subsection M of this section on site. Such records may be retained in an electronic format.

9. A requirement to submit the reports required under subsection N of this section by the required deadlines.

10. Any other requirements that the ~~board~~ department deems necessary to implement and enforce the PAL.

11. A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation as long as the source complies with the PAL.

G. The PAL effective period shall be 10 years.

H. The following requirements for reopening the PAL permit shall apply:

1. During the PAL effective period the ~~board~~ department will reopen the PAL permit to:

a. Correct typographical or calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

b. Reduce the PAL if the owner creates creditable emissions reductions for use as offsets under 9VAC5-80-2120 F through N; and

c. Revise the PAL to reflect an increase in the PAL as provided under subsection K of this section.

2. The ~~board~~ department may reopen the PAL permit for the following reasons:

a. Reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date; and

b. Reduce the PAL consistent with any other requirement that is enforceable as a practical matter and that the ~~board~~ department may impose on the major stationary source or GHG-only source.

3. Except for the permit reopening in subdivision 1 a of this subsection for the correction of typographical or calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection D of this section.

I. Any PAL that is not renewed in accordance with the procedures in subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply:

1. Each emissions unit or each group of emissions units that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures:

a. Within the time frame specified for PAL renewals in subdivision J 2 of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the ~~board~~ department) by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under subdivision J 5 of this section, such distribution shall be made as if the PAL had been adjusted.

b. The ~~board~~ department will decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the ~~board~~ department determines is appropriate.

2. Each emissions unit shall comply with the allowable emission limitation on a 12-month rolling basis. The ~~board~~ department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.

3. Until the ~~board~~ department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subdivision 1 b of this subsection, the source shall continue to comply with a sourcewide, multiunit emissions cap equivalent to the level of the PAL emission limitation.

4. Any physical change or change in the method of operation at the major stationary source or GHG-only source shall be subject to major NSR requirements if such change meets the definition of "major modification" in 9VAC5-80-1615 C.

5. The major stationary source or GHG-only source owner shall continue to comply with any state or federal applicable requirements (such as BACT, RACT, NSPS) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 9VAC5-80-1605 C, but were eliminated by the PAL in accordance with the provisions in subdivision A 2 c of this section.

J. PALs shall be renewed as follows:

1. The ~~board~~ department will follow the procedures specified in subsection D of this section in approving any request to renew a PAL for a major stationary source or a GHG-only source and will provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the ~~board~~ department.

2. A major stationary source or a GHG-only source owner shall submit a timely application to the ~~board~~ department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner of a major stationary source or a GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

3. The application to renew a PAL permit shall contain the following information:

a. The information required in subdivisions B 1, B 2, and B 3 of this section.

b. A proposed PAL level.

c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

d. Any other information the owner wishes the ~~board~~ department to consider in determining the appropriate level for renewing the PAL.

4. In determining whether and how to adjust the PAL, the ~~board~~ department will consider the following options; however, in no case may any such adjustment fail to comply with subdivision 4 c of this subsection:

a. If the emissions level calculated in accordance with subsection E of this section is equal to or greater than 80% of the PAL level, the ~~board~~ department may renew the PAL at the same level without considering the factors set forth in subdivision 4 b of this subsection; or

b. The ~~board~~ department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the ~~board~~ department in its written rationale.

c. Notwithstanding subdivisions 4 a and 4 b of this subsection (i) if the potential to emit of the major stationary source or GHG-only source is less than the PAL, the ~~board~~ department will adjust the PAL to a level no greater than the potential to emit of the source and (ii) the ~~board~~ department will not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of subsection K of this section.

5. If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the ~~board~~ department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or federal operating permit renewal, whichever occurs first.

K. A PAL may be increased during the PAL effective period as follows:

1. The ~~board~~ department may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the following provisions:

a. The owner of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions units contributing to the increase in emissions so as to cause the GHG-only source's emissions to equal or exceed its PAL.

b. As part of this application, the major stationary source or GHG-only source owner shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions units exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.

c. The owner obtains a major NSR permit for all emissions units identified in subdivision 1 a of this subsection, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions units shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

2. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

3. The ~~board~~ department will calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with subdivision 1 b of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

4. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection D of this section.

L. Monitoring requirements for PALs shall be as follows:

1. The following general requirements apply:

a. Each PAL permit shall contain enforceable requirements for the monitoring system that accurately determine plantwide emissions of the PAL pollutant in terms of CO_2e per unit of time. Any monitoring system authorized for use in the PAL permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

b. The PAL monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subdivision 2 of this subsection and shall be approved by the ~~board~~ department.

c. Notwithstanding subdivision 1 b of this subsection, the owner may also employ an alternative monitoring

approach that meets subdivision 1 a of this subsection if approved by the ~~board~~ department.

d. Failure to use a monitoring system that meets the requirements of this subsection renders the PAL invalid.

2. The following are acceptable general monitoring approaches when conducted in accordance with the following minimum requirements:

a. Mass balance calculations for activities using coatings or solvents;

b. CEMS;

c. CPMS or PEMS; and

d. Emission factors.

3. An owner using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner shall use the highest value of the range to calculate the PAL pollutant emissions unless the ~~board~~ department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

4. An owner using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. CEMS shall comply with applicable Performance Specifications found in Appendix B to 40 CFR Part 60; and

b. CEMS shall sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

5. An owner using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

a. The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameters and the PAL pollutant emissions across the range of operation of the emissions unit; and

b. Each CPMS or PEMS shall sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the ~~board~~ department, while the emissions unit is operating.

6. An owner using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

c. If technically practicable, the owner of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the ~~board~~ department determines that testing is not required.

7. A source owner shall record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

8. Notwithstanding the requirements in subdivisions 3 through 7 of this subsection, where an owner of an emissions unit cannot demonstrate a correlation between the monitored parameters and the PAL pollutant emissions rate at all operating points of the emissions unit, the ~~board~~ department will, at the time of permit issuance:

a. Establish default values for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating points; or

b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameters and the PAL pollutant emissions is a violation of the PAL.

9. All data used to establish the PAL pollutant shall be revalidated through performance testing or other scientifically valid means approved by the ~~board~~ department. Such testing shall occur at least once every five years after issuance of the PAL.

M. Recordkeeping requirements shall be as follows:

1. The PAL permit shall require the owner to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

2. The PAL permit shall require the owner to retain a copy of the following records for the duration of the PAL effective period plus five years:

a. A copy of the PAL permit application and any applications for revisions to the PAL; and

b. Each annual certification of compliance pursuant to the federal operating permit program and the data relied on in certifying the compliance.

N. The owner shall submit semi-annual monitoring reports and prompt deviation reports to the ~~board~~ department in accordance with the federal operating permit program. The reports shall meet the following requirements:

1. The semi-annual report shall be submitted to the ~~board~~ department within 30 days of the end of each reporting period. This report shall contain the following information:

a. The identification of owner and the permit number.

b. Total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO_2e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subdivision M 1 of this section.

c. All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

d. A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding six-month period.

e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subdivision L 7 of this section.

g. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

2. The major stationary source or GHG-only source owner shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 9VAC5-80-110 F 2 b shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 9VAC5-80-110 F 2 b. The reports shall contain the following information:

a. The identification of owner and the permit number;

b. The PAL requirement that experienced the deviation or that was exceeded;

c. Emissions resulting from the deviation or the exceedance; and

d. A signed statement by the responsible official (as defined by the federal operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

3. The owner shall submit to the ~~board~~ department the results of any revalidation test or method within three months after completion of such test or method.

O. The ~~board~~ department will not issue a PAL that does not comply with the requirements of this part after March 13, 2014. The ~~board~~ department may supersede any PAL that was established prior to March 13, 2014, with a PAL that complies with the requirements of this section.

9VAC5-170-10. Use of terms.

A. For the purpose of this chapter and subsequent amendments to it, of regulations of the board, or of orders issued by the ~~board~~ department, the words or terms shall have the meanings given them in 9VAC5-170-20.

B. Unless specifically defined in the Virginia Air Pollution Control Law or in the regulations of the board, terms used shall have the meanings commonly ascribed to them by recognized authorities.

9VAC5-170-20. Terms defined.

"Administrative proceeding" means an informal fact finding or formal hearing.

"Administrative Process Act" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

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

"Board" means the State Air Pollution Control Board or its designated representative. When used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "board" means the Department of Environmental Quality.

"Case decision" means any determination that a named party as a matter of past or present fact, or as a matter of threatened or contemplated private action, either is or is not, or may or may not be (i) in violation of any law or regulations, or (ii) in compliance with any existing requirement for obtaining or retaining a permit or other right or benefit. Case decisions include, but are not limited to, consent orders, consent agreements, orders, special orders, emergency special orders, permits, waivers, and licenses. Case decisions do not include notices of violations, variances, regulations, or inspection reports.

"Confidential information" means secret formulae, secret processes, secret methods, or other trade secrets that are

proprietary information certified by the signature of the responsible person for the owner to meet the following criteria: (i) information for which the owner has been taking and will continue to take measures to protect confidentiality, (ii) information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding, (iii) information that is not publicly available from sources other than the owner, and (iv) information the disclosure of which would cause substantial harm to the owner.

"Consent agreement" means an agreement that the owner or another person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with the regulations of the board, by mutual agreement of the owner or another person and the ~~board~~ department.

"Consent order" means a consent agreement issued as an order. Consent orders may be issued without a formal hearing.

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

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

"Disclosure form" means the financial statement required by § 2.2-3114 of the State and Local Government Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia).

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

"Emergency special order" means an order of the ~~board~~ department issued under the provisions of § 10.1-1309 B of the Code of Virginia, after declaring a state of emergency and without a formal hearing, to owners who are permitting or causing air pollution to cease the pollution. These orders shall become invalid if a formal hearing is not held within 10 days after the effective date.

"Enabling law" or "enabling laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing the board to make regulations or the department to decide cases or containing procedural requirements therefor, including, but not limited to, the (i) Virginia Air Pollution Control Law and (ii) the Virginia Motor Vehicle Emissions Control Law.

"Evidentiary hearing" means a formal proceeding that provides opportunity for interested persons to submit factual proofs in formal proceedings as provided in § 2.2-4009 of the Administrative Process Act in connection with the making of regulations. Evidentiary hearings do not include the informational inquiries of an informal nature provided in § 2.2-4007.01 B of the Administrative Process Act.

"Federal Clean Air Act" means 42 USC 7401 et seq., 91 Stat 685.

"Formal hearing" means a formal proceeding that provides for the right of private parties to submit factual proofs as provided in § 2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 2.2-4019 of the Administrative Process Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 2.2-4019 of the Administrative Process Act.

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

"Order" means a decision or directive of the ~~board~~ department, including special orders, emergency special orders, and other orders of all types, rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of the regulations of the board. Unless specified otherwise in the Virginia Air Pollution Control Law or in the regulations of the board, orders shall be issued only after the appropriate administrative proceeding.

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

"Party" means, for the purposes of Part VIII (9VAC5-170-190 et seq.) of this chapter, a person named in the record who actively participates in the administrative proceeding or offers comments through the public participation process. The term "party" also means the department.

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

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

"Potential conflict of interest" means a personal interest as defined in § 2.2-3101 of the State and Local Government Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia).

"Public hearing" means, unless indicated otherwise, an informal proceeding, similar to that provided for in § 2.2-

4007.01 B of the Administrative Process Act, held to afford people an opportunity to submit views and data relative to a matter on which a decision of the board or the department is pending.

"Public meeting" means an informal proceeding conducted by the department in conjunction with the notice of intended regulatory action to afford people an opportunity to submit comments relative to intended regulatory actions.

"Public participation process" means any element of a board or department decision making process that involves the use of a public meeting, public hearing, or evidentiary hearing.

"Regulations of the board" means regulations adopted by the State Air Pollution Control Board under a provision of the Code of Virginia.

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

"Special order" means an order of the ~~board~~ department issued:

1. Under the provisions of § 10.1-1309 of the Code of Virginia:

a. To owners who are permitting or causing air pollution to cease and desist from the pollution;

b. To owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to, and approved by the ~~board~~ department, to construct facilities in accordance with or otherwise comply with the approved plan;

c. To owners who have violated or failed to comply with the terms and provisions of an order or directive issued by the ~~board~~ department to comply with the terms and provisions;

d. To owners who have contravened duly adopted and promulgated air quality standards and policies to cease and desist from the contravention and to comply with the air quality standards and policies; and

e. To require an owner to comply with the provisions of the Virginia Air Pollution Control Law and a decision of the ~~board~~ department; or

2. Under the provisions of § 10.1-1309.1 of the Code of Virginia, which require that an owner file with the ~~board~~ department a plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the environment that is reasonably likely to occur if the source ceases operations.

"Variance" means the temporary exemption of an owner or other person from the regulations of the board, or a temporary change in the regulations of the board as they apply to an owner or other person.

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

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Virginia Register Act" means Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia.

9VAC5-170-30. Applicability.

A. The provisions of this chapter, unless specified otherwise, shall apply throughout the Commonwealth of Virginia.

B. The provisions of this chapter, unless specified otherwise, shall apply in the administration of all regulations of the board to the extent not covered in a specific regulation of the board. In cases where the provisions of this chapter conflict with another regulation of the board, the provisions of the other regulation shall apply.

C. No provision of this chapter shall limit the power of the ~~board~~ department to take appropriate action as necessary to control and abate air pollution in emergency situations.

~~D. By the adoption of this chapter, the board confers upon the department the administrative, enforcement, and decision-making authority articulated in this chapter except as restricted in Part VII (9VAC5-170-180 et seq.) of this chapter.~~

9VAC5-170-40. Hearings and proceedings.

A. Four types of proceedings are used in the administration of the ~~board's regulatory program~~ following programs.

1. A public hearing is held in each of two situations, as explained below.

a. A public hearing is required before considering regulations in accordance with § 10.1-1308 of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 2.2-4007.01 B of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1308 of the Virginia Air Pollution Control Law, and to 9VAC5-5 (Public Participation Guidelines).

b. A public hearing is required before considering variances and amendments to and revocation of variances in accordance with § 10.1-1307 C of the Virginia Air Pollution Control Law. The procedure for a public hearing shall conform to § 10.1-1307 C of the Virginia Air Pollution Control Law and to the provisions of 9VAC5-170-140.

2. An informal fact finding is used to negotiate and to make case decisions. The procedure for an informal fact finding shall conform to § 2.2-4019 of the Administrative Process Act.

3. A formal hearing is held in each of two situations.

a. A formal hearing is held for the enforcement or review of orders and permits and for the enforcement of regulations in accordance with § 10.1-1307 D and § 10.1-1322 A of the Virginia Air Pollution Control Law. The procedures for this type of hearing shall conform to § 2.2-4020 of the Administrative Process Act, except as modified by § 10.1-1307 D and F of the Virginia Air Pollution Control Law.

b. A formal hearing is held for special orders or emergency special orders for the enforcement or review of orders and permits and for the enforcement of regulations in accordance with § 10.1-1309 of the Virginia Pollution Control Law. The procedures for this type of hearing shall conform to § 2.2-4020 of the Administrative Process Act, except as modified by §§ 10.1-1307 F and 10.1-1309 of the Virginia Air Pollution Control Law.

4. An evidentiary hearing may be held for the making of regulations. The procedure for this type of hearing shall conform to § 2.2-4009 of the Administrative Process Act.

B. The ~~board~~ department may adopt policies and procedures to supplement the statutory procedural requirements for the various hearings and proceedings cited in ~~subsection A~~ subdivisions A 1, A 2, and A 3 of this section.

C. Records of hearings and proceedings may be kept in one of the following forms:

1. Oral statements or testimony at a public hearing will be stenographically or electronically recorded, and may be transcribed to written form.

2. Oral statements or testimony at an informal fact finding will be stenographically or electronically recorded, and may be transcribed to written form.

3. Formal hearings and evidentiary hearings will be recorded by a court reporter or electronically recorded for transcription to written form.

D. Availability of records of hearings and proceedings shall be as follows:

1. A copy of the electronic recording or the transcript of a public hearing, if transcribed, will be provided within a reasonable time to anyone upon receipt of a written request and payment of the cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

2. A copy of the electronic recording or the transcript of an informal fact finding, if transcribed, will be provided within a reasonable time to anyone upon receipt of a written request and payment of cost; if not transcribed, the additional cost of preparation will be paid by the person making the request.

3. Anyone desiring a copy of the transcript of a formal hearing or evidentiary hearing recorded by a court reporter may purchase the copy directly from the court reporter; if not transcribed, the additional cost of preparation will be paid by the person making the request.

9VAC5-170-50. Policy and procedural information and guidance.

A. The director may adopt detailed policies and procedures which:

1. Request data and information in addition to and in amplification of the provisions of the regulations of the board;

2. Specify the methods and means that may be used to determine compliance with applicable provisions of the regulations of the board;

3. Set forth the format by which all data and information should be submitted; and

4. Set forth how the regulatory programs should be implemented.

B. In cases where the regulations of the board specify that procedures or methods shall be approved by, acceptable to, or determined by the board or other similar phrasing, ~~the~~ such phrasing shall be interpreted such as consistent with the Air Pollution Control Law of Virginia (§ 10.1-1300 et seq. of the Code of Virginia) The owner may request information and guidance concerning the proper procedures and methods, and the director shall furnish in writing such information on a case-by-case basis.

9VAC5-170-60. Availability of information.

A. Emission data in the possession of the ~~board~~ department shall be available to the public without exception.

B. Other records, reports, or information in the possession of the ~~board~~ department shall be available to the public with the following exception. The ~~board~~ department shall consider records, reports, or information confidential in accordance with §§ 10.1-1314 and 10.1-1314.1 of the Virginia Air Pollution Control Law upon a showing satisfactory to the ~~board~~ department by an owner that records, reports, or information meet the criteria in subsection C of this section and the owner provides a certification to that effect signed by a responsible representative of the owner. Records, reports or information may be disclosed, however, to other officers, employees or authorized representatives of the Commonwealth of Virginia and the U.S. Environmental Protection Agency concerned with carrying out the provisions of the Virginia Air Pollution Control Law and the federal Clean Air Act.

C. In order to be exempt from disclosure to the public under subsection B of this section, the record, report or information must satisfy the following criteria:

1. Information for which the owner has been taking and will continue to take measures to protect confidentiality;

2. Information that has not been and is not presently reasonably obtainable without the owner's consent by private citizens or other firms through legitimate means other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding;

3. Information which is not publicly available from sources other than the owner; and

4. Information the disclosure of which would cause substantial harm to the owner.

D. The ~~board~~ department shall have the right to substitute information which is not confidential for information claimed as confidential and to inquire as to the basis of the confidentiality claim. Upon approval of the ~~board~~ department, an owner may substitute information which is not confidential for information claimed as confidential. Information substituted shall be limited to that which would have the same substantive effect in analyses conducted by the ~~board~~ department as the information for which the inquiry is made.

E. The responsible representative of the owner who certifies information as confidential which does not meet the criteria in subsection C of this section shall be in violation of the Virginia Air Pollution Control Law.

9VAC5-170-70. ~~Evaluation of regulation.~~ (Repealed.)

~~A. Prior to January 1, 2001, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements, and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.~~

~~B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter, or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.~~

9VAC5-170-80. Establishment of regulations and orders.

A. Regulations of the board shall be adopted, amended or repealed in accordance with the provisions of the enabling laws, Articles 1 (§ 2.2-4000 et seq.) and 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, and 9VAC5-5 (Public Participation Guidelines).

B. Regulations, amendments, and repeals shall become effective as provided in § 2.2-4015 of the Administrative Process Act.

C. If necessary in an emergency situation, the board may adopt, amend or stay a regulation as an exclusion under § 2.2-4011 of the Administrative Process Act, but the regulation shall remain effective no longer than one year unless readopted following the requirements of subsection A of this section. The provisions of this subsection are not applicable to emergency special orders of the ~~board~~ department; these orders are subject to the provisions of subsection E of this section.

D. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout the regulations of the board, documents of the types specified below have been incorporated by reference.

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

Additional information on specific documents which have been incorporated by reference and on the availability of these documents may be found in the specific regulations of the board which incorporate the documents.

E. Orders, special orders, and emergency special orders may be issued pursuant to § 10.1-1307 D, § 10.1-1309, or § 10.1-1309.1 of the Virginia Air Pollution Control Law.

9VAC5-170-120. Enforcement of regulations, permits, and orders.

A. As provided in § 10.1-1186(10) of the Code of Virginia, the director has independent authority to compel compliance with the Virginia Air Pollution Control Law, regulations of the board, permits, certifications, and case decisions. However, whenever the director has reason to believe that a violation of any provision of the regulations of the board or a permit or order has occurred, he may serve notice on the suspected violator ~~on behalf of the board~~, citing the applicable provision of the regulations of the board, permit, or order and the facts on which the suspected violation is based. ~~When acting on behalf of the board, the~~ The director may obtain compliance through one of the enforcement proceedings provided in subdivisions 1 and 2 of this subsection. ~~Thus, the director may act on his own independent authority or on the authority of the board as delegated to him by this chapter.~~

1. The director may obtain compliance through administrative means. These means may be a variance,

order, special order, control program, consent agreement, or another mechanism that requires compliance by a specific date. The means and the associated date shall be determined on a case-by-case basis and shall not allow an unreasonable delay in compliance.

2. The director may obtain compliance through legal means pursuant to § 10.1-1307.3, § 10.1-1316, or § 10.1-1320 of the Virginia Air Pollution Control Law.

B. Nothing in this section shall prevent the director from making efforts to obtain voluntary compliance through conference, warning or other appropriate means.

C. Orders, consent orders, delayed compliance orders, special orders, and emergency special orders are considered administrative means, and the ~~board~~ department reserves the right to use these means in lieu of or to provide a legal basis for the enforcement of administrative means approved by the director under subsection A of this section.

D. Case decisions regarding the enforcement of regulations, orders, and permits shall be made by the director ~~or board~~. Case decisions of the director that are made pursuant to a formal hearing ~~(i)~~ may be regarded as a final decision ~~of the board~~ and appealed pursuant to 9VAC5-170-200 D ~~or (ii) may be directly considered by the board as provided in 9VAC5-170-200 G~~, with the review being on the record and not de novo with opportunity for oral argument. Case decisions of the director that are made pursuant to an informal fact finding ~~(i)~~ may be appealed ~~to the board~~ pursuant to 9VAC5-170-200 A ~~or (ii) may be directly considered by the board according to 9VAC5-170-200 G~~.

9VAC5-170-130. Right of entry.

A. Whenever it is necessary for the purposes of the regulations of the board, the ~~board~~ department or an agent authorized by the ~~board~~ department may at reasonable times enter an establishment or upon property, public or private, for the purpose of obtaining information or conducting surveys or investigation as authorized by § 10.1-1315 or ~~§~~ 46.2-1187.1 of the Code of Virginia.

B. Upon the procurement of an inspection warrant signed by a judge of the circuit court whose territorial jurisdiction encompasses the property or premises to be inspected or entered, the ~~board~~ department or an agent authorized by the ~~board~~ department may enter any property or premises and conduct any inspection, testing, or collection of samples for testing required or authorized by state law or regulation in connection with the manufacturing, emitting, or presence of a toxic substance, as authorized by § 19.2-393 et seq. of the Code of Virginia.

Part VI
~~Board Actions~~ Variances, Ordinances, and Approvals

9VAC5-170-140. Variances.

A. Pursuant to § 10.1-1307 C of the Virginia Air Pollution Control Law, the ~~board~~ department may ~~in its discretion~~ grant local variances to a provision of the regulations of the board after an investigation and public hearing; except that no local variances shall be granted from regulations adopted by the board pursuant to § 10.1-1308 of the Code of Virginia related to the requirements of § 10.1-1308 E of the Code of Virginia or Article 4 (§ 10.1-1329 et seq.) of Chapter 13 of Title 10.1 of the Code of Virginia. If a local variance is appropriate, the ~~board~~ department shall issue an order to this effect. The order shall be subject to amendment or revocation at any time.

B. The ~~board~~ department shall adopt variances and amend or revoke variances if warranted only after conducting a public hearing pursuant to public advertisement in at least one major newspaper of general circulation in the affected area of the subject, date, time, and place of the public hearing at least 30 days prior to the scheduled hearing.

C. The public participation procedures of § 10.1-1307.01 of the Virginia Air Pollution Control Law shall be followed in the consideration of variances.

D. Notwithstanding the requirements of subsection B of this section, if the ~~board~~ department finds that there is a locality particularly affected by a variance involving (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas:

1. The applicant shall perform the following:

a. Publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public ~~how to request board consideration~~ as to the date and location of a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The department shall post such notice on the department website and on a department social media account; and

b. Mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of

real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality. ~~Written comments shall be accepted by the board for at least 30 days after any hearing on such variance or permit unless the board votes to shorten the period.~~

2. The department shall post the notice required in subdivision 1 a of this subsection on the department website and on a department social media account.

3. Written comments shall be accepted by the ~~board~~ department for at least 30 days after any hearing on such variance or permit, unless the ~~board votes~~ director chooses to shorten the period.

9VAC5-170-150. Local ordinances.

A. Local ordinances shall be established and approved as follows:

1. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution shall first obtain the approval of the ~~board~~ department as to the provisions of the ordinance or amendment. Except for an ordinance or amendment pertaining solely to open burning, the ~~board~~ department shall not approve an ordinance or amendment which regulates an emission source that is required to register with the ~~board~~ department or to obtain a permit pursuant to Virginia Air Pollution Control Law and the regulations of the board. The ~~board~~ department in approving local ordinances will consider, but will not be limited to, the following criteria:

a. The local ordinance shall provide for intergovernmental cooperation and exchange of information.

b. Adequate local resources will be committed to enforcing the proposed local ordinance.

c. The provisions of the local ordinance shall be as strict as state regulations, except as provided for leaf burning in § 10.1-1308 of the Virginia Air Pollution Control Law.

2. Approval of a local ordinance shall be withdrawn if the ~~board~~ department determines that the local ordinance is less strict than state regulations, or if the locality fails to enforce the ordinance.

3. If a local ordinance must be amended to conform to an amendment to state regulations, the local amendment will be made within six months. If the necessary amendment is not made within six months, the ~~board~~ department may rescind its approval of the ordinance.

B. Local ordinances shall provide for reporting information required by the ~~board~~ department to fulfill its responsibilities under the Virginia Air Pollution Control Law and the federal Clean Air Act. Reports shall include, but are not limited to monitoring data, surveillance programs, procedures for investigation of complaints, variance hearings, and status of control programs and permits.

C. Local ordinances are a supplement to state regulations. Provisions of local ordinances which have been approved by the ~~board~~ department and are more strict than state regulations shall take precedence over state regulations within the respective locality. It is the intention of the ~~board~~ department to coordinate activities among the enforcement officers of the various localities in the enforcement of local ordinances and state regulations. The ~~board~~ department will also provide technical and other assistance to local authorities in the investigation and study of air pollution problems, and in the enforcement of local ordinances and state regulations. The ~~board~~ department emphasizes its intention to assist in the local enforcement of local ordinances. If a locality fails to enforce its own ordinance, the ~~board~~ department reserves the right to enforce state regulations.

D. A local governing body may grant a variance to a provision of its air pollution control ordinance provided that:

1. A public hearing is held by the locality prior to granting the variance;

2. The public is notified of the application for a variance by advertisement in at least one major newspaper of general circulation in the affected locality and a major newspaper of general circulation in the state capital area at least 30 days prior to the date of the public hearing by the locality; and

3. The variance does not permit an owner or other person to take action that would result in a violation of a provision of state regulations unless a variance is granted by the ~~board~~ department. The local public hearing required for the variances to the local ordinance and the public hearing required under state regulations may be conducted jointly as one proceeding.

E. This section shall not apply to the approval of local ordinances concerning open burning established pursuant to 9VAC5-40-5640 D.

9VAC5-170-160. Conditions on approvals.

A. The ~~board~~ department may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the ~~board~~ department in this regard. If the owner or other person fails to adhere to the conditions, the ~~board~~ department may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.

B. An owner may consider a condition imposed by the ~~board~~ department as a denial of the requested approval or permit, which shall entitle the applicant to appeal the decision of the ~~board~~ department pursuant to 9VAC5-170-200.

9VAC5-170-170. Considerations for approval actions.

Pursuant to the provisions of § 10.1-1307 E of the Virginia Air Pollution Control Law, the board~~,~~ in making regulations and the department in approving variances, control programs, or permits, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with safety, health, or the reasonable use of property which is caused or threatened to be caused;

2. The social and economic value of the activity involved;

3. The suitability of the activity to the area in which it is located, except that consideration of this factor shall be satisfied if the local governing body of a locality in which a facility or activity is proposed has resolved that the location and operation of the proposed facility or activity is suitable to the area in which it is located; and

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from the activity.

9VAC5-170-180. ~~General provisions.~~ (Repealed.)

~~A. In accordance with the Virginia Air Pollution Control Law and the Administrative Process Act, the board confers upon the director the administrative, enforcement, and decision-making powers as are set forth in this part. The board reserves the right to exercise its authority in any of the following delegated powers should it choose to do so, except as limited by §§ 10.1-1322 and 10.1-1322.01 of the Code of Virginia.~~

~~B. The director is delegated the authority to act within the scope of the Virginia Air Pollution Control Law and the regulations of the board and for the board when it is not in session except for the authority to:~~

~~1. Control and regulate the internal affairs of the board;~~

~~2. Approve proposed regulations for public comment and adopt final regulations;~~

~~3. Grant variances to regulations;~~

~~4. Approve amendments to a policy or procedure approved by the board except as may be otherwise provided;~~

~~5. Appoint people to the State Advisory Board on Air Pollution;~~

~~6. Create local air pollution control districts and appoint representatives; and~~

~~7. Approve local ordinances except those that pertain solely to open burning.~~

Part VIII
Appeal of ~~Board~~ Department Actions

9VAC5-170-190. General provisions.

A. Except as provided in subsections B and C of this section, this part applies to the appeal of case decisions and other actions or inactions of the ~~board~~ department.

B. The provisions of this part do not apply to the appeal of the promulgation of regulations or variances. Appeals of the promulgation of regulations and variances shall be pursued under Article 4 (§ 2.2-4026 et seq.) of the Administrative Process Act.

C. The provisions of this part do not apply to permit actions subject to Part I (9VAC5-80-5 et seq.) of 9VAC5-80 with respect to any party except the named party.

9VAC5-170-200. Appeal procedures.

A. An owner or other party significantly affected by an action of the ~~board~~ department taken without a formal hearing, or by inaction of the ~~board~~ department, may request a formal hearing in accordance with § 2.2-4020 of the Administrative Process Act, provided a petition requesting a formal hearing is filed with the ~~board~~ department. In cases involving actions of the ~~board~~ department, the petition shall be filed within 30 days after notice of the action is mailed, by postal or electronic delivery, or delivered to the owner or party requesting notification of the action.

B. Prior to a formal hearing, an informal fact finding shall be held pursuant to § 2.2-4019 of the Administrative Process Act unless waived by the named party and the ~~board~~ department.

C. A decision of the ~~board~~ department resulting from a formal hearing shall constitute the final decision of the ~~board~~ department.

D. Judicial review of a final decision of the ~~board~~ department shall be afforded in accordance with § 10.1-1318 of the Virginia Air Pollution Control Law and § 2.2-4026 of the Administrative Process Act.

E. Nothing in this section shall prevent disposition of a case by consent.

F. A petition for a formal hearing or a notice or petition for an appeal by itself shall not constitute a stay of decision or action. A stay of decision shall be sought through appropriate legal channels.

G. ~~A party significantly affected by a decision of the director may request that the board exercise its authority for direct consideration of the issue. The request shall be filed within 30 days after the decision is rendered and shall contain reasons for the request.~~

~~H. The submittal of the request by itself shall not constitute a stay of decision. A stay of decision shall be sought through appropriate legal channels.~~

~~I.~~ The director has final authority to adjudicate contested decisions of subordinates delegated powers by the director prior to appeal of decisions to the circuit court ~~or consideration by the board~~.

9VAC5-170-210. General.

A. Pursuant to § 128(a)(2) of the federal Clean Air Act, ~~the board and~~ the director, in ~~their~~ the director's capacity of approving permits or enforcement orders, shall adequately disclose any potential conflicts of interest. Such disclosure shall be made annually through the applicable disclosure forms set forth in § 2.2-3117 or 2.2-3118 of the State and Local Conflict of Interests Act (Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia) as required in § 2.2-3114 of the State and Local Conflict of Interests Act. All terms used in the disclosure forms shall have the meaning as set forth in the State and Local Conflict of Interests Act.

B. Conduct concerning personal interest in transactions shall be governed by § 2.2-3112 of the State and Local Conflict of Interests Act. All terms used regarding personal interest in transactions shall have the meaning as set forth in the State and Local Conflict of Interests Act.

VA.R. Doc. No. R23-7152; Filed September 14, 2022, 10:28 a.m.

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: **9VAC25-20. Fees for Permits and Certificates (amending 9VAC25-20-10, 9VAC25-20-20, 9VAC25-20-50, 9VAC25-20-60, 9VAC25-20-100, 9VAC25-20-130, 9VAC25-20-142; repealing 9VAC25-20-150).**

Statutory Authority: §§ 62.1-44.15:6, 62.1-44.16, and 62.1-44.19:3 of the Code of Virginia.

Effective Date: November 23, 2022.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, FAX (804) 698-4178, or email andrew.hammond@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" as necessary and removing provisions delegating authority.

9VAC25-20-10. Definitions.

Unless otherwise defined in this chapter or unless the context clearly indicates otherwise, the terms used in this regulation shall have the meanings ascribed to them by the State Water Control Law, § 62.1-44.3; the board's Virginia Pollutant Discharge Elimination System Permit Regulation, 9VAC25-31-10; the board's Virginia Pollution Abatement Permit Regulation, 9VAC25-32-10; the board's Virginia Water Protection Permit Program Regulation, 9VAC25-210-10; the board's Surface Water Management Area Regulation, 9VAC25-220-10; and the board's Groundwater Withdrawal Regulations, 9VAC25-610-10, including any general permits issued thereunder.

"Applicant" means for the purposes of this chapter any person filing an application for issuance, reissuance, or modification, except as exempted by 9VAC25-20-50, of a permit, certificate or special exception or filing a registration statement or application for coverage under a general permit issued in response to Chapters 3.1 (§ 62.1-44.2 et seq.), 24 (§ 62.1-242 et seq.), and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

"Application" means for the purposes of this chapter the forms approved by the ~~State Water Control Board~~ department for applying for issuance or reissuance of a permit, certificate or special exception or for filing a registration statement or application for coverage under a general permit issued in response to Chapters 3.1, 24, and 25 of Title 62.1 of the Code of Virginia. In the case of modifications to an existing permit, permit authorization, certificate or special exception requested by the permit, permit authorization, certificate or special exception holder and not exempted by 9VAC25-20-50, the application shall consist of the formal written request and any accompanying documentation submitted by the permit, permit authorization, certificate or special exception holder to initiate the modification.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing or distribution in accordance with 9VAC25-31 or 9VAC25-32.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

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

"Existing permit" means for the purposes of this chapter a permit, permit authorization, certificate or special exception issued by the department or general permit issued as a regulation by the board and currently held by an applicant.

"Established fees" means a fee established by the department per dry ton of biosolids or industrial residuals managed by land appliers.

"Industrial residual" 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.

"Land application" means, in regard to sewage, biosolids, and industrial residuals, the distribution of treated wastewater of acceptable quality, referred to as effluent, or stabilized sewage sludge of acceptable quality, 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. Bulk disposal of stabilized sludge or industrial residuals in a confined area, such as in landfills, is not land application. Sites approved for land application of biosolids in accordance with 9VAC25-31 or 9VAC25-32 are not to be considered to be treatment works.

"Land applier" means someone who land applies biosolids or industrial residuals pursuant to a valid permit from the department as set forth in 9VAC25-31 or 9VAC25-32.

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

"Major modification" means for the purposes of this chapter modification or amendment of an existing permit, permit authorization, certificate or special exception before its expiration which is not a minor modification as defined in this regulation.

"Major reservoir" means for the purposes of this chapter any new or expanded reservoir with greater than or equal to 17 acres of total surface water impacts (stream and wetlands), or a water withdrawal of greater than or equal to 3,000,000 gallons in any one day.

"Minor modification" means for the purposes of this chapter minor modification or amendment of an existing permit, permit authorization, certificate or special exception before its expiration as specified in 9VAC25-31-400, 9VAC25-32-240, 9VAC25-210-180, 9VAC25-220-230, or in 9VAC25-610-330. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Minor reservoir" means for the purposes of this chapter any new or expanded reservoir with less than 17 acres of total surface water impacts (stream and wetlands), or a water withdrawal of less than 3,000,000 gallons in any one day.

"New permit" means for the purposes of this chapter a permit, permit authorization, certificate or special exception issued by the department or coverage issued, pursuant to a general permit issued as a regulation adopted by the board, to an applicant that does not currently hold and has never held a permit, permit authorization, certificate or special exception of that type, for that activity, at that location.

"Reimbursement application" means forms approved by the department to be used to apply for reimbursement of local monitoring costs for land application of biosolids or industrial residuals in accordance with the provisions of this regulation. The application shall consist of a formal written request and any accompanying documentation submitted by a local government in accordance with a local ordinance.

"Revoked permit" means, for the purposes of this chapter, an existing permit, permit authorization, certificate or special exception which is terminated by the ~~board~~ department before its expiration.

"Single jurisdiction" means for the purposes of this chapter a single county or city. The term county includes incorporated towns which are part of the county.

9VAC25-20-20. Purpose.

Section 62.1-44.15:6 of the Code of Virginia requires the promulgation of regulations establishing a fee assessment and collection system to recover a portion of the ~~State Water Control Board's~~ Department of Environmental Quality's, Department of Game and Inland Fisheries', and the Department of Conservation and Recreation's direct and indirect costs associated with the processing of an application to issue, reissue, or modify any permit, permit authorization or certificate which the board or department has the authority to issue from the applicant for such permit, permit authorization or certificate. Section 62.1-44.19:3 of the Code of Virginia requires the promulgation of regulations establishing a fee to be charged to all permit holders and persons applying for permits and permit modifications associated with land application of biosolids. Section 62.1-44.16 of the Code of Virginia requires the promulgation of regulations requiring the payment of a fee by persons land applying solid or semisolid industrial wastes. Section 62.1-44.19:3 of the Code of Virginia also requires the promulgation of regulations requiring the payment of a fee by persons land applying biosolids. These

regulations establish the required fee assessment and collection system.

9VAC25-20-50. Exemptions.

A. No permit application fees will be assessed to:

1. An applicant for a permit, permit authorization, certificate or special exception pertaining to a farming operation engaged in production for market.

2. An applicant for a permit, permit authorization, or certificate pertaining to maintenance dredging for federal navigation channels or other U.S. Army Corps of Engineers-sponsored or Department of the Navy-sponsored dredging projects.

3. Permit holders who request minor modifications or minor amendments to permits, permit authorizations or certificates as defined in 9VAC25-20-10.

4. Permit, permit authorization or certificate holders whose permits, permit authorizations or certificates are modified or amended at the initiative of the ~~board~~ department.

5. VPDES permit holders or VPA permit holders for the regularly scheduled renewal of an individual permit for an existing facility, except VPDES and VPA permit holders whose permits expire on or before December 27, 2004.

6. An applicant for a permit, permit authorization, permit modification, or certificate pertaining solely to biosolids research.

B. No permit maintenance fees will be assessed to:

1. VPDES and VPA facilities operating under a general permit.

2. Permits pertaining to a farming operation engaged in production for market.

3. Virginia Water Protection (VWP), Surface Water Withdrawal (SWW), and Ground Water Withdrawal (GWW) permits, permit authorizations, certificates and special exceptions.

4. Permits pertaining solely to biosolids research.

9VAC25-20-60. Due dates.

A. Virginia Pollutant Discharge Elimination System (VPDES) and Virginia Pollution Abatement (VPA) permits.

1. Application fees for all new permit applications are due on the day an application is submitted and shall be paid in accordance with 9VAC25-20-70 A. Applications will not be processed without payment of the required fee.

2. For reissuance of permits that expire on or before December 27, 2004, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.

3. An application fee is due on the day an application is submitted for either a major modification or a permit reissuance that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a regularly scheduled renewal of an individual permit for an existing facility, unless the permit for the facility expires on or before December 27, 2004. There is no application fee for a major modification or amendment that is made at the ~~board's~~ department's initiative.

4. Permit maintenance fees shall be paid to the ~~board~~ department by October 1 of each year. Additional permit maintenance fees for facilities that are authorized to land apply, distribute, or market biosolids; are in a toxics management program; or have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls) shall also be paid to the ~~board~~ department by October 1 of each year. No permit will be reissued or administratively continued without payment of the required fee.

a. Existing individual permit holders with an effective permit as of July 1, 2004 (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the ~~board~~ department by October 1, 2004, unless one of the following conditions apply:

(1) The permit is terminated prior to October 1, 2004; or

(2) The permit holder applied or reapplied for a municipal minor VPDES permit with a design flow of 10,000 gallons per day or less between July 1, 2003, and July 1, 2004, and paid the applicable permit application fee.

b. Effective April 1, 2005, any permit holder whose permit is effective as of April 1 of a given year (including permits that have been administratively continued) shall pay the permit maintenance fee or fees to the ~~board~~ department by October 1 of that same year.

B. Surface Water Withdrawal (SWW) and Groundwater Withdrawal (GWW) permits.

1. All permit application fees are due on the day an application is submitted and shall be paid in accordance with 9VAC25-20-70 A. Applications will not be processed without payment of the required fee. No permit will be administratively continued without payment of the required fee.

2. For reissuance of GWW permits that expire on or before March 27, 2005, the application fee for new permit applications as set forth in this regulation is due on the day the application is submitted.

3. Application fees for major modifications or amendments are due on the day an application is submitted. Applications will not be processed without payment of the required fee. There is no fee for a major modification or amendment that is made at the ~~board's~~ department's initiative.

C. Virginia Water Protection (VWP) permits.

1. VWP permit application fees shall be paid in accordance with 9VAC25-20-70 A. Review of applications may be initiated before the fee is received; however, draft permits or authorizations shall not be issued prior to payment of the required fee. No permit or permit authorization shall be administratively continued without payment of the required fee.

2. VWP application fees for major modifications shall be paid in accordance with 9VAC25-20-70 A. Review of applications may be initiated before the fee is received; however, major modifications shall not be issued prior to payment of the required fee. There is no application fee for a major modification that is made at the ~~board's~~ department's initiative.

D. Land application fees for biosolids and industrial residuals. The department may bill the land applier for amounts due following the submission of the monthly land application report. Payments are due 30 days after receipt of a bill from the department. No permit or modification of an existing permit will be approved in the jurisdiction where payment of the established fee by the land applier has not been received by the due date; until such time that the fees are paid in full. Existing permits may be revoked or approved sources may be reclassified as unapproved unless the required fee is paid by the due date. No permit will be reissued or administratively continued or modified without full payment of any past due fee.

9VAC25-20-100. General.

Each application for a new permit, permit authorization or certificate, each application for reissuance of a permit, permit authorization or certificate, each application for major modification of a permit, permit authorization or certificate, each revocation and reissuance of a permit, permit authorization or certificate, and each application of a dry ton of biosolids or industrial residuals is a separate action and shall be assessed a separate fee, as applicable. The fees for each type of permit, permit authorization or certificate that the board or department has the authority to issue, reissue or modify will be as specified in this part.

9VAC25-20-130. Fees for filing registration statements or applications for general permits issued by the board.

The following fees apply to filing of applications or registration statements for all general permits issued by the board, except:

1. The fee for filing a registration statement for coverage under 9VAC25-110 (General VPDES Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 GPD) is $0.

2. The fee for filing a registration statement for coverage under 9VAC25-120 (General VPDES Permit Regulation for Discharges from Petroleum Contaminated Sites) is $0.

3. The fee for filing an application or registration statement for coverage under a VWP General Permit issued by the board shall be:

VWP General/Less Than 4,356 sq. ft. (1/10 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	$0
VWP General/4,356 sq. ft. to 21,780 sq. ft. (1/10 acre to 1/2 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	$600
VWP General/21,781 sq. ft. to 43,560 sq. ft. (greater than 1/2 acre to one acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	$1,200
VWP General/43,561 sq. ft. to 87,120 sq. ft. (greater than one acre to two acres) of Surface Water Impact (Wetlands, Streams and/or Open Water)	$1,200 plus $120 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 43,560 sq. ft. (one acre) ($2,400 maximum)
VWP General/Minimum Instream Flow/Reservoir - Water withdrawals and/or pond construction	$2,400

4. The fee for filing a registration statement for coverage under a VPDES ~~general/industrial~~ general permit issued as a regulation adopted by the board or an industrial stormwater permit issued by the ~~board~~ department shall be $500.

5. Except as specified in subdivisions 1, 2, 3 and 4 of this section, the fee for filing an application or registration statement for coverage under any general permit issued by the board shall be $600.

9VAC25-20-142. Permit maintenance fees.

A. The following annual permit maintenance fees apply to each individual VPDES and VPA permit, including expired permits that have been administratively continued, except those exempted by 9VAC25-20-50 B or 9VAC25-20-60 A 4:

1. Base fee rate for Virginia Pollutant Discharge Elimination System (VPDES) permitted facilities. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	$7,876
VPDES Municipal Major/Greater Than 10 MGD	$7,794
VPDES Municipal Major/2 MGD - 10 MGD	$7,138
VPDES Municipal Major/Less Than 2 MGD	$6,317
VPDES Industrial Minor/No Standard Limits	$3,347
VPDES Industrial Minor/Standard Limits	$1,969
VPDES Industrial Minor/Water Treatment System	$1,969
VPDES Industrial Stormwater	$2,363
VPDES Municipal Minor/Greater Than 100,000 GPD	$2,461
VPDES Municipal Minor/10,001 GPD - 100,000 GPD	$1,969
VPDES Municipal Minor/1,001 GPD - 10,000 GPD	$1,772
VPDES Municipal Minor/1,000 GPD or Less	$656

2. Base fee rate for Virginia Pollution Abatement (VPA) permits.

VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	$2,461
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	$1,723
VPA Industrial Sludge Operation	$1,231
VPA Combined Sludge Operation - Industrial Sludges (excluding water treatment plant residuals) and Municipal Biosolids	$1,231
VPA Municipal Wastewater Operation	$2,215
VPA Municipal Biosolids Operation	$100
VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
All other operations not specified above	$123

3. The amount of the annual permit maintenance fee due from the owner for VPDES and VPA permits for a specified year as required by 9VAC25-20-40 C shall be calculated according to the following formulae:

$$F = B \times C$$

$$C = 1 + \Delta CPI$$

$$\Delta CPI = \frac{CPI - 215.15}{215.15}$$

Where:

F = the permit maintenance fee amount due for the specified calendar year, expressed in dollars.

B = the base fee rate for the type of VPDES or VPA permit from subdivision 1 or 2 of this subsection, expressed in dollars.

C = the Consumer Price Index adjustment factor.

ΔCPI = the difference between CPI and 215.15 (the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30, 2009), expressed as a proportion of 215.15.

CPI = the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30 of the calendar year before the specified year for which the permit maintenance fee is due. (The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0).

For example, if calculating the 2010 permit maintenance fee (F) for a VPDES Industrial Major source:

CPI = 215.15 (the average of CPI values from May 1, 2008, to April 30, 2009, inclusive would be used for the 2010 permit maintenance fee calculation).

ΔCPI = zero for the 2010 permit maintenance fee calculation (i.e., (CPI - 215.15)/215.15 = (215.15 - 215.15)/215.15 = 0). (Note: ΔCPI for other years would not be zero.)

C = 1.0 for the 2010 permit maintenance fee calculation (i.e., 1 + ΔCPI = 1 + 0 = 1.0).

B = $7,876 (i.e. the value for a VPDES Industrial Major source, taken from subdivision 1 of this subsection).

F = $7,876 for the 2010 permit maintenance fee calculation for this VPDES Industrial Major source (i.e., $7,876 x 1.0 = $7,876).

4. Permit maintenance fees (F) calculated for each facility shall be rounded to the nearest dollar.

5. The total amount of permit fees collected by the ~~board~~ department (permit maintenance fees plus permit application fees) shall not exceed 50% of direct costs for administration, compliance, and enforcement of VPDES and VPA permits. The director shall take whatever action is necessary to ensure that this limit is not exceeded.

B. Additional permit maintenance fees.

1. An additional permit maintenance fee of $1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.

2. An additional permit maintenance fee of $1,000 shall be paid annually by permittees that have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls).

3. For a local government or public service authority with permits for multiple facilities in a single jurisdiction, the total permit maintenance fees for all permits held as of April 1, 2004, shall not exceed $32,818 per year.

C. If the category of a facility (as described in subdivision A 1 or A 2 of this section) changes as the result of a permit modification, the permit maintenance fee based upon the permit category as of April 1 shall be submitted by October 1.

D. Annual permit maintenance fees may be discounted for participants in the Environmental Excellence Program as described in 9VAC25-20-145.

~~Part V~~
~~Delegation of Authority~~

9VAC25-20-150. ~~Delegation of authority.~~ (Repealed.)

~~The director, or his designee, may perform any action of the State Water Control Board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

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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, 9VAC25-32-20, 9VAC25-32-30, 9VAC25-32-40, 9VAC25-32-60 through 9VAC25-32-110, 9VAC25-32-130, 9VAC25-32-140, 9VAC25-32-160, 9VAC25-32-170, 9VAC25-32-190, 9VAC25-32-200, 9VAC25-32-210, 9VAC25-32-230, 9VAC25-32-240, 9VAC25-32-250, 9VAC25-32-260, 9VAC25-32-270, 9VAC25-32-280, 9VAC25-32-305, 9VAC25-32-315, 9VAC25-32-330, 9VAC25-32-350, 9VAC25-32-358, 9VAC25-32-400, 9VAC25-32-410, 9VAC25-32-470, 9VAC25-32-480, 9VAC25-32-490, 9VAC25-32-530, 9VAC25-32-540, 9VAC25-32-550, 9VAC25-32-560, 9VAC25-32-570, 9VAC25-32-675, 9VAC25-32-685; adding 9VAC25-32-15, 9VAC25-32-175, 9VAC25-32-176, 9VAC25-32-177; repealing 9VAC25-32-290).**

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

Effective Date: November 23, 2022.

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Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" as necessary, adding permit rationale, adding criteria for requesting and granting a public hearing in a permit action, adding requirements related to controversial permits and controversial permit reporting, removing provisions delegating authority, and updating the definition of "board" and citations to the Code of Virginia.

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. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"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.

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-32-170 and 9VAC25-32-175.

"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.

"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~~ department'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 as a regulation adopted 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 or a general permit issued as a regulation adopted by the board.

"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.

"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 Energy unless the ~~board~~ department 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~~ department, 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~~ department.

"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.

"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~~ department, pursuant to this chapter, authorizing pollutant management activities under prescribed conditions or a general permit issued as a regulation adopted by the board in accordance with 9VAC25-32-260.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" means a document issued by the ~~board~~ department pursuant to 9VAC25-31, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters or a general permit issued as a regulation adopted by the board in accordance with 9VAC25-31-171.

"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~~ department 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).

9VAC25-32-15. Permit rationale.

In granting a permit pursuant to this chapter, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, the department shall in consultation with legal counsel provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC25-32-20. Purpose.

This regulation delineates the procedures and requirements to be followed in connection with VPA permits issued by the department or a general permit issued as a regulation adopted by the board pursuant to the State Water Control Law.

9VAC25-32-30. Requirements and prohibitions.

A. All pollutant management activities covered under a VPA permit shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm.

B. Except in compliance with a VPA permit, or another permit issued by the department or a general permit issued as a regulation adopted by the board, it shall be unlawful for any person to:

1. Discharge into, or adjacent to, state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

C. Any person required to obtain a permit pursuant to this chapter who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of subsection B of this section; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection B of this section shall notify the department of the discharge immediately upon discovery of the discharge and, in any event, no later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge.

1. The written report shall contain:

a. A description of the nature of the discharge;

b. The cause of the discharge;

c. The date on which the discharge occurred;

d. The length of time that the discharge continued;

e. The volume of the discharge;

f. If the discharge is continuing, how long it is expected to continue;

g. If the discharge is continuing, what the expected total volume of the discharge will be; and

h. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by the permit.

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

D. VPA permits may be utilized to authorize pollutant management activities including, but not limited to, animal feeding operations, storage or land application of sewage, sludge, biosolids, industrial waste or other waste; or the complete reuse or recycle of wastewater. Point source discharges of pollutants to surface waters may be authorized by a VPDES permit (See 9VAC25-31, VPDES Permit Regulation).

E. No VPA permit shall be issued in the following circumstances:

1. Where the terms or conditions of the VPA permit do not comply with the applicable regulations or requirements of the law;

2. For the discharge of any radiological, chemical or biological warfare agent or high level radioactive material into state waters; or

3. For any pollutant management activity that is in conflict with any area-wide or basin-wide water quality control and waste management plan or policy established by the board pursuant to the law.

9VAC25-32-40. Exclusions.

The following do not require a VPA permit:

1. The introduction of sewage, industrial waste or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with VPA permits until all discharges of pollutants to state waters are eliminated;

2. Any introduction of pollutants from nonpoint source agricultural or silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to concentrated confined animal feeding operations;

3. Return flows from irrigated agricultural land;

4. Land disposal activity, including biosolids use or sewage sludge disposal or onsite waste treatment, when this activity is otherwise authorized by the department;

5. Land disposal activity, including onsite waste treatment, when this activity is authorized by a Virginia Department of Health permit; and

6. Discharges authorized by EPA under the Safe Drinking Water Act Underground Injection Control Program (UIC), 40 CFR Part 144, and approved, in writing, by the ~~board~~ department.

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

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

B. Time to apply.

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

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

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

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

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

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

D. Completeness.

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

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

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

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

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

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

F. Application for the authorization to land apply biosolids. All persons applying to land apply biosolids must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The ~~board~~ department may waive any requirement of this subsection if it has access to substantially identical information. The ~~board~~ department may also waive any requirement of this subsection that is not of material concern for a specific permit.

1. General information.

a. Legal name and address.

b. Owner contact information including:

(1) Name;

(2) Mailing address;

(3) Telephone number; and

(4) Email address.

c. A general description of the proposed activity including:

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

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

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

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

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

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

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

(4) Means of biosolids transport or conveyance;

(5) Location and volume of storage proposed;

(6) A description of field staging methods;

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

(8) Methods of biosolids application proposed.

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

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

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

2. Design information.

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

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

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

(3) Applicants must provide:

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

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

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

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

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

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

(b) Analytical method used; and

(c) Method detection level.

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

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

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

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

(a) Water wells (operating or abandoned);

(b) Surface waters;

(c) Springs;

(d) Public water supplies;

(e) Sinkholes;

(f) Underground and surface mines;

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

(h) Mining spoil piles and mine dumps;

(i) Quarries;

(j) Sand and gravel pits;

(k) Gas and oil wells;

(l) Diversion ditches;

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

(n) Landfills and dumps;

(o) Other unlined impoundments;

(p) Septic tanks and drainfields; and

(q) Injection wells;

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

(a) Maximum and minimum percent slopes;

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

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

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

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

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

(7) Calculations justifying impoundment capacity; and

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

c. Staging. Generic plans for staging of biosolids.

d. Land application sites:

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

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

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

(a) Property boundaries;

(b) Surface water courses;

(c) Water supply wells and springs;

(d) Roadways;

(e) Rock outcrops;

(f) Slopes;

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

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

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

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

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

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

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

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

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

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

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

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

(a) Whether the applicant has contacted the permitting authority in the state where the bulk biosolids subject to

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

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

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

a. Description of operation: A comprehensive, general description of the operation as required by this section.

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

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

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

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

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

4. Biosolids transport.

a. General description of transport vehicles to be used.

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

c. Voucher system used for documentation and recordkeeping.

5. Field operations.

a. Storage.

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

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

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

(4) Reestablishment of offloading and staging areas.

b. Application methodology.

(1) Description and specifications on spreader vehicles.

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

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

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

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

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

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

9VAC25-32-70. Signatory requirements.

Any application, report, including monitoring reports, or certifications shall be signed as follows:

1. Application.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

c. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.

2. Reports. All reports required by VPA permits and other information requested by the ~~board~~ department shall be signed by:

a. One of the persons described in subdivision 1 of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 of this section; and

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

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the department prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

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

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

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

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

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

E. Permit action.

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

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

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

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

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

1. Enter upon any permittee's property, public or private, and have access to records required by the VPA permit;

2. Have access to, inspect, and copy any records that must be kept as part of VPA permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the VPA permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring VPA permit compliance or as otherwise authorized by law.

G. Duty to provide information.

1. The permittee shall furnish to the department, within a reasonable time, any information which the ~~board~~ department may request to determine whether cause exists for modifying, revoking and reissuing, terminating the VPA permit, or to determine compliance with the VPA permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee.

2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the ~~board~~ department prior to commencing construction.

H. Monitoring and records.

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

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the VPA permit, and records of all data used to complete the application for the VPA permit, for a period of at least three years or in the case of activities regulated under Part IX (9VAC25-32-303 et seq.) of this chapter, at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the ~~board~~ department at any time.

3. Records of monitoring information shall include:

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

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

c. The date or dates 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; and

f. The results of such analyses.

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

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

I. Reporting requirements.

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

2. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 6 of this subsection. Unusual and extraordinary discharges include any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of some or all of the treatment works; and

d. Flooding or other acts of nature.

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

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

a. Monitoring results shall be reported in a format acceptable to the ~~board~~ department.

b. If a permittee monitors the pollutant management activity, at a sampling location specified in the VPA permit, for any pollutant more frequently than required by the VPA permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

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

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

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

6. 24-hour reporting.

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

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

(1) Any unanticipated bypass; and

(2) Any upset which causes a discharge to surface waters.

J. Bypass.

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

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

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

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

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

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

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the department were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the VPA permit.

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

M. Transfers. A VPA permit is not transferable to any person except after notice to the department according to 9VAC25-32-230. The ~~board~~ department may require modification or revocation and reissuance of the VPA permit to change the name of the permittee and incorporate such other requirements as may be necessary.

9VAC25-32-90. Conditions applicable to publicly or privately owned sewage treatment works.

A. Publicly or privately owned sewage treatment works shall provide adequate notice to the department of any substantial change in quantity or quality of pollutants being introduced into the privately or publicly owned sewage treatment works and any anticipated impact the change may have on such treatment works.

B. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPA permit for each month of any consecutive three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the VPA permit.

1. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could reasonably be anticipated, resulting from high influent flows.

2. Upon receipt of the owner's plan of action, the ~~board~~ department shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

3. Failure to submit an adequate plan in a timely manner shall be deemed a violation of the VPA permit.

C. Nothing herein shall in any way impair the authority of the ~~board~~ department to take enforcement action under § 62.1-44.15, § 62.1-44.23, or § 62.1-44.32 of the Code of Virginia.

9VAC25-32-100. Establishing limitations and other VPA permit conditions.

A. In addition to the conditions established in 9VAC25-32-80 and 9VAC25-32-90, each VPA permit shall include conditions meeting the following requirements where applicable.

1. Determination of limitations. VPA permit limitations and conditions shall be established based on the nature of the pollutant management activity in order to ensure compliance with technology-based limitations, water quality standards, the law and all regulations promulgated thereunder. These limitations and conditions may include, but are not limited to, duration of VPA permits, monitoring requirements, limitations to control toxic pollutants, best management practices and schedules of compliance.

2. Duration of VPA permits. VPA permits issued under this regulation shall have an effective date and an expiration date which will determine the life of the VPA permit. VPA permits shall be effective for a fixed term not to exceed 10 years as specified in the VPA permit. The term of the VPA permits shall not be extended by modification beyond the maximum duration. The VPA permit shall expire at the end of the term unless an application for a new VPA permit has been timely filed as required by this chapter and the ~~board~~ department is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.

B. Monitoring requirements.

1. All VPA permits may specify:

a. Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods;

b. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring; and

c. Applicable reporting requirements based upon the impact of the regulated activity on water quality.

2. VPA permits may include requirements to report monitoring results with a frequency dependent on the nature and effect of the pollutant management activity.

3. In addition, the following monitoring requirements may be included in the VPA permits:

a. Mass or other measurements specified in the VPA permit for each pollutant of concern;

b. The volume of waste, wastewater, biosolids, or sludge managed by the activity; and

c. Other measurements as appropriate.

C. Best Management Practices (BMPs). The VPA permit shall require the use of BMPs to control or abate pollutants where numeric limits are infeasible, and the VPA permit may include BMPs in addition to numeric limits where BMPs are necessary to achieve limitations and standards or to carry out the purpose and intent of the law.

D. Sludge disposal. The VPA permit shall include, where appropriate, specific requirements for disposal of all sludge.

E. Biosolids land application. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the department may incorporate in the permit at the time it is issued reasonable special conditions regarding setback distances, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by this regulation. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

F. Schedules of compliance. The VPA permit may specify a schedule, when appropriate, leading to compliance with the VPA permit as soon as possible. When schedules of compliance are applicable the following shall be incorporated:

1. Schedule or schedules of compliance shall require the permittee to take specific steps where necessary to achieve expeditious compliance with the VPA permit;

2. The schedule of compliance shall set forth interim time periods not more than one year apart for the submission of reports of progress toward completion of each requirement; and

3. Schedule or schedules of compliance may be modified by modification of the VPA permit for good cause beyond the control of the permittee (e.g., act of God, strike, flood, material shortage).

9VAC25-32-110. Draft VPA permit formulation.

A. Upon receipt of a complete application, the ~~board~~ department shall make a decision to tentatively issue the VPA permit or deny the application. If a tentative decision is to issue

the VPA permit then a draft VPA permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft VPA permit:

1. Conditions, limitations, standards and other requirements applicable to the VPA permit;

2. Compliance schedules where applicable; and

3. Monitoring requirements.

B. If the tentative decision is to deny the application, the ~~board~~ department shall advise the owner of that decision and of the requirements necessary to obtain approval. The owner may withdraw the application prior to ~~board~~ department action. If the application is not withdrawn or modified to contain conditions necessary for tentative approval to issue, the ~~board~~ department shall provide public notice and opportunity for a public hearing prior to ~~board~~ department action on a recommendation to deny the application.

C. This section does not apply to requests for coverage under a general VPA permit.

9VAC25-32-130. Continuation of expiring VPA permits.

A. Expiring VPA permits are automatically continued pending issuance of a new VPA permit if:

1. The permittee has submitted a timely and complete application as required by this chapter, unless the ~~board~~ department has given permission for a later submittal, which shall not extend beyond the expiration date of the original VPA permit; and

2. The ~~board~~ department is unable, through no fault of the permittee, to issue a new VPA permit before the expiration date of the previous VPA permit.

B. Continued VPA permits remain effective and enforceable against the permittee.

9VAC25-32-140. Public notice of VPA permit action and public comment period.

A. Draft VPA permits.

1. Every draft VPA permit shall be given public notice, paid for by the owner, by publication once a week for two successive weeks in a newspaper of general circulation in the area affected by the pollutant management activity except for animal feeding operations as defined in 9VAC25-32-10, when the modifications are to the nutrient management plan.

2. Interested persons shall have a period of at least 30 days following the date of the initial newspaper public notice to submit written comments on the tentative decision and to request a public hearing.

3. The contents of the public notice of an application for a VPA permit shall include:

a. The name and address of the applicant. If the location of the pollutant management activity differs from the address of the applicant the notice shall also state the location of the pollutant management activity including storage and land application sites;

b. A brief description of the business or activity conducted at the facility;

c. A statement of the tentative determination to issue or deny a VPA permit;

d. A brief description of the final determination procedure;

e. The address and phone number of a specific person at the state office from whom further information may be obtained; and

f. A brief description of how to submit comments and request a hearing.

B. VPA permit application.

1. Upon receipt of an application for the issuance of a new or modified permit, the department shall notify in writing the locality wherein the pollutant management activity does or is proposed to take place. This notification shall, at a minimum, include:

a. The name of the applicant;

b. The nature of the application and proposed pollutant management activity;

c. The availability and timing of any comment period; and

d. Upon request, any other information known to, or in the possession of, ~~the board or~~ the department regarding the application except as restricted by 9VAC25-32-150.

2. Whenever the department receives an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, or an application to reissue with the addition of sites increasing acreage by 50% or more of that authorized in the initial permit, the department shall establish a date for a public meeting to discuss technical issues relating to proposals for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge or stabilized septage. The department shall give notice of the date, time, and place of the public meeting and a description of the proposal by publication in a newspaper of general circulation in the city or county where the proposal is to take place. Public notice of the scheduled meeting shall occur no fewer than seven nor more than 14 days prior to the meeting. The department shall not issue the permit until the public meeting has been held and comment has been received from the local governing body or until 30 days have lapsed from the date of the public meeting.

3. Following the submission of an application for a new permit for land application of biosolids or land disposal of treated sewage, stabilized sewage sludge, or stabilized septage, the department shall make a good faith effort to

notify or cause to be notified persons residing on property bordering the sites that contain the proposed land application fields. This notification shall be in a manner selected by the department. For the purposes of this subsection, "site" means all contiguous land under common ownership, but which may contain more than one tax parcel.

4. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application.

C. Following the submission of an application to add a site that is not contiguous to sites included in an existing permit authorizing the land application of biosolids:

1. The department shall notify persons residing on property bordering such site and shall receive written comments from those persons for a period of 30 days. Based upon written comments, the department shall determine whether additional site-specific requirements should be included in the authorization for land application at the site.

2. An application for any permit amendment to increase the acreage authorized by the initial permit by 50% or more shall be considered a major modification and shall be treated as a new application for purposes of public notice and public hearings. The increase in acreage for the purpose of determining the need for the public meeting is the sum of all acreage that has been added to the permit since the last public meeting, plus that proposed to be added.

D. Before issuing any permit, if the ~~board~~ department finds that there are localities particularly affected by the permit, the ~~board~~ department shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed permit, which at a minimum shall include information on the specific pollutants involved and the total quantity of each which may be discharged; and

2. Mail, by electronic or postal delivery, the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the ~~board~~ department for at least 15 days after any public hearing on the permit, unless the ~~board votes to shorten~~ department shortens the period. For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material water quality impact which would not be experienced by other localities.

9VAC25-32-160. Conditions requested by other government agencies.

If during the comment period any other state agency with jurisdiction over fish, wildlife, or public health advises the department in writing that the imposition of specified conditions upon the VPA permit is necessary to avoid substantial impairment of human health or of fish, shellfish, or wildlife resources, the ~~board~~ department shall consider the inclusion of the specified conditions in the VPA permit. If any conditions requested are not included in the VPA permit, the agency making the request shall be notified of the reasons for not including the conditions.

9VAC25-32-170. Public comments and hearings.

A. A comment period of at least 30 days following the initial date of the newspaper public notice of the formulation of a draft VPA permit shall be provided. During this period any interested persons may submit written comments on the draft VPA permit and may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issues to be raised pursuant to ~~the board's Procedural Rule No. 1 (9VAC25-230-10 et seq.), or its successor~~ 9VAC25-32-175. All comments shall be considered by the ~~board~~ department in preparing the final VPA permit and shall be responded to in writing.

B. The ~~board~~ department may hold a public hearing on any permit action. The ~~board~~ department shall hold a public hearing where there is a significant degree of public interest relevant to a draft VPA permit pursuant to 9VAC25-32-175. Public notice of that hearing shall be given as specified in 9VAC25-32-180. Nothing in this subsection shall relieve the ~~board~~ department of the requirement to hold a hearing where a hearing is required by applicable law or regulation.

C. Any hearing convened pursuant to this section will be held in the geographical area of the proposed pollutant management activity, or in another appropriate area. Related groups of VPA permit applications may be considered at any such hearing.

D. If changes are made to the VPA permit based on public comments, the permittee and all persons who commented will be notified of the changes and the reasons for the changes. No further public notice is required.

E. Any owner aggrieved by any action of the ~~board~~ department taken without a formal hearing, or by inaction of the ~~board~~ department, may demand in writing a formal hearing pursuant to § 62.1-44.25 of the Code of Virginia.

F. Proceedings at~~, and the decision from,~~ the public hearing will be governed by the board's Procedural Rule No. 1 - Public and Formal Hearing Procedures (9VAC25-230~~-10 et seq~~) or its successor, and the decision from the public hearing will be governed by 9VAC25-32-176.

9VAC25-32-175. Criteria for requesting and granting a public hearing on an individual permit action.

A. During the public comment period on a permit action in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing to contest the action or terms and conditions of the permit.

B. Requests for a public hearing shall contain the following information:

1. The name and postal mailing or email address of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative;

3. The reason for the request for a public hearing;

4. A brief, informal statement setting forth the factual nature and extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and the conditions of the permit in question, together with suggested revisions and alterations to those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Water Control Board.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the comment period on the permit action, and within 30 calendar days following the expiration of the time period for the submission of requests, shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with or in violation of the basic laws of the State Water Control Board for a water permit action, a federal law, or any regulation promulgated thereunder.

D. The director shall notify by email or mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

E. If the request for a public hearing is granted, the director shall:

1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing.

2. Cause or require the applicant to publish notice of a public hearing to be published once in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

F. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

G. The director may at his discretion convene a public hearing on a permit action.

9VAC25-32-176. Controversial permits.

Before rendering a final decision on a controversial permit, the department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at that time. In making its decision, the department shall consider (i) the verbal and written comments received during the comment period and the public hearing made part of the record, (ii) any commentary of the board, and (iii) the agency files.

9VAC25-32-177. Controversial permits reporting.

At each regular meeting of the board, the department shall provide an overview and update regarding any controversial permits pending before the department that are relevant. Immediately after such presentation by the department, the board shall have an opportunity to respond to the department's presentation and provide commentary regarding such pending permits.

9VAC25-32-190. Operator requirements.

A. The permittee shall employ or contract at least one operator who holds a current wastewater license appropriate for the permitted facility, if required by the VPA permit. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the Board for Waterworks and Wastewater Works Operators (18VAC160-20-10 et seq.). Notwithstanding the foregoing requirement, unless the pollutant management activity is determined by the ~~board~~ department on a case-by-case basis to be a potential

contributor of pollution, no licensed operator is required for wastewater treatment works:

1. That have a design hydraulic capacity equal to or less than 0.04 million gallons per day;

2. That discharge industrial waste or other waste from coal mining operations; or

3. That do not utilize biological or physical/chemical treatment.

B. In making this case-by-case determination, the following shall be considered:

1. The location of the pollutant management activity with respect to state waters;

2. The size of the pollutant management activity;

3. The quantity and nature of pollutants reaching state waters; and

4. The treatment methods used at the treatment works.

C. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply, with the requirements of subsection A of this section. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

9VAC25-32-200. Modification, revocation and reissuance, and termination.

A. VPA permits shall be modified, revoked and reissued, or terminated only as authorized by this section.

B. A VPA permit may be modified in whole or in part, revoked and reissued, or terminated.

C. VPA permit modifications shall not be used to extend the term of a VPA permit.

D. Modification, revocation and reissuance, or termination of VPA permit may be initiated by the ~~board~~ department, interested persons, or permittee under applicable provisions of this chapter.

E. An updated VPA permit application may be required in order to modify or revoke and reissue a VPA permit.

9VAC25-32-210. Causes for termination.

A. The following are causes for terminating a VPA permit during its term, or for denying a VPA permit renewal application, after public notice and opportunity for a public hearing:

1. The permittee has violated any regulation of the board or order of the ~~board~~ department, any condition of a VPA permit, any provision of the law, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a substantial threat of release of harmful substances into the environment or presents a hazard to human health or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the ~~board~~ department, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. The permittee's failure to disclose fully all relevant material facts, or the permittee's misrepresentation of any relevant material facts in applying for a VPA permit, or in any other report or document required under the law or this chapter;

3. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by VPA permit modification or termination; or

4. There exists a material change in the basis on which the VPA permit was issued that requires either a temporary or a permanent reduction or elimination of any pollutant management activity controlled by the VPA permit necessary to protect human health or the environment.

B. In addition to causes for terminating a VPA permit specified in subsection A of this section, causes for terminating a VPA permit issued for land application, marketing and distribution of biosolids shall include:

1. Failure to comply with the conditions of the permit.

2. Violation of Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia or of any provisions of this regulation.

3. Change in ownership.

4. Abandonment of the facilities.

C. A VPA permit may be terminated without public notice and opportunity for a hearing when the termination is mutually agreed to by the permittee and the ~~board~~ department.

9VAC25-32-230. Transfer of VPA permits.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a VPA permit shall be transferred only if the VPA permit has been modified to reflect the transfer or has been revoked and reissued to the new owner.

B. Automatic transfer. Any VPA permit shall be automatically transferred to a new owner if:

1. The current owner notifies the department 30 days in advance of the proposed transfer of the title to the facility or property;

2. The notice to the department includes a written agreement between the existing and proposed new owner containing a specific date of transfer of VPA permit responsibility, coverage and liability between them; and

3. The ~~board~~ department does not within the 30-day time period notify the existing owner and the proposed owner of its intent to modify or revoke and reissue the VPA permit.

9VAC25-32-240. Minor modification.

A. Upon request of the permittee, or upon ~~board~~ department initiative with the consent of the permittee, minor modifications may be made in the VPA permit without following the public involvement procedures.

B. Minor modification may only:

1. Correct typographical errors;

2. Require reporting by the permittee at a frequency other than that required in the VPA permit;

3. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;

4. Allow for a change in name, ownership or operational control when the ~~board~~ department determines that no other change in the VPA permit is necessary, provided that a written agreement containing a specific date for transfer of VPA permit responsibility, coverage and liability from the current to the new permittee has been submitted to the department;

5. Delete the listing of a land application site when the pollutant management activity is terminated and does not result in an increase of pollutants which would exceed VPA permit limitations;

6. Reduce VPA permit limitations to reflect a reduction in the permitted activity when such reduction results from a shutdown of processes or pollutant generating activities or from connection of the permitted activity to a POTW;

7. Change plans and specifications where no other changes in the VPA permit are required;

8. Authorize treatment facility expansions, production increases or process modifications which will not cause a significant change in the quantity of pollutants being managed or a significant change in the nature of the pollutant management activity; or

9. Delete VPA permit limitation or monitoring requirements for specific pollutants when the activities generating these pollutants are terminated.

C. An application for any permit amendments to increase the acreage authorized by the initial permit shall not be considered a minor modification and shall require the public involvement procedures outlined in 9VAC25-32-140 C.

9VAC25-32-250. Animal feeding operations.

A. All animal feeding operations shall maintain no point source discharge of pollutants to surface waters except in the case of a storm event greater than the 25-year, 24-hour storm. Animal feeding operations having 300 or more animal units utilizing a liquid manure collection and storage system or having 200 or more animal units of poultry are pollutant management activities subject to the VPA permit program. Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose 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.

B. Case-by-case determination.

1. The ~~board~~ department may determine that any animal feeding operation that does not otherwise qualify for coverage under the VPA general permit and has not been required to obtain a VPDES permit be required to obtain an individual VPA permit upon determining that it is a potential or actual contributor of pollution to state waters. In making this determination the following factors shall be considered:

a. The size of the operation;

b. The location of the operation relative to state waters;

c. The means of conveyance of animal wastes and process waters into state waters;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into state waters;

e. The compliance history and the ability to make corrections in order to comply with the VPA general permit conditions;

f. The means of storage, treatment, or disposal of animal wastes; and

g. Other relevant factors.

2. A VPA permit application shall not be required for an animal feeding operation subject to subdivision 1 of this subsection until the ~~board~~ department has conducted an on-site inspection of the operation and determined that the operation shall be regulated under the VPA permit program.

9VAC25-32-260. General VPA permits.

The board may issue a general VPA permit in accordance with the following:

1. Sources. A general VPA permit may be written to regulate a category of pollutant management activities that:

a. Involve the same or similar types of operations;

b. Manage the same or similar types of wastes;

c. Require the same VPA permit limitations or operating conditions;

d. Require the same or similar monitoring; and

e. In the opinion of the board, are more appropriately controlled under a general VPA permit than under individual VPA permits.

2. Administration.

a. General VPA permits will be issued, modified, revoked and reissued, or terminated pursuant to the law and the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

b. The ~~board~~ department may require any person operating under a general VPA permit to apply for and obtain an individual VPA permit. Interested persons may petition the ~~board~~ department to take action under this subdivision. Cases where an individual VPA permit may be required include the following:

(1) Where the pollutant management activity is a significant contributor of pollution;

(2) Where the owner is not in compliance with the conditions of the general VPA permit;

(3) When a water quality management plan containing requirements applicable to the pollutant management activity is approved; or

(4) When a permitted activity no longer meets the general VPA permit conditions.

c. Any owner operating under a general VPA permit may request to be excluded from the coverage of the general VPA permit by applying for an individual VPA permit.

d. When an individual VPA permit is issued to an owner the applicability of the general VPA permit to the individual permittee is automatically terminated on the effective date of the individual VPA permit.

e. When a general VPA permit is issued which applies to an owner already covered by an individual VPA permit, such owner may request exclusion from the provisions of the general VPA permit and subsequent coverage under an individual VPA permit.

f. A general VPA permit may be revoked as to an individual owner for any of the reasons set forth in 9VAC25-32-210 or subdivision 2 b of this section subject to appropriate opportunity for a hearing.

9VAC25-32-270. Control of disposal of pollutants into wells.

A. No right to dispose of pollutants into wells shall exist under this regulation, except as authorized pursuant to a VPA permit issued by the department or VPA general permit issued as a regulation adopted by the board.

B. Whenever an applicant for a VPA permit proposes to dispose of pollutants into a well or wells, the proposed disposal shall be prohibited, or specific terms and conditions shall be included in the VPA permit which shall control the proposed disposal in order to prevent the pollution of and protect all beneficial uses of state waters, protect the public health and welfare, and require compliance with all applicable water quality standards.

9VAC25-32-280. Enforcement.

A. The ~~board~~ department may enforce the provisions of this regulation by:

1. Issuing directives in accordance with the law;

2. Issuing special orders in accordance with the law;

3. Issuing emergency special orders in accordance with the law;

4. Seeking injunction, mandamus or other appropriate remedy as authorized by the law;

5. Seeking civil penalties under the law;

6. Seeking remedies under the law or under other laws including the common law.

B. The ~~board~~ department encourages citizen participation in all its activities, including enforcement. In particular:

1. The ~~board~~ department will investigate citizen complaints and provide written response to all signed, written complaints from citizens concerning matters within the ~~board's~~ department's purview;

2. The ~~board~~ department will not oppose intervention in any civil enforcement action when such intervention is authorized by statute or Supreme Court rule, or in any administrative enforcement action when authorized by the board's Procedural Rule; and

3. At least 30 days prior to the final settlement of any civil enforcement action or the issuance of any consent special order, the ~~board~~ department will publish public notice of such settlement or order in a newspaper of general circulation in the county, city or town in which the pollutant management activity is located, and in the Virginia Register of Regulations. This notice will identify the owner, specify the enforcement action to be taken and specify where a copy of the settlement or order can be obtained. Appeals will be public noticed in accordance with Procedural Rule No. 1 - Public and Formal Hearing Procedures (9VAC25-230~~-10 et seq.~~). A consent special order is a special order issued without a public hearing and with the written consent of the affected owner. For the purpose of this chapter, an emergency special order is not a consent special order. The ~~board~~ department shall consider all comments received during the comment period before taking final action.

C. When a VPA permit is amended solely to reflect a new owner, and the previous owner had been issued a consent special order that at the time of VPA permit amendment was still in full force and effect, a consent special order issued to the new owner does not have to go to public notice provided that:

1. The VPA permit amendment does not have to go to public notice, and

2. The terms of the new consent order are the same as issued to the previous owner.

D. Notwithstanding subdivision 3 of this subsection, a special order may be issued by ~~agreement at a board meeting~~ the department without further notice when a public hearing has been scheduled to issue a special order, to the affected owner, whether or not the public hearing is actually held.

9VAC25-32-290. ~~Delegation of authority.~~ (Repealed.)

~~The director may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.~~

9VAC25-32-305. Permits.

A. No owner shall cause or allow any land application, marketing, or distribution of biosolids except in compliance with a permit issued by the ~~board~~ department that authorizes these activities.

B. A separate biosolids use permit shall be issued for each political jurisdiction (county or city) where land application is proposed.

C. No person shall land apply Class B biosolids on any land in Virginia unless that land has been identified in an application to issue, reissue or modify a permit and approved by the ~~board~~ department.

D. No person shall land apply, market, or distribute biosolids in Virginia unless the biosolids source has been approved by the ~~board~~ department.

9VAC25-32-315. Additional and more stringent requirements.

A. On a case-by-case basis, the ~~board~~ department may impose requirements for the use of biosolids or the disposal of sewage sludge in addition to or more stringent than the requirements in this part when necessary to protect human health and the environment from any adverse effect of a pollutant in the biosolids or sewage sludge.

B. Nothing in this part precludes the authority of another state agency, political subdivision of Virginia, or an interstate agency with respect to the use of biosolids or disposal of sewage sludge.

C. For biosolids land application where, because of site specific conditions, including soil type, identified during the permit application review process, the department determines that special requirements are necessary to protect the environment or the health, safety, or welfare of persons residing in the vicinity of a proposed land application site, the department may incorporate in the permit at the time it is issued reasonable special conditions regarding setback distances, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by this regulation. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

9VAC25-32-330. Variances.

A. The ~~board~~ department may grant a variance to a procedural, design, or operational regulation by following the appropriate procedures set forth in this section.

B. Requirements for a variance. The ~~board~~ department may grant a variance if it finds that the hardship imposed outweighs the benefits that may be received by the public and that the granting of such variance does not subject the public to unreasonable health risks or environmental pollution.

C. Application for a variance. Any owner may apply in writing for a variance. The application shall be submitted to the appropriate regional office for evaluation. The application shall include:

1. A citation of the regulation from which a variance is requested.

2. The nature and duration of variance requested.

3. A statement of the hardship to the owner and the anticipated impacts to the public health and welfare if a variance were granted.

4. Suggested conditions that might be imposed on the granting of a variance that would limit its detrimental impact on public health and welfare.

5. Other information, if any, believed to be pertinent by the applicant.

6. Such other information as may be required to make the determination in accordance with subsection B of this section.

D. Consideration of a variance.

1. The ~~board~~ department shall act on any variance request submitted pursuant to this subsection within 90 days of receipt of request.

2. In the ~~board's~~ department's consideration of whether a biosolids use variance should be granted, the ~~board~~ department shall consider such factors as the following:

a. The effect that such a variance would have on the adequate operation of the biosolids use facility, including public nuisance concerns;

b. The cost and other economic considerations imposed by this requirement; and

c. The effect that such a variance would have on the protection of the public health or the environment.

E. Disposition of a variance request.

1. The ~~board~~ department may grant the variance request and if the ~~board~~ department proposes to deny the variance it shall provide the owner an opportunity to an informal proceeding

as provided in § 2.2-4019 of the Code of Virginia. Following this opportunity for an informal proceeding the ~~board~~ department may reject any application for a variance by sending a rejection notice to the applicant. The rejection notice shall be in writing and shall state the reasons for the rejection. A rejection notice constitutes a case decision.

2. If the ~~board~~ department proposes to grant a variance request submitted pursuant to this regulation, the applicant shall be notified in writing of this decision. Such notice shall identify the variance, the biosolids use facility involved, and shall specify the period of time for which the variance will be effective. Such notice shall provide that the variance will be terminated when the biosolids use facility comes into compliance with the applicable regulation and may be terminated upon a finding by the ~~board~~ department that the biosolids use facility has failed to comply with any requirements or schedules issued in conjunction with the variance. The effective date of the variance shall be 15 days following its issuance.

F. Posting of variances. All variances granted for the design or operation of biosolids use facility are nontransferable. Any requirements of the variance shall become part of the permit for biosolids use subsequently granted by the ~~board~~ department.

9VAC25-32-350. Procedures for obtaining a certificate to construct and certificate to operate.

No owner shall cause or allow the construction, expansion, modification, or operation of facilities necessary for biosolids treatment or storage except in compliance with a certificate to construct (CTC) and a certificate to operate (CTO) issued by the ~~board~~ department in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790).

9VAC25-32-358. Frequency of monitoring.

A. Biosolids.

1. The frequency of monitoring for the pollutants listed in Tables 1 through 5 of 9VAC25-32-356; the pathogen density requirements in 9VAC25-32-675 A and B 2 through B 4; and the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 4, B 7, and B 8 shall be the frequency in Table 1 of this section.

TABLE 1
FREQUENCY OF MONITORING – LAND APPLICATION

Amount of biosolids[(1)] (metric tons per 365-day period)	Frequency[(2)]
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year
Note[(1)]: Either the amount of bulk biosolids applied to the land or the amount of biosolids received by a person who prepares biosolids that is sold or given away in a bag or other container for application to the land (dry weight basis).	
Note[(2)]: Sampling shall be conducted at approximately equal intervals at the listed frequencies. Biosolids programs that store biosolids and land apply only during discrete events throughout the year shall schedule sampling events to coincide with application periods. The department may require increased monitoring frequencies, if necessary, to adequately define any significant variability in biosolids quality.	

2. After the biosolids has been monitored for two years at the frequency in Table 1 of this section, the ~~board~~ department may reduce the frequency of monitoring for pollutant concentrations and for the pathogen density requirements in 9VAC25-32-675 A 5 b and c.

B. Domestic septage. If the vector attraction reduction requirements in 9VAC25-32-685 B 12 are met when domestic septage is applied to agricultural land, forest, or a reclamation site, each container of domestic septage applied to the land shall be monitored for compliance with those requirements.

9VAC25-32-400. Additional monitoring.

A. The department may require that additional site specific monitoring be performed by the holder of the permit for any biosolids land application practice regardless of frequency of application or size of the application area. Such requirements may occur in situations in which groundwater contamination, surface runoff, soil toxicity, health hazards or nuisance conditions are identified as an existing problem or potential problem as a result of biosolids use operations. Additional monitoring may include, but is not limited to, groundwater, surface water, crop, and soil monitoring.

B. The ~~board~~ department may require the owner or operator of any facility or operation to install, use, and maintain monitoring equipment for internal testing of biosolids quality, to identify and determine the causes of operational problems, and to determine the necessary corrective actions to correct such problems. If this testing is required, test results shall be recorded, compiled, and reported to the department.

C. Additional operational control information may be required on an individual basis by the department.

D. The department may require biosolids to be tested for certain toxic organic compounds prior to agricultural use. If performed and validated, these test results shall be utilized to evaluate the maximum allowable annual loading rate for the tested biosolids. If analytical test results verify that biosolids contains levels of organic chemicals exceeding concentration limits incorporated in federal regulations or standards, appropriate restrictions shall be imposed for agricultural use of those biosolids.

E. Additional parameters may be required for screening purposes such as aluminum (mg/kg), water soluble boron (mg/kg), calcium (mg/kg), manganese (mg/kg), sulfates (mg/kg), and those pollutants for which removal credits are granted.

F. Microbiological testing may be necessary to document the sludge treatment classification (9VAC25-32-675). Microbiological standards shall be verified by the log mean of the analytical results from testing of seven or more samples of the sludge source. Sampling events shall be separated by an appropriate period of time so as to be representative of the random and cyclic variations in sewage characteristics.

9VAC25-32-410. Biosolids management plan.

A. The permit holder shall maintain and implement a Biosolids Management Plan that shall consist of three components:

1. The materials, including site booklets, developed and submitted at the time of permit application or permit modification adding a farm to the permit in accordance with 9VAC25-32-60 F;

2. Nutrient management plan developed for each site, prior to biosolids application; and

3. Operations and maintenance (O&M) manual, developed and submitted to the department within 90 days of the effective date of the permit.

B. The biosolids management plan and all of its components shall be incorporated as an enforceable part of the permit.

C. Nutrient management plan:

1. A nutrient management plan approved by the Department of Conservation and Recreation shall be required for application sites prior to ~~board~~ department authorization under specific conditions, including but not limited to:

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

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

c. Mined or disturbed land sites where land application is proposed at greater than agronomic rates; and

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

2. Where conditions at the land application site change so that it meets one or more of the specific conditions identified in subdivisions 1 a through d of this subsection, an approved nutrient management plan shall be submitted prior to any future land application at the site.

3. The nutrient management plan shall be available for review by the department at the land application site during biosolids land application.

4. Within 30 days after land application at the site has commenced, the permit holder shall provide a copy of the nutrient management plan to the farm operator of the site, the Department of Conservation and Recreation and the chief executive officer or designee for the local government unless they request in writing not to receive the nutrient management plan.

5. The nutrient management plan must be approved by the Department of Conservation and Recreation prior to land application for application sites where the soil test phosphorus levels exceed the values in Table 1 of this section. For purposes of approval, permittees should submit the nutrient management plan to the Department of Conservation and Recreation at least 30 days prior to the anticipated date of land application to ensure adequate time for the approval process.

TABLE 1
SOIL PHOSPHORUS LEVELS REQUIRING NMP APPROVAL

Region	Soil Test P (ppm) VPI & SU Test (Mehlich I)*
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162

*If results are from another laboratory, the Department of Conservation and Recreation approved conversion factors must be used.

D. The O&M manual shall include at a minimum:

1. Equipment maintenance and calibration procedures and schedules;

2. Storage facility maintenance procedures and schedules;

3. Sampling schedules for:

a. Required monitoring; and

b. Operational control testing;

4. Sample collection, preservation, and analysis procedures, including laboratories and methods used; and

5. Instructions for recording and reporting of all monitoring activities.

9VAC25-32-470. Crop monitoring and reporting.

Vegetation monitoring may be required by the ~~board~~ department upon recommendation of the department once every three years on sites with frequent applications of biosolids applied at or greater than agronomic rates and when 400 pounds per acre or more of available phosphorus has been applied to the soil. Analyses of plant tissue should be conducted at the proper growth stage as recommended by either the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Conservation and Recreation or Virginia Cooperative Extension Service. Routine analyses include nitrate-nitrogen, phosphorus, potassium, calcium, manganese, magnesium, iron, copper and zinc. Analysis for additional parameters may be necessary as determined on a case-by-case basis. Results shall be reported annually to the department.

9VAC25-32-480. Groundwater monitoring and reporting.

A. Monitoring wells may be required by the ~~board~~ department for land treatment sites, sludge lagoons, biosolids land application sites, or biosolids storage facilities to monitor groundwater quality.

B. If groundwater monitoring is required, a groundwater monitoring plan shall be submitted to the department for approval that includes at a minimum:

1. Geologic and hydrologic conditions at the site;

2. Monitoring well design, placement, and construction;

3. Sampling frequency;

4. Sampling procedures, including quality assurance and quality control; and

5. Collection of background samples.

9VAC25-32-490. Compliance with biosolids use practices of this chapter.

Guidelines set forth in 9VAC25-32-515 through 9VAC25-32-580 of this regulation specify minimum standards for biosolids use for land application, marketing and distribution, including biosolids quality and site specific management practices. Compliance with this chapter will not be required for facilities not including land application, distribution, or marketing, which have received the approval of the Commissioner of the State Department of Health and the State Water Control Board and for which operation has commenced as of January 1, 2008. Such operation of facilities is deemed to be commenced upon issuance of a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790). However, the ~~board~~ department may impose standards and requirements that are more stringent than those contained in this regulation according to the provisions of 9VAC25-32-100 E, 9VAC25-32-315, and 9VAC25-32-560 B 3. Conformance to local land use zoning and planning should be resolved between the local government and the facility owner or permit holder. Applications submitted for facilities must demonstrate that the facility and biosolids use management practices will adequately safeguard public health and will comply with the certificate and permit requirements, as appropriate. Submissions that are in substantial compliance with this regulation and comply with any additional requirements as noted above will be approved. Justification for biosolids use proposals may be required for those portions of the submitted proposal that differ from these criteria. The owner or owner's agent shall identify and justify noncompliance with specific standards or "shall" criteria that the department identifies, or the applicant, in his judgment, believes to be substantial in nature. The department may request changes in designs that are not in substantial compliance with this regulation and that are not adequately justified by the applicant. The fact that significant work was accomplished on a specific permit application prior to adoption of this regulation shall be a consideration when evaluating applications.

9VAC25-32-530. Land acquisition.

A. When an application to permit land application of biosolids is submitted to the department, the permit applicant shall ensure the continued availability of the land and protection from improper concurrent use during the utilization period.

B. Land acquisition requirements.

1. Permit holders shall use a unique control number assigned by the department as an identifier for fields permitted for land application.

2. A written agreement shall be established between the landowner and permit applicant or permit holder to be submitted with the permit application, whereby the landowner shall consent to apply biosolids on his property. The landowner agreement shall include:

a. A statement certifying that the landowner is the sole owner or one of multiple owners of the property or properties identified on the landowner agreement;

b. A statement certifying that no concurrent agreements are in effect for the fields to be permitted for biosolids application;

c. An acknowledgement that the landowner shall notify the permittee when land is sold or ownership transferred;

d. An acknowledgement that the landowner shall notify the permittee if any conditions change such that any component of the landowner agreement becomes invalid;

e. Permission to allow department staff on the landowner's property to conduct inspections;

f. An acknowledgement by the landowner of any site restrictions identified in the regulation;

g. An acknowledgement that the landowner has received a biosolids fact sheet approved by the department; and

h. An acknowledgement that the landowner shall not remove notification signs placed by the permit holder.

3. New landowner agreements using the most current form provided by the ~~board~~ department shall be submitted to the department for proposed land application sites identified in each application for issuance or reissuance of a permit or the modification to add land to an existing permit that authorizes the land application of biosolids.

4. For permits modified in order to incorporate changes to this regulation, the permit holder shall, within 60 days of the effective date of the permit modification, advise the landowner by certified letter of the requirement to provide a new landowner agreement. The letter shall include instructions to the landowner for signing and returning the new landowner agreement, and shall advise the landowner that the permit holder's receipt of such new landowner agreement is required prior to application of biosolids to the landowner's property.

5. The responsibility for obtaining and maintaining the agreements lies with the permit holder. The written agreement shall be submitted to the department with the permit application.

9VAC25-32-540. Transport.

A. Transport routes should follow primary highways, shall avoid residential areas when possible, and shall comply with all Virginia Department of Transportation requirements and standards. Transport vehicles shall be sufficiently sealed to prevent leakage and spillage of biosolids. For biosolids with a solids content of less than 15%, totally closed watertight transport vehicles with rigid tops shall be provided to prevent spillage unless adequate justification is provided to demonstrate that such controls are unnecessary. The ~~board~~ department may also require certain dewatered biosolids exceeding 15% solids content to be handled as liquid biosolids. The minimum information for biosolids transport that shall be supplied in the biosolids management plan is listed in 9VAC25-32-60 F.

B. The permit holder shall be responsible for the prompt cleanup and removal of biosolids spilled during transport. The operations manual shall include a plan for the prevention of spills during transport and for the cleanup and removal of spills. The permit holder shall ensure that its personnel, subcontractors or the drivers of vehicles transporting biosolids for land application shall be properly trained in procedures for spill removal and cleanup.

C. The permit holder shall take appropriate steps to prevent drag-out and track-out of dirt and debris or biosolids from land application sites onto public roads. Where material is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly as soon as practicable, but no later than the end of each day.

D. The permit holder shall promptly report offsite spills to the department, the chief executive officer or designee for the local government and the owner of the facility generating the biosolids. The report shall be made verbally as soon as possible, but no later than 24 hours after the discovery of the spill. After business hours notification may be provided by voicemail, facsimile or email.

E. A written report, which shall include a description of measures taken in response to the spill, shall be submitted by the permit holder to the department, the chief executive officer or designee for the local government, and the owner of the facility generating the biosolids within five working days of the spill. The report may be sent by first class mail, facsimile or email, or it may be hand delivered.

9VAC25-32-550. Storage facilities.

A. No person shall apply to the department for a permit, a variance, or a permit modification authorizing storage of biosolids without first complying with all requirements adopted pursuant to § 62.1-44.19:3 R of the Code of Virginia.

B. Two types of storage may be integrated into a complete biosolids management plan:

1. On-site storage, or

2. Routine storage. Only routine storage facilities shall be considered a facility under this regulation.

C. All on-site storage and routine storage facilities shall comply with the requirements of this section by 12 months from the effective date of this regulation.

D. On-site storage. On-site storage is the short-term storage of biosolids on a constructed surface within a site approved for land application at a location preapproved by the department. These stored biosolids shall be applied only to sites under the operational control of the same owner or operator of the site where the on-site storage is located. Requirements for on-site storage include the following:

1. The certified land applier shall notify the department within the same working day whenever it is necessary to implement on-site storage. Notification shall include the source or sources, location, and amounts;

2. A surface shall be constructed with sufficient strength to support operational equipment and with a maximum permeability of 10^{-7} cm/sec;

3. Storage shall be limited to the amount of biosolids specified in the nutrient management plan to be applied at sites under the operational control of the same owner or operator of the site where the on-site storage is located;

4. If malodors related to the stored biosolids are verified by the department at any occupied dwelling on surrounding property, the problem must be corrected within 48 hours. If the problem is not corrected within 48 hours, the biosolids must be removed from the storage site;

5. All biosolids stored on the on-site storage pad shall be land applied by the 45th day from the first day of on-site storage;

6. Biosolids storage shall be located to provide minimum visibility from adjacent properties;

7. Best management practices shall be utilized as appropriate to prevent contact with storm water run on or runoff;

8. Stored biosolids are to be inspected by the certified land applier at least every seven days and after precipitation events of 0.1 inches or greater to ensure that runoff controls are in good working order. Observed excessive slumping, erosion, or movement of biosolids is to be corrected within 24 hours. Any ponding or malodor at the storage site is to be corrected. The certified land applier shall maintain documentation of inspections of stored biosolids;

9. The department may prohibit or require additional restrictions for on-site storage in areas of Karst topography and environmentally sensitive sites; and

10. Storage of biosolids shall be managed so as to prevent adverse impacts to water quality or public health.

E. Routine storage. Routine storage is the long-term storage of biosolids at a facility not located at the site of the wastewater treatment plant, preapproved by the department and constructed specifically for the storage of biosolids to be applied at any permitted site. Routine storage facilities shall be provided for all land application projects if no alternative means of management is available during nonapplication periods. No person shall apply to the department for a permit, a variance, or a permit modification authorizing storage of biosolids without first complying with all requirements adopted pursuant to § 62.1-44.19:3 A 5 of the Code of Virginia. Plans and specifications for any surface storage facilities (pits, ponds, lagoons) or aboveground facilities (tanks, pads) shall be submitted as part of the minimum information requirements. The minimum information requirements include:

1. Location.

a. The facility shall be located at an elevation that is not subject to, or is otherwise protected against, inundation produced by the 100-year flood/wave action as defined by U.S. Geological Survey or equivalent information.

b. Storage facilities should be located to provide minimum visibility.

c. All storage facilities located offsite of property owned by the generator shall be provided with a minimum 750-feet setback area. The length of the setback area considered will be the distance measured from the perimeter of the storage facility. Residential uses, high-density human activities and activities involving food preparation are prohibited within the setback area. The ~~board~~ department may reduce the setback requirements based on site-specific factors, such as facility size, topography, prevailing wind direction, and the inclusion of an effective windbreak in the overall design.

2. Design capacity.

a. The design capacity for storage of liquid biosolids shall be sufficient to store a minimum volume equivalent to 60 days or more average production of biosolids and the incidental wastewater generated by operation of the treatment works plus sufficient capacity necessary for: (i) the 25 year-24 hour design storm (incident rainfall and any runoff as may be present); (ii) net precipitation excess during the storage period; and (iii) an additional one foot freeboard from the maximum water level (attributed to the sum of the above factors) to the top berm elevation. Storage capacity of less than that specified above will be considered on a case-by-case basis only if sufficient justification warrants such a reduction.

b. If alternative methods of management cannot be adequately verified, contractors shall provide for a minimum of 30 days of in-state routine storage capacity for the average quantity of biosolids transported into Virginia from out-of-state treatment works generating at least a Class B biosolids.

3. Facility design.

a. All drawings and specifications shall be submitted in accordance with 9VAC25-790-160.

b. The biosolids shall be stored on an engineered surface with a maximum permeability of 10^{-7} cm/sec and of sufficient strength to support operational equipment.

c. Storage facilities designed to hold dewatered biosolids shall be constructed with a cover to prevent contact with precipitation.

d. Existing facilities permitted as routine storage facilities and designed to contain liquid biosolids may be used to store dewatered biosolids. The supernatant shall be managed as liquid biosolids in accordance with 9VAC25-32-550 E 5 d. Freeboard shall be maintained in accordance with 9VAC25-32-550 E 5 c. The department may require additional monitoring prior to land application.

e. Storage facilities shall be of uniform shape (round, square, rectangular) with no narrow or elongated portions.

f. The facilities shall also be designed to permit access of equipment necessary for loading and unloading biosolids, and shall be designed with receiving facilities to allow for even distribution of biosolids into the facility.

g. The design shall also provide for truck cleaning facilities.

4. Monitoring. All biosolids storage facilities shall be monitored in accordance with the requirements of this regulation. Plans and specifications shall be provided for such a monitoring program in accordance with the minimum information specified in 9VAC25-32-60 F and 9VAC25-32-410.

5. Operation.

a. Only biosolids suitable for land application (Class A or B biosolids) shall be placed into permitted routine storage facilities.

b. Storage of biosolids located offsite or remote from the wastewater treatment works during the summer months shall be avoided whenever possible so that the routine storage facility remains as empty as possible during the summer months.

c. Storage facilities shall be operated in a manner such that sufficient freeboard is provided to ensure that the maximum anticipated high water elevation due to any and all design storm inputs is not less than one foot below the top berm elevation.

d. Complete plans for supernatant disposal shall be provided in accordance with 9VAC25-32-60 F. Plans for supernatant disposal may include transport to the sewage treatment works, mixing with the biosolids for land application or land application separately. However, separate land application of supernatant will be regulated as liquid biosolids; additional testing, monitoring and treatment (disinfection) may be required.

e. The facility site shall be fenced to a minimum height of five feet; gates and locks shall be provided to control access. The fence shall be posted with signs identifying the facility. The fence shall not be constructed closer than 10 feet to the outside edge of the facility or appurtenances, to allow adequate accessibility.

f. If malodors related to the stored biosolids are verified by the department at any occupied dwelling on surrounding property, the malodor must be corrected within 48 hours.

6. Closure. An appropriate plan of closure or abandonment shall be developed by the permittee when the facility ceases to be utilized and approved by the ~~board~~ department. Such plans may also be reviewed by the Department of Health.

7. Recordkeeping. A manifest system shall be developed, implemented and maintained and be available for inspection during operations as part of the overall daily recordkeeping for the project (9VAC25-32-60 F).

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~~ department 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. Infequent 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.

(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):

TABLE 1
MINIMUM SETBACK DISTANCE REQUIREMENTS

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

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

[2]The 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.

[3]Setback 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.

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

[5]Publicly 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.

[6]A 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 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.

9VAC25-32-570. Distribution and marketing.

A. Exceptional quality. Distribution or marketing provides for the sale or distribution of exceptional quality biosolids or mixtures of exceptional quality biosolids with other materials such that the mixture achieves the Class A pathogen control, vector attraction reduction and pollutant control standards. Distribution or marketing of Class A biosolids that have been mixed with inert materials may be approved on a case-by-case basis. Use of such mixtures for agricultural purposes shall be evaluated through proper testing or research programs designed to assess the suitability of the material for such use. Exceptional quality biosolids marketed as fertilizers or soil conditioners must meet the following conditions:

1. The biosolids product must be registered with the Virginia Department of Agriculture and Consumer Services in accordance with the provisions of § 3.2-3607 of the Code of Virginia.

2. The biosolids product must be processed to meet Class A pathogen requirements as specified in 9VAC25-32-675 A.

3. The biosolids product must meet one of the vector attraction reduction requirements as specified in 9VAC25-32-685 B 1 through B 8.

4. The biosolids product must meet the ceiling concentrations specified in 9VAC25-32-356 - Table 2.

5. The biosolids product must meet the pollutant concentrations specified in 9VAC25-32-356 - Table 4.

6. Additional parameters may be required for screening purposes such as organic chemicals, aluminum (mg/kg), water soluble boron (mg/kg), calcium (mg/kg), chlorides

(mg/l), manganese (mg/kg), sulfur (mg/kg), and those pollutants for which removal credits are granted.

B. Bulk distribution. Exceptional quality biosolids may be distributed and marketed in either bulk amounts (unpacked) or as a bagged product. The following requirements shall apply to distribution and marketing of biosolids products:

1. Any permit holder who distributes or markets exceptional quality biosolids shall comply with the reporting requirements of §§ 3.2-3609 and 3.2-3610 of the Code of Virginia. The records shall be maintained for five years and made available to the department upon request.

2. Bulk quantities of exceptional quality biosolids shall be land applied in accordance with a nutrient management plan prepared by a certified nutrient management planner as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia, except under the following conditions:

a. The percent solids of the biosolids is equal to or greater than 90% based on moisture content and total solids, or

b. A blended product derived from biosolids is utilized for a purpose other than land application at agricultural operations.

3. Within 30 days after land application at the site has commenced, the permit holder shall provide a copy of the plan to the farm operator of the site and the Department of Conservation and Recreation.

C. Approval of biosolids sources. Only exceptional quality biosolids produced from a sludge processing facility approved by the ~~board~~ department can be distributed and marketed.

D. Information furnished to all users. Labeling requirements shall be addressed in a biosolids management plan. Either a label shall be affixed to the bag or other container in which exceptional quality biosolids is sold or given away for application to the land, or an information sheet shall be provided to the person who receives exceptional quality biosolids. The label or information sheet shall contain the following information:

1. The name and address of the person who prepared the exceptional quality biosolids;

2. A statement that application of the exceptional quality biosolids to the land is prohibited except in accordance with the instructions on the label or information sheet;

3. The annual whole sludge application rate for the biosolids that does not cause any of the annual pollutant loading rates in Table 5 of 9VAC25-32-356 to be exceeded; and

4. Information required in accordance with regulations promulgated under § 3.2-3601 of the Code of Virginia and with the labeling provisions of § 3.2-3611 of the Code of Virginia.

E. Recordkeeping.

1. The person who prepares exceptional quality biosolids shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 4 of 9VAC25-32-356 in the biosolids;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

2. The person who derives the material that meets the criteria of exceptional quality biosolids shall develop the following information and shall retain the information for five years:

a. The concentration of each pollutant listed in Table 4 of 9VAC25-32-356 in the material;

b. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the Class A pathogen requirements in 9VAC25-32-675 A and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

c. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

d. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

3. If the requirements in 9VAC25-32-356 B 4 b are met when biosolids is sold or given away in a bag or other container for application to the land, the person who prepares the biosolids that is sold or given away in a bag or other container shall develop the following information and shall retain the information for five years:

a. The annual whole sludge application rate for the biosolids that does not cause the annual pollutant loading rates in Table 5 of 9VAC25-32-356 to be exceeded;

b. The concentration of each pollutant listed in Table 5 of 9VAC25-32-356 in the biosolids;

c. The following certification statement:

"I certify, under penalty of law, that the information that will be used to determine compliance with the management practices in 9VAC25-32-570 E and F, the Class A pathogen requirement in 9VAC25-32-675 A, and the vector attraction reduction requirement in (insert one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8) was prepared under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.";

d. A description of how the Class A pathogen requirements in 9VAC25-32-675 A are met; and

e. A description of how one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8 is met.

F. An annual report shall be submitted to the department that includes the following information:

1. Total amount in dry tons of exceptional quality biosolids distributed in a bag or other container per year;

2. Total amount in dry tons of exceptional quality biosolids distributed in bulk; and

3. Total amount in dry tons of exceptional quality biosolids distributed from each approved source.

9VAC25-32-675. Pathogens.

A. Biosolids - Class A.

1. The requirement in subdivision 2 of this subsection and the requirements in either subdivision 3, 4, 5, 6, 7, or 8 of this subsection shall be met for biosolids to be classified as Class A biosolids with respect to pathogens.

2. The Class A pathogen requirements in subdivisions 3 through 8 of this subsection shall be met either prior to meeting or at the same time the vector attraction reduction requirements in 9VAC25-32-685, except the vector attraction reduction requirements in 9VAC25-32-685 B 6 through B 8, are met.

3. Class A - Alternative 1.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 2, the pollutant concentrations in 9VAC25-32-356 Table 4, the Class A pathogen requirements in subsection A of this section, and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. The temperature of the sewage sludge that is used as biosolids or disposed shall be maintained at a specific value for a period of time.

(1) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge shall be 50°C or higher, the time period shall be 20 minutes or longer; and the temperature and time period shall be determined using equation (1), except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

EQUATION (1)

$D = 131{,}700{,}000/10^{0.1400t}$

D = time in days

t = temperature in degrees Celsius

(2) When the percent solids of the sewage sludge is 7.0% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge shall be 50°C or higher; the time period shall be 15 seconds or longer; and the temperature and time period shall be determined using equation (1).

(3) When the percent solids of the sewage sludge is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period shall be determined using equation (1).

(4) When the percent solids of the sewage sludge is less than 7.0%, the temperature of the sewage sludge is 50°C or higher; and the time period is 30 minutes or longer; the temperature and time period shall be determined using equation (2).

EQUATION (2)

$D = 50{,}070{,}000/10^{0.1400t}$

D = time in days

t = temperature in degrees Celsius

4. Class A - Alternative 2.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella

sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen requirements in subsection A of this section, and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. The pH and temperature of the sewage sludge that is used as biosolids or disposed shall be maintained at specific values for a period of time.

(1) The pH of the sewage sludge that is used as biosolids or disposed shall be raised to above 12 and shall remain above 12 for 72 hours;

(2) The temperature of the sewage sludge shall be above 52°C for 12 hours or longer during the period that the pH of the sewage sludge is above 12; and

(3) At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

5. Class A - Alternative 3.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses.

(1) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge;

(2) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the biosolids that meets the enteric virus density requirement are documented; and

(3) After the enteric virus reduction in subdivision 5 b (2) of this subsection is demonstrated for the pathogen treatment process, the biosolids continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 b (2) of this subsection.

c. The sewage sludge shall be analyzed prior to pathogen treatment to determine whether the sewage sludge contains viable helminth ova.

(1) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(2) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(3) After the viable helminth ova reduction in subdivision 5 c (2) of this subsection is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in subdivision 5 c (2) of this subsection.

6. Class A - Alternative 4.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 2; the pollutant concentrations in 9VAC25-

32-356 Table 4; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. The density of enteric viruses in the biosolids shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8, unless otherwise specified by the ~~board~~ department.

c. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen requirements in subsection A of this section, and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8, unless otherwise specified by the ~~board~~ department.

7. Class A - Alternative 5.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. Biosolids that is used or disposed shall be treated in one of the processes to further reduce pathogens described in subsection E of this section.

8. Class A - Alternative 6.

a. Either the density of fecal coliform in the biosolids shall be less than 1,000 Most Probable Number per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the biosolids shall be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the biosolids is used or disposed; at the time the biosolids is prepared for sale or giveaway in a bag or other container for application to the land; or at the time the biosolids or material derived from biosolids is prepared to meet the ceiling concentrations in 9VAC25-32-356 Table 2; the pollutant concentrations in 9VAC25-32-356 Table 4; the Class A pathogen requirements in subsection A of this section; and one of the vector attraction reduction requirements in 9VAC25-32-685 B 1 through B 8.

b. Biosolids that is used or disposed shall be treated in a process that is equivalent to a process to further reduce pathogens, as determined by the ~~board~~ department.

B. Biosolids - Class B.

1. Minimum requirements for Class B biosolids.

a. The requirements in either subdivisions 2, 3, or 4 of this subsection shall be met for a sewage sludge to be classified as Class B biosolids with respect to pathogens.

b. The site restrictions in subdivision B 5 of this section shall be met when biosolids that meets the Class B pathogen requirements in subdivision 2, 3, or 4 of this subsection is applied to the land.

2. Class B - Alternative 1.

a. Seven representative samples of the biosolids that is used or disposed shall be collected.

b. The geometric mean of the density of fecal coliform in the samples collected in subdivision 2 a of this subsection shall be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

3. Class B - Alternative 2. Biosolids that is used or disposed shall be treated in one of the processes to significantly reduce pathogens described in subsection D of this section.

4. Class B - Alternative 3. Biosolids that is used or disposed shall be treated in a process that is equivalent to a process to significantly reduce pathogens, as determined by the ~~board~~ department.

5. Site restrictions.

a. Food crops with harvested parts that touch the biosolids/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of biosolids.

b. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of biosolids when the biosolids remains on the land surface for four months or longer prior to incorporation into the soil.

c. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of biosolids when the biosolids remains on the land surface for less than four months prior to incorporation into the soil.

d. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of biosolids.

e. Animals shall not be grazed on the land for 30 days after application of biosolids (60 days for lactating dairy livestock).

f. Turf grown on land where biosolids is applied shall not be harvested for one year after application of the biosolids when the harvested turf is placed on either land with a high potential for public exposure or a lawn, unless otherwise specified by the ~~board~~ department.

g. Public access to land with a high potential for public exposure shall be restricted for one year after application of biosolids.

h. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of biosolids.

TABLE 1
TIME RESTRICTIONS FOLLOWING COMPLETION OF BIOSOLIDS APPLICATION ASSOCIATED WITH CLASS B PATHOGEN REDUCTION

Type of Application	Surface[(1)]	Incorporated[(2)]
Control of access for high potential for public contact[(3)]	12 months	12 months
Time lapse required before above ground food crops with harvested parts that touch the biosolids/soil mixture can be harvested	14 months	14 months
Time lapse before food crops with harvested parts below the land surface can be harvested	20 months	38 months
Harvesting food crops, feed crops and fiber crops	1 month	1 month
Grazing and feeding harvested crops to animals whose products are consumed by humans[(4)]	1 month	1 month
Grazing of farm animals whose products are not consumed by humans	1 month	1 month
Harvesting turf for placement on land with a high potential for public exposure or a lawn[(5)]	12 months	12 month

Notes:

[(1)]Remains on land surface for four months or longer prior to incorporation.

[(2)]Remains on land surface for less than four months prior to incorporation.

[(3)]Public access to agricultural sites and other sites with a low potential for direct contact with the ground surface shall be controlled for 30 days.

[(4)]The restriction for lactating dairy cows is 60 days.

[(5)]This time restriction must be met unless otherwise specified by the department.

C. Domestic septage. The site restrictions in subdivision B 5 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site.

D. Processes to significantly reduce pathogens (PSRP).

1. Aerobic digestion. Sewage sludge is agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 40 days at 20°C and 60 days at 15°C.

2. Air drying. Sewage sludge is dried on sand beds or on paved or unpaved basins. The sewage sludge dries for a minimum of three months. During two of the three months, the ambient average daily temperature is above 0°C.

3. Anaerobic digestion. Sewage sludge is treated in the absence of air for a specific mean cell residence time at a specific temperature. Values for the mean cell residence time and temperature shall be between 15 days at 35°C to 55°C and 60 days at 20°C.

4. Composting. Using either the within-vessel, static aerated pile, or windrow composting methods, the temperature of the sewage sludge is raised to 40°C or higher and remains at 40°C or higher for five days. For four hours during the five days, the temperature in the compost pile exceeds 55°C.

5. Lime stabilization. Sufficient lime is added to the sewage sludge to raise the pH of the sewage sludge to 12 after two hours of contact.

E. Processes to further reduce pathogens (PFRP).

1. Composting. Using either the within-vessel composting method or the static aerated pile composting method, the temperature of the sewage sludge is maintained at 55°C or higher for three days. Using the windrow composting method, the temperature of the sewage sludge is maintained at 55°C or higher for 15 days or longer. During the period when the compost is maintained at 55°C or higher, there shall be a minimum of five turnings of the windrow.

2. Heat drying. Sewage sludge is dried by direct or indirect contact with hot gases to reduce the moisture content of the sewage sludge to 10.0% or lower. Either the temperature of the sewage sludge particles exceeds 80°C or the wet bulb temperature of the gas in contact with the sewage sludge as the sewage sludge leaves the dryer exceeds 80°C.

3. Heat treatment. Liquid sewage sludge is heated to a temperature of 180°C or higher for 30 minutes.

4. Thermophilic aerobic digestion. Liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the sewage sludge is 10 days at 55°C to 60°C.

5. Beta ray irradiation. Sewage sludge is irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

6. Gamma ray irradiation. Sewage sludge is irradiated with gamma rays from certain isotopes, such as Cobalt 60 and Cesium 137, at dosages of at least 1.0 megarad at room temperature (ca. 20°C).

7. Pasteurization. The temperature of the sewage sludge is maintained at 70°C or higher for 30 minutes or longer.

9VAC25-32-685. Vector attraction reduction.

A. Conditions under which vector attraction reductions are required:

1. One of the vector attraction reduction requirements in subdivisions B 1 through B 10 of this section shall be met when bulk biosolids is applied to agricultural land, forest, a public contact site, or a reclamation site;

2. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when bulk biosolids is applied to a lawn or a home garden;

3. One of the vector attraction reduction requirements in subdivisions B 1 through B 8 of this section shall be met when biosolids is sold or given away in a bag or other container for application to the land;

4. One of the vector attraction reduction requirements in subdivisions B 1 through B 11 of this section shall be met when sewage sludge (other than domestic septage) is placed on an active sewage sludge unit;

5. One of the vector attraction reduction requirements in subdivision B 9, B 10, or B 12 of this section shall be met when domestic septage is applied to agricultural land, forest, or a reclamation site; and

6. One of the vector attraction reduction requirements in subdivisions B 9 through B 12 shall be met when domestic septage is placed on an active sewage sludge unit.

B. Vector attraction reduction options:

1. The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%, calculated according to the method in 9VAC25-32-450 F 8.

2. When the 38% volatile solids reduction requirement in subdivision 1 of this subsection cannot be met for an anaerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30°C and 37°C. When at the end of the 40 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 17%, vector attraction reduction is achieved.

3. When the 38% volatile solids reduction requirement in subdivision 1 of this section cannot be met for an aerobically digested sewage sludge, vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of 2.0% or less aerobically in the laboratory in a bench-scale unit for 30

additional days at 20°C. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15%, vector attraction reduction is achieved.

4. The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20°C.

5. Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40°C and the average temperature of the sewage sludge shall be higher than 45°C.

6. The pH of sewage sludge shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for two hours and then at 11.5 or higher for an additional 22 hours.

7. The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials.

8. The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials.

9. Sewage sludge injection requirements:

a. Sewage sludge shall be injected below the surface of the land.

b. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

c. When the sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

10. Sewage sludge incorporation requirements:

a. Sewage sludge applied to the land surface or placed on an active sewage sludge unit shall be incorporated into the soil within six hours after application to or placement on the land unless otherwise specified by the ~~board~~ department.

b. When the sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

11. Sewage sludge placed on an active sewage sludge unit shall be covered with soil or other material at the end of each operating day.

12. The pH of domestic septage shall be raised to 12 or higher by alkaline addition and, without the addition of more alkaline material, shall remain at 12 or higher for 30 minutes.

VA.R. Doc. No. R23-7261; Filed September 9, 2022, 2:23 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: **9VAC25-40. Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed (amending 9VAC25-40-25, 9VAC25-40-40, 9VAC25-40-70).**

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

Effective Date: November 23, 2022.

Agency Contact: Allan Brockenbrough, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 836-2321, FAX (804) 698-4178, or email allan.brockenbrough@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-40-25. Definitions.

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

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Department" means the Department of Environmental Quality.

"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.

"Expansion" or "expands" means initiating construction at an existing facility after July 1, 2005, to increase treatment capacity, except that the term does not apply in those cases where a Certificate to Construct was issued on or before July 1, 2005.

"Point source dischargers" or "dischargers" do not include permitted discharges of noncontact cooling water or storm water.

9VAC25-40-40. Permit amendments.

Whenever the ~~board~~ department determines that a permittee has the potential for discharging monthly average total phosphorus concentrations greater than or equal to 2.0 mg/l or monthly average total nitrogen concentrations greater than or equal to 10 mg/l to "nutrient enriched waters," the ~~board~~ department may reopen the VPDES permit to impose monitoring requirements for nutrients in the discharge.

9VAC25-40-70. Strategy for Chesapeake Bay Watershed.

A. As specified herein, the ~~board~~ department shall include technology-based effluent concentration limitations in the individual permit for any facility that has installed technology for the control of nitrogen and phosphorus whether by new construction, expansion, or upgrade. Such limitations shall be based upon the technology installed by the facility and shall be expressed as annual average concentrations.

1. Except as provided under subdivision 4 of this subsection, an owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day, or an equivalent load directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters shall install state-of-the-art nutrient removal technology at the time of the expansion and achieve an annual average total nitrogen effluent concentration of 3.0 milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter.

2. Except as provided under subdivision 4 of this subsection, an owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day up to and including 499,999 gallons per day, or an equivalent load, directly into nontidal waters shall install, at a minimum, biological nutrient removal technology at the time of the expansion and achieve an annual average total nitrogen effluent concentration of 8.0 milligrams per liter and an annual average total phosphorus effluent concentration of 1.0 milligrams per liter.

3. Except as provided under subdivision 4 of this subsection, an owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall install:

a. At a minimum, biological nutrient removal technology at any facility authorized to discharge up to and including 99,999 gallons per day, or an equivalent load, directly into tidal and nontidal waters or up to and including 499,999 gallons per day, or an equivalent load, to nontidal waters and achieve an annual average total nitrogen effluent concentration of 8.0 milligrams per liter and an annual average total phosphorus effluent concentration of 1.0 milligrams per liter; and

b. State-of-the-art nutrient removal technology at any facility authorized to discharge 100,000 gallons or more per day, or an equivalent load, directly into tidal waters or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters and achieve an annual average total nitrogen effluent concentration of 3.0 milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter.

4. On a case-by-case basis, the ~~board~~ department may establish a technology-based standard and associated concentration limitation less stringent than the applicable standard specified in subdivision 1, 2 or 3 of this subsection, as applicable, based on a demonstration by an owner or operator that the specified standard is not technically or economically feasible for the affected facility or that the technology-based standard and associated concentration limitation would degrade receiving waters or require the owner or operator to construct treatment facilities not otherwise necessary to comply with his waste load allocation without reliance on nutrient credit exchanges pursuant to § 62.1-44.19:18 of the Code of Virginia, provided, however, the discharger must achieve an annual total nitrogen waste load allocation and an annual total phosphorus waste load allocation as required by the Water Quality Management Planning Regulation (9VAC25-720).

5. Any effluent limitation concerning a nutrient that is imposed under any other requirement of state or federal law or regulation that is more stringent than those established herein shall not be affected by this regulation.

B. In accordance with Article 1.1 (§ 10.1-1187.1 et seq.) of Chapter 11.1 of Title 10.1 of the Code of Virginia, the ~~board~~ department may approve an alternate compliance method to the technology-based effluent concentration limitations as required by subsection A of this section. Such alternate compliance method shall be incorporated into the permit of an Exemplary Environmental Enterprise (E3) facility or an Extraordinary Environmental Enterprise (E4) facility to allow the suspension of applicable technology-based effluent concentration limitations during the period the E3 or E4 facility has a fully implemented environmental management system that includes operation of installed nutrient removal

technologies at the treatment efficiency levels for which they were designed.

C. Notwithstanding subsection A of this section, point source dischargers within the Chesapeake Bay Watershed are also governed by the Water Quality Management Planning Regulation (9VAC25-720).

VA.R. Doc. No. R23-7262; Filed September 9, 2022, 2:23 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: **9VAC25-71. Regulations Governing the Discharge of Sewage and Other Wastes from Boats (amending 9VAC25-71-10).**

Statutory Authority: § 62.1-44.33 of the Code of Virginia; § 312 of the federal Clean Water Act.

Effective Date: November 23, 2022.

Agency Contact: Justin Williams, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1125, FAX (804) 698-4178, or email justin.williams@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," removing delegation of authority provisions, and correcting Code of Virginia citations.

9VAC25-71-10. Definitions.

For the purposes of this chapter, the following definitions apply:

"Act" means the Clean Water Act (33 USC § 1251 et seq.) and standards and regulations promulgated thereunder.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Container seal" means a tamper-evident plastic or wire security device.

"Department" means the Department of Environmental Quality.

"Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"Discharges incidental to the normal operation of a vessel" means discharges of graywater (galley, bath and shower water), bilge water, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other discharge from a properly functioning marine engine or propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or catapult, or from a protective, preservative, or adsorptive application to the hull of a vessel, or a discharge in connection with the testing, maintenance, and repair of a system described above whenever the vessel is waterborne. It does not include a discharge of rubbish, trash, garbage, other such material discharged overboard or pollution.

"Houseboat" means a vessel that is used primarily as a residence and is not used primarily as a means of transportation.

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

"Macerator pump valve" means a valve in a vessel's sewage piping that in the open position allows an overboard discharge of sewage via a through-hull fitting.

"Marina" means any installation, operating under public or private ownership, that provides dockage or moorage for boats (exclusive of paddle or rowboats) and provides, through sale, rental or fee basis, any equipment, supply or service (fuel, electricity or water) for the convenience of the public or its lessee, renters or users of its facilities.

"Marine sanitation device" means any equipment installed on a boat or vessel and that is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

"No Discharge Zone" means an area where a state has received an affirmative determination from the U.S. Environmental Protection Agency that there are adequate facilities for the removal of sewage from vessels (holding tank pump-out facilities) in accordance with § 312(f)(3) of the Act, and where federal approval has been received allowing a complete prohibition of all treated or untreated discharges of sewage from all vessels;

"Other waste" means decayed wood, sawdust, shavings, bark, lime, garbage, refuse, ashes, offal, tar, oil, chemicals, and all other substances, except industrial waste and sewage, which may cause pollution in any state waters.

"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 chapter.

"Pump-out facility" means any device, equipment or method of removing sewage from a marine sanitation device. Also it shall include any holding tanks either portable, movable or permanently installed, and any sewage treatment method or disposable equipment used to treat, or ultimately dispose of, sewage removed from boats.

"Sewage" means human body wastes, the wastes from toilets and other receptacles intended to receive or retain human wastes, and liquid-carried human wastes together with such industrial wastes and other liquid as may be present.

"State" means the Commonwealth of Virginia.

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

"Vessel" means every description of watercraft or other artificial contrivance used, or capable of being used on the waters of the state, including boats and houseboats regardless of size, means of propulsion or place of registry.

"Y-valve" means a valve in a vessel's sewage piping that in the open position allows an overboard discharge of sewage via a through-hull fitting, and in the closed position prevents an overboard discharge and retains sewage in a holding tank.

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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: **9VAC25-91. Facility and Aboveground Storage Tank (AST) Regulation (amending 9VAC25-91-10, 9VAC25-91-40, 9VAC25-91-50, 9VAC25-91-100 through 9VAC25-91-180, 9VAC25-91-210, 9VAC25-91-220; repealing 9VAC25-91-80).**

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: November 23, 2022.

Agency Contact: Russell P. Ellison, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2670, FAX (804) 698-4178, or email russell.ellison@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," and removing delegation of authority provisions.

9VAC25-91-10. Definitions.

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

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include 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.).

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Corrosion professional" means a person who by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that

includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Department" means the Department of Environmental Quality (DEQ).

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

"Elevated tank" means an AST that is not in contact with the ground and that is raised above the surface of the ground.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil and includes a pipeline.

"Flow-through process tank" means (as defined in 40 CFR Part 280) a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or byproducts from the production process.

"Local building official" means the person authorized by the Commonwealth to enforce the provisions of the Uniform Statewide Building Code (USBC).

"Local director or coordinator of emergency services" means any person appointed pursuant to § 44-146.19 of the Code of Virginia.

"Major repair" means alterations that refer to operations that require cutting, additions, removal or replacement of the annular plate ring, the shell-to-bottom weld or a sizable portion of the AST shell.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters by demise, rents, or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

"Person" means an individual; trust; firm; joint stock company; corporation, including a government corporation; partnership; association; any state or agency thereof; municipality; county; town; commission; political subdivision of a state; any interstate body; consortium; joint venture; commercial entity; the government of the United States or any unit or agency thereof.

"Pipes" or "piping" means a pressure-tight cylinder used to convey a fluid or to transmit a fluid pressure and is ordinarily designated "pipe" in applicable material specifications. Materials designated "tube" or "tubing" in the specifications are treated as pipe when intended for pressure service. This term includes piping and associated piping which is utilized in the operation of an AST, or emanating from or feeding ASTs or transfers oil from or to an AST (e.g., dispensing systems, including airport hydrant fueling systems, supply systems, gauging systems, auxiliary systems, etc.). This term does not include 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.).

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe; pumping units; fabricated assemblies associated with pumping units; metering and delivery stations and fabricated assemblies therein; and breakout tanks.

"Release prevention barrier (RPB)" means a nonearthen barrier that is impermeable; is composed of material compatible with oil stored in the AST; meets proper engineering strength and elasticity standards; and functions to prevent the discharge of stored oil to state lands, waters and storm drains. It must contain and channel any leaked oil in a manner that provides for early release detection through the required daily and weekly inspections.

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

"Storage capacity" means the total capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with this chapter has no storage capacity.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Tank vessel" means any vessel used in the transportation of oil as bulk cargo.

"Upgrade" means an alteration of the performance, design, equipment or appurtenances of an AST or facility to meet a higher, new, or current standard.

"Vaulted tank" means any tank situated upon or above the surface of the floor in an underground area (such as an underground room, basement, cellar, mine-working, drift, shaft, tunnel or vault) providing enough space for physical inspection of the exterior of the tank.

"Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

9VAC25-91-40. Compliance dates.

A. Every operator shall comply with this chapter on its effective date unless a later date is otherwise specified.

B. Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., facilities not engaged in the resale of oil) having an aboveground storage capacity of 25,000 gallons or greater of oil must have complied with Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter on or before October 22, 1998, unless otherwise specified in this chapter. If compliance with Part III of this chapter necessitates extensive upgrades to the existing facility design, these exempted operators shall have submitted a proposed extended compliance schedule and supporting explanation to the ~~board~~ department no later than September 22, 1998, or such date approved by the ~~board~~ department.

C. Operators of ASTs and facilities existing prior to June 24, 1998, and previously registered in accordance with the requirements of § 62.1-44.34:19.1 of the Code of Virginia shall not have to resubmit the registration form until five years from the date of the initial registration unless title to that AST or facility is transferred (i.e., change of ownership) or the AST is converted or brought back into use after permanent closure, whichever occurs first.

D. Operators of facilities subject to Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter that were brought into use on or after June 24, 1998, shall submit a complete application meeting all applicable requirements of this chapter no later than 90 days prior to commencement of operations.

1. The operator must receive approval of the ODCP by the ~~board~~ department prior to commencement of facility operations.

2. The operators of facilities that have previously met the provisions of § 62.1-44.34:15 of the Code of Virginia for ODCP submittal shall not be required to resubmit the ODCP until 90 days prior to the date that plan's approval expires. Ninety days prior to the expiration of approval of the ODCP, the facility operator shall submit an updated plan or certification of renewal of an existing plan according to 9VAC25-91-170 F.

E. An operator having obtained approval of the ODCP shall operate, maintain, monitor, and keep records pertaining to 9VAC25-91-170 A 18 of Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter and under the provisions of Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter.

9VAC25-91-50. Statement of purpose.

The purpose of this chapter is to: (i) establish requirements for registration of facilities and individual ASTs located within the Commonwealth; (ii) provide the ~~board~~ department with the information necessary to identify and inventory facilities with an aggregate storage capacity of greater than 1,320 gallons of oil or an individual AST with a storage capacity of greater than 660 gallons of oil; (iii) develop standards and procedures for operators of facilities with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil relating to the prevention of pollution from new and existing aboveground storage tanks; (iv) provide requirements for the development of facility oil discharge contingency plans for facilities with an aggregate aboveground storage capacity of 25,000 gallons or greater of oil that will ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of an oil discharge, and to contain, clean up and mitigate an oil discharge within the shortest feasible time, where plans must address concerns for the effect of oil discharges on the environment as well as considerations of public health and safety; and (v) provide requirements for facilities and individual ASTs with an aggregate aboveground storage capacity of one million gallons or greater of oil to conduct a groundwater characterization study (GCS) within the geographic boundaries of a facility; to submit the GCS as part of the oil discharge contingency plan; to conduct a monthly gauging and inspection of GCS monitoring wells, monitoring of well headspace and sampling and laboratory analysis of GCS monitoring wells; and to gather all observations and data maintained at the facility and compile and submit them as an annual report to the department.

9VAC25-91-80. ~~Delegation of authority.~~ (Repealed.)

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

9VAC25-91-100. Registration requirements.

A. Section 62.1-44.34:19.1 of the Code of Virginia requires an operator of a facility located within the Commonwealth with an aggregate aboveground storage capacity of more than 1,320 gallons of oil or an operator of an individual AST located within the Commonwealth with a storage capacity of more than 660 gallons of oil to register such facility or AST with the ~~board~~ department and with the local director or coordinator of emergency services unless otherwise specified within this chapter.

B. Although the term "operator" includes a variety of persons who may share joint responsibility for compliance with this chapter, in fixing responsibility for compliance with the registration requirements, the ~~board~~ department shall look first to the owner or a duly authorized representative of the facility or AST.

C. A duly authorized representative may submit the registration on the owner's behalf.

1. A person is a duly authorized representative only if:

a. The authorization is made in writing by the owner and indicates that the representative has signatory authority for the registration;

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

c. The written authorization is submitted to the department along with the registration form.

2. Changes to authorization. If an authorization previously submitted is no longer accurate because a different individual or position has assumed responsibility for the overall operation of the facility or for environmental matters, a new authorization satisfying the requirements shall be submitted to the department prior to or together with any reports or information signed by that duly authorized representative.

3. Certification. Any person signing a registration document shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

D. The owner or a duly authorized representative of a new facility or AST, a converted facility or AST, a facility or AST brought back into use after permanent closure, or a facility or AST whose title is transferred (change of ownership) shall register such facility or AST with the ~~board~~ department and local director or coordinator of emergency services within 30 days after being brought into use or when title is transferred.

E. Registration shall include the following information and other information that may be required if approved by the ~~board~~ department:

1. Facility and AST owner and operator information (e.g., name, address, and phone numbers);

2. Facility information (e.g., name, type, address, contact person and phone numbers, and aggregate storage capacity);

3. Tank and piping information (e.g., storage capacity, product stored, type of design and construction standards);

4. Other information that may be reasonably requested by the ~~board~~ department; and

5. Owner certification of information.

F. The owner or a duly authorized representative of the facility or AST shall renew the registration required by this section every five years or whenever title to the facility or AST is transferred (change of ownership), whichever occurs first.

G. A facility or AST installed after June 24, 1998, including an AST or facility operated by the federal government, shall not be registered without either (i) a review performed by the department of the permits, inspections, and certification of use required in accordance with the provisions of the Uniform Statewide Building Code and obtained by the owner or a duly authorized representative from the local code officials or their designee or (ii) an inspection by the department. In the case of a regulated AST operated by the Commonwealth, the Department of General Services shall function as the local code official in accordance with § 36-98.1 of the Code of Virginia.

9VAC25-91-110. Notifications.

A. An owner or a duly authorized representative of the facility or AST shall notify the ~~board~~ department within 30 days after any AST:

1. Upgrade;

2. Major repair;

3. Replacement (i.e., relocating or repositioning of an existing AST); or

4. Change in service (i.e., change in operation, conditions of the stored product, specific gravity, corrosivity, temperature or pressure that has occurred from the original that may affect the tank's suitability for service).

B. Notifications do not require a fee.

9VAC25-91-120. Aboveground storage tank closure.

A. After June 24, 1998, a facility or AST, including a facility or AST operated by the federal government, shall not be permanently closed without being registered and either (i) having a review performed by the department of the permits and inspections required in accordance with the provisions of the Uniform Statewide Building Code and obtained by the owner or a duly authorized representative from the local code official or his designee or (ii) being inspected by the department.

1. For inspections by the department (e.g., where a permit is not issued by the local code official or his designee), at least 14 days notice to the department is required prior to the commencement of closure operations. Notice shall be made by the owner or a duly authorized representative.

2. In the case of a regulated AST operated by the Commonwealth, the Department of General Services shall function as the local code official in accordance with § 36-98.1 of the Code of Virginia.

3. If the closure is in response to containment and cleanup actions that necessitate AST removal, the owner or a duly authorized representative of the facility or AST shall immediately notify the local code official and the department.

B. Closure operations shall be reported to the department by the owner or a duly authorized representative within 30 days after the permanent closure operation is completed.

C. Closure operations shall include the following:

1. Removal of all liquids, sludges, and vapors from the AST and associated piping. All wastes removed shall be disposed of in accordance with all applicable state and federal requirements.

2. For tanks being closed in place, the tank shall be rendered vapor free. Provisions must be made for adequate ventilation to ensure that the tank remains vapor free. Vent lines shall remain open and maintained in accordance with the applicable codes. All access openings shall be secured (normally with spacers to assist ventilation). The AST shall be secured against tampering and flooding. The name of the product last stored, the date of permanent closure and PERMANENTLY CLOSED shall be stenciled in a readily visible location on the AST. Piping shall be disconnected. All pipes being closed in place shall be vapor free and capped or blind flanged.

3. An assessment of the AST site shall be conducted prior to completion of permanent closure operations.

a. In conducting the assessment, the owner or a duly authorized representative shall sample and test for the presence of petroleum hydrocarbons at the AST site in any area where contamination is likely to have occurred. These locations shall be subject to the review of the ~~board~~ department. Sampling and testing shall be conducted in accordance with established EPA-approved analytical methods or other methods approved by the ~~board~~ department .

(1) The owner or a duly authorized representative shall submit copies of the laboratory results, a description of the area sampled, a photograph of the site indicating sampled areas, and a site map indicating the location of the closed AST and associated piping as attachments to the closure form.

(2) If contaminated soils, contaminated groundwater, free product as a liquid or vapor, or other evidence of a release is discovered, the owner or a duly authorized representative shall immediately notify the ~~board~~ department and conduct the cleanup in accordance with ~~board~~ department requirements.

b. The ~~board~~ department may consider an alternative to the soil sampling requirements of this subsection if the owner or a duly authorized representative of the AST demonstrates to the ~~board's~~ department's satisfaction that:

(1) There is no evidence of present or past contamination by providing records of monthly leak detection monitoring for the previous 12 months; and

(2) The facility or AST has operated an approved or approvable leak detection system.

4. A closure inspection conducted by either the department or the local building official, as discussed in subsection A of this section.

D. When deemed necessary by the ~~board~~ department, the owner or a duly authorized representative of a facility or an AST that was permanently closed prior to June 24, 1998, shall assess the site and close the AST in accordance with the requirements of this section.

E. The owner or a duly authorized representative shall maintain all records relating to compliance with this section for a period of not less than five years from the date the ~~board~~ department receives notice of the completed closure. These records shall be made available to the ~~board~~ department upon request.

9VAC25-91-130. Pollution prevention standards and procedures.

A. Pollution prevention standards and procedures for facilities are listed in this section. Aboveground storage tanks with an aggregate capacity of one million gallons or more shall comply with the requirements of subsections B and C of this section.

B. Requirements for aboveground storage tanks at facilities for 25,000 gallons or more. Section 62.1-44.34:15.1 of the Code of Virginia provides the following requirements for existing aboveground storage tanks at a facility with an aggregate aboveground storage capacity equal to or greater than 25,000 gallons of oil or for an existing individual aboveground storage tank with a storage capacity equal to or greater than 25,000 gallons of oil, unless otherwise exempted.

1. Inventory control and testing for significant variations.

a. The following aboveground storage tanks shall not be subject to inventory control and testing for significant variations:

(1) Aboveground storage tanks totally off ground with all associated piping off ground;

(2) Aboveground storage tanks with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil; and

(3) Aboveground storage tanks containing No. 5 or No. 6 oil for consumption on the premises where stored.

b. Each operator shall institute inventory control procedures capable of detecting a significant variation of inventory. A significant variation shall be considered a variation in excess of 1.0% of the storage capacity of each individual AST. Reconciliations of inventory measurements shall be conducted monthly. If a significant variation persists for two consecutive reconciliation periods, the operator shall conduct an investigation to determine the cause of the variation and reconcile physical measurements to 60°F at 14.7 pounds per square inch absolute. This investigation shall be completed within five working days of the end of the second reconciliation period. If this investigation does not reveal the cause of the inventory variation, the operator shall notify the ~~board~~ department and the local director or coordinator of emergency services and shall conduct additional testing to determine the cause of the inventory variation. The testing method, schedule, and results of this additional testing shall be submitted to the ~~board~~ department for review. For a refinery, a significant variation of inventory shall be considered a loss in excess of 1.0% by weight of the difference between the refinery's input and output of oil.

c. Inventory records shall be kept of incoming and outgoing volumes of oil from each tank. All tanks shall be gauged no less frequently than once every 14 days and on each day of normal operation. For a refinery, the operator shall calculate the input and output of oil at the refinery on a daily basis. The operator shall reconcile daily inventory records with the inventory measurements conducted monthly.

2. Secondary containment.

a. The operator shall have and maintain secondary containment or another method approved by the ~~board~~ department for each AST. The containment structure must be capable of containing oil and shall be constructed in accordance with 40 CFR Part 112 so that any discharge from the AST will not escape the containment before cleanup occurs. The operator shall have each secondary containment or approved method evaluated and certified to be in compliance with the applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106. The operator of a facility existing on June 24, 1998, shall have had this evaluation or certification performed by a professional engineer or person approved by the ~~board~~ department on or before June 30, 1998, and every 10 years thereafter, unless otherwise exempted.

b. If the secondary containment cannot be certified to be in compliance with the applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106, the operator must upgrade, repair, or replace the secondary containment to meet the applicable requirements listed in subdivision 2 a of this subsection unless the ~~board~~ department accepts the certification with qualifications.

c. The operator of a facility shall have the evaluation and certification performed every 10 years by a professional engineer (PE) licensed in the Commonwealth of Virginia or other state having reciprocity with Virginia or by a person approved by the ~~board~~ department unless otherwise exempted.

d. The professional engineer shall not certify the secondary containment until all of the applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106 have been met. In the event the professional engineer certifies the secondary containment with qualifications, such qualifications will be subject to review and approval by the ~~board~~ department. If the certification contains qualifications that may impact the ability of the secondary containment to contain a discharge of oil as required by subdivision 2 a of this subsection, the deficiencies must be corrected and the secondary containment must be reevaluated and recertified by a professional engineer.

e. At a minimum, the certification statement for the secondary containment must contain the following statement: "Based on my evaluation, I hereby certify that each secondary containment structure for (insert the facility name and tank identification information) is in compliance with the applicable requirements of 40 CFR Part 112, the Uniform Statewide Building Code and its referenced model codes and standards, and 29 CFR 1910.106."

f. The certification must be signed and sealed by a professional engineer licensed in the Commonwealth of Virginia or other state having reciprocity or by a person approved by the ~~board~~ department.

g. Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have had this evaluation completed on or before June 24, 2003, and every 10 years thereafter.

h. Operators of a newly installed AST shall have this evaluation completed prior to being placed into service and every 10 years thereafter.

i. Operators of an existing AST with a current engineering certification statement on November 1, 2015, may maintain their existing engineering certification statement until their next required certification, or 10 years, whichever is sooner. At such time, the certification

statements must contain the statement required in 9VAC25-91-130 B 2 e.

3. Safe fill and shutdown procedures.

a. Each operator shall institute safe fill, shutdown, and transfer procedures, or equivalent measures approved by the ~~board~~ department, that will ensure that spills resulting from tank overfills or other product transfer operations do not occur. Written safe fill, shutdown, and transfer procedures shall be maintained by the operator for use by facility personnel.

All receipts of oil shall be authorized by the operator or facility personnel trained by the operator who shall ensure the volume available in the tank is greater than the volume of oil to be transferred to the tank before the transfer operation commences. The operator shall ensure the transfer operation is monitored continually, either by manual or automatic means, until complete. The operator shall ensure that all tank fill valves not in use are secured and that only the tank designated is receiving oil.

b. All oil transfer areas where filling connections are made with vehicles shall be equipped with a spill containment system capable of containing and collecting those spills and overfills. The containment system shall be designed to hold at least the capacity as required by 40 CFR Part 112.

c. If installed, an automatic shutdown system utilized during transfer of oil shall include the capability to direct the flow of oil to another tank capable of receiving the transferred oil or the capability to shut down the pumping or transfer system. This automatic shutdown system shall be tested prior to each receipt of oil and records of testing shall be maintained at the facility.

d. All ASTs shall be equipped with a gauge that is readily visible and indicates the level of oil or quantity of oil in the tank. In addition, the storage capacity, product stored and tank identification number shall be clearly marked on the tank at the location of the gauge. These gauges shall be calibrated annually.

4. Pressure testing of piping. All piping shall be pressure tested as specified in this subsection or using an equivalent method or measure approved by the ~~board~~ department at intervals not to exceed five years. The operator of a facility or AST existing on June 24, 1998, shall have completed the initial test on or before June 30, 1998, except operators of existing facilities or ASTs for which compliance was exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil). These excepted operators shall have completed the initial test on or before June 24, 2003. All newly installed or repaired piping shall be tested before being placed into service.

a. A pressure test may be a hydrostatic test at 150% maximum allowable working pressure (MAWP) or an inert gas test at 110% MAWP.

b. A test conducted and certified by an American Petroleum Institute (API) authorized piping inspector to be in conformity with the API 570 Piping Inspection Code is deemed an equivalent method of testing approved by the ~~board~~ department.

c. The ~~board~~ department may consider on a case-by-case basis requests for approval of other equivalent methods or measures which conform to industry recommended practices, standards and codes. The operator shall submit a request for approval of a proposed equivalent method or measure to the ~~board~~ department as specified in 9VAC25-91-160.

5. Visual daily inspection and weekly inspections.

a. The operator or a duly authorized representative shall conduct a daily visual inspection for each day in which normal operation occurs, but no less frequently than once every 14 days in the areas of the facility where this chapter applies. The facility person conducting the inspection shall document completion of this inspection by making and signing an appropriate notation in the facility records. This visual inspection shall include the following:

(1) A complete walk-through of the facility property in the areas where this chapter applies to ensure that no hazardous conditions exist;

(2) An inspection of ground surface for signs of leakage, spillage, or stained or discolored soils;

(3) A check of the berm or dike area for excessive accumulation of water and to ensure the dike or berm manual drain valves are secured;

(4) A visual inspection of the exterior tank shell to look for signs of leakage or damage; and

(5) An evaluation of the condition of the aboveground storage tank and appurtenances.

b. The operator or a duly authorized representative shall conduct a weekly inspection each week in which normal operation occurs, but no less frequently than once every 14 days, of the facility in the areas where this chapter applies, using a checklist that contains at least the items found in subdivision 5 c of this subsection. The checklist is not inclusive of all safety or maintenance procedures but is intended to provide guidance to the requirements within this chapter. The weekly checklist shall be maintained at the facility and provided to the ~~board~~ department upon request. This checklist shall be signed and dated by the facility person or persons conducting the inspection and shall become part of the facility record.

(1) The operator of a new AST/facility shall develop the checklist within 90 days after the date of installation.

(2) The operator of each facility existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale

of oil) shall have developed the checklist by September 28, 1998.

(3) Operators of facilities existing on June 24, 1998, and not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have developed a checklist by September 28, 1993, shall be deemed to be in compliance with this checklist requirement as of June 24, 1998.

c. Sample—weekly inspection checklist for aboveground storage tank systems:

____ (1) Containment dike or berm in satisfactory condition.

____ (2) Containment area free of excess standing water or oil.

____ (3) Gate valves used for emptying containment areas secured.

____ (4) Containment area/base of tank free of high grass, weeds, and debris.

____ (5) Tank shell surface, including any peeling areas, welds, rivets/bolts, seams, and foundation, visually inspected for areas of rust and other deterioration.

____ (6) Ground surface around tanks and containment structures and transfer areas checked for signs of leakage.

____ (7) Leak detection equipment in satisfactory condition.

____ (8) Separator or drainage tank in satisfactory condition.

____ (9) Tank water bottom drawoffs not in use are secured.

____ (10) Tank fill valves not in use are secured.

____ (11) Valves inspected for signs of leakage or deterioration.

____ (12) Inlet and outlet piping and flanges inspected for leakage.

____ (13) All tank gauges have been inspected and are operational.

Signature of Inspector Date Time

d. The operator shall promptly remedy unsatisfactory facility and equipment conditions observed in the daily and weekly inspections. The operator shall make repairs, alterations, and retrofits in accordance with American Petroleum Institute (API) Standard 653, Fourth Edition (April 2009), with Addendum 1 (August 2010) and Addendum 2 (January 2012), Steel Tank Institute (STI) standard STI-SP001, Fifth Edition (September 2011), industry standards, or methods approved by the ~~board~~ department.

6. Training of individuals. To ensure proper training of individuals conducting inspections required by subdivision 5 of this subsection, the operator of a facility shall train personnel based on the following requirements:

a. Each facility operator shall establish a training program for those facility personnel conducting the daily visual and weekly inspections of the facility. Facility records shall contain the basic information and procedures required by subdivision 6 c of this subsection. The required training may be conducted by the operator or by a third party. The training program established shall be maintained to reflect current conditions of the facility.

(1) The operator of a new facility shall establish the training program within six months after being brought into use.

(2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have established the training program by December 24, 1998.

(3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who developed a training program by December 31, 1993, shall be deemed to be in compliance with this training program requirement as of June 24, 1998, so long as that program reflects current conditions of the facility.

b. The required training shall be conducted for facility personnel as applicable. Personnel not receiving this initial training and who will be conducting these inspections shall receive the training prior to conducting any inspection.

(1) The operator of a new facility shall conduct the personnel training within 12 months after being brought into use and prior to personnel conducting any inspection.

(2) The operator of each facility exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have conducted the personnel training by June 24, 1999.

(3) Operators of facilities not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have conducted the personnel training by June 30, 1994, shall be deemed to be in compliance with this personnel training requirement as of June 24, 1998, so long as the training provided reflects current conditions of the facility and all inspections are current.

c. Training for personnel performing daily and weekly inspections shall address at a minimum:

(1) Basic information regarding occupational safety, hazard recognition, personnel protection, and facility operations;

(2) The procedures to be followed in conducting the daily visual and weekly facility inspections;

(3) The procedures to be followed upon recognition of a hazard or the potential for a hazard; and

(4) The procedure for evaluating the condition of the aboveground storage tank and appurtenances.

d. The operator of a facility shall train facility personnel upon any changes to the contents of the initial training program or every three years and shall document this training in the facility records.

7. Leak detection. The operator shall operate, maintain, monitor and keep records of the system established for early detection of a discharge to groundwater (i.e., a method of leak detection) as required by 9VAC25-91-170 A 18 and contained in the facility's approved ODCP. These activities shall be inspected and approved by the ~~board~~ department.

C. Requirements for aboveground storage tanks at facilities for one million gallons or more. In addition to the requirements of subsection B of this section, the following requirements apply to existing aboveground storage tanks at facilities with an aggregate aboveground storage capacity of one million gallons or more of oil or for an existing individual aboveground storage tank with a storage capacity of one million or more gallons of oil, unless otherwise exempted.

1. Formal inspections.

a. Each AST shall undergo formal external and internal tank inspections. The initial formal internal and external inspections for an AST existing on June 24, 1998, shall have been completed on or before June 30, 1998, unless otherwise specified within this chapter.

(1) All newly installed ASTs shall have initial formal inspections within five years after the date of installation.

(2) Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have completed the initial formal inspections on or before June 24, 2003.

(3) An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal inspection unless the integrity of the AST is in question and an inspection is deemed necessary by the ~~board~~ department.

b. Inspections shall be conducted in accordance with the provisions of American Petroleum Institute (API) Standard 653, Fourth Edition (April 2009), with Addendum 1 (August 2010) and Addendum 2 (January 2012); Steel Tank Institute (STI) standard STI-SP001, Fifth Edition (September 2011); or procedure approved by the ~~board~~ department. If construction practices allow external access to the tank bottom, a formal external inspection utilizing accepted methods of nondestructive testing or procedure approved by the ~~board~~ department may be allowed in lieu of the internal inspection.

c. An API Standard 653 inspection conducted between January 1, 1991, and June 24, 1998, may be accepted by the ~~board~~ department if the operator provides supporting documentation to the ~~board~~ department for review and approval.

d. All formal inspections and testing required by subdivisions 1 and 2 of this subsection shall be conducted by a person certified to conduct the inspection or test. This certification shall be accomplished in accordance with the provisions of API Standard 653, STI-SP001, or a procedure approved by the ~~board~~ department. Proof of this certification shall be maintained in the facility records. The results of all tests and inspections required by subdivisions 1 and 2 of this subsection shall be maintained at the facility or at a location approved by the ~~board~~ department for the life of the tank, but for no less than five years.

2. Formal reinspections.

a. Each AST shall undergo an external reinspection every five years. Inspections shall be conducted in accordance with the provisions of API Standard 653, STI-SP001, or other procedure accepted by the ~~board~~ department after the initial formal external inspection has been conducted.

b. Each AST with a storage capacity of 12,000 gallons of oil or greater shall undergo an internal reinspection in accordance with the provisions of API Standard 653 or STI-SP001 every 10 years after the initial formal internal inspection has been conducted.

(1) The ~~board~~ department may require the internal reinspection sooner than 10 years if there is an indication that the corrosion rate established by the initial internal inspection or a subsequent reinspection has increased.

(2) The internal reinspection period may be extended beyond 10 years if the operator can demonstrate to the ~~board~~ department that an extension of the reinspection period is warranted. The operator shall provide supporting documentation to the ~~board~~ department for review and approval at least six months prior to the date the reinspection is due.

c. An AST with a storage capacity of less than 12,000 gallons shall not be subject to the formal internal reinspection unless the integrity of the AST is in question and an inspection is deemed necessary by the ~~board~~ department.

3. Safe fill and shutdown procedures - high level alarm. If unattended during transfer operations, the AST shall be equipped with a high level alarm or other appropriate mechanism approved by the ~~board~~ department that will immediately alert the operator to prevent an overfill event. Activation of the high level alarm or other appropriate mechanism shall initiate an immediate and controlled emergency shutdown of the transfer, either by manual or automatic means. Each operator shall include this

emergency shutdown procedure in the facility records and shall ensure that all facility personnel involved in the transfer operation are trained in this procedure. The alarm shall consist of a visual and audible device capable of alerting the operator, both by sight and hearing, to prevent an overfill situation. If the operator is in a control station, this alarm shall activate a warning light and audible signal in that station. In addition, this system shall alarm on failure, malfunction, or power loss. This high level alarm shall be tested prior to each receipt of oil. Records of testing shall be maintained at the facility.

4. Cathodic protection of piping. The requirement for cathodic protection of piping shall apply to buried piping only. Cathodic protection shall be installed and maintained in accordance with the following applicable publications: American Petroleum Institute Standard (API) 1632, Third Edition (2002), the Uniform Statewide Building Code and its referenced model codes and standards, or National Association of Corrosion Engineers (NACE) SP0285-2011. All piping above ground shall be protected from corrosion using methods and procedures referenced in the Uniform Statewide Building Code and its referenced model codes and standards, or a procedure approved by the ~~board~~ department. Piping that passes through the wall of the containment berm or dike or under road crossings shall be protected from corrosion and damage using practices recommended in the publications listed in this subdivision.

9VAC25-91-140. Performance standards for aboveground storage tanks newly installed, retrofitted, or brought into use.

A. All ASTs shall be built in accordance with the applicable design standards adopted by Underwriters Laboratories, the American Petroleum Institute, the Steel Tank Institute or other standard approved by the ~~board~~ department.

B. All ASTs shall be strength tested before being placed in use in accordance with the applicable code or standard under which they were built.

C. ASTs that have the tank bottom in direct contact with the soil shall have a determination made by a corrosion professional as to the type and degree of corrosion protection needed to ensure the integrity of the tank system during the use of the tank. If a survey indicates the need for corrosion protection for the new installation, corrosion protection shall be provided.

D. ASTs installed after June 30, 1993, shall have a release prevention barrier (RPB) installed either under or in the bottom of the tank. The RPB shall be capable of: (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection.

E. Existing ASTs that are retrofitted (reconstruction or bottom replacement) or brought back into use shall be brought into compliance with subsections A, B, C, and D of this section. The operator shall submit a schedule to the department of the work to be performed in order to bring the existing AST into compliance with new-built construction standards. This compliance schedule shall be submitted to the department no less than six months prior to the anticipated completion date.

F. Operators of ASTs installed, retrofitted (reconstruction or bottom replacement) or brought back into use shall also comply with 9VAC25-91-130 B and 9VAC25-91-130 C, as applicable.

G. All newly installed ASTs shall be constructed and installed in a manner consistent with the applicable standards and requirements found in the Uniform Statewide Building Code and its referenced model codes and standards or other standards approved by the ~~board~~ department. Approval and any applicable permits shall be obtained from the local building official before construction starts.

H. Compliance dates for subsections A through G of this section.

1. Operators of a newly installed, retrofitted or brought-back-into-use facility or AST shall comply with the requirements of this section within 30 days prior to being placed into service.

2. Operators of facilities existing on June 24, 1998, and exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) shall have complied with these requirements by October 22, 1998.

3. Operators of facilities existing on June 24, 1998, and not exempted under § 62.1-44.34:17 D of the Code of Virginia (i.e., exempted facilities not engaged in the resale of oil) and who have met these requirements on or before June 30, 1993, shall be deemed to be in compliance with these requirements as of the effective date of this chapter.

9VAC25-91-145. Performance standards for certain aboveground storage tanks located in the City of Fairfax.

A. The requirements of this section apply to aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater existing prior to January 29, 1992, and located in the City of Fairfax.

B. All ASTs altered as required by this section shall be strength tested before being returned to use in accordance with the applicable code or standard under which they were built.

C. All ASTs shall contain a release prevention barrier (RPB) either under or in the bottom of the tank. The RPB shall be capable of (i) preventing the release of the oil and (ii) containing or channeling the oil for leak detection. Existing elevated ASTs that are installed in containment areas meeting the requirements of an RPB or that are located within earthen containment dikes and are included in the daily and weekly inspections required by 9VAC25-91-130 B 5 shall be

considered to be in compliance with the requirements of this section.

D. All ASTs altered as required by this section shall meet the applicable standards and requirements found in the Uniform Statewide Building Code or other standards approved by the ~~board~~ department. Approval and all applicable permits shall be obtained from the local building official before altering ASTs.

E. Operators of facilities subject to this section shall meet the performance standards of this section no later than July 1, 2021.

9VAC25-91-150. Recordkeeping and access to facilities.

A. Each operator of a facility subject to this chapter shall maintain the following records:

1. All records relating to all required measurements and inventory and reconciliation of oil at the facility;

2. All records relating to required tank/pipe testing;

3. All records relating to spill events and other discharges of oil from the facility;

4. All supporting documentation for developed contingency plans;

5. All records for implementation and monitoring of leak detection and applicable provisions of 9VAC25-91-170 A 18 of Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter;

6. All records relating to training of individuals;

7. All records relating to facility and tank inspections; and

8. Any records required to be kept by statute or regulation of the board.

B. These records shall be kept by the operator of a facility at the facility or at an alternate location approved by the ~~board~~ department for a period of no less than five years unless otherwise indicated.

C. Upon request, each operator shall make these records available to the department and to the director or coordinator of emergency services for the locality in which the facility is located or to any political subdivision within one mile of the facility.

D. Operators shall maintain all records relating to compliance with this chapter for a period of no less than five years from the date the department receives notice of the closure unless otherwise indicated. These records shall be made available to the department at any time upon request.

9VAC25-91-160. Variances to the requirements of Part III (9VAC25-91-130 et seq.) of this chapter.

A. General criteria for granting a variance on a case-by-case basis.

1. The ~~board~~ department is required by § 62.1-44.34:15.1 of the Code of Virginia to establish the criteria to grant variances of the AST pollution prevention requirements on a case-by-case basis and by regulation for categories of ASTs. Any person affected by this chapter may petition the ~~board~~ department to grant a variance of any requirement of Part III (9VAC25-91-130 et seq.) of this chapter.

2. The ~~board~~ department will not grant any petition for a variance related to:

a. Definitions;

b. Registration;

c. Classification of aboveground storage tanks; or

d. Oil discharge contingency plans.

3. The ~~board~~ department may grant a variance if:

a. The applicant demonstrates to the satisfaction of the ~~board~~ department that the alternate design or operation will result in a facility that is equally capable of preventing pollution of state water, land, and storm drains from the discharge of oil from new and existing ASTs. If the variance would extend a deadline, the petitioner shall demonstrate that a good faith effort to comply with the deadline was made;

b. Granting the variance will not result in an unreasonable risk to human health or the environment; and

c. Granting the variance will not result in a conflict with applicable local codes or ordinances.

4. In rendering a decision, the ~~board~~ department may:

a. Deny the petition;

b. Grant the variance as requested;

c. Grant a modified variance which:

(1) Specifies additional or modified requirements;

(2) Includes a schedule for:

(a) Periodic review of the modified requirements;

(b) Implementation by the facility of such control measures as the ~~board~~ department finds necessary in order that the variance may be granted; or

(c) Compliance, including increments of progress, by the facility with each requirement of the variance; or

(3) Specifies the termination date of the variance.

d. Grant a partial variance that:

(1) Specifies a particular part of the requirement;

(2) Specifies a particular part of the request;

(3) Includes a schedule for:

(a) Periodic review of the partial requirements;

(b) Implementation by the facility of such control measures as the ~~board~~ department finds necessary in order that the variance may be granted; or

(4) Specifies the termination date of the variance.

5. An operator must comply with the requirements of this chapter even when a variance request is under consideration by the ~~board~~ department. A variance request submitted but disapproved, or submitted but not yet decided, shall not constitute a defense or delay to any enforcement action undertaken by the department.

B. Administrative procedures.

1. General requirements for the submission of a petition by the owner or a duly authorized representative. All petitions submitted to the ~~board~~ department shall include:

a. The owner's or duly authorized representative's name and address;

b. A citation of the regulatory requirement to which a variance is requested;

c. An explanation of the need or desire for the proposed action, including the reason the existing requirement is not achievable or is impractical compared to the alternative being proposed;

d. An explanation of the impact to applicable local codes and ordinances;

e. A description of the proposed action;

f. The duration of the variance, if applicable;

g. The potential impact of the variance on human health or the environment and a justification of the proposed action's ability to provide equivalent protection of human health and the environment as would compliance with the regulatory requirements;

h. Enforcement action against or pending against the petitioner;

i. Other information believed by the applicant to be pertinent; and

j. The following statements signed by the owner or a duly authorized representative:

"I certify that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. The petition, if granted, will not be in violation of any local codes or ordinances or pose an unreasonable risk to human health or the environment. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

2. In addition to the general information required of all petitioners under subdivision 1 of this subsection, the petitioner shall submit other information as may be required by the ~~board~~ department.

3. All variance petitions and correspondence shall be submitted to the following address:

Mailing Address:

Department of Environmental Quality

Office of Spill Response and Remediation

P.O. Box 1105

Richmond, VA 23218

Street Address:

Department of Environmental Quality

Office of Spill Response and Remediation

1111 East Main Street, Suite 1400

Richmond, VA 23219

C. Petition processing.

1. After receiving a petition that includes the information required in subdivision B 1 of this section, the ~~board~~ department will determine whether the information received is sufficient to render the decision. If the information is deemed to be insufficient, the ~~board~~ department will specify additional information needed and request that it be furnished.

2. The petitioner may submit the additional information requested, may attempt to show that no reasonable basis exists for the request for additional information, or may withdraw the petition. If the ~~board~~ department agrees that no reasonable basis exists for the request for additional information, the ~~board~~ department will act in accordance with subdivision 3 b of this subsection. If the ~~board~~ department continues to believe that a reasonable basis exists to require the submission of such information, the ~~board~~ department will deny the petition.

3. After the petition is deemed complete:

a. The ~~board~~ department will review the petition;

b. After evaluating the petition, the ~~board~~ department will notify the applicant of the following final decision:

(1) Petition is denied;

(2) Requested variance is granted; or

(3) Modified or partial variance is granted;

c. The ~~board~~ department shall send written notification of the variance to the chief administrative officer of the locality in which the facility is located; and

d. If the ~~board~~ department grants a variance request, the notice to the petitioner shall provide that the variance may be terminated upon a finding by the ~~board~~ department that the petitioner has failed to comply with any variance requirements.

D. Variance by regulation for categories of ASTs.

1. ASTs totally off ground shall not be subject to inventory control or testing for significant variation if:

a. All associated piping is off ground;

b. All associated buried piping is double walled; or

c. All associated piping meets the requirements using a combination of subdivisions 1 a and 1 b of this subsection.

2. ASTs with a capacity of 5,000 gallons or less located within a building or structure designed to fully contain a discharge of oil shall not be subject to inventory control or testing for significant variation.

3. ASTs containing No. 5 or No. 6 fuel oil for consumption on the premises where stored shall not be subject to inventory control or testing for significant variation.

4. ASTs with release prevention barriers (RPBs) and with an established corrosion rate and cathodic protection that protects the entire area of the tank bottom shall not be subject to inventory control or testing for significant variation if:

a. All associated piping is off ground;

b. All associated buried piping is double walled; or

c. All associated piping meets the requirements using a combination of subdivisions 4 a and 4 b of this subsection.

5. ASTs with release prevention barriers (RPBs) and with secondary containment that is 72 hours impermeable shall not be subject to inventory control or testing for significant variation if:

a. All associated piping is off ground;

b. All associated buried piping is double walled; or

c. All associated piping meets the requirements using a combination of subdivisions 5 a and 5 b of this subsection.

6. ASTs that meet the construction and installation standards of STI-F911, F921, or F941, or equivalent standards approved by the ~~board~~ department shall not be subject to inventory control or testing for significant variation.

7. For refineries with a continuous leak detection monitoring system and cathodic protection of the AST and piping, a significant variation of inventory shall be considered a loss in excess of 3.0% by weight of the difference between the refinery's input and output.

8. Vaulted tanks meeting UL 2245 or an equivalent standard approved by the ~~board~~ department shall not be subject to inventory control or testing for significant variation. The inspections for these tanks required in 9VAC25-91-130 B 5 need to be conducted no more frequently than once every 31 days. The criteria for the visual daily inspection and weekly inspection checklist shall be incorporated into a monthly checklist.

9. An AST used in the production/manufacturing process with full containment that is 72 hours impervious shall not be subject to inventory control or testing for significant variation.

10. An AST of 12,000 gallons or less with full containment that is 72 hours impervious, inside a building and used for the storage of heating oil consumed on the premises shall not be subject to inventory control or testing for significant variation.

11. A double-walled AST shall not be subject to inventory control or testing for significant variation. The inspections required in 9VAC25-91-130 B 5 need be conducted no more frequently than once every 31 days. The criteria for the visual daily inspection and weekly inspection checklist shall be incorporated into a monthly checklist.

9VAC25-91-170. Contingency plan requirements and approval.

A. Section 62.1-44.34:15 of the Code of Virginia requires that all facility oil discharge contingency plans must conform to the requirements and standards determined by the ~~board~~ department to be necessary to ensure that the applicant can take such steps as are necessary to protect environmentally sensitive areas; to respond to the threat of an oil discharge; and to contain, cleanup, and mitigate an oil discharge within the shortest feasible time. Each such plan shall provide for the use of the best available technology (economically feasible, proven effective and reliable and compatible with the safe operation of the facility) at the time the plan is submitted for approval and, in order to be approvable, shall contain, at a minimum, the following requirements:

1. The name of the facility, geographic location and access routes from land and water if applicable;

2. The names of the operators of the facility including address and phone number;

3. A physical description of the facility consisting of a plan of the facility which identifies the applicable oil storage areas, transfer locations, control stations, above and below ground oil transfer piping within the facility boundary (and including adjacent easements and leased property), monitoring systems, leak detection systems and location of any safety protection devices;

4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil or groups of oil with similar characteristics stored, transferred or handled at the facility. To be equivalent, the submission shall contain the following:

a. Generic or chemical name of the oil;

b. Hazards involved in handling the oil; and

c. A list of fire-fighting procedures and extinguishing agents effective with fires involving each oil or groups of oil demonstrating similar hazardous properties which require the same fire-fighting procedures;

5. The maximum storage or handling capacity of the facility and the individual tank capacities or, in the case of a pipeline, the average daily throughput of oil;

6. A complete listing, including 24-hour phone numbers, of all federal, state and local agencies required to be notified in the event of a discharge;

7. The position title of the individuals responsible for making the required notifications and a copy of the notification check-off list;

8. The position title, address and phone number of the individuals authorized to act on behalf of the operator to implement containment and cleanup actions. This individual shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated;

9. The position title of the individuals designated by the operator to ensure compliance during containment and cleanup of a discharge with applicable federal, state and local requirements for disposal of both solid and liquid wastes;

10. Identification and assurance by contract or other means acceptable to the ~~board~~ department of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. This contract or agreement shall ensure a certain response within the shortest feasible time. The ~~board~~ department will accept a letter of understanding between the operator and the response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by subdivision 12 of this subsection, shall be included unless these capabilities are already on file with the department;

11. Assessment of the worst case discharge, including measures to limit the outflow of oil, response strategy and operational plan. For the purpose of this chapter, the worst case discharge is the instantaneous release of the volume of the largest tank on the facility (125% of the volume of the largest tank for facilities with multiple tanks within a single containment dike) during adverse weather conditions. Facilities shall take into consideration that due to hydraulic pressure of the release, the secondary containment will not contain this volume in its entirety. The worst case discharge for a pipeline shall be based upon the volume of a discharge calculated using the maximum pressure, velocity, and elevation, and the largest pipe size and pipeline location. If facility design and operation indicates that this worst case discharge scenario does not meet the intent of this chapter, the ~~board~~ department may require submission of other worst case scenarios on a facility-specific basis;

12. Inventory of facility containment equipment, including specification of quantity, type, location, time limits for gaining access to the equipment, and identification of facility personnel trained in its use;

13. Identification and location of natural resources at risk (including, but not limited to, surface waters as indicated on the applicable USGS quadrangle maps, groundwater, public water supplies, public and private water wells and springs, state or federal wildlife management areas, wildlife refuges, management areas, sanctuaries, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks), priorities for protection and means of protecting these resources;

a. In addition to the requirements set forth in this subdivision, the operator of a facility with an aggregate aboveground storage or handling capacity of one million gallons or greater of oil shall conduct a groundwater characterization study (GCS) within the geographic boundaries of the facility to be submitted as part of the contingency plan. The operator of such a facility shall utilize upgradient and downgradient GCS monitoring wells to satisfy this requirement. At the time of a discharge, the operator of such a facility shall conduct further characterization of the groundwater as required by the ~~board~~ department;

b. For purposes of satisfying the requirement to identify and locate natural resources at risk, the operator of a pipeline shall identify surface waters as indicated on the applicable USGS quadrangle maps, public water supplies, state or federal wildlife management areas, wildlife refuges, management areas, sanctuaries, property listed on the National Register of Historic Places and property listed on the National Register of Natural Landmarks which could reasonably be expected to be impacted by the discharge. At the time of a discharge, the operator of a pipeline shall conduct a complete groundwater characterization study as required by the ~~board~~ department and identify other natural resources at risk including public and private wells or springs which could reasonably be expected to be impacted by the discharge;

14. Identification and location of any municipal or other services (including, but not limited to, storm drains, storm water collection systems and sanitary sewer systems) at risk, notification procedures applicable and means of protection of these services. The identification and location of all municipal services shall include those services for which official records are available. The operator of a pipeline shall determine which sections of the system are located in areas that would require an immediate response by the operator to prevent hazards to the public if a discharge occurred;

15. If applicable, the facility's responsibility for responding to a discharge from a vessel moored at the facility and the identity of the sizes, types, and number of vessels that the facility can transfer oil to or from simultaneously;

16. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator to mitigate or prevent the discharge or the substantial threat of a discharge;

17. The facility's oil inventory control procedures. Facilities shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards;

18. A detailed description of a system for early detection of a discharge to groundwater, utilizing upgradient and downgradient leak detection monitoring wells or other groundwater protection measures acceptable to the ~~board~~ department (i.e., visual, interstitial, vapor and leak detection groundwater monitoring wells). The system will be operated, maintained and monitored in the manner approved and be subject to inspection by the department under the pollution prevention requirements of Part III (9VAC25-91-130 et seq., Pollution Prevention Requirements) of this chapter. Operators subject to subdivision 13 a of this subsection may utilize such GCS wells to meet this requirement when approved by the ~~board~~ department;

19. The procedures to be followed, upon detection of a discharge of oil, for testing and inspection of all tanks, piping and all oil transfer associated equipment that could reasonably be expected to be a point source for the discharge. These procedures shall be conducted within the shortest feasible time, include a progression of written procedures from visual inspection to formal testing and be conducted in accordance with recognized engineering practices;

20. The facility's preventive maintenance procedures applicable to the critical equipment of an oil storage and transfer system as well as the maximum pressure for each oil transfer system. The term "critical equipment" shall mean equipment that affects the safe operation of an oil storage and handling system;

21. A description of the security procedures used by facility personnel to avoid intentional or unintentional damage to the facility; and

22. A post-discharge review procedure to assess the discharge response in its entirety.

B. All nonexempt facility operators shall file with the ~~board~~ department the application form for approval of the contingency plan. This form shall be submitted with the required contingency plan and shall be completed insofar as it pertains to the facility. The operator shall sign and date the certification statement on the application form. If the operator is a corporation, the form shall be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the form shall be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the form shall be signed by a general partner or the sole proprietor. All forms shall be acknowledged before a Notary Public.

C. Contingency plans shall be filed with and approved by the ~~board~~ department. The plan shall be submitted to the ~~board~~ department at the address specified in 9VAC25-91-60 A. A copy of the original with the facility-specific information and the approval letter shall be retained at the facility and shall be readily available for inspection.

D. An operator of multiple facilities may submit a single contingency plan encompassing more than one facility if the facilities are located within the defined boundaries of the same city or county or if the facilities are similar in design and operation. The plan shall contain site-specific information as required by subsection A of this section for each facility. The site-specific information shall be placed in appendices to the plan.

Upon renewal of an approved contingency plan submitted under this subsection, the ~~board~~ department shall consider the individual facilities subject to all provisions of subsections E through J of this section.

E. Oil discharge contingency plans shall be reviewed, updated if necessary and resubmitted to the ~~board~~ department for approval every 60 months from the date of approval unless significant changes occur sooner. Operators shall notify the ~~board~~ department of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a significant change includes the following:

1. A change of operator of the facility;

2. An increase in the maximum storage or handling capacity of the facility that would change the measures to limit the outflow of oil, response strategy or operational plan in the event of the worst case discharge;

3. A decrease in the availability of private personnel or equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge;

4. A change in the type of product dealt in, stored or handled by any facility covered by the plan for which a MSDS or its equivalent has not been submitted as part of the plan; or

5. A change in the method or operation utilized for the early detection of a discharge to groundwater (i.e., change in a method of leak detection).

F. Updated plans or certification for renewal of an existing plan shall be submitted to the ~~board~~ department for review and approval not less than 90 days prior to expiration of approval of the current plan. Submittal of the certification for renewal for an existing plan shall be made in accordance with the provisions of subsection B of this section. All notifications of changes, renewals, submissions and updates of plans required by this chapter shall be directed to the respective regional office.

G. An oil discharge exercise may be required by the ~~board~~ department to demonstrate the facility's ability to implement the contingency plan. The ~~board~~ department will consult with the operator of the facility prior to initiating an exercise. Where appropriate, the ~~board~~ department will ensure coordination with federal agencies prior to initiation of an exercise.

H. The ~~board~~ department may, after notice and opportunity for a conference pursuant to § 2.2-4019 of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan if it determines that:

1. The plan as submitted fails to provide sufficient information for the ~~board~~ department to process, review and evaluate the plan or fails to ensure the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of a discharge, and to contain and clean up an oil discharge within the shortest feasible time;

2. A significant change has occurred in the operation of the facility covered by the plan;

3. The facility's discharge experience or its inability to implement its plan in an oil spill discharge exercise demonstrates a necessity for modification; or

4. There has been a significant change in the best available technology since the plan was approved.

I. The ~~board~~ department, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved;

3. A term or condition of approval of this chapter has been violated; or

4. The facility is no longer in operation.

J. A Facility Response Plan (FRP) developed pursuant to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USCA § 2716 (1996), may be accepted as meeting the requirements of subdivisions A 1 through A 22 of this section. The operator shall submit a copy of the FRP and a copy of the currently valid FRP approval letter for the facility for review and approval by the ~~board~~ department. The FRP shall contain a cross reference in order to index pages for the specific requirements of the ODCP. The FRP shall also contain the satisfaction of the requirements of subdivisions A 13 a and A 18 of this section. This information shall be resubmitted in accordance with the renewal period established by federal statute or regulation but in no instance shall the renewal period exceed five years. The ~~board~~ department shall be notified of any plan amendments within 30 days of the amendment.

9VAC25-91-180. Groundwater characterization study (GCS).

A. Section 62.1-44.34:15 of the Code of Virginia requires the operator to apply to the ~~board~~ department for approval of an ODCP. The ODCP shall be accompanied by other relevant information required by the ~~board~~ department (e.g., groundwater characterization study (GCS) of each facility with an aggregate aboveground storage capacity of one million gallons or greater of oil). The purpose of this GCS is to determine baseline conditions and flow of groundwater within the geographic boundaries of the facility. The operator's results of the GCS shall be subject to the review and approval of the ~~board~~ department and shall be submitted to the department as part of the Oil Discharge Contingency Plan (ODCP) referenced in Part IV (9VAC25-91-170, Oil Discharge Contingency Plan (ODCP) Requirements) of this chapter. The GCS wells are required by 9VAC25-91-170 A 13 a in the ODCP requirements.

B. Section 62.1-44.34:15.1 of the Code of Virginia requires that the operator of a facility with an aggregate capacity of one million gallons or greater of oil conduct monthly gauging and inspection, monitoring of well headspace, and quarterly sampling and laboratory analysis of all groundwater monitoring wells located at the facility to determine the presence of petroleum or petroleum byproduct contamination.

C. Although GCS monitoring wells may be approved for use as part of a leak detection system, the GCS well monitoring requirement should not be confused with any requirement for leak detection monitoring wells required by 9VAC25-91-170 A 18.

9VAC25-91-210. Response.

Should any observations or data indicate the presence of petroleum hydrocarbons in groundwater, the results shall be immediately reported to the ~~board~~ department and to the local director or coordinator of emergency services appointed pursuant to § 44-146.19 of the Code of Virginia.

9VAC25-91-220. Resources available.

A. This chapter (Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91)) does not contain all requirements for aboveground storage tanks in Virginia. The resources listed in this section have been included to assist with complying with requirements of this regulation. Section 36-99.6 of the Code of Virginia requires the Board of Housing and Community Development to incorporate, as part of the building code, regulations adopted and promulgated by the State Water Control Board governing the installation, repair, upgrade, and closure of aboveground storage tanks. Portions of this chapter are incorporated into the Virginia Uniform Statewide Building Code (USBC). The USBC referenced model codes and standards apply as promulgated by the Virginia Department of Housing and Community Development.

B. The following documents or portions thereof are resources referenced or provide guidance in this chapter:

1. Underwriters Laboratories Standards:

a. Specification 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids," Ninth Edition;

b. Standard 2245, "Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks," Second Edition, December 28, 2006;

2. American Petroleum Institute (API) Standards:

a. API 12B: Specification 12B October 2008, "Specification for Bolted Tanks for Storage of Production Liquids," Fifteenth Edition;

b. API 12D: Specification 12D, October 2008, "Specification for Field Welded Tanks for Storage of Production Liquids," Eleventh Edition;

c. API 12F: Specification 12F, October 2008, "Specification for Shop Welded Tanks for Storage of Production Liquids," Twelfth Edition;

d. API 575; May 2005, "Inspection of Existing Atmospheric and Low-pressure Storage Tanks," Second Edition, May 2005;

e. API 620: Standard 620, February 2008, "Design and Construction of Large, Welded, Low-Pressure Storage Tanks," includes Addendum 1 (2009), Addendum 2 (2010), and Addendum 3 (2012), Eleventh Edition;

f. API 650: Standard 650, June 2001, "Welded Tanks for Oil Storage," Eleventh Edition;

g. API 651: Recommended Practice 651, January 2007, "Cathodic Protection for Above Ground Petroleum Storage Tanks," Third Edition;

h. API 652: Recommended Practice 652, October 2005, "Lining of Aboveground Petroleum Storage Tank Bottoms," Third Edition;

i. API 2350: Recommended Practice 2350, January 2005, "Overfill Protection for Petroleum Storage Tanks," Third Edition;

3. Virginia Statewide Fire Prevention Code (SWFPC), (March 1, 2011); and

4. Steel Tank Institute (STI), Standards and Recommended Practices:

a. STI Standard for Diked Aboveground Storage Tanks F911;

b. STI Standard for Aboveground Tanks with Integral Secondary Containment F921, revised July 2011;

c. STI Fireguard™ Specifications for Fireguard protected Aboveground Storage Tanks F941.

C. Standards and codes listed in subsection B of this section are specifically authorized for use by the ~~board~~ department. Other standards and codes may be used if specifically authorized by the ~~board~~ department.

D. This chapter refers to resources that may be used to comply with provisions of the regulations. These resources are available through the Internet; therefore, in order to assist the regulated community, the resource reference document owner's contact information, including uniform resource locator or Internet address is provided for each of the resource references listed in this section.

1. Underwriter's Laboratories, http://ulstandards.ul.com/access-standards/, Underwriter's Laboratories, 2600 NW Lake Road, Camas, WA 98607-8542.

2. American Petroleum Institute, http://api.org, American Petroleum Institute, 1220 L Street, NW, Washington, DC 20005-4070.

3. National Association of Corrosion Engineers, http://nace.org, National Association of Corrosion Engineers, 1440 South Creek Drive, Houston, TX USA 77084-4906.

4. Code of Federal Regulations, http://www.gpo.gov/fdsys/.

5. Virginia Uniform Statewide Building Code, http://www.dhcd.virginia.gov/index.php/va-building-codes/building-and-fire-codes/regulations/uniform-statewide-building-code-usbc.html, Virginia Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219.

6. Virginia Statewide Fire Prevention Code, http://www.dhcd.virginia.gov/StateBuilding CodesandRegulations/PDFs/2009/Code - SFPC.pdf, Virginia Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219.

7. Steel Tank Institute, www.steeltank.com, Steel Tank Institute, 944 Donata Court, Lake Zurich, IL 60047.

VA.R. Doc. No. R23-7161; Filed September 9, 2022, 2:24 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: **9VAC25-101. Tank Vessel Oil Discharge Contingency Plan and Financial Responsibility**

Regulation (amending 9VAC25-101-10, 9VAC25-101-35 through 9VAC25-101-50; repealing 9VAC25-101-60).

Statutory Authority: §§ 62.1-44.15, 62.1-44.34:16, and 62.1-44.34:21 of the Code of Virginia.

Effective Date: November 23, 2022.

Agency Contact: Russell P. Ellison, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2670, FAX (804) 698-4178, or email russell.ellison@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-101-10. Definitions.

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

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Containment and cleanup" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Department" means the Department of Environmental Quality.

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Net worth" means the amount of all assets of a tank vessel operator located in the United States, less all liabilities.

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils and all other liquid hydrocarbons regardless of specific gravity. For the purpose of this chapter only, this definition does not include nonpetroleum hydrocarbon-based animal and vegetable oils or petroleum, including crude oil or any fraction thereof which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 USC § 9601) and which is subject to the provisions of that Act.

"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or vessel.

"Person" means an individual, trust, firm, joint stock company, corporation including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Public vessel" means a vessel owned or bareboat-chartered and operated by the United States, by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

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

"Tank vessel" means any vessel used in the transportation of oil in bulk as cargo. For the purpose of this chapter, this definition includes tankers, tank ships, tank barges and combination carriers when carrying oil. It does not include vessels carrying oil in drums, barrels, portable tanks or other packages or vessels carrying oil as fuel or stores for that vessel. For the purpose of this chapter only, this definition does not include public vessels.

"Vehicle" means any motor vehicle, rolling stock or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" includes every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

"Working capital" means the amount of current assets of a tank vessel operator located in the United States, less all current liabilities.

9VAC25-101-35. Oil discharge contingency plan and vessel response plan requirements for state waters.

No operator of a tank vessel shall cause or permit a tank vessel to transport or transfer oil in state waters unless an oil discharge contingency plan applicable to the tank vessel is filed with and approved by the ~~board~~ department in accordance with 9VAC25-101-40 or a Vessel Response Plan applicable to the tank vessel has been approved by the United States Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 33 USC § 1321(j).

9VAC25-101-40. ~~Board~~ Department oil discharge contingency plan review and approval.

A. Tank vessel oil discharge contingency plans shall provide for the use of the best available technology (economically feasible, proven effective and reliable and compatible with the safe operation of the vessel) at the time the plan is submitted for approval, be written in English, and, in order to be approvable, shall contain, at a minimum, the following information:

1. The vessel name, country of registry, identification number, date of build and certificated route of the vessel.

2. The names of the vessel operators including address and phone number.

3. If applicable, name of local agent, address and phone number.

4. A copy of the material safety data sheet (MSDS) or its equivalent for each oil, or groups of oil with similar characteristics, transported or transferred by the tank vessel. To be equivalent, the submission must contain the following:

a. Generic or chemical name of the oil;

b. Hazards involved in handling the oil; and

c. A list of firefighting procedures and extinguishing agents effective with fires involving each oil or groups of oil demonstrating similar hazardous properties which require the same firefighting procedures.

5. A complete listing, including 24-hour phone numbers, of all federal, state and local agencies required to be notified in event of a discharge.

6. The position title of the individual(s) responsible for making the required notifications and a copy of the notification check-off list. The individual(s) must be fluent in English.

7. The position title, address and phone number of the individual(s) authorized to act on behalf of the operator to implement containment and cleanup actions. The individual(s) must be fluent in English and shall be available on a 24-hour basis to ensure the appropriate containment and cleanup actions are initiated.

8. The position title of the individual(s) designated by the operator to ensure compliance during containment and cleanup of a discharge, with applicable federal, state and local requirements for disposal of both solid and liquid wastes.

9. A copy of the valid evidence of financial responsibility pursuant to 9VAC25-101-45.

10. A complete description of the vessel including vessel drawings providing a complete view of the location of all cargo tanks as well as the location of fuels and other oils carried in bulk by the vessel.

11. A complete description of each oil transfer system on the vessel, including:

a. A line diagram of the vessel's oil transfer piping, including the location of each valve, pump, control device, vent, safety device and overflow;

b. The location of the shutoff valve or other isolation device that separates any bilge or ballast system from the oil transfer system; and

c. The maximum pressure for each oil transfer system.

12. Identification and assurance by contract, or other means acceptable to the ~~board~~ department, of the availability of private personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge. This contract or agreement shall ensure a certain response within the shortest feasible time. The department will accept a letter of understanding between the operator and response contractors which attests to this capability being readily available. Membership in a cleanup cooperative or other response organization is also acceptable. A listing of contractor or cooperative capabilities, including an inventory of the equipment and specification of the other information required by subdivision 14 of this subsection shall be included unless these capabilities are already on file with the department.

13. Assessment of the worst case discharge, including measures to limit the outflow of oil, response strategy and operational plan. For the purpose of this chapter, the worst case discharge for a tank vessel is a discharge in adverse weather conditions of its entire cargo.

14. Inventory of onboard containment equipment, including specification of quantity, type, location, time limits for gaining access to the equipment, and, if applicable, identification of tank vessel personnel trained in its use.

15. If applicable, a copy of the United States Coast Guard approved oil transfer procedures and International Oil Pollution Prevention Certificate (IOPP).

16. A description of training, equipment testing, and periodic unannounced oil discharge drills conducted by the operator to mitigate or prevent the discharge, or the substantial threat of a discharge.

17. The tank vessel's cargo inventory control procedures. Tank vessel operators shall ensure that this control procedure is capable of providing for the detection of a discharge of oil within the shortest feasible time in accordance with recognized engineering practices and industry measurement standards.

18. A post discharge review procedure to assess the discharge response in its entirety.

B. All nonexempt tank vessel operators shall file with the department the Application for Approval of a Tank Vessel Contingency Plan form available from the department for approval of the contingency plan. This form identifies the tank vessel operator by name and address and provides information on the tank vessel or vessels and shall be submitted with the required contingency plan and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form which certifies to the ~~board~~ department that the information is true and accurate. If the operator is a corporation, the application form must be signed by an authorized corporate official; if the

operator is a municipality, state, federal or other public agency, the application form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the application form must be signed by a general partner or the sole proprietor.

C. Contingency plans must be filed with and approved by the ~~board~~ department. A signed original shall be submitted to the department at the address specified in subsection F of this section. A copy of the original with the tank vessel specific information and the approval letter shall be retained on the tank vessel and shall be readily available for inspection. An operator of a tank vessel whose normal operating route does not include entry into state waters shall certify to the ~~board~~ department, within 24 hours of entering state waters, that the operator has ensured by contract or other means acceptable to the ~~board~~ department, the availability of personnel and equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent the discharge or the substantial threat of a discharge. The operator shall submit a contingency plan to the ~~board~~ department for approval in accordance with this chapter prior to the next entry of the tank vessel into state waters.

D. An operator of multiple tank vessels may submit a single fleet contingency plan. The plan shall contain vessel specific information required by this section for each vessel. The vessel specific information shall be included in appendices to the plan. This plan shall be separate from any required facility contingency plan.

E. Oil discharge contingency plans shall be reviewed, updated if necessary, and resubmitted to the ~~board~~ department for approval every 60 months unless significant changes occur sooner. Operators must notify the department of significant changes and make appropriate amendments to the contingency plan within 30 days of the occurrence. For the purpose of this chapter, a significant change includes the following:

1. A change of operator of the tank vessel or individual authorized to act on behalf of the operator;

2. A substantial increase in the maximum storage or handling capacity of the tank vessel;

3. A material decrease in the availability of private personnel or equipment necessary to remove to the maximum extent practicable the worst case discharge and to mitigate or prevent a substantial threat of such a discharge;

4. A change in the type of product transported or transferred in or by any tank vessel covered by the plan for which a MSDS or its equivalent has not been submitted; or

5. The addition of a tank vessel to a single fleet contingency plan provided this requirement can be met by submittal of a new or amended appendix to the plan.

Renewals for expiring plans shall be submitted to the ~~board~~ department for review and approval not less than 90 days prior to expiration of the current plan.

F. All applications and written communications concerning changes, submissions and updates of plans required by this chapter, with the exception of applications and submissions accompanied by fees addressed in subsection J of this section, shall be addressed as follows:

Mailing Address:

Virginia Department of Environmental Quality
Office of Spill Response and Remediation
P.O. Box 1105
Richmond, VA 23218

Location Address:

Virginia Department of Environmental Quality
Office of Spill Response and Remediation
1111 East Main Street, Suite 1400
Richmond, VA 23219

All applications and submissions accompanied by fees as addressed in subsection J of this section shall be sent to the addressed listed in subdivision J 2.

G. An oil discharge exercise may be required by the ~~board~~ department to demonstrate the tank vessel's ability to implement the contingency plan. The department will consult with the operator of the vessel prior to initiating an exercise. Where appropriate, the department will ensure coordination with federal agencies prior to initiation of an exercise.

H. The ~~board~~ department may, after notice and opportunity for a conference pursuant to § 2.2-4019 of the Code of Virginia, deny or modify its approval of an oil discharge contingency plan if it determines that:

1. The plan as submitted fails to provide sufficient information for the department to process, review and evaluate the plan or fails to ensure the applicant can take such steps as are necessary to protect environmentally sensitive areas, to respond to the threat of a discharge, and to contain and cleanup an oil discharge within the shortest feasible time;

2. A significant change has occurred in the operation of the tank vessel covered by the plan;

3. The tank vessel's discharge experience or its inability to implement its plan in an oil spill discharge exercise demonstrates a necessity for modification; or

4. There has been a significant change in the best available technology since the plan was approved.

I. The ~~board~~ department, after notice and opportunity for hearing, may revoke its approval of an oil discharge contingency plan if it determines that:

1. Approval was obtained by fraud or misrepresentation;

2. The plan cannot be implemented as approved; or

3. A term or condition of approval or of this chapter has been violated.

J. An application for approval of an oil discharge contingency plan will be accepted only when the fee established by this section has been paid.

1. Fees shall be paid by operators of tank vessels subject to this chapter upon initial submittal of an oil discharge contingency plan to the ~~board~~ department. Renewals, additions, deletions or changes to the plan are not subject to the administrative fee.

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to the Treasurer of Virginia. All applications and submissions accompanying fees shall be sent to:

Mailing Address:

Virginia Department of Environmental Quality

Office of Financial Management

P.O. Box 1105

Richmond, VA 23218

Location Address:

Virginia Department of Environmental Quality

Office of Financial Management

1111 East Main Street, Suite 1400

Richmond, VA 23219

3. Application fees for approval of tank vessel contingency plans are as follows:

a. For a tank vessel with a maximum storage, handling or transporting capacity of 15,000 gallons and up to and including 250,000 gallons of oil the fee is $718;

b. For a tank vessel with a maximum storage, handling or transporting capacity greater than 250,000 gallons and up to and including 1,000,000 gallons of oil the fee is $2,155; and

c. For a tank vessel with a maximum storage, handling or transporting capacity greater than 1,000,000 gallons of oil the fee is $3,353.

4. The fee for approval of contingency plans encompassing more than one tank vessel, as authorized by subsection D of this section, shall be based on the aggregate capacity of the tank vessels.

5. Application fees are refundable upon receipt of a written request for withdrawal of the plan and fee refund no later than 30 days after submittal and prior to approval of the plan.

6. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicant's future use under this section.

9VAC25-101-45. Demonstration of financial responsibility.

The operator of any tank vessel entering upon state waters shall have a Certificate of Financial Responsibility, approved by the Unites States Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990, or shall deposit with the ~~board~~ department cash or its equivalent in the amount of $500 per gross ton of such vessel in accordance with 9VAC25-101-50.

9VAC25-101-50. ~~Board~~ Department financial responsibility demonstration.

A. The operator of any tank vessel entering upon state waters that does not have a Certificate of Financial Responsibility approved by the U.S. Coast Guard pursuant to § 4202 of the federal Oil Pollution Act of 1990 (33 USC § 1321) shall deposit with the ~~board~~ department cash or its equivalent in the amount of $500 per gross ton of such vessel. If the operator owns or operates more than one tank vessel, evidence of financial responsibility need be established only to meet the maximum liability applicable to the vessel having the greatest maximum liability.

1. All documents submitted shall be in English and all monetary terms shall be in United States currency.

2. A copy of the ~~board's~~ department's acceptance of the required evidence of financial responsibility shall be kept on the tank vessel and readily available for inspection.

B. If the ~~board~~ department determines that oil has been discharged in violation of applicable state law or there is a substantial threat of such discharge from a vessel for which a cash deposit has been made, any amount held in escrow may be used to pay any fines, penalties or damages imposed under such law.

C. Operators of tank vessels may obtain exemption from the cash deposit requirement if evidence of financial responsibility is provided in an amount equal to the cash deposit required for such tank vessel pursuant to § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The following means of providing such evidence, or any combination thereof, will be acceptable:

1. Self-insurance. Any operator demonstrating financial responsibility by self-insurance shall provide evidence of such self-insurance in a manner that is satisfactory to the ~~board~~ department. An operator demonstrating self-insurance shall:

a. Maintain, in the United States, working capital and net worth each in the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

(1) Maintenance of the required working capital and net worth shall be demonstrated by submitting with the application form an annual, current nonconsolidated balance sheet and an annual, current nonconsolidated statement of income and surplus certified by an independent certified public accountant. Those financial statements shall be for the operator's last fiscal year preceding the date of application and shall be accompanied by an additional statement from the operator's treasurer (or equivalent official) certifying to both the amount of current assets and the amount of total assets included in the accompanying balance sheet which are located in the United States and are acceptable for purposes of this chapter.

(2) If the balance sheet and statement of income and surplus cannot be submitted in nonconsolidated form, consolidated statements may be submitted if accompanied by an additional statement by the involved certified public accountant certifying to the amount by which the operator's assets, located in the United States and acceptable under this subsection C, exceed total liabilities and that current assets, located in the United States and acceptable under this subsection C, exceed its current liabilities.

(3) When the operator's demonstrated net worth is not at least 10 times the required amount, an affidavit shall be filed by the operator's treasurer (or equivalent official) covering the first six months of the operator's fiscal year. Such affidavits shall state that neither the working capital nor the net worth have fallen below the required amounts during the first six months.

(4) Additional financial information shall be submitted upon request by the department; or

b. Provide evidence in the form of a marine insurance broker's certificate of insurance, certificate of entry, or other proof satisfactory to the ~~board~~ department that the operator has obtained oil pollution liability coverage through an operator's membership in a Protection & Indemnity (P&I) Club that is a member of the international group of P&I clubs or through coverage provided by a pool of marine underwriters in an amount sufficient to meet the requirements of § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

2. Insurance. Any operator demonstrating evidence of financial responsibility by insurance shall provide evidence of insurance issued by an insurer licensed, approved, or otherwise authorized to do business in the Commonwealth of Virginia. The amount of insurance shall be sufficient to cover the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The operator shall provide evidence of such coverage in the form of a marine insurance broker's certificate of insurance or by utilizing a form worded identically to the Insurance Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department. The insurer must also comply with all requirements in the form available from the department.

3. Surety. Any operator demonstrating financial responsibility through a surety bond shall file a surety bond utilizing a form worded identically to the surety form available from the department. The surety company issuing the bond must be licensed to operate as a surety in the Commonwealth of Virginia and must possess an underwriting limitation at least equal to the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section. The surety must also comply with all requirements in the Surety Bond Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department.

4. Guaranty. An operator demonstrating financial responsibility through a guaranty shall submit the guaranty worded identically to the form available from the department. The guarantor shall comply with all provisions of subdivision 1 of this subsection for self-insurance and also comply with all requirements in the Guaranty Form Furnished as Evidence of Financial Responsibility in Respect of Liability for Discharge of Oil available from the department.

D. To obtain exemption from the cash deposit requirements:

1. The operator shall have and maintain an agent for service of process in the Commonwealth;

2. Any insurer, guarantor, or surety shall have and maintain an agent for service of process in the Commonwealth;

3. Any insurer must be authorized by the Commonwealth of Virginia to engage in the insurance business; and

4. Any instrument of insurance, guaranty or surety must provide that actions may be brought on such instrument of insurance, guaranty or surety directly against the insurer, guarantor or surety for any violation by the operator of Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia up to, but not exceeding, the amount insured, guaranteed or otherwise pledged.

5. All forms of evidence of financial responsibility shall be accompanied by an endorsement that certifies that the insurance policy, evidence of self-insurance, surety or guaranty provides liability coverage for the tank vessels in the amount required by § 62.1-44.34:16 of the Code of Virginia and subsection A of this section.

6. Subdivisions 2, 3 and 4 of this subsection do not apply to operators providing evidence of financial responsibility in accordance with subdivision C 1 of this section.

E. Any operator whose financial responsibility is accepted under this chapter shall notify the ~~board~~ department at least 30

days before the effective date of a change, expiration or cancellation of any instrument of insurance, guaranty or surety.

F. The ~~board's~~ department's approval of evidence of financial responsibility shall expire:

1. One year from the date that the ~~board~~ department exempts an operator from the cash deposit requirement based on acceptance of evidence of self-insurance;

2. On the effective date of any change in the operator's instrument of insurance, guaranty or surety; or

3. Upon the expiration or cancellation of any instrument of insurance, guaranty or surety.

G. All nonexempt tank vessel operators shall file with the ~~board~~ department the Application for Approval of Evidence of Tank Vessel Financial Responsibility which identifies the tank vessel operator and agent for service of process by name and address, provides identifying information on the tank vessel or vessels and certifies to the ~~board~~ department that the information is true and accurate for approval of the evidence of financial responsibility. This form is available. This form shall be submitted with the required evidence of financial responsibility (cash deposit, proof of insurance, self-insurance, guaranty or surety), and shall be completed as far as it pertains to the tank vessel. The operator must sign and date the certification statement on the application form. If the operator is a corporation, the application form must be signed by an authorized corporate official; if the operator is a municipality, state, federal or other public agency, the application form must be signed by an authorized executive officer or ranking elected official; if the operator is a partnership or sole proprietorship, the application form must be signed by a general partner or the sole proprietor.

H. Application for renewal of approval of tank vessel financial responsibility shall be filed with the ~~board~~ department 30 days prior to the date of expiration.

I. All applications and written communications concerning changes, submissions and updates required by this chapter, with the exception of applications and submissions accompanied by fees as addressed in subsection K of this section, shall be addressed as follows:

Mailing Address:

Virginia Department of Environmental Quality
Office of Spill Response and Remediation
P.O. Box 1105
Richmond, VA 23218

Location Address:

Virginia Department of Environmental Quality
Office of Spill Response and Remediation
1111 East Main Street, Suite 1400
Richmond, VA 23219

All applications and submissions accompanied by fees as addressed in subsection K of this section shall be sent to the address listed in subdivision K 2.

J. The ~~board~~ department, after notice and opportunity for hearing, may revoke its acceptance of evidence of financial responsibility if it determines that:

1. Acceptance has been procured by fraud or misrepresentation; or

2. A change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility.

K. An application for approval of the demonstration of financial responsibility will be accepted only when the fees established by this section have been paid.

1. Fees shall only be paid upon initial submittal of the demonstration of financial responsibility by an operator to the ~~board~~ department. Renewals or changes are not subject to the administrative fee.

2. Fees shall be paid in United States currency by check, draft or postal money order made payable to Treasurer of Virginia. All fees and accompanying applications and submissions shall be sent to:

Mailing Address:

Virginia Department of Environmental Quality
Office of Financial Management
P.O. Box 1105
Richmond, VA 23218

Location Address:

Virginia Department of Environmental Quality
Office of Financial Management
1111 East Main Street, Suite 1400
Richmond, VA 23219

3. Application fees for approval of evidence of financial responsibility for tank vessels are as follows:

a. Applicants shall pay an application fee of $120.

b. Applicants shall pay a fee of $30 for each additional tank vessel requiring a copy of the accepted evidence of financial responsibility.

4. Application fees are refundable upon receipt of a written notice of withdrawal; of the proffer of financial responsibility and a request for refund received by the department no later than 30 days after submittal and prior to approval.

5. Overpayments of application fees are refundable upon written request. Overpayments not refunded will be credited for the applicant's future use under this section.

9VAC25-101-60. ~~Delegation of authority.~~ (Repealed.)

~~The Director of the Department of Environmental Quality, or his designee, may perform any act of the board under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

VA.R. Doc. No. R23-7162; Filed September 9, 2022, 2:24 a.m.

Final Regulation

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

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

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

Effective Date: March 1, 2023.

Agency Contact: Alison Thompson, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (571) 866-6083, or email alison.thompson@deq.virginia.gov.

Summary:

This regulatory action reissues the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges From Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests. The general permit contains effluent limitations, monitoring requirements, and special conditions for discharges of sites contaminated by petroleum products, chlorinated hydrocarbon solvents, the hydrostatic testing of natural gas storage tanks and pipelines, the hydrostatic testing and dewatering of petroleum storage tank systems and associated distribution equipment, and the hydrostatic testing of water storage tanks and pipelines. The amendments (i) expand the scope to include non-petroleum contaminated sites, groundwater remediation discharges, and dewatering activities; (ii) revise two limits and add 11 metal limits to address dewatering activities with contamination by metals; and (iii) replace the existing formula with specified hardness-dependent metal limits.

Changes to the proposed regulation incorporate the transfer of authority from the State Water Control Board to the Department of Environmental Quality for certain actions pursuant to Chapter 356 of the 2022 Acts of Assembly.

Chapter 120

Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from ~~Petroleum Contaminated Sites,~~ Groundwater Remediation of Contaminated Sites, Dewatering Activities of Contaminated Sites, and Hydrostatic Tests

9VAC25-120-10. Definitions.

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

["Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.]

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

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

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

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

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

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

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

Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of [July 1,] ~~2017~~ [~~2021~~ 2022].

9VAC25-120-20. Purpose.

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

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

This general permit will become effective on ~~February 26, 2018~~ March 1, 2023. This general permit will expire on February ~~25~~ 29, ~~2023~~ 2028. This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-120-60.

9VAC25-120-60. Authorization to discharge.

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

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

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

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

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

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

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

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

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

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

C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the federal Clean Water Act and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation, including compliance with the Water Withdrawal Reporting (9VAC25-200) and the Groundwater Withdrawal Regulations (9VAC25-610).

D. Continuation of permit coverage.

1. Permit coverage shall expire at the end of ~~its~~ the applicable permit term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal date established by the [~~board~~ department], which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to discharge until such time as the [~~board~~ department] either:

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

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

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

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

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

c. Issue an individual permit with appropriate conditions; or

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

9VAC25-120-70. Registration statement.

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

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

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

a. Emergency repairs;

b. Dewatering projects;

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

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

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

f. New well construction discharges of groundwater;

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

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

Owners of these types of discharges are authorized to discharge under this permit immediately upon the permit's effective date of ~~February 26, 2018~~ March 1, 2023.

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

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

C. Deadlines for submitting registration statements.

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

2. Existing facilities.

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

b. Any owner that was authorized to discharge under the expiring petroleum contaminated sites, groundwater remediation, and hydrostatic tests ~~general~~ VPDES general permit that is not exempted under subsection B of this section and that intends to continue coverage under this general permit shall submit a complete registration statement to the [~~board~~ department] at least 30 days prior to the expiration date of the existing permit or a later submittal established by the [~~board~~ department].

D. Late registration statements. Registration statements will be accepted after the expiration date of the permit, but authorization to discharge will not be retroactive.

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

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

2. Facility street address (if different from mailing address) or location (if the facility location does not have a mailing address);

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

4. Nature of business conducted at the facility;

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

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

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

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

9. The ~~location~~ latitude and longitude in decimal degrees (six digits - ten-thousandths place) of the discharge point and identification of the waterbody into which the discharge will occur. For linear projects, the ~~location~~ latitude and longitude in decimal degrees (six digits - ten-thousandths place) of all the proposed discharge points along the project length and the associated waterbody for each discharge point;

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

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

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

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

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

15. A USGS 7.5 minute topographic map or equivalent computer generated map that indicates the receiving waterbody name ~~or names~~, the discharge point ~~or points~~, the property boundaries, as well as springs, other surface waterbodies, drinking water wells, and public water supplies that are identified in the public record or are otherwise known to the applicant within a 1/2 mile radius of the proposed discharge or discharges;

16. A determination of whether the facility will discharge to an MS4. If the facility discharges to an MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge information at the time of registration under this permit and include that notification with the registration statement. The notice shall include the following information: the name of the facility, a contact person and telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number;

17. Whether central wastewater facilities are available to the site, and if so, whether the option of discharging to the central wastewater facility has been evaluated and the results of that evaluation;

18. Whether the facility currently has any permit issued by the [department or general permit issued as a regulation by the] board, and if so, the permit number;

19. Any pollution complaint number or Voluntary Remediation Program (VRP) information associated with the project;

20. A statement as to whether the material being treated or to be discharged is certified as a hazardous waste under the Virginia Hazardous Waste Management Regulations (9VAC20-60); ~~and~~

21. State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law; and

22. The following certification:

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

F. The registration statement shall be signed in accordance with 9VAC25-31-110.

G. The registration statement shall be delivered by either postal or electronic mail to the DEQ regional office serving the area where the facility is located. Following notification from the department of the start date for the required electronic submission of Notices of Intent to discharge forms (i.e., registration statements), as provided for in 9VAC25-31-1020, such forms submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms must be submitted electronically.

9VAC25-120-80. General permit.

Any owner whose registration statement is accepted by the [~~board~~ department], or that is automatically authorized to discharge under this permit, shall comply with the requirements of the general permit and be subject to all requirements of 9VAC25-31-170 B of the VPDES Permit Regulation. Not all of Part I A of the general permit will apply to every permittee. The determination of which provisions

apply will be based on the type of contamination at the individual site and the nature of the waters receiving the discharge. Part I B and all of Part II apply to all permittees.

General Permit No.: VAG83
Effective Date: ~~February 26~~ March 1, ~~2018~~ 2023
Expiration Date: February ~~25~~ 29, ~~2023~~ 2028

VPDES GENERAL PERMIT FOR DISCHARGES FROM ~~PETROLEUM CONTAMINATED SITES,~~ GROUNDWATER REMEDIATION OF CONTAMINATED SITES, DEWATERING ACTIVITIES OF CONTAMINATED SITES, AND HYDROSTATIC TESTS

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, the State Water Control Law and regulations adopted pursuant thereto, the owner is authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except to designated public water supplies or waters specifically named in other board regulations which prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I - Effluent Limitations and Monitoring Requirements, and Part II - Conditions Applicable to All VPDES Permits, as set forth in this general permit.

If there is any conflict between the requirements of a [~~board~~ department] approved cleanup plan and this permit, the requirements of this permit shall govern.

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. SHORT TERM PROJECTS.

The following types of short term projects (14 consecutive calendar days or less in duration) are authorized under this permit:

a. Emergency repairs;

b. Dewatering projects. Dewatering projects shall be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

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

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

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

f. New well construction discharges of groundwater.

Effluent limits for short term projects correspond to the type of contamination at the project site and are given in Tables A 3 through A ~~5~~ 6 below. The sampling frequency for these projects shall be once per discharge. Discharge monitoring reports for these projects are not required to be submitted to the department, but shall be retained by the owner for a period of at least three years from the completion date of the project.

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

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

2. DISCHARGES OF HYDROSTATIC TEST WATERS -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS[2]	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	1/discharge	Estimate
pH (standard units)	6.0	9.0	1/discharge	Grab
Total Petroleum Hydrocarbons (TPH, mg/l) [1]	NA	~~15.0~~ 15	1/discharge	Grab
Total Organic Carbon (TOC, mg/l)	NA	NL	1/discharge	Grab

Total Residual Chlorine (TRC, mg/l)[3]	NA	0.011[3]	1/discharge	Grab
Total Suspended Solids (TSS)	NA	NL	1/discharge	Grab

NL = No limitation, monitoring required

NA = Not applicable

The equipment being tested shall be substantially free of debris, raw material, product, or other residual materials.

The discharge flow shall be managed to control the volume and velocity of the discharge, including peak flow rates and total volume, to minimize erosion at outlets, and to minimize downstream channel and stream bank erosion.

[1]TPH is the sum of individual gasoline range organics and diesel range organics or TPH-GRO and TPH-DRO to be measured by EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) for gasoline and diesel range organics, or by EPA SW 846 Methods 8260B (1996) and 8270D (2014) or 8270E (2018).

[2]Discharge monitoring reports for hydrostatic test discharges are not required to be submitted to the department but shall be retained by the owner for a period of at least three years from the completion date of the hydrostatic test.

Owners shall notify the department's regional office in writing within 14 days of the completion of the hydrostatic test discharge. The notification shall include the owner's name and address, the type of hydrostatic test that occurred, the physical location of the test work, and the receiving stream.

[3]Total residual chlorine limitation of 0.011 mg/l and chlorine monitoring only apply to discharges of test water that have been chlorinated or come from a chlorinated water supply. All data below the quantification level (QL) of 0.1 mg/L shall be reported as "<QL."

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

3. GASOLINE CONTAMINATION -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	[4]	Estimate
Benzene (µg/l)[1]	NA	~~12.0~~ 5.8	[4]	Grab
Toluene (µg/l)[1]	NA	~~43.0~~ 43	[4]	Grab
Ethylbenzene (µg/l)[1]	NA	4.3	[4]	Grab
Total Xylenes (µg/l)[1]	NA	~~33.0~~ 33	[4]	Grab
MTBE (methyl tert-butyl ether) (µg/l)[1]				
Freshwaters not listed as public water supplies and saltwater	NA	~~440.0~~ 440	1/Month[4]	Grab
Freshwaters listed as public water supply	NA	~~15.0~~ 15	2/Month[4]	Grab
pH (standard units)	6.0	9.0	[4]	Grab
Total Recoverable Lead (µg/l)[2]	NA	7.2	[4]	Grab

~~Freshwaters not listed as public water supplies and saltwater~~	~~NA~~	~~$e^{(1.273(\ln \text{hardness})) - 3.259}$~~	~~(4)~~	~~Grab~~
~~Freshwaters listed as public water supply~~	~~NA~~	~~Lower of $e^{(1.273(\ln \text{hardness})) - 3.259}$ or 15~~	~~(4)~~	~~Grab~~
Total Hardness (mg/l $CaCO_3$)[(2)]	NL	NA	[(4)]	Grab
Ethylene Dibromide (µg/l)[(2)]				
Freshwaters not listed as public water supplies and saltwater	NA	1.9	1/Month[(4)]	Grab
Freshwaters listed as public water supply	NA	0.16 ~~1~~	2/Month[(4)]	Grab
1,2 Dichloroethane (µg/l)[(2)]	NA	3.8	[(4)]	Grab
Ethanol (µg/l)[(3)]	NA	~~4100.0~~ 4100	[(4)]	Grab

NL = No limitation, monitoring required

NA = Not applicable

[(1)]Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136) or EPA SW 846 Method 8021B (2014).

[(2)]Monitoring for this parameter is required only when contamination results from leaded fuel. Lead shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136). ~~The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l.~~ 1,2 dichloroethane and ethylene dibromide (EDB) shall be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136. EDB in wastewaters discharged to public water supplies shall be analyzed using EPA SW 846 Method 8011 (1992) or EPA Drinking Water Method 504.1 (1995).

[(3)]Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) or EPA SW 846 Method 8260B (1996).

[(4)]The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, monitoring frequency may be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 1/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January in each year of permit coverage.

The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced to 1/quarter and the other parameters to 1/month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol may be reduced to 1/quarter and the other parameters to1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January in each year of permit coverage.

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

4. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	(4)	Estimate
Naphthalene (µg/l)(1)	NA	8.9	(4)	Grab
Total Petroleum Hydrocarbons (mg/l)(2)	NA	~~15.0~~ 15	(4)	Grab
pH (standard units)	6.0	9.0	(4)	Grab
Benzene (µg/l)(3)	NA	~~12.0~~ 5.8	2/Month(4)	Grab
MTBE (methyl tert-butyl ether) (µg/l)(3)	NA	~~15.0~~ 15	2/Month(4)	Grab

NL = No limitation, monitoring required

NA = Not applicable

(1)Naphthalene shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part 136 or a current and appropriate EPA SW 846 Method.

(2)TPH shall be analyzed using EPA SW 846 Method 8015C (2000) or EPA SW 846 Method 8015C (2007) for diesel range organics, or by EPA SW 846 Method 8270D (2014) or 8270E (2018).

(3)Monitoring for benzene and MTBE is only required for discharges into freshwaters listed as public water supplies. Benzene and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136) or EPA SW 846 Method.

(4)The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month.

The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced to once per month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol may be reduced to 1/quarter or the other parameters to1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date.

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

5. CONTAMINATION BY CHLORINATED HYDROCARBON SOLVENTS -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring

requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	1/Month	Estimate
			2/Month if public water supply[2]	Estimate
Chloroform (CAS # 67663), (µg/l)[1]	NA	~~80.0~~ 60	1/Month	Grab
			2/Month if public water supply[2]	Grab
1,1 Dichloroethane (CAS # 75343) (µg/l)[1]	NA	2.4	1/Month	Grab
			2/Month if public water supply[2]	Grab
1,2 Dichloroethane (CAS # 107062) (µg/l)[1]	NA	3.8	1/Month	Grab
			2/Month if public water supply[2]	Grab
1,1 Dichloroethylene (CAS # 75354) (µg/l)[1]	NA	7.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
cis-1,2 Dichloroethylene (CAS # 159592) (µg/l)[1]	NA	~~70.0~~ 70	1/Month	Grab
			2/Month if public water supply[2]	Grab
trans 1,2 Dichloroethylene (CAS # 156605) (µg/l)[1]	NA	~~100.0~~ 100	1/Month	Grab
			2/Month if public water supply[2]	Grab
Methylene Chloride (CAS # 75092) (µg/l)[1]	NA	5.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
Tetrachloroethylene (CAS # 127184) (µg/l)[1]	NA	5.0	1/Month	Grab
			2/Month if public water supply[2]	Grab
	NA	~~54.0~~ 54	1/Month	Grab

1,1,1 Trichloroethane (CAS # 71556) (µg/l)[(1)]			2/Month if public water supply[(2)]	Grab
1,1,2 Trichloroethane (CAS # 79005) (µg/l)[(1)]	NA	5.0	1/Month	Grab
			2/Month if public water supply[(2)]	Grab
Trichloroethylene (CAS # 79016) (µg/l)[(1)]	NA	5.0	1/Month	Grab
			2/Month if public water supply[(2)]	Grab
Vinyl Chloride (CAS # 75014) (µg/l)[(1)]	NA	2.0	1/Month	Grab
			2/Month if public water supply[(2)]	Grab
Carbon Tetrachloride (CAS # 56235) (µg/l)[(1)]	NA	2.3	1/Month	Grab
			2/Month if public water supply[(2)]	Grab
1,2 Dichlorobenzene (CAS # 95501) (µg/l)[(1)]	NA	~~15.8~~ 16	1/Month	Grab
			2/Month if public water supply[(2)]	Grab
Chlorobenzene (CAS # 108907) (µg/l)[(1)]	NA	3.4	1/Month	Grab
			2/Month if public water supply[(2)]	Grab
Trichlorofluoromethane (CAS # 75694) (µg/l)[(1)]	NA	5.0	1/Month	Grab
			2/Month if public water supply[(2)]	Grab
Chloroethane (CAS # 75003) (µg/l)[(1)]	NA	3.6	1/Month	Grab
			2/Month if public water supply[(2)]	Grab
pH (standard units)	6.0	9.0	1/Month	Grab
			2/Month if public water supply[(2)]	Grab

NL = No limitation, monitoring required

NA = Not applicable

[(1)]This constituent shall be analyzed by a current and appropriate gas chromatograph/mass spectroscopy method from EPA SW 846 or the EPA Wastewater Method series from 40 CFR Part 136.

(2)Monitoring frequency for discharges into surface waters listed as public water supplies shall be 2/month for the first year of permit coverage. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, monitoring frequency may be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation, or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date.

Part I
A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

6. DEWATERING ACTIVITIES WITH CONTAMINATION BY METALS -- ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

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

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	1/Month	Estimate
			2/Month if public water supply(3)	Estimate
Total Hardness (as $CaCO_3$ in mg/l)(2)	NA	NL	1/Month	Grab
			2/Month if public water supply(3)	Grab
Total Recoverable Antimony (µg/l)(1)	NA	5.6	1/Month	Grab
			2/Month if public water supply(3)	Grab
Total Recoverable Arsenic (µg/l)(1)	NA	10	1/Month	Grab
			2/Month if public water supply(3)	Grab
Total Recoverable Cadmium (µg/l)(1)	NA	0.55	1/Month	Grab
			2/Month if public water supply(3)	Grab
Total Recoverable Chromium (µg/l)(1)	NA	11	1/Month	Grab
			2/Month if public water supply(3)	Grab
Total Recoverable Copper (µg/l)(1)	NA	6.6	1/Month	Grab
			2/Month if public water supply(3)	Grab

Total Recoverable Lead (µg/l)[1]	NA	7.2	1/Month	Grab
			2/Month if public water supply[3]	Grab
Total Recoverable Mercury (µg/l)[1]	NA	0.77	1/Month	Grab
			2/Month if public water supply[3]	Grab
Total Recoverable Nickel (µg/l)[1]	NA	15	1/Month	Grab
			2/Month if public water supply[3]	Grab
Total Recoverable Selenium (µg/l)[1]	NA	5.0	1/Month	Grab
			2/Month if public water supply[3]	Grab
Total Recoverable Silver (µg/l)[1]	NA	1.9	1/Month	Grab
			2/Month if public water supply[3]	Grab
Total Recoverable Thallium (µg/l)[1]	NA	0.24	1/Month	Grab
			2/Month if public water supply[3]	Grab
Total Recoverable Zinc (µg/l)[1]	NA	87	1/Month	Grab
			2/Month if public water supply[3]	Grab
pH (standard units)	6.0	9.0	1/Month	Grab
			2/Month if public water supply[3]	Grab

NL = No limitation, monitoring required

NA = Not applicable

[1]Metals shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part 136.

[2]Total Hardness shall be collected concurrently with the metals.

[3]The monitoring frequency for discharges into freshwaters not listed as public water supplies and saltwater shall be once per month.

The monitoring frequency for discharges into freshwaters listed as public water supplies shall be twice per month for all constituents or parameters. If the first 12 months of permit coverage results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced to once per month. The written request shall be sent to the appropriate DEQ regional office for review. Upon written notification from the regional office, the monitoring frequency for ethanol may be reduced to 1/quarter or the other parameters to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations or a notice of violation or be the subject of an active enforcement action, monitoring frequency shall revert to 2/month upon issuance of the letter or notice or execution of the enforcement action and remain in effect until the permit's expiration date.

Part I

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. The permittee shall sample each permitted outfall each calendar month in which a discharge occurs. When no discharge occurs from an outfall during a calendar month, the discharge monitoring report for that outfall shall be submitted indicating "No Discharge."

3. Operation and maintenance (O&M) manual. If the permitted discharge is through a treatment works, within 30 days of coverage under this general permit, the permittee shall develop and maintain on-site, an O&M manual for the treatment works permitted in this general permit. This manual shall detail practices and procedures that will be followed to ensure compliance with the requirements of this permit. The permittee shall operate the treatment works in accordance with the O&M manual. The manual shall be made available to the department upon request.

4. Operation schedule. The permittee shall construct, install and begin operating the treatment works described in the registration statement prior to discharging to surface waters. The permittee shall notify the department's regional office within five days after the completion of installation and commencement of operation.

5. Materials storage. Except as expressly authorized by this permit or another permit issued by the [department or general permit adopted by the] board, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

6. If the permittee discharges to surface waters through an MS4, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system in writing of the existence of the discharge and provide the following information: the name of the facility, a contact person, and telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number. A copy of such notification shall be provided to the department. Discharge Monitoring Reports (DMRs) required to be submitted under this permit shall be submitted to both the department and the owner of the municipal separate storm sewer system.

7. Monitoring results shall be reported using the same number of significant digits as listed in the permit. Regardless of the rounding convention used by the permittee (e.g., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

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

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

10. Discharges to waters with an approved TMDL. Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

11. Termination of coverage. Provided that the [~~board~~ department] agrees that the discharge covered under this general permit is no longer needed, the permittee may request termination of coverage under the general permit, for the entire facility or for specific outfalls, by submitting a request for termination of coverage. This request for termination of coverage shall be sent to the department's regional office with appropriate documentation or references to documentation already in the department's possession. Upon the permittee's receipt of the regional director's approval, coverage under this general permit will be terminated. Termination of coverage under this general permit does not relieve the permittee of responsibilities under other board regulations or [department] directives.

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

a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this permit if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter;

(2) Two hundred micrograms per liter for acrolein and acrylonitrile; five hundred micrograms per liter for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the general permit registration statement; or

(4) The level established by the board.

b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in this permit if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter;

(2) One milligram per liter for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the general permit registration statement; or

(4) The level established by the board.

Part II
Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

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

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individual ~~or individuals~~ who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of all reports required by this permit; and records of all data used to complete the registration statement for this permit for a period of at least three years from the date of the sample, measurement, report, or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the [~~board~~ department].

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department. Following notification from the department of the start date for the required electronic submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall be electronically submitted to the department in compliance with this section and 9VAC25-31-1020. There shall be at least a three-month notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the [~~board~~ department] may request to determine whether cause exists for ~~modifying, revoking and reissuing, or~~ terminating this permit or to determine compliance with this permit. The [~~board~~ department] may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ the permittee's discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical, or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters in violation of Part II F or that discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately (see Part II I 3) upon discovery of the discharge, but in no case later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify~~, in no case later than 24 hours,~~ (see Part II I 3) the department ~~by telephone~~ after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit the report to the department within five days of discovery of the discharge in accordance with Part II I 1 b. Unusual and extraordinary discharges include any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

a. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information, which shall be reported within 24 hours under this subsection:

(1) Any unanticipated bypass; and

(2) Any upset which causes a discharge to surface waters.

b. A written report shall be submitted within five days and shall contain:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The [~~board~~ department] may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

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

~~NOTE:~~ 3. The immediate (within 24 hours) reports required in Part II G, H and I ~~may~~ shall be made to the department's regional office. Reports may be made by telephone, FAX, or online at ~~http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/PollutionReportingForm.aspx.~~ https://www.deq.virginia.gov/get-involved/pollution-response (online reporting preferred). For reports outside normal working hours, ~~leave a message and this shall fulfill the immediate reporting requirement~~ the online portal shall be used. For emergencies, call the Virginia Department of Emergency ~~Services maintains a 24-hour telephone service~~ Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

~~3.~~ 4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.

J. Notice of planned changes.

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

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

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

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act ~~which~~ that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the Act within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements under Part I B 12; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit registration process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports. All reports required by permits, and other information requested by the [~~board~~ department] shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

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

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

c. The written authorization is submitted to the department.

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

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those

persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit coverage termination or denial of permit coverage renewal.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions ~~or standards for sewage sludge use or disposal~~, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~30~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the [~~board~~ department]. The [~~board~~ department] shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Article 11 (§ 62.1-44.34:14 et seq.) of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

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

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

periods of equipment downtime or preventive maintenance; and

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

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

V. Upset.

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

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

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

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

W. Inspection and entry. The permittee shall allow the director or an authorized representative, including an authorized contractor acting as a representative of the administrator, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law any substances or parameters at any location.

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

X. Permit actions. Permit coverage may be terminated for cause. The filing of a request by the permittee for permit coverage termination or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permit coverage.

1. Permit coverage is not transferable to any person except after notice to the department.

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

a. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The [~~board~~ department] does not notify the existing permittee and the proposed new permittee of its intent to deny permit coverage. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

VA.R. Doc. No. R21-6517; Filed September 23, 2022, 7:44 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: **9VAC25-200. Water Withdrawal Reporting (amending 9VAC25-200-30).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.38 of the Code of Virginia.

Effective Date: November 23, 2022.

Agency Contact: Ryan Green, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4258, FAX (804) 698-4178, or email ryan.green@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-200-30. Applicability and exemptions.

A. Applicability.

1. Except as stated in this section, this chapter applies to every user withdrawing groundwater or surface water in Virginia including the Potomac River abutting Virginia whose average daily withdrawal during any single month exceeds 10,000 gallons per day. Reportable withdrawals include, but are not limited to, those for public water supply, manufacturing, mining, commercial, institutional, livestock watering, artificial fish culture, and steam-electric power generation uses.

2. This chapter applies to every user withdrawing ground or surface water for the purpose of irrigating crops whose withdrawal exceeds 1 million gallons in any single month. Such users need not report withdrawals from ponds collecting diffuse surface water and not situated on a perennial stream as defined on U.S. Geological Survey 7.5-minute series topographic maps, unless the ponds are dug ponds which intercept the groundwater table and hence contain groundwater.

B. Exemptions.

1. This chapter does not apply to:

a. Users reporting under the provisions of the Groundwater Act the information here required, provided the withdrawal is gaged in accordance with this chapter;

b. Drydock fillings;

c. Withdrawals from mines or quarries made for the sole purpose of dewatering the mine or quarry, provided that the water withdrawn is not put to other beneficial uses such as, but not limited to, washing or cooling; and

d. Withdrawals made for the sole purpose of hydroelectric power generation, provided that the water withdrawn is not put to other beneficial uses and that none of it is consumptively used.

2. Users subject to the Virginia Department of Health Waterworks Regulations shall annually report to the board the source and location of water withdrawals and the type of use information required here. They may provide the monthly withdrawal data required here by reference to reports filed with the Virginia Department of Health.

3. Industrial VPDES permittees shall annually report to the board the source and location of water withdrawals and the type of use information required here. They may provide the monthly withdrawal data required here by reference to VPDES discharge monitoring reports filed with the ~~board~~ department provided that:

a. The wastewater return flow to the receiving natural water body is gaged and the total monthly volume is reported on the discharge monitoring reports;

b. There is no substantial temporal lag between natural water withdrawal and wastewater return;

c. Augmentation of the withdrawal (e.g., by collected surface run-off or infiltration/inflow) and diminution of the withdrawal (e.g., by consumption in product or evaporation) are either shown to be negligible or are separately reported pursuant to this chapter as adjustments to the wastewater return flow; and

d. The monthly wastewater return flow, adjusted as necessary in accordance with subdivision 3 c of subsection B, is volumetrically equivalent to monthly withdrawal within a tolerance of ± 10%.

VA.R. Doc. No. R23-7238; Filed September 9, 2022, 2:28 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 9VAC25-220-10, 9VAC25-220-20, 9VAC25-220-40 through 9VAC25-220-120, 9VAC25-220-140, 9VAC25-220-150, 9VAC25-220-170 through 9VAC25-220-240, 9VAC25-220-270, 9VAC25-220-280, 9VAC25-220-290, 9VAC25-220-310; adding 9VAC25-220-15, 9VAC25-220-175, 9VAC25-220-185, 9VAC25-220-187; repealing 9VAC25-220-320).**

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

Effective Date: November 23, 2022.

Agency Contact: Scott Kudlas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4456, FAX (804) 698-4032, or email scott.kudlas@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" as necessary, adding permit rationale, adding criteria for requesting and granting a public hearing in a permit action, adding requirements related to

controversial permits and controversial permit reporting, removing provisions delegating authority, and updating the definition of "board" and citations to the Code of Virginia.

9VAC25-220-10. Definitions.

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

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include but are not limited to protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include but are not limited to domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Domestic and other existing beneficial uses shall be considered the highest priority beneficial uses.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-220-170 and 9VAC25-220-175.

"Department" means the Department of Environmental Quality.

"Existing beneficial consumptive user" means a person who is currently withdrawing water from a stream for a beneficial use and not returning that water to the stream near the point from which it was taken.

"Investor-owned water company" means a water supplier owned by private investors which operates independently of the local government and is regulated by the Department of Health.

"Nonconsumptive use" means the use of water withdrawn from a stream in such a manner that it is returned to the stream without substantial diminution in quantity at or near the point from which it was taken and would not result in or exacerbate low flow conditions.

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

"Serious harm" means man induced reduction to the flow of a surface water resource that results in impairment of one or more beneficial uses.

"Surface water" means any water in the Commonwealth, except groundwater as defined in § 62.1-255 of the Code of Virginia.

"Surface water management area" means a geographically defined surface water area in which the board deemed the levels or supply of surface water to be potentially adverse to public welfare, health, and safety.

"Surface water withdrawal certificate" means a document issued by the ~~board~~ department as found in subsection D of § 62.1-243 of the Code of Virginia.

"Surface water withdrawal permit" means a document issued by the ~~board~~ department evidencing the right to withdraw surface water.

"Water conservation program" means a program incorporating measures or practices which will result in the alteration of water uses resulting in reduction of water losses as contemplated by subsection B of § 62.1-243 of the Code of Virginia.

"Water management program" means a program incorporating measures or practices which will result in the alteration of water uses resulting in reduction of water losses as contemplated by subsection C of § 62.1-243 of the Code of Virginia.

9VAC25-220-15. Permit rationale.

In granting a permit pursuant to this chapter, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit, the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC25-220-20. Purpose.

This chapter delineates the procedures and requirements to be followed in connection with establishment of surface water management areas, the issuance of surface water withdrawal permits and the issuance of surface water withdrawal certificates by the ~~board~~ department pursuant to the Code of Virginia. The establishment of surface water management areas, the issuance of surface water withdrawal permits and surface water withdrawal certificates provide for the protection of beneficial uses during periods of low stream flow.

9VAC25-220-40. Initiate surface water management area proceeding.

A. The board upon its own motion or, in its discretion, upon receipt of a petition by any county, city or town within the surface water management area in question, or any state agency, may initiate a surface water management area proceeding whenever in its judgment there is evidence to indicate that:

1. A stream has substantial instream values as indicated by evidence of fishery, recreation, habitat, cultural or aesthetic properties;

2. Historical records or current conditions indicate that a low flow condition could occur which would threaten important instream uses; and

3. Current or potential offstream uses contribute to or are likely to exacerbate natural low flow conditions to the detriment of instream values.

B. If the board finds that the conditions required in subsection A of this section exist and further finds that the public welfare, health and safety require that regulatory efforts be initiated, the board shall, by regulation, declare the area in question to be a surface water management area.

C. In its proceeding to declare an area to be a surface water management area, the board shall, by regulation, determine when the level of flow is such that permit conditions in a surface water management area are in force. This flow level will be determined for each regulation establishing a surface water management area and included in it.

D. The board shall include in its decision a definition of the boundaries of the surface water management area.

E. The regulations may provide that the ~~board~~ department, or the ~~board executive~~ director may by order, declare that the level of flow is such that permit conditions are applicable for all or part of a surface water management area.

F. The board shall follow its Public Participation Guidelines (9VAC25-11) for all hearings contemplated under this section. If after a public hearing held pursuant to § 2.2-4007.01 of the Virginia Administrative Process Act, or at the request of an affected person or on the board motion, a hearing shall be held under § 2.2-4009 of the Virginia Administrative Process Act.

9VAC25-220-50. Notice of surface water management area.

A. The ~~board~~ department shall cause notice of the declaration of a surface water management area to be published in a newspaper of general circulation throughout the area covered by the declaration.

B. The ~~board~~ department shall mail, by electronic or postal delivery, a copy of its decision on the proposed declaration of a surface water management area to the mayor or chairman of the governing body of each county, city or town within which any part of the area lies, or which is known by the ~~board~~ department to make offstream use of water from the area, and to the chief administrative officer of any federal facility known by the ~~board~~ department to be using water from within the area.

9VAC25-220-60. Agreements.

A. The ~~board~~ department shall encourage, promote and recognize voluntary agreements among persons withdrawing surface water in the same surface water management area.

B. When the ~~board~~ department finds that any such agreement, executed in writing and filed with the ~~board~~ department, is consistent with the intent, purposes and requirements of this chapter, the ~~board~~ department shall approve the agreement following a public hearing.

C. The ~~board~~ department shall provide at least 60 days' notice of the public hearing to the public in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies. The ~~board~~ department shall be a party to the agreement.

D. The agreement, until terminated, shall control in lieu of a formal order, rule, ~~regulation,~~ or permit issued by the department or a regulation adopted by the board under the provisions of this chapter and shall be deemed to be a case decision under the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Permits issued in accordance with this chapter shall incorporate the terms of this agreement.

E. Any agreement shall specify the amount of water affected by it.

F. Any agreement approved by the ~~board~~ department may include conditions that can result in its amendment or termination by the ~~board,~~ department following a public hearing if the ~~board~~ department finds that it or its effect is inconsistent with the intent, purposes and requirements of this chapter. Such conditions include the following:

1. A determination by the ~~board~~ department that the agreement originally approved by the ~~board~~ department will not further the purposes of this chapter;

2. A determination by the ~~board~~ department that circumstances have changed such that the agreement originally approved by the ~~board~~ department will no longer further the purposes of this chapter; or

3. One or more of the parties to the agreement is not fulfilling its commitments under the agreement.

The ~~board~~ department shall provide at least 60 days' notice of the public hearing to the public and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement and shall make a good faith effort to so notify recreational user groups, conservation organizations and fisheries management agencies.

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~~ department pursuant to 9VAC25-220-60. A complete application shall be submitted to the ~~board~~ department 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~~ Department of Environmental Quality or the Department of 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~~ department 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~~ department.

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~~ department 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 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~~ department.

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~~ department 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~~ department 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~~ department 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~~ department, 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~~ department 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~~ department deems necessary. All applicants for a permit must submit a complete permit application in accordance with subsection A of this section.

9VAC25-220-80. Conditions applicable to all permits.

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this chapter shall be construed to relieve the surface water withdrawal permit holder of the duty to comply with all applicable federal and state statutes, regulations, standards and prohibitions. Any permit noncompliance is a violation of the law and is grounds for enforcement action, permit suspension, cancellation, revocation, modification or denial of a permit renewal application.

B. Duty to mitigate. The permittee shall take all reasonable steps to (i) avoid all adverse environmental impact which could result from the activity, (ii) where avoidance is impractical, minimize the adverse environmental impact, and (iii) where impacts cannot be avoided, provide mitigation of the adverse impact on an in-kind basis.

C. Permit action.

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

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

3. Permits may be modified, revoked and reissued or terminated upon the request of the permittee, or upon ~~board~~ department initiative to reflect the requirements of any changes in the statutes or regulations.

D. Inspection and entry. Upon presentation of credentials and upon consent of the owner or custodian, any duly authorized agent of the ~~board~~ department may, at reasonable times and under reasonable circumstances:

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

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

E. Duty to provide information. The permittee shall furnish to the ~~board~~ department, within a reasonable time, any information which the ~~board~~ department may request to determine whether cause exists for modifying, reissuing, suspending and cancelling the permit, or to determine compliance with the permit. The permittee shall also furnish to the ~~board~~ department, upon request, copies of records required to be kept by the permittee. This information shall be furnished to the ~~board~~ department pursuant to § 62.1-244 of the Code of Virginia.

F. Monitoring and records requirements.

1. Monitoring shall be conducted according to approved methods as specified in the permit or as approved by the ~~board~~ department.

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

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

4. Records of monitoring information shall include:

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

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

c. The date the measurements were compiled;

d. The name of the individuals who compiled the measurements;

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

f. The results of such techniques or methods.

G. Permit conditions become applicable.

1. Permit conditions become applicable in a surface water management area upon notice by the ~~board~~ department to each permittee by mail, by electronic or postal delivery, or cause notice of that to be published in a newspaper of general circulation throughout the area.

2. The ~~board~~ department shall notify each permittee by mail or cause notice of that to be published in a newspaper of general circulation throughout the surface water management area when the declaration of water shortage is rescinded.

9VAC25-220-90. Signatory requirements.

Any application, report, or certification shall be signed as follows:

1. Application.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 in second-quarter 1980 dollars, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.

c. For a partnership or sole proprietorship, by a general partner or proprietor respectively.

d. Any application for a permit under this regulation must bear the signatures of the responsible party and any agent acting on the responsible party's behalf.

2. Reports. All reports required by permits and other information requested by the ~~board~~ department shall be signed by:

a. One of the persons described in subdivision a, b or c of this section; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision a, b, or c of this section; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization shall be submitted to the ~~board~~ department prior to or together with any separate information, or applications to be signed by an authorized representative.

3. Certification of application and reports. Any person signing a document under subdivision 1 or 2 of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete."

9VAC25-220-100. Establishing applicable limitations or other permit conditions.

In addition to the conditions established in 9VAC25-220-80, each permit shall include conditions meeting the following requirements where applicable:

1. Instream flow conditions.

a. Subject to the provisions of § 62.1-242 et seq. of the Code of Virginia and subject to the authority of the State Corporation Commission over hydroelectric facilities contained in § 62.1-80 et seq. of the Code of Virginia instream flow conditions may include but are not limited to conditions that limit the volume and rate at which water may be withdrawn at certain times and conditions that require water conservation and reductions in water use.

b. This flow requirement shall be appropriate for the protection of beneficial uses.

c. In determining the level of flow in need of protection of beneficial uses, the ~~board~~ department shall consider, among other things, recreation and aesthetic factors and the potential for substantial and long-term adverse impact on fish and wildlife found in that particular surface water management area. Should this determination indicate a need to restrict water withdrawal, the ~~board~~ department shall consider, among other things, the availability of alternative water supplies, the feasibility of water storage or other mitigating measures, and the socioeconomic impacts of such restriction on the potentially affected water users and on the citizens of the Commonwealth in general.

2. Water conservation or management plans.

a. Subject to the provisions of § 62.1-242 et seq. of the Code of Virginia permit conditions may include voluntary and mandatory conservation measures.

b. Political subdivisions and investor-owned water companies shall have water conservation plans which shall include, but not be limited to, the following:

(1) Use of water saving plumbing fixtures in new and renovated plumbing as provided under the Uniform Statewide Building Code, Chapter 6 (§ 36-97 et seq.) of Title 36 of the Code of Virginia;

(2) A water loss reduction program;

(3) A water use education program; and

(4) Ordinances prohibiting waste of water generally and providing for mandatory water use restrictions, with penalties during water shortage emergencies.

c. Beneficial consumptive users shall have water management plans which shall include, but not be limited to, the following:

(1) Use of water saving plumbing;

(2) A water loss reduction program;

(3) A water use education program; and

(4) Mandatory reductions during water shortage emergencies. However, these reductions shall be on an equitable basis with other uses exempted under subsection C of 9VAC25-220-70.

3. Compliance requirements. The permit shall include requirements to comply with all appropriate provisions of state laws and regulations.

4. Duration of permits. Surface water withdrawal permits issued under this chapter shall have an effective duration of not more than 10 years. The term of these permits shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and reissuance of a new permit.

5. Monitoring requirements as conditions of permits.

a. All permits shall specify:

(1) Requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit; and

(2) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring.

b. All permits shall include requirements to report monitoring results with a frequency dependent on the nature and effect of the water withdrawal, but in no case less than once per year.

6. Reissued permits. When a permit is renewed or reissued, limitations or conditions must be in conformance with current limitations or conditions.

9VAC25-220-110. Draft permit formulation.

A. Upon receipt of a complete application, pursuant to subsection A of 9VAC25-220-70, the ~~board~~ department shall review the application and make a tentative determination to issue the permit or deny the application. In considering whether to issue or deny a permit under this section, the ~~board~~ department shall consider:

1. The number of persons using a stream and the object, extent and necessity of their representative withdrawal uses;

2. The nature and size of the stream;

3. The type of businesses or activities to which the various uses are related;

4. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream uses;

5. The effects on beneficial uses; and

6. Any other relevant factors.

B. If a tentative decision is to issue the permit then a draft permit shall be prepared in advance of public notice. The

following tentative determinations shall be incorporated into a draft permit:

1. The level of flow that activates the permit conditions, water withdrawal limitations, and other requirements applicable to the permit;

2. Monitoring requirements;

3. Instream flow requirements; and

4. Water conservation or management requirements.

C. If the tentative decision is to deny the application, the ~~board~~ department shall do so in accordance with 9VAC25-220-240.

9VAC25-220-120. Permit issuance.

A. Upon completion of all public involvement and consideration of all comments, the ~~executive~~ director may grant the permit~~, or, at his discretion, transmit the application, together with all written comments thereon and relevant staff documents and staff recommendations, if any, to the board for its decision~~.

B. Permits issued by priority system.

1. For the purposes of this chapter, the following water-use classification system based on beneficial uses, instream and offstream, shall be used by the ~~board~~ department when issuing permits:

a. Class I uses are domestic (including public water supply). Class I uses are all existing uses as of July 1, 1989. Included among existing uses shall be any projected use which has been relied upon in the development of an industrial project and for which a permit has been obtained by January 1, 1989, pursuant to § 404 of the Clean Water Act;

b. Class II uses are new uses, not existing on July 1, 1989. These uses include both instream uses, protection of fish and wildlife habitat, maintenance of waste assimilation and offstream uses, agriculture, electric power generation, commercial and industrial; and

c. Class III uses are new uses not existing on July 1, 1989. They include, but are not limited to, recreation, navigation, and cultural and aesthetic values.

2. Class I uses shall be given the highest priority in the issuance of permits for other beneficial uses. Class II and Class III uses are of decreasing priority respectively.

3. The ~~board~~ department may impose restrictions on one or more classes of beneficial uses as may be necessary to protect the surface water resources of the area from serious harm.

4. In its permit decision, the ~~board~~ department shall attempt to balance offstream and instream uses so that the welfare of the citizens of the Commonwealth is maximized without imposing unreasonable burdens on any individual water user or water-user group. The decision to implement this balance may consist of approval of withdrawal without restriction, approval subject to conditions designed to protect instream uses from unacceptable adverse effects, or disapproval of the withdrawal.

9VAC25-220-140. Variances and alternative measures.

A. Variances may be applied for, and alternative measures may be used to:

1. Prevent undue hardship; and

2. Ensure equitable distribution of water resources.

B. Alternative measures may include, but are not limited to, the following:

1. Alternative or secondary water source;

2. Water storage during times of minimum use and high stream flow;

3. Ponds, pits, ditches and basins when the sole source of water is storm water run-off; and

4. Vary water withdrawal based on time of day, the season or the stream flow.

C. The ~~board~~ department must approve all variances and use of alternative measures.

9VAC25-220-150. Public notice of permit action and public comment period.

A. Every draft permit shall be given public notice paid for by the owner, by publication once in a newspaper of general circulation in the area affected by the withdrawal.

B. The ~~board~~ department shall allow a period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request a public hearing.

C. The contents of the public notice of an application for a permit, or proposed permit action shall include:

1. Name and address of the applicant. If the location of the activity resulting in the withdrawal of water differs from the address of the applicant the notice shall also state the location of the withdrawal in sufficient detail such that the specific location may be easily identified;

2. Brief description of the business or activity to be conducted at the withdrawal site;

3. The name of the affected waterway;

4. A statement of the tentative determination to issue or deny a permit;

5. A brief description of the final determination procedure;

6. The address and phone number of a specific person at the state office from whom further information may be obtained; and

7. A brief description on how to submit comments and request a public hearing.

9VAC25-220-170. Public comments and hearing.

A. The ~~board~~ department shall provide a comment period of at least 30 days following the date of public notice of the formulation of a draft permit during which interested persons may submit written comments and requests for an informal hearing on the proposed permit. All written comments submitted during the comment period shall be retained by the ~~board~~ department and considered during its final decision process.

B. The ~~executive~~ director shall consider all written comments and requests for an informal hearing received during the comment period, and shall make a determination on the necessity of an informal hearing in accordance with ~~9VAC25-230-50. All proceedings, informal hearings and decisions therefrom will be in accordance with Procedural Rule No. 1 (9VAC25-230-10 et seq.)~~ 9VAC25-220-175.

C. Should the ~~executive~~ director, in accordance with ~~Procedural Rule No. 1 (9VAC25-230-10 et seq.)~~ 9VAC25-220-175, determine to dispense with the informal hearing, ~~he~~ the director may grant the permit~~, or, at his discretion, transmit the proposal, application or request, together with all written comments thereon and relevant staff documents and staff recommendations, if any, to the board for its decision~~.

9VAC25-220-175. Criteria for requesting and granting a public hearing in a permit action.

A. During the public comment period on a permit action in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing to contest the action or terms and conditions of the permit.

B. Requests for a public hearing shall contain the following information:

1. The name and postal mailing or email address of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative;

3. The reason for the request for a public hearing;

4. A brief, informal statement setting forth the factual nature and extent of the interest of the requester or the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations to those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Water Control Board.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the comment period on the permit action and, within 30 calendar days following the expiration of the time period for the submission of requests, shall grant a public hearing, unless the permittee or applicant agrees to a later date if the director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with or in violation of the basic laws of the State Water Control Board for a water permit action, a federal law, or any regulation promulgated thereunder.

D. The director of DEQ shall notify by email or postal mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

E. If the request for a public hearing is granted, the director shall:

1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the notice of the decision to grant the public hearing.

2. Cause or require the applicant to publish notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

F. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

G. The director may, at the director's discretion, convene a public hearing in a permit action.

9VAC25-220-180. Public notice of hearing.

A. Public notice of any informal hearing held pursuant to 9VAC25-220-170 and 9VAC25-220-175 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the county or city where the activity is to occur; and

2. Notice of the informal hearing shall be sent to all persons and government agencies which received a copy of the notice of proposed regulation or permit application and to those persons requesting an informal hearing or having commented in response to the public notice.

B. Notice shall be effected pursuant to subdivisions A 1 and 2 above at least 30 days in advance of the informal hearing.

C. The content of the public notice of any hearing held pursuant to 9VAC25-220-170 and 9VAC25-220-175 shall include at least the following:

1. Name and address of each person whose application will be considered at the informal hearing and a brief description of the person's activities or operations;

2. The precise location of such activity and the state surface waters that will or may be affected. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information;

3. A brief reference to the public notice issued for the permit application, including identification number and date of issuance of the permit application unless the public notice includes the informal hearing notice;

4. Information regarding the time and location for the informal hearing;

5. The purpose of the informal hearing;

6. A concise statement of the relevant water withdrawal issues raised by the persons requesting the informal hearing;

7. Contact person and the address of the ~~State Water Control Board~~ Department of Environmental Quality office at which the interested persons may obtain further information, request a copy of the draft permit prepared pursuant to 9VAC25-220-110; and

8. A brief reference to the rules and procedures to be followed at the informal hearing.

D. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

9VAC25-220-185. Controversial permits.

Before rendering a final decision on a controversial permit, the department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at that time. In making its decision, the department shall consider (i) the verbal and written comments received during the comment period and the public hearing made part of the record, (ii) any commentary of the broad, and (iii) the agency files.

9VAC25-220-187. Controversial permits reporting.

At each regular meeting of the board, the department shall provide an overview and update regarding any controversial permits pending before the department that are relevant. Immediately after such presentation by the department, the board shall have an opportunity to respond to the department's presentation and provide commentary regarding such pending permits.

9VAC25-220-190. Public notice that permit conditions are in force.

A. When permit conditions become applicable in a surface water management area, the ~~board~~ department shall notify each permittee by mail, electronic or postal delivery, or cause notice of it to be published in a newspaper of general circulation throughout the area.

B. The ~~board~~ department shall notify each permittee by mail, electronic or postal delivery, or cause notice of it to be published in a newspaper of general circulation throughout the surface water management area when the declaration of water shortage is rescinded.

9VAC25-220-200. Rules for modification, revocation and reissuance, suspension, cancellation and denial.

Permits shall be modified, revoked and reissued, suspended, or cancelled only as authorized by this section as follows:

1. A permit may be modified in whole or in part, revoked and reissued, suspended, or cancelled.

2. Permit modifications shall not be used to extend the term of a permit.

3. Modification, revocation and reissuance, suspension, or cancellation may be initiated by the ~~board~~ department, permittee, or other person, under applicable laws or the provisions of this chapter.

4. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100, a permit can be suspended or cancelled whenever the ~~board~~ department finds that the holder of a permit is willfully violating any provision of such permit or any other provision of § 62.1-242 et seq. of the Code of Virginia. Whenever a permit is suspended the conditions to lift the suspension will be included in the ~~board's~~ department's decision. The determination to suspend, cancel or impose conditions on its future use in order to prevent future violations shall be based on the seriousness of the offense, the permittee's past record, the effect on beneficial uses, the effect on other users in the area

and any other relevant factors. The causes for suspension or cancellation are as follows:

a. Willful noncompliance by the permittee with any condition of the permit;

b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

c. The permittee's violation of a special or judicial order; and

d. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by permit modification or cancellation.

5. In considering whether to modify, revoke and reissue, or deny a permit under this section, the ~~board~~ department shall consider:

a. The number of persons using a stream and the object, extent and necessity of their representative withdrawal uses;

b. The nature and size of the stream;

c. The type of businesses or activities to which the various uses are related;

d. The importance and necessity of the uses claimed by permit applicants, or of the water uses of the area and the extent of any injury or detriment caused or expected to be caused to instream or offstream uses;

e. The effects on beneficial uses; and

f. Any other relevant factors.

9VAC25-220-210. Causes for modification.

A permit may be modified, but not revoked and reissued, except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of permit conditions that differ from those of the existing permit or are absent from it;

2. When new information becomes available about the operation or withdrawal covered by the permit which was not available at permit issuance and would have justified the application of different permit conditions at the time of permit issuance;

3. When a change is made in the methodology or regulations on which the permit was based;

4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;

5. When the ~~board~~ department determines that minimum instream flow levels resulting from the permittee's withdrawal of water is detrimental to the instream beneficial use and that the withdrawal of water should be subject to further net limitations; and

6. When other states were not notified of the change in the permit and their waters may be affected by the withdrawal.

9VAC25-220-220. Transferability of permits.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a permit shall be transferred only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner.

B. Automatic transfer. Any permit shall be automatically transferred to a new user if:

1. The current user notifies the ~~board~~ department 30 days in advance of the proposed transfer of the permit to the facility or property;

2. The notice to the ~~board~~ department includes a written agreement between the existing and proposed new user containing a specific date of transfer of permit responsibility, coverage and liability between them; and

3. The ~~board~~ department does not within the 30-day time period notify the existing user and the proposed user of its intent to modify or revoke and reissue the permit.

9VAC25-220-230. Minor modification.

A. Upon request of the permittee, or upon ~~board~~ department initiative with the consent of the permittee, minor modifications may be made in the permit without following the public involvement procedures.

B. For surface water withdrawal permits, minor modification may only:

1. Correct typographical errors;

2. Require reporting by the permittee at a greater frequency than required in the permit; and

3. Allow for a change in ownership or operational control when the ~~board~~ department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability from the current to the new permittee has been submitted to the ~~board~~ department.

9VAC25-220-240. Denial of a permit.

A. The applicant shall be notified by letter of the staff's decision to recommend to the ~~board~~ department denial of the permit requested.

B. The staff shall provide sufficient information to the applicant regarding the rationale for denial, such that the applicant may at his option: (i) modify the application in order

to achieve a favorable recommendation; (ii) withdraw his application; or (iii) proceed with the processing on the original application.

C. Should the applicant withdraw his application, no permit will be issued.

D. Should the applicant elect to proceed with the original project, the staff shall make its recommendation of denial to the ~~executive~~ director for determination of the need for public notice as provided for in accordance with Part III of this chapter (9VAC25-220-150 et seq.).

9VAC25-220-270. Duty to re-apply.

Any person who has an effective surface water withdrawal certificate must apply for a new certification at least 180 days before the expiration date of an effective certificate unless permission for a later date has been granted by the ~~board~~ department.

9VAC25-220-280. Complete application required.

A. A complete Surface Water Withdrawal Certificate application to the ~~State Water Control Board~~ Department of Environmental Quality shall, as a minimum, consist of the following:

1. General requirements.

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 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 of the withdrawal, including the importance for the need for this use; and

d. Any alternative water supplies or water storage.

2. Specific requirements. Water conservation or management plans as found in subdivision 2 of 9VAC25-220-100.

B. Where an application is considered incomplete the ~~board~~ department 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~~ department considers the application complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from a certificate application, or submitted incorrect information in a certificate application or in any report to the ~~board~~ department, he shall immediately submit such facts or the correct information.

9VAC25-220-290. Information requirements.

All applicants for a Surface Water Withdrawal Certificate shall provide all such information consistent with this chapter as the ~~board~~ department deems necessary. All applicants for a certificate must submit a complete application in accordance with 9VAC25-220-280.

9VAC25-220-310. Enforcement.

The ~~board~~ department may enforce the provisions of this chapter utilizing all applicable procedures under the law.

9VAC25-220-320. ~~Delegation of authority.~~ (Repealed.)

~~The executive director, or a designee acting for him, may perform any act of the board provided under this chapter.~~

VA.R. Doc. No. R23-7175; Filed September 9, 2022, 2:28 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: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-5; repealing 9VAC25-260-550).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; Clean Water Act (33 USC § 1251 et seq.); 40 CFR Part 131.

Effective Date: November 23, 2022.

Agency Contact: David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9180, FAX (804) 698-4178, or email david.whitehurst@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-260-5. Definitions.

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

"Algicides" means chemical substances, most commonly copper-based, used as a treatment method to control algae growths.

"Board" means State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Chesapeake Bay and its tidal tributaries" means all tidally influenced waters of the Chesapeake Bay; western and eastern coastal embayments and tributaries; James, York, Rappahannock and Potomac Rivers and all their tidal tributaries to the end of tidal waters in each tributary (in larger rivers this is the fall line); and includes subdivisions 1, 2, 3, 4, 5, and 6 of 9VAC25-260-390, subdivisions 1, 1b, 1d, 1f and 1o of 9VAC25-260-410, subdivisions 5 and 5a of 9VAC25-260-415, subdivisions 1 and 1a of 9VAC25-260-440, subdivisions 2, 3, 3a, 3b and 3e of 9VAC25-260-520, and subdivision 1 of 9VAC25-260-530. This definition does not include free flowing sections of these waters.

"Criteria" means elements of the board's water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

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

"Designated uses" means those uses specified in water quality standards for each waterbody or segment whether or not they are being attained.

"Drifting organisms" means planktonic organisms that are dependent on the current of the water for movement.

"Epilimnion" means the upper layer of nearly uniform temperature in a thermally stratified man-made lake or reservoir listed in 9VAC25-260-187 B.

"Existing uses" means those uses actually attained in the waterbody on or after November 28, 1975, whether or not they are included in the water quality standards.

"Lacustrine" means the zone within a lake or reservoir that corresponds to nonflowing lake-like conditions such as those near the dam. The other two zones within a reservoir are riverine (flowing, river-like conditions) and transitional (transition from river to lake conditions).

"Man-made lake or reservoir" means a constructed impoundment.

"Mixing zone" means a limited area or volume of water where initial dilution of a discharge takes place and where numeric water quality criteria can be exceeded but designated uses in the waterbody on the whole are maintained and lethality is prevented.

"Natural lake" means an impoundment that is natural in origin. There are two natural lakes in Virginia: Mountain Lake in Giles County and Lake Drummond located within the boundaries of Chesapeake and Suffolk in the Great Dismal Swamp.

"Passing organisms" means free swimming organisms that move with a mean velocity at least equal to the ambient current in any direction.

"Primary contact recreation" means any water-based form of recreation, the practice of which has a high probability for total body immersion or ingestion of water (examples include but are not limited to swimming, water skiing, canoeing and kayaking).

"Pycnocline" means the portion of the water column where density changes rapidly because of salinity and/or temperature. In an estuary the pycnocline is the zone separating deep, cooler more saline waters from the less saline, warmer surface waters. The upper and lower boundaries of a pycnocline are measured as a change in density per unit of depth that is greater than twice the change of the overall average for the total water column.

"Secondary contact recreation" means a water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of waters (examples include but are not limited to wading, boating and fishing).

"Swamp waters" means waters with naturally occurring low pH and low dissolved oxygen caused by (i) low flow velocity that prevents mixing and reaeration of stagnant, shallow waters and (ii) decomposition of vegetation that lowers dissolved oxygen concentrations and causes tannic acids to color the water and lower the pH.

"Use attainability analysis" means a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in 9VAC25-260-10 H.

"Water quality standards" means provisions of state or federal law which consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the federal Clean Water Act (33 USC § 1251 et seq.).

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

~~Part X~~

~~Designations of Authority~~

9VAC25-260-550. ~~Designations of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7284; Filed September 9, 2022, 2:29 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: **9VAC25-280. Ground Water Standards (amending 9VAC25-280-10; repealing 9VAC25-280-90).**

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

Effective Date: November 23, 2022.

Agency Contact: Scott Kudlas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4456, FAX (804) 698-4178, or email scott.kudlas@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," removing delegation of authority provisions, and correcting Code of Virginia citations.

9VAC25-280-10. Definitions.

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

"Board" means State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Criteria" means elements of the board's ground water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, ground water quality will generally protect the designated use.

"Department" means the Department of Environmental Quality.

"Ground water quality standards" means provisions of state law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based upon such uses. Ground water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia).

9VAC25-280-90. ~~Designations of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7239; Filed September 9, 2022, 2:29 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: **9VAC25-370. Policy for the Protection of Water Quality in Virginia's Shellfish Growing Waters (amending 9VAC25-370-10, 9VAC25-370-20, 9VAC25-370-30).**

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

Effective Date: November 23, 2022.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, FAX (804) 698-4178, or email andrew.hammond@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," removing delegation of authority provisions, and correcting Code of Virginia citations.

9VAC25-370-10. Socio-economic hearings management.

In the conduct of these hearings, as required by the board's water quality standards on projects that may result in shellfish condemnations, it will be the ~~board's~~ Department of Environmental Quality's policy to request information from appropriate state agencies such as the Department of Health, Virginia Marine Resources Commission, and the Virginia Institute of Marine Science, from the Virginia Seafood Council membership and from private owners and others as appropriate.

9VAC25-370-20. Evaluation of applications.

In the ~~board's~~ Department of Environmental Quality's (department's) decision-making process on applications for any new industries, sewage treatment plants, housing developments, marinas, dredging, spoil disposal, bulkheading, or any other new or expanded operations that would directly or indirectly cause condemnations of shellfish growing areas, it

will be the ~~board's~~ department's policy, in giving adequate protection to viable shellfish resources, to include an evaluation of reasonable potential as well as actual productivity data for the affected areas.

9VAC25-370-30. Coordination with other agencies.

In its continuing efforts of pollution abatement to protect existing water quality and development of new programs as may be necessary for restoration of currently condemned shellfish areas, it will be the policy of the ~~board~~ Department of Environmental Quality to integrate its programs with other state and federal programs which would also have as their sole or partial objective the continued viability of the Commonwealth's seafood and shellfish resources.

VA.R. Doc. No. R23-7247; Filed September 9, 2022, 2:29 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: **9VAC25-380. Wetlands Policy (amending 9VAC25-380-30, 9VAC25-380-40).**

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

Effective Date: November 23, 2022.

Agency Contact: Dave Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, or email dave.davis@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-380-30. Policy.

A. In its decision processes, it shall be the ~~board's~~ Department of Environmental Quality's policy to give particular cognizance and consideration to any proposal to the ~~State Water Control Board~~ Department of Environmental Quality (department) that has the potential to damage wetlands, to recognize the irreplaceable value and man's dependence on them to maintain an environment acceptable to society, and to preserve and protect them from damaging misuses.

B. It shall be the ~~board's~~ department's policy to minimize alteration in the quantity or quality of the natural flow of water that nourishes wetlands and to protect wetlands from adverse dredging or filling practices, solid waste management practices, siltation, or the addition of pesticides, salts, or toxic materials arising from non-point source wastes and through construction activities, and to prevent violation of applicable water quality standards from such environmental insults.

C. It shall be the policy of ~~this board~~ the department not to approve the construction of waste water treatment facilities or other waste treatment-associated appurtenances which may interfere with the existing wetland ecosystem except where no other alternative of lesser environmental damage is found to be feasible. In the application for such facilities or appurtenances, where there is reason to believe that wetlands will be damaged, an assessment will be requested from the applicant that delineates the various alternatives that have been investigated for the control or treatment of the waste water, including the reasons for rejecting those alternatives not used. A full economic appraisal of all alternatives should be included to the extent possible.

D. To promote the most environmentally protective measures for the wetlands, it shall be the policy of the ~~board~~ department to advise those applicants for waste treatment facilities that the selection of the most environmentally protective alternative should be made, and to advise those applicants for discharge permits for all other activities which may affect the wetlands that those activities should be carried in the most environmentally protective manner. The Virginia Institute of Marine Science, the Marine Resources Commission, and any other appropriate state or federal agency will be consulted to aid in the determination of the probable impact on the pertinent fish and wildlife resources of wetlands. In the event of projected significant adverse environmental impact, a public hearing on the wetlands issue may be held to aid in the selection of the most appropriate action, and the ~~board~~ department may deny the issuance of a discharge permit, and may recommend against the furnishing of appropriate state or federal grant funds.

9VAC25-380-40. Implementation.

The ~~board~~ Department of Environmental Quality will apply this policy to the extent of its authorities in conducting all program activities, including regulatory activities, research, development and demonstration, technical assistance, and the administration of all state and federal grants programs.

VA.R. Doc. No. R23-7248; Filed September 9, 2022, 2:29 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: **9VAC25-390. Water Resources Policy (amending 9VAC25-390-30, 9VAC25-390-40).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.38 of the Code of Virginia.

Effective Date: November 23, 2022.

Agency Contact: Scott Kudlas, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1104, Richmond, VA 23218, telephone (804) 698-4456, FAX (804) 698-4032, or email scott.kudlas@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," removing delegation of authority provisions, and correcting Code of Virginia citations.

9VAC25-390-30. Policies.

Governed by these precepts and in order to fulfill its statutory responsibilities in the development of the Water Resources Policy, the ~~board~~ Department of Environmental Quality (department) will observe the following specific policies in preparing Water Resource Management Plans, advising on the adequacy and desirability of water resource projects, and authorizing specific water resource projects or in commenting on projects which affect water resources.

1. Natural water sources (groundwater and surface water).

a. Community, natural resource and transportation development should proceed in such a way that the adverse effect on run-off (rates, quality and quantity) and ground water recharge are minimized, that remedial structures (such as spreading basins and flow retarding structures) are incorporated as permanent features of developments and that adequate financial and legal provisions are made for the maintenance of such structures.

b. Total withdrawals from coastal zone aquifers should be limited to such a quantity as to prevent the intrusion of salinity beyond the limit determined acceptable for the beneficial uses of the aquifer.

c. Total withdrawals from a specific aquifer shall not exceed estimated recharge except for short (one or two year) periods of time: the divergence should not be so great as to affect unreasonably legal rights to withdrawal or to affect the capability of the aquifer to be recharged fully in the future.

d. Conjunctive use of groundwater and surface water is encouraged.

2. Beneficial use and public benefit.

a. The natural values and natural processes occurring in water resources in an undisturbed state constitute a substantial social and economic benefit to the citizens of the Commonwealth, and protection of these processes should be considered in any resource management plan.

b. The public shall have full access to future facilities paid for by general public funds to the extent that such access is compatible with project purposes and to the extent that the primary purpose of the facility is not defeated.

c. Once a project site has been approved by the ~~board~~ department it will be a policy of the ~~board~~ department to encourage preservation of the site by other state agencies.

d. Flow releases from reservoirs for the purpose of maintaining minimum flows necessary for prevention of eutrophic conditions and for protection of fish, wildlife and aesthetic values will be considered as beneficial uses.

e. Generation of electricity by hydropower, both in conventional and pumped storage developments, is considered a beneficial use of water resources provided that the system is so operated that neither maximum nor minimum flow releases are unreasonable and so that the rate of flow does not change so rapidly as to be hazardous.

f. Water resource projects and sewerage systems shall be so designed, operated and maintained that hazards to health, public safety and environmental values are minimized.

g. The consideration of water resources projects by the ~~board~~ department shall include coordination with other public agencies in order to ensure that all relevant public policy and formal standards will have an appropriate bearing on the final decision.

3. Environmental protection.

a. The long-term protection of the environment shall be the guiding criterion in decisions relating to water and related land resources.

b. Channel management projects should be designed, constructed and operated in such a way as to minimize, and preferable to avoid, both short term and long term adverse environmental effects; the capability of water resources to absorb change shall be a designed constraint for such projects (e.g. erosion during construction).

c. Agricultural and urban channelization projects in natural water courses should be limited in size to that essential for the protection of property and should be developed and constructed in such a way that fish and wildlife and aesthetic values are protected, that erosion and flood hazards are not increased, and that groundwater is not adversely affected.

d. Water resource projects and sewerage system plans shall be accompanied by an adequate environmental evaluation.

4. Pollution and wasteful use.

a. Industrial processes should be designed to minimize system demand through reuse and process change and to

minimize discharge of wastes. As a goal the ~~board~~ department favors the design of industrial processes with minimum withdrawal.

b. Flow releases from reservoir systems to dilute wastes are not to be considered as a substitute for adequate treatment of waste from industry, agriculture or municipalities.

c. No water storage reservoir project will be endorsed or approved unless accompanied by adequate plans and programs for safeguarding reservoir storage from loss through sedimentation from upstream erosion and shoreline erosion which may include the use of upstream sedimentation basins and the control of pollutants from all sources. Any such plan and project shall have adequate legal and financial support.

d. Plumbing and building codes should prevent needless waste of water, without interfering with maintenance of health values. Metering of municipal water deliveries to users is encouraged.

e. The discharge of pollutants into ground water aquifers shall be contrary to ~~board~~ department policy except that brine derived from naturally saline aquifers may be returned to these aquifers and chemicals and water may be used in connection with the exploration for and development of water, brines, oil and natural gas to the extent that such uses do not result in pollution of groundwater.

f. Spoils produced from original dredging and channel maintenance projects should not be disposed of in any manner that would in itself adversely modify circulation in estuaries or wetlands. Installation and maintenance of drainage ditches, including disposition of any spoils produced by them, or use of drain tile is permissible in managing wet or soggy agricultural lands.

g. Fail-safe type mechanisms should be provided for all facilities designed to store substances which might be hazardous to stream environment or to ground water.

h. Fail-safe devices shall be incorporated in the construction of wastewater treatment facilities to prevent discharges which would create a potential hazard to downstream uses.

All sewer systems shall be so designed and operated that bypassing occurs only under emergency conditions and that nearby residents and official agencies are informed and alerted whenever such bypassing of raw sewage occurs.

5. Water supply and storage.

a. Municipal areas should have adequate off-stream raw water storage. The amount of storage should be governed by such factors as community size and demand, hydrographic characteristics of the supply areas (including well fields) and susceptibility to accidental contamination.

b. Water systems should be interconnected whenever practicable in order that they may mutually support or aid each other in emergency situations, and assure the best possible uses of available surface and ground water resources. In order to ensure reliability and safety the use or development of multiple or alternate sources should be considered.

c. The use of reclaimed water should be considered in water resources planning for urban areas provided such uses are compatible with the public's health and safety. Acceptable uses which should be considered are:

(1) Cooling waters;

(2) Agricultural;

(3) Irrigation;

(4) Industrial; and

(5) Recreational

The direct reuse of sewage effluents as a raw domestic water source is not recommended.

d. The use of reservoirs for all compatible uses including recreation, municipal and industrial water supply and fish/wildlife management, and the use of reservoir shoreline for all purposes shall be subject to community/project controls which will protect the reservoir against pollution from runoff or discharges from point sources, and to zoning controls which will preserve agreed-upon aesthetic values.

e. Subsurface storage and groundwater recharge should be encouraged subject to the provisions that such practices do not cause pollution of underground water resources.

f. Municipal sewage treatment plants shall, whenever possible, be located to permit the beneficial reuse of effluents for the purposes set forth in subparagraph c above.

g. Criteria for guidance in the withdrawal and use of groundwater should be considered as follows:

(1) The relationships between groundwater and surface water in the area.

(2) Information relating to the planned use of the groundwater, considering use for domestic drinking water as of greatest importance.

(3) The economic effects involved in both the withdrawal and nonwithdrawal of groundwater on the area and the Commonwealth.

(4) The urgency of the need for ground water in a given area.

h. The ~~board~~ department encourages provision of the highest degree of protection for the capacity and quality of reservoirs and storage through programs designed to assure reliable waste treatment systems, effective erosion and run-off controls, and effective control of quality of run-off in newly developed areas.

6. Flood plains and flood control.

a. Development of permanent, private or public structures should be discouraged on the flood plains unless there are overriding economic or social justifications for such development and compatible facilities are designed to withstand inundation and provide for safety of people and property.

b. Communities and individuals should make optimum use of flood plain insurance and the levels of participation will be considered by the ~~board~~ department in recommending protection measures.

Existing or authorized development of the flood plain should be protected at a minimum from a flood with a recurrence interval of 100 years.

c. Flood control measures approved or recommended for any community shall incorporate a cost-effective mix of reservoirs, dry dams, protective levees, structure flood proofing, flood plain zoning and other measures necessary for preservation of environmental values including historic sites.

d. Any proposals for new construction of water or sewerage systems in defined flood plains, with the exception of limited park and recreational facilities or agricultural uses, should be discouraged.

e. In the flood plain, construction of facilities designed to store substances which might be hazardous to the stream environment is discouraged.

f. In approving sewerage projects, the ~~board~~ department will consider the extent to which the proposed project will result in increased erosion, changes in the rate and amount of surface run-off, changes in the development-induced quality of run-off, and increased exposure to flood damage.

7. Financial consideration.

a. Project costs (both nonrecurring and recurring), should be apportioned equitably among the identifiable project beneficiaries.

b. No community or area of Virginia, in the development or management of a water resource project, shall unduly place any hardship on another community or area without just compensation. The ~~board~~ department in acting on a water resource project will consider the extent to which such inequities may be present and the steps, financial and otherwise, necessary to alleviate both short and long range consequences of such inequities. Compensation of individuals disrupted by water resource projects necessarily includes, to the extent reasonably possible, subjective as well as objective valuation factors.

c. Beneficiaries of water resource structures and projects shall be encouraged to adopt user charges based upon the total recurring and nonrecurring costs of the structures or projects.

8. Wetlands. It is the policy of the ~~State Water Control Board~~ department to preserve the wetland ecosystems, both tidal and nontidal, and to protect them from destruction.

9VAC25-390-40. Modification.

The board may, from time to time and after public hearing, adopt, modify, amend or rescind any policy contained herein. Such action may be taken on the board's own motion or by virtue of a citizen action if presented in a manner acceptable to the board. Nothing in this Water Resource Policy statement in any way negates previous specific policy statements of the board.

The ~~board~~ Department of Environmental Quality will review this policy triennially.

VA.R. Doc. No. R23-7240; Filed September 9, 2022, 2:30 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: **9VAC25-580. Underground Storage Tanks: Technical Standards and Corrective Action Requirements (amending 9VAC25-580-10, 9VAC25-580-50, 9VAC25-580-60, 9VAC25-580-70, 9VAC25-580-82, 9VAC25-580-85, 9VAC25-580-100 through 9VAC25-580-130, 9VAC25-580-150, 9VAC25-580-160, 9VAC25-580-180 through 9VAC25-580-220, 9VAC25-580-240 through 9VAC25-580-300, 9VAC25-580-320 through 9VAC25-580-350, 9VAC25-580-370, 9VAC25-580-380, 9VAC25-580-390; repealing 9VAC25-580-360).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.34:9 of the Code of Virginia; 42 USC § 6901 et seq.; 40 CFR Parts 280 and 281.

Effective Date: November 23, 2022.

Agency Contact: Russell P. Ellison, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2670, FAX (804) 698-4266, or email russell.ellison@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board," and removing delegation of authority provisions.

9VAC25-580-10. Definitions.

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

"Aboveground release" means any release to the surface of the land or to surface water. This includes releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

"Airport hydrant fuel distribution system" or "airport hydrant system" means an UST system that fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

"Ancillary equipment" means any devices including such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

"Belowground release" means any release to the subsurface of the land and to groundwater. This includes releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Building official" means the executive official of the local government building department empowered by § 36-105 of the Code of Virginia to enforce and administer the Virginia Uniform Statewide Building Code (USBC) (§ 36-97 et seq. of the Code of Virginia).

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC § 9601 et seq.).

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of the tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"De minimis" means trivial and beyond the intent of regulation, as that term is used at 53 FR 37108-37109.

"Delivery prohibition" is prohibiting the delivery, deposit, or acceptance of product to an underground storage tank system that has been determined to be ineligible by the ~~board~~ department for such delivery, deposit, or acceptance.

"Delivery prohibition tag" means a tag, device, or mechanism on the tank's fill pipes that clearly identifies an underground storage tank system as ineligible for product delivery. The tag or device is easily visible to the product deliverer and clearly states and conveys that it is unlawful to deliver to, deposit into, or accept product into the ineligible underground storage tank system. The tag, device, or mechanism is generally tamper resistant.

"Department" means the Department of Environmental Quality.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to

electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

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

"Dispenser" means equipment located aboveground that dispenses regulated substances from the UST system.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

1. The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if

2. a. Either a continuous onsite physical construction or installation program has begun; or

b. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field constructed.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (42 USC § 9601 et seq.) (but not including any substance regulated as a hazardous waste under subtitle C of RCRA) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (for example, motor gasoline blended with alcohol).

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988 (See also "existing tank system").

"Noncommercial purposes" with respect to motor fuel means not for resale.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Part VII (9VAC25-580-310 et seq.) of this chapter.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

1. In the case of a UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Product deliverer" is any person who delivers or deposits product into an underground storage tank.

"RCRA" means the federal Resource Conservation and Recovery Act of 1976 as amended (42 USC § 6901 et seq.).

"Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health or welfare, or the environment. The term "regulated substance" includes:

1. Any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 USC § 9601 et seq.), but not any substance regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976 (42 USC § 6901 et seq.); and

2. Petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute). The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into groundwater, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore to proper operating condition a tank, a pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment, or other UST system component that has caused a release of product from the UST system or has failed to function properly.

"Replaced" means:

1. For a tank - to remove a tank and install another tank.

2. For piping - to remove 50% or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Secondary containment" or "secondarily contained" means a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

"Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The

effluent from such receptacle is distributed for disposal through the soil, and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored;

3. Septic tank;

4. Pipeline facility (including gathering lines):

a. Regulated under the Natural Gas Pipeline Safety Act of 1968 (49 USC § 1671 et seq.);

b. Regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 USC § 2001 et seq.); or

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Storm water or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank that is described in subdivisions 1 through 9 of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

9VAC25-580-50. Performance standards for new UST systems.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the requirements in this section.

Tanks and piping installed or replaced on or after September 15, 2010, must be secondarily contained and use interstitial monitoring in accordance with subdivision 7 of 9VAC25-580-160, except for suction piping that meets the requirements of subdivisions 2 a (2) (a) through (e) of 9VAC25-580-140. Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the UST system. For cases where the piping is considered to be replaced, the entire piping run must be secondarily contained.

1. Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The tank is constructed of fiberglass-reinforced plastic;

NOTE: The following codes of practice may be used to comply with subdivision 1 a of this section:

(1) Underwriters Laboratories Standard 1316, Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures; or

(2) Underwriter's Laboratories of Canada S615 Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids.

b. The tank is constructed of steel and cathodically protected in the following manner:

(1) The tank is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subdivision 3 of 9VAC25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9VAC25-580-90; or

NOTE: The following codes of practice may be used to comply with subdivision 1 b of this section:

(a) Steel Tank Institute Specification for STI-P3® Specification and Manual for External Corrosion Protection of Underground SteelStorage Tanks;

(b) Underwriters Laboratories Standard 1746, External Corrosion Protection Systems for Steel Underground Storage Tanks;

(c) Underwriters Laboratories of Canada S603, Standard for Steel Underground Tanks for Flammable and Combustible Liquids, and S603.1, Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids, and S631, Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems

(d) Steel Tank Institute Standard F841, Standard for Dual Wall Underground Steel Storage Tanks; or

(e) NACE International Standard Practice SP0285, External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection, and Underwriters Laboratories Standard 58, Standard for Steel Underground Tanks for Flammable and Combustible Liquids.

c. The tank is constructed of steel and clad or jacketed with a noncorrodible material; or

NOTE: The following codes of practice may be used to comply with subdivision 1 c of this section:

(1) Underwriters Laboratories Standard 1746, External Corrosion Protection Systems for Steel Underground Storage Tanks;

(2) Steel Tank Institute ACT-100® Specification F894, Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks;

(3) Steel Tank Institute ACT-100-U® Specification F961, Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks; or

(4) Steel Tank Institute Specification F922, Steel Tank Institute Specification for Permatank®.

d. The tank construction and corrosion protection are determined by the ~~board~~ department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than subdivisions 1 a, 1 b, and 1 c of this section.

2. Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

a. The piping is constructed of a noncorrodible material.

NOTE: The following codes of practice may be used to comply with subdivision 2 a of this section:

(1) Underwriters Laboratories Standard 971, Nonmetallic Underground Piping for Flammable Liquids; or

(2) Underwriters Laboratories of Canada Standard S660, Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids.

b. The piping is constructed of steel and cathodically protected in the following manner:

(1) The piping is coated with a suitable dielectric material;

(2) Field-installed cathodic protection systems are designed by a corrosion expert;

(3) Impressed current systems are designed to allow determination of current operating status as required in subdivision 3 of 9VAC25-580-90; and

(4) Cathodic protection systems are operated and maintained in accordance with 9VAC25-580-90; or

NOTE: The following codes of practice may be used to comply with subdivision 2 b of this section:

(a) American Petroleum Institute Recommended Practice 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;

(b) Underwriters Laboratories Subject 971A, Outline of Investigation for Metallic Underground Fuel Pipe;

(c) Steel Tank Institute Recommended Practice R892, Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems;

(d) NACE International Standard Practice SP0169, Control of External Corrosion on Underground or Submerged Metallic Piping Systems; or

(e) NACE International Standard Practice SP0285, External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection.

c. The piping construction and corrosion protection are determined by the ~~board~~ department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in subdivisions 2 a and 2 b of this section.

3. Spill and overfill prevention equipment.

a. Except as provided in subdivisions 3 b and 3 c of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(2) Overfill prevention equipment that will:

(a) Automatically shut off flow into the tank when the tank is no more than 95% full;

(b) Alert the transfer operator when the tank is no more than 90% full by restricting the flow into the tank or triggering a high-level alarm; or

(c) Restrict the flow 30 minutes prior to overfilling, alert the transfer operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

b. Owners and operators are not required to use the spill and overfill prevention equipment specified in subdivision 3 a of this section if:

(1) Alternative equipment is used that is determined by the ~~board~~ department to be no less protective of human health and the environment than the equipment specified in subdivision 3 a (1) or 3 a (2) of this section; or

(2) The UST system is filled by transfers of no more than 25 gallons at one time.

c. Flow restrictors used in vent lines may not be used to comply with subdivision 3 a (2) of this section when overfill protection is installed or replaced on or after January 1, 2018.

d. Spill and overfill protection equipment must be periodically tested or inspected in accordance with 9VAC25-580-82.

4. Installation.

a. The UST system must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

b. Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia). No UST system shall be installed or placed into use without the owner and operator having obtained the required permit and inspections from the building official under the provisions of the Virginia Uniform Statewide Building Code.

In the case of state-owned facilities, the Department of General Services shall function as the building official in accordance with § 36-98.1 of the Code of Virginia.

In the case of federal facilities, the building official must be contacted. Owners and operators must obtain a permit and the required inspections must be issued in accordance with the provisions of the Virginia Uniform Statewide Building Code.

NOTE: Tank and piping system installation practices and procedures described in the following codes of practice may be used to comply with the requirements of subdivision 4 of this section:

(1) American Petroleum Institute Publication 1615, Installation of Underground Petroleum Storage System;

(2) Petroleum Equipment Institute Publication RP100, Recommended Practices for Installation of Underground Liquid Storage Systems; or

(3) National Fire Protection Association Standard 30, Flammable and Combustible Liquids Code and Standard 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages.

NOTE: These industry codes require that prior to bringing the system into use the following tests be performed: (i) tank tightness test (air); (ii) pipe tightness test (air or hydrostatic); and (iii) precision system test.

5. Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection in subdivisions 5 a through 5 d of this section is performed, and a permit has been issued in accordance with the provisions of the Virginia Uniform Statewide Building Code to demonstrate compliance with subdivision 4 of this section. A certification of compliance on the UST Notification form must be submitted to the ~~board~~ department in accordance with 9VAC25-580-70.

a. The installer has been certified by the tank and piping manufacturers;

b. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;

c. All work listed in the manufacturer's installation checklists has been completed; or

d. The owner and operator have complied with another method for ensuring compliance with subdivision 4 of this section that is determined by the ~~board~~ department to be no less protective of human health and the environment.

6. Release detection. Release detection shall be provided in accordance with Part IV (9VAC25-580-130 et seq.) of this chapter.

7. Dispenser systems. Each UST system must be equipped with under-dispenser containment for any new dispenser system installed on or after September 15, 2010.

a. A dispenser system is considered new when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed at an UST facility. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

b. Under-dispenser containment must be liquid-tight on its sides, bottom, and at any penetrations. Under-dispenser containment must allow for visual inspection and access to the components in the containment system or be periodically monitored for leaks from the dispenser system.

9VAC25-580-60. Upgrading of existing UST systems.

Owners and operators must permanently close in accordance with Part VII (9VAC25-580-310 et seq.) of this chapter any UST system that does not meet the new UST system performance standards in 9VAC25-580-50 or has not been upgraded in accordance with subdivisions 2, 3, and 4 of this section. This does not apply to previously deferred UST systems described in Part X (9VAC25-580-380 et seq.) of this chapter and where an upgrade is determined to be appropriate by the ~~board~~ department.

Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

A permit from the building official must be obtained prior to upgrading any UST system. No upgraded UST system shall be placed into use unless and until the system is inspected in accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

In the case of state-owned facilities, the Department of General Services shall function as the building official in accordance with § 36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

1. Alternatives allowed. All existing UST systems must comply with one of the following requirements:

a. New UST system performance standards under 9VAC25-580-50;

b. The upgrading requirements in subdivisions 2, 3, and 4 of this section; or

c. Closure requirements under Part VII of this chapter, including applicable requirements for corrective action under Part VI (9VAC25-580-230 et seq.) of this chapter.

2. Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

a. Interior lining. Tanks upgraded by internal lining must meet the following:

(1) The lining was installed in accordance with the requirements of 9VAC25-580-110; and

(2) Within 10 years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications. If the internal lining is no longer performing in accordance with original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory, then the lined tank must be permanently closed in accordance with Part VII of this chapter.

b. Cathodic protection. Tanks upgraded by cathodic protection must meet the requirements of 9VAC25-580-50 1 b (2), (3), and (4) and the integrity of the tank must have been ensured using one of the following methods:

(1) The tank was internally inspected and assessed to ensure that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system;

(2) The tank had been installed for less than 10 years and is monitored monthly for releases in accordance with subdivisions 4 through 9 of 9VAC25-580-160;

(3) The tank had been installed for less than 10 years and was assessed for corrosion holes by conducting two tightness tests that meet the requirements of subdivision 3 of 9VAC25-580-160. The first tightness test must have been conducted prior to installing the cathodic protection system. The second tightness test must have been conducted between three and six months following the first operation of the cathodic protection system; or

(4) The tank was assessed for corrosion holes by a method that is determined by the ~~board~~ department to prevent releases in a manner that is no less protective of human

health and the environment than subdivisions 2 b (1), (2), and (3) of this section.

c. Internal lining combined with cathodic protection. Tanks upgraded by both internal lining and cathodic protection must meet the following:

(1) The lining was installed in accordance with the requirements of 9VAC25-580-110; and

(2) The cathodic protection system meets the requirements of subdivisions 1 b (2), (3), and (4) of 9VAC25-580-50.

NOTE: The following historical codes of practice were listed as options for complying with subdivision 2 of this section:

(a) American Petroleum Institute Publication 1631, Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks;

(b) National Leak Prevention Association Standard 631, Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection;

(c) National Association of Corrosion Engineers Standard RP-02-85, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and

(d) American Petroleum Institute Recommended Practice 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems.

NOTE: The following codes of practice may be used to comply with the periodic lining inspection requirement in subdivision 2 a (2) of this section:

(a) American Petroleum Institute Recommended Practice 1631, Interior Lining and Periodic Inspection of Underground Storage Tanks;

(b) National Leak Prevention Association Standard 631, Chapter B Future Internal Inspection Requirements for Lined Tanks; or

(c) Ken Wilcox Associates Recommended Practice, Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera.

3. Piping upgrading requirements. Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of subdivisions 2 b (2), (3) and (4) of 9VAC25-580-50.

NOTE: The codes of practice listed in the note following subdivision 2 b of 9VAC25-580-50 may be used to comply with this requirement.

4. Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with UST system spill and overfill prevention equipment requirements specified in subdivision 3 of 9VAC25-580-50.

5. Release detection. Release detection shall be provided in accordance with Part IV (9VAC25-580-130 et seq.) of this chapter.

9VAC25-580-70. Notification requirements.

A. After May 8, 1986, an owner must submit notice of a tank system's existence to the ~~board~~ department within 30 days of bringing the underground storage tank system into use. Owners must use a UST Notification form approved by the ~~board~~ department.

B. Any change in ownership, tank status, tank/piping systems, or substance stored requires the UST owner to submit an amended notification form, or other documentation approved by the ~~board~~ department, within 30 days after such change or upgrade occurs or is brought into use. Owners may provide notice for several tanks using one notification form, but owners with tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

C. Under Virginia UST notification requirements effective July 1, 1987, owners of property who have actual knowledge of underground storage tanks on such property that were taken out of service before January 1, 1974, yet are still in the ground, must notify the ~~board~~ department on the notification form.

NOTE: Under the federal UST Notification Program, owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the ~~board~~ department in accordance with the Hazardous and Solid Waste Amendments of 1984, P.L. 98-616 (42 USC § 9603), on a form published by EPA on November 8, 1985, (50 FR 46602) unless notice was given pursuant to § 103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use portions I through VI of the UST Notification form approved by the ~~board~~ department.

D. All owners and operators of new UST systems must certify in the notification form compliance with the following requirements:

1. Installation of tanks and piping under subdivision 5 of 9VAC25-580-50.

2. Cathodic protection of steel tanks and piping under subdivisions 1 and 2 of 9VAC25-580-50.

3. Financial responsibility under financial responsibility regulations promulgated by the board under 9VAC25-590.

4. Release detection under 9VAC25-580-140 and 9VAC25-580-150.

E. All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the

methods used to install the tanks and piping comply with the requirements in subdivision 4 of 9VAC25-580-50.

F. Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under subsection A of this section. The statement provided in the following note, when used on shipping tickets and invoices, may be used to comply with this requirement:

NOTE: A federal law (the Solid Waste Disposal Act, 42 USC § 6901 et seq.) requires owners of certain underground storage tanks to notify implementing agencies of the existence of their tanks. Notifications must be made within 30 days of bringing the tank into use. Consult EPA's regulations at 40 CFR 280.22 to determine if you are affected by this law.

9VAC25-580-82. Periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and periodic inspection of overfill prevention equipment.

A. Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping must meet these requirements to ensure the equipment is operating properly and will prevent releases to the environment:

1. Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) and containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

a. The equipment is double walled and the integrity of both walls is periodically monitored as described in 9VAC25-580-85 A 1 a (1) at a frequency not less than the frequency of the walkthrough inspections described in 9VAC25-580-85. Within 30 days of discontinuing periodic monitoring under this subdivision, owners and operators must conduct a test in accordance with subdivision A 1 b of this section and begin meeting the requirements of that subdivision; or

b. The spill prevention equipment and containment sumps used for interstitial monitoring of piping are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(1) Requirements developed by the manufacturer (Note: Owners and operators may use this option only if the manufacturer has developed requirements);

(2) Code of practice developed by a nationally recognized association or independent testing laboratory; or

(3) Requirements determined by the ~~board~~ department to be no less protective of human health and the environment than the requirements listed in subdivisions A 1 b (1) and (2) of this section.

2. Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in subdivision 3 of 9VAC25-580-50 and will activate when regulated substance reaches that level. Inspections must be conducted in accordance with one of the criteria in subdivisions 1 b (1), (2), or (3) of this subsection.

NOTE: The following code of practice may be used to comply with subdivisions A 1 b and A 2 of this section: Petroleum Equipment Institute Publication RP 1200, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.

B. Owners and operators must begin meeting these requirements as follows:

1. For UST systems in use before January 1, 2018, the initial spill prevention equipment test, containment sump test, and overfill prevention equipment inspection must be conducted not later than January 1, 2021.

2. For UST systems brought into use on or after January 1, 2018, these requirements apply at installation.

C. Owners and operators must maintain records as follows in accordance with 9VAC25-580-120 for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment:

1. All records of testing or inspection must be maintained for three years; and

2. For spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double walled and the integrity of both walls is periodically monitored must be maintained for as long as the equipment is periodically monitored.

9VAC25-580-85. Periodic operation and maintenance walkthrough inspections.

A. To properly operate and maintain UST systems, not later than January 1, 2021, owners and operators must meet one of the following:

1. Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:

a. Every 30 days (Exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

(1) Spill prevention equipment – visually check for damage; remove liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and, for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and

(2) Release detection equipment – check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present and ensure records of release detection testing are reviewed and current; and

b. Annually:

(1) Containment sumps – visually check for damage, leaks to the containment area, or releases to the environment; remove liquid (in contained sumps) or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and

(2) Handheld release detection equipment – check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;

2. Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to subdivision 1 of this subsection; or

3. Conduct operation and maintenance walkthrough inspections according to a protocol developed by the ~~board~~ department that checks equipment comparable to subdivision 1 of this subsection.

B. Owners and operators must maintain records (in accordance with 9VAC25-580-120) of operation and maintenance walkthrough inspections for one year. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

NOTE: The following code of practice may be used to comply with subdivision A 2 of this section: Petroleum Equipment Institute Recommended Practice RP 900, Recommended Practices for the Inspection and Maintenance of UST Systems.

9VAC25-580-100. Compatibility.

A. Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

B. Owners and operators must notify the ~~board~~ department at least 30 days prior to switching to a regulated substance containing greater than 10% ethanol, greater than 20% biodiesel, or any other regulated substance identified by the ~~board~~ department. In addition, owners and operators with UST systems storing these regulated substances must meet one of the following:

1. Demonstrate compatibility of the UST system, including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment. Owners and operators may demonstrate compatibility of the UST system by using one of the following options:

a. Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

b. Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer; or

2. Use another option determined by the ~~board~~ department to be no less protective of human health and the environment than the options listed in subdivision 1 of this subsection.

C. Owners and operators must maintain records in accordance with subdivision 2 of 9VAC25-580-120 documenting compliance with subsection B of this section for as long as the UST system is used to store the regulated substance.

NOTE: The following code of practice may be useful in complying with this section:

American Petroleum Institute Recommended Practice 1626, Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations.

9VAC25-580-110. Repairs allowed.

Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

A permit from the building official must be obtained prior to repairing any UST system. No repaired UST system shall be placed into use unless and until the system is inspected in accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

In the case of state-owned facilities the Department of General Services shall function as the building official in accordance with § 36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

1. Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

NOTE: The following codes of practice may be used to comply with subdivision 1 of this section:

a. National Fire Protection Association Standard 30, Flammable and Combustible Liquids Code;

b. American Petroleum Institute Recommended Practice RP 2200, Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines;

c. American Petroleum Institute Recommended Practice RP 1631, Interior Lining and Periodic Inspection of Underground Storage Tanks;

d. National Fire Protection Association Standard 326, Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair;

e. National Leak Prevention Association Standard 631, Chapter A, Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks;

f. Steel Tank Institute Recommended Practice R972, Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks;

g. NACE International Standard Practice SP 0285, External Control of Underground Storage Tank Systems by Cathodic Protection; or

h. Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks.

2. Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

3. Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Noncorrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications.

4. Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the ~~board~~ department within 30 days following the date of completion of the repair.

5. All other repairs to tanks and piping must be tightness tested in accordance with subdivision 3 of 9VAC25-580-160 and subdivision 2 of 9VAC25-580-170 within 30 days following the date of the completion of the repair except as provided below:

a. The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory;

b. The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in subdivisions 4 through 9 of 9VAC25-580-160; or

c. Another test method is used that is determined by the ~~board~~ department to be no less protective of human health and the environment than those listed in subdivisions a and b of this subdivision 5.

NOTE: The following codes of practice may be used to comply with subdivisions 4 and 5 of this section:

(1) Steel Tank Institute Recommended Practice R012, Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks; or

(2) Fiberglass Tank and Pipe Institute Protocol, Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks With Dry Annular Space.

(3) Petroleum Equipment Institute Recommended Practice RP1200, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.

6. Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with subdivisions 2 and 3 of 9VAC25-580-90 to ensure that it is operating properly.

7. Within 30 days following any repair to spill or overflow prevention equipment, the repaired spill or overflow prevention equipment must be tested or inspected as appropriate, in accordance with 9VAC25-580-82 to ensure it is operating properly.

8. UST system owners and operators must maintain records in accordance with 9VAC25-580-120 of each repair until the UST system is permanently closed or undergoes a change-in-service pursuant to 9VAC25-580-320.

9VAC25-580-120. Reporting and recordkeeping.

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the ~~board~~ department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to § 9005 of Subtitle I of the Solid Waste Disposal Act, as amended.

1. Reporting. Owners and operators must submit the following information to the ~~board~~ department:

a. Notification for all UST systems (9VAC25-580-70), which includes certification of installation for new UST systems (subdivision 5 of 9VAC25-580-50) and

notification when any person assumes ownership of an UST system (9VAC25-580-70);

b. Notification prior to UST systems switching to certain regulated substances (subsection B of 9VAC25-580-100);

c. Reports of all releases including suspected releases (9VAC25-580-190), spills and overfills (9VAC25-580-220), and confirmed releases (9VAC25-580-240);

d. Corrective actions planned or taken including initial abatement measures (9VAC25-580-250), site characterization (9VAC25-580-260), free product removal (9VAC25-580-270), and corrective action plan (9VAC25-580-280); and

e. An amended notification form must be submitted within 30 days after permanent closure or change-in-service (9VAC25-580-320).

2. Recordkeeping. Owners and operators must maintain the following information:

a. Documentation of operation of corrosion protection equipment (subdivision 4 of 9VAC25-580-90);

b. Documentation of compatibility for UST systems (subsection C of 9VAC25-580-100);

c. Documentation of UST system repairs (subdivision 8 of 9VAC25-580-110);

d. Documentation of compliance and applicable installation records for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (subsection C of 9VAC25-580-82);

e. Documentation of periodic walkthrough inspections (subsection B of 9VAC25-580-85);

f. Documentation of compliance with release detection requirements (9VAC25-580-180);

g. Results of the site investigation conducted at permanent closure (9VAC25-580-350); and

h. Documentation of operator training required by 9VAC25-580-125, including verification of training for current Class A, Class B, and Class C operators, and current list of operators and written instructions or procedures for Class C operators (9VAC25-580-125).

3. Availability and maintenance of records. Owners and operators must keep the records required either:

a. At the UST site and immediately available for inspection by the ~~board~~ department; or

b. At a readily available alternative site and be provided for inspection to the ~~board~~ department upon request.

In the case of permanent closure records required under 9VAC25-580-350, owners and operators are also provided with the additional alternative of mailing closure records to the ~~board~~ department if they cannot be kept at the site or an alternative site as indicated above.

9VAC25-580-125. Operator training.

A. Definitions.

1. For purposes of this section, "Class A operator" means an operator who has primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements. In general, Class A operators focus on the broader aspects of the underground storage tank statutory and regulatory requirements and standards necessary to properly operate and maintain the underground storage tank system and facility.

2. For purposes of this section, "Class B operator" means an operator who implements applicable underground storage tank regulatory requirements and standards in the field or at the underground storage tank facility. A Class B operator oversees and implements the day-to-day aspects of operations, maintenance, and recordkeeping for the underground storage tanks at one or more facilities.

3. For purposes of this section, "Class C operator" means the person responsible for responding to alarms or other indications of emergencies caused by spills or releases from underground storage tank systems and equipment failures. A Class C operator, generally, is the first line of response to events indicating emergency conditions.

B. Requirements for trained operators.

1. Owners and operators of UST systems shall designate Class A, Class B, and Class C operators for each UST system or facility that has underground storage tanks.

a. A person may be designated for more than one class of operator.

b. Any person designated for more than one class of operator shall successfully complete the required training under subsection C of this section for each operator class for which he is designated.

c. Persons trained in accordance with subsection C of this section may perform operator duties consistent with their training when employed or contracted by the tank owner or operator to perform these functions.

2. Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

3. Class B operators shall be familiar with Class B and Class C operator responsibilities and may provide training for Class C operators.

4. Trained operators shall be readily available to respond to suspected/confirmed releases, other unusual operating conditions and equipment shut-offs or failures.

a. The Class A or Class B operator shall be available for immediate telephone consultation when an UST facility is in operation. A Class A or Class B operator shall be able to be onsite at the facility within a reasonable time to perform necessary functions.

b. For manned facilities, a Class C operator shall be onsite whenever the UST facility is in operation. After September 15, 2010, written instructions or procedures shall be maintained and visible at manned UST facilities for persons performing duties of the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

c. For unmanned facilities, a Class C operator shall be available for immediate telephone consultation and shall be able to be onsite within a reasonable time to perform necessary functions. Emergency contact information shall be prominently displayed at the site. After September 15, 2010, written instructions or procedures shall be maintained and visible at unmanned UST facilities for persons performing duties of the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

C. Required training.

1. Class A operators shall successfully complete a training course approved by the ~~board~~ department that includes a general knowledge of UST system requirements. Training shall provide information that should enable the operator to make informed decisions regarding compliance and ensuring that appropriate persons are fulfilling operation, maintenance, and recordkeeping requirements and standards of this chapter and/or federal underground storage tank requirements in 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of underground storage tanks (UST)), including, at a minimum, the following:

a. Spill and overfill prevention;

b. Release detection and related reporting requirements;

c. Corrosion protection;

d. Emergency response;

e. Product and equipment compatibility;

f. Financial responsibility;

g. Notification and storage tank registration requirements;

h. Temporary and permanent closure requirements; and

i. Class B and Class C operator training requirements.

2. Class B operators shall successfully complete a training course approved by the ~~board~~ department that includes an in-depth understanding of operation and maintenance aspects of UST systems and related regulatory requirements. Training shall provide specific information on the components of UST systems, materials of construction, methods of release detection and release prevention applied to UST systems and components. Training shall address operation and maintenance requirements of this chapter and/or federal underground storage tank requirements in 40 CFR Part 280, including, at a minimum, the following:

a. Spill and overfill prevention;

b. Release detection and related reporting requirements;

c. Corrosion protection and related testing;

d. Emergency response;

e. Product and equipment compatibility;

f. Reporting and recordkeeping requirements; and

g. Class C operator training requirements.

3. Class C operators. At a minimum, training provided by the tank owner or Class A or Class B operator shall enable the Class C operator to take action in response to emergencies caused by spills or releases and alarms from an underground storage tank. Training shall include written instructions or procedures for the Class C operator to follow and to provide notification necessary in the event of emergency conditions.

4. Successful completion for Class A and Class B operators means completion of the entire training course and demonstration of knowledge of the course material as follows:

a. Receipt of a passing grade (a score of 80% or better) on an examination of material presented in the training course, or demonstration through practical (hands-on) application to the trainer of operation and maintenance checks of underground storage tank equipment, including performance of release detection at the UST facility, at the conclusion of onsite training; and

b. Receipt of a training certificate by an approved trainer upon verification of successful completion of training under this section.

5. Reciprocity. The ~~board~~ department may also recognize successful completion of Class A and Class B operator training on regulatory standards consistent with 40 CFR Part 280, which is recognized by other state or implementing agencies and which is approved by EPA as meeting operator training grant guidelines published by EPA.

6. The tank owner and operator shall incur the costs of the training.

D. Timing of training.

1. An owner and operator shall ensure that Class A, Class B and Class C operators are trained as soon as practicable after September 15, 2010, contingent upon availability of approved training providers, but not later than August 8, 2012.

2. When a Class A or Class B operator is replaced after August 8, 2012, a new operator shall be trained within 60 days of assuming duties for that class of operator.

3. Class C operators shall be trained before assuming duties of a Class C operator. After September 15, 2010, written instructions or procedures shall be provided to Class C operators to follow and to provide notification necessary in the event of emergency conditions. Class C operators shall be briefed on these instructions or procedures at least annually (every 12 months), which may be concurrent with annual safety training required under Occupational Safety and Health Administration, 29 CFR Part 1910 (relating to Occupational Safety and Health Standards).

E. Retraining.

1. Owners and operators of UST systems shall ensure that Class A and B operators in accordance with subsection C of this section are retrained if the ~~board~~ department determines that the UST system is out of compliance with the requirements of 9VAC25-580-30 through 9VAC25-580-190. At a minimum, Class A and Class B operators shall successfully complete retraining in the areas identified as out of compliance.

2. Class A and B operators shall complete training pursuant to this subsection no later than 90 days from the date the ~~board~~ department identifies the noncompliance.

F. Documentation.

1. Owners and operators of underground storage tank facilities shall prepare and maintain a list of designated Class A, Class B, and Class C operators. The list shall represent the current Class A, Class B, and Class C operators for the UST facility and shall include:

a. The name of each operator, class of operation trained for, and the date each operator successfully completed initial training and refresher training, if any.

b. For Class A and Class B operators that are not permanently onsite or assigned to more than one facility, telephone numbers to contact the operators.

2. A copy of the certificates of training for Class A and Class B operators shall be on file as long as each operator serves in that capacity at the facility or three years, whichever is longer, and readily available, and a copy of the facility list of Class A, Class B, and Class C operators and Class C operator instructions or procedures shall be kept onsite and immediately available for manned UST facilities and readily available for unmanned facilities (see subdivision 2 h of 9VAC25-580-120 relating to reporting and recordkeeping).

3. Class C operator and owner contact information, including names and telephone numbers, and any emergency information shall be conspicuously posted at unmanned facilities.

9VAC25-580-130. General requirements for all petroleum and hazardous substance UST systems.

A. Owners and operators of UST systems must provide a method, or combination of methods, of release detection that:

1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

2. Is installed and calibrated in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition;

3. Beginning on January 1, 2021, is operated and maintained, and electronic and mechanical components are tested for proper operation, in accordance with one of the following: (i) manufacturer's instructions; (ii) a code of practice developed by a nationally recognized association or independent testing laboratory; or (iii) requirements determined by the ~~board~~ department to be no less protective of human health and the environment than the two options listed in subdivisions 1 and 2 of this subsection. A test of the proper operation must be performed at least annually and, at a minimum, as applicable to the facility, cover the following components and criteria:

a. Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

b. Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

c. Automatic line leak detector: test operation to meet criteria in subdivision 1 of 9VAC25-580-170 by simulating a leak;

d. Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and

e. Handheld electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

NOTE: The following code of practice may be used to comply with subdivision 3 of this subsection. Petroleum Equipment Institute Publication RP 1200, Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.

4. Meets the performance requirements in 9VAC25-580-160 or 9VAC25-580-170 or Part X (9VAC25-580-380 et seq.) of this chapter as applicable with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods listed in subdivisions 2, 3, 4, 8, and 9 of 9VAC25-580-160; subdivisions 1 and 2 of 9VAC25-580-170; and Part X must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the

regulation with a probability of detection of 0.95 and a probability of false alarm of 0.05.

B. When a release detection method operated in accordance with the performance standards in 9VAC25-580-160, 9VAC25-580-170, or Part X of this chapter indicates a release may have occurred, owners and operators must notify the ~~board~~ department in accordance with Part V (9VAC25-580-190 et seq.) of this chapter.

C. Any UST system that cannot apply a method of release detection that complies with the requirements of this part must complete the closure procedures in Part VII (9VAC25-580-310 et seq.) of this chapter. For previously deferred UST systems described in Parts I (9VAC25-580-10 et seq.) and X of this chapter, this requirement applies on or after the effective dates described in 9VAC25-580-20 A 1 b and c and 9VAC25-580-380 A 1.

9VAC25-580-150. Requirements for hazardous substance UST systems.

Owners and operators of hazardous substance UST systems must provide containment that meets the following requirements and monitor these systems using subdivision 7 of 9VAC25-580-160 at least every 30 days:

1. Secondary containment systems must be designed, constructed and installed to:

a. Contain regulated substances leaked from the primary containment until they are detected and removed;

b. Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

c. Be checked for evidence of a release at least every 30 days.

NOTE: The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements for tanks installed before September 15, 2010.

2. Double-walled tanks must be designed, constructed, and installed to:

a. Contain a leak from any portion of the inner tank within the outer wall; and

b. Detect the failure of the inner wall.

3. External liners (including vaults) must be designed, constructed, and installed to:

a. Contain 100% of the capacity of the largest tank within its boundary;

b. Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

c. Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

4. Underground piping must be equipped with secondary containment that satisfies the requirements of this section (e.g., trench liners, double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with subdivision 1 of 9VAC25-580-170.

5. For hazardous substance UST systems installed before September 15, 2010, other methods of release detection may be used if owners and operators:

a. Demonstrate to the ~~board~~ department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in subdivisions 2 through 9 of 9VAC25-580-160 can detect a release of petroleum;

b. Provide information to the ~~board~~ department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

c. Obtain approval from the ~~board~~ department to use the alternate release detection method before the installation and operation of the new UST system.

9VAC25-580-160. Methods of release detection for tanks.

Owners and operators must obtain a permit and the required inspections in accordance with 9VAC25-580-50 or 9VAC25-580-60 for the installation of certain release detection equipment contained in subdivisions 4 through 9 of this section.

Each method of release detection for tanks used to meet the requirements of 9VAC25-580-140 must be conducted in accordance with the following and be designed to detect releases at the earliest possible time for the specific method chosen:

1. Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0% of flow-through plus 130 gallons on a monthly basis in the following manner:

a. Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

b. The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch;

c. The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

d. Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

e. Product dispensing is metered and recorded according to regulations of the Bureau of Weights and Measures of the Virginia Department of Agriculture and Consumer

Services for meter calibration within their jurisdiction; for all other product dispensing meter calibration, an accuracy of six cubic inches for every five gallons of product withdrawn is required; and

f. The measurement of any water level in the bottom of the tank is made to the nearest 1/8 of an inch at least once a month.

NOTE: Practices described in the American Petroleum Institute Recommended Practice RP 1621 Bulk Liquid Stock Control at Retail Outlets, may be used, where applicable, as guidance in meeting the requirements of this subsection.

2. Manual tank gauging. Manual tank gauging must meet the following requirements:

a. Tank liquid level measurements are taken at the beginning and ending of a period using the appropriate minimum duration of test value in the table below during which no liquid is added to or removed from the tank;

b. Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

c. The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch;

d. A release is suspected and subject to the requirements of Part V (9VAC25-580-190 et seq.) if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Minimum Duration of Test	Weekly Standard (One Test)	Monthly Standard (Four Test Average)
550 gallons or less	36 hours	10 gallons	5 gallons
551 - 1,000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551 - 1,000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551 -1,000 gallons (also requires periodic tank tightness testing)	36 hours	13 gallons	7 gallons
1001 - 2,000 gallons (also requires periodic tank tightness testing)	36 hours	26 gallons	13 gallons

e. Tanks of 550 gallons or less nominal capacity and tanks with a nominal capacity of 551 to 1,000 gallons that meet the tank diameter criteria in the table in subdivision 2 d of this section may use this as the sole method of release detection. All other tanks with a nominal capacity of 551 to 2,000 gallons may use the method in place of inventory control in subdivision 1 of this section. Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this part.

3. Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

4. Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

a. The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product;

b. The automatic tank gauging equipment must meet the inventory control (or other test of equivalent performance) requirements of subdivision 1 of this section; and

c. The test must be performed with the system operating in one of the following modes:

(1) In-tank static testing conducted at least once every 30 days; or

(2) Continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.

5. Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

a. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

b. The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the

monitoring devices located in the excavation zone in the event of a release from the tank;

c. The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

d. The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

e. The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

f. In the UST excavation zone, the site is assessed to ensure compliance with the requirements in subdivisions a through d of this subdivision 5 and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

g. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

6. Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:

a. The regulated substance stored is not readily miscible in water and has a specific gravity of less than one;

b. Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soils between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

c. The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

d. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

e. Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

f. The continuous monitoring devices or manual methods used can detect the presence of at least 1/8 of an inch of free product on top of the groundwater in the monitoring wells;

g. Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in subdivisions a through e of this subdivision 6 and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

h. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

7. Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

a. For double-walled UST systems, the sampling or testing method can detect a leak through the inner wall in any portion of the tank that routinely contains product;

b. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a leak between the UST system and the secondary barrier:

(1) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a leak to the monitoring point and permit its detection;

(2) The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(3) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(4) The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(5) The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

(6) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

c. For tanks with an internally fitted liner, an automated device can detect a leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

8. Statistical inventory reconciliation. Release detection methods based on the application of statistical principles to inventory data similar to those described in subdivision 1 of this section must meet the following requirements:

a. Report a quantitative result with a calculated leak rate;

b. Be capable of detecting a leak rate of 0.2 gallon per hour or a release of 150 gallons within 30 days; and

c. Use a threshold that does not exceed one-half the minimum detectible leak rate.

9. Other methods. Any other type of release detection method, or combination of methods, can be used if:

a. It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

b. The ~~board~~ department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subdivisions 3 through 8 of this section. In comparing methods, the ~~board~~ department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the ~~board~~ department on its use to ensure the protection of human health and the environment.

9VAC25-580-180. Release detection recordkeeping.

All UST system owners and operators must maintain records in accordance with 9VAC25-580-120 demonstrating compliance with all applicable requirements of this part. These records must include the following:

1. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for five years from the date of installation or as long as the method of release detection is used, whichever is greater. Not later than January 1, 2021, records of site assessments required under subdivisions 5 f and 6 g of 9VAC25-580-160 must be maintained for as long as the methods are used. Records of site assessments developed after January 1, 2018, must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the ~~board~~ department;

2. The results of any sampling, testing, or monitoring must be maintained for at least one year, or for another reasonable period of time determined by the ~~board~~ department, except as follows:

a. The results of annual operation tests conducted in accordance with subdivision A 3 of 9VAC25-580-130 must be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in subdivision A 3 of 9VAC25-580-130 or needs to have action taken, and describe any action taken to correct an issue;

b. The results of tank tightness testing conducted in accordance with subdivision 3 of 9VAC25-580-160 must be retained until the next test is conducted; and

c. The results of tank tightness testing, line tightness testing, and vapor monitoring using a tracer compound placed in the tank system conducted in accordance with 9VAC25-580-390 D must be retained until the next test is conducted; and

3. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed or for such longer period as may be required by the ~~board~~ department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation.

9VAC25-580-190. Reporting of suspected releases.

Owners and operators of UST systems must report to the ~~board~~ department within 24 hours and follow the procedures in 9VAC25-580-210 for any of the following conditions:

1. The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

2. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, an unexplained presence of water in the tank, or liquid in the interstitial space of secondarily contained systems), unless:

a. The system equipment or component is found not to be releasing regulated substances to the environment;

b. Any defective system equipment or component is immediately repaired or replaced; and

c. For secondarily contained systems, except as provided for in subdivision 7 b (4) of 9VAC25-580-160, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.

3. Monitoring results, including investigation of an alarm, from a release detection method required under 9VAC25-580-140 and 9VAC25-580-150 that indicate a release may have occurred unless:

a. The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result;

b. The leak is contained in the secondary containment and:

(1) Except as provided for in subdivision 7 b (4) of 9VAC25-580-160, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

(2) Any defective system equipment or component is immediately repaired or replaced;

c. In the case of inventory control, described in subdivision 1 of 9VAC25-580-160, a second month of

data or in the case of manual tank gauging, a second week or month as prescribed in the chart under subdivision 2 d of 9VAC25-580-160 does not confirm the initial result or the investigation determines no release has occurred; or

d. The alarm was investigated and determined to be a nonrelease event (for example, from a power surge or caused by filling the tank during release detection testing).

9VAC25-580-200. Investigation due to off-site impacts.

When required by the ~~board~~ department, owners and operators of UST systems must follow the procedures in 9VAC25-580-210 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and state waters) that has been observed by the ~~board~~ department or brought to its attention by another party.

9VAC25-580-210. Release investigation and confirmation steps.

Unless corrective action is initiated in accordance with Part VI (9VAC25-580-230 et seq.) of this chapter, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 9VAC25-580-190 within seven days, or another reasonable time period specified by the ~~board~~ department upon written request made and approved within seven days after reporting of the suspected release.

The following steps are required for release investigation and confirmation:

1. System test. Owners and operators must conduct tests (according to the requirements for tightness testing in subdivision 3 of 9VAC25-580-160 and subdivision 2 of 9VAC25-580-170) or, as appropriate, secondary containment testing described in subdivision 4 of 9VAC25-580-110.

a. The test must determine whether:

(1) A leak exists in that portion of the tank that routinely contains product or in the attached delivery piping; or

(2) A breach of either wall of the secondary containment has occurred.

b. If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, upgrade, or close the UST system. In addition, owners and operators must begin corrective action in accordance with Part VI of this chapter if the test results for the system, tank, or delivery piping indicate that a release exists.

c. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.

d. Owners and operators must conduct a site check as described in subdivision 2 of this section if the test results for the system, tank, and delivery piping do not indicate that a release exists but environmental contamination is the basis for suspecting a release.

2. Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Samples shall be tested according to established EPA analytical methods or methods approved by the ~~board~~ department.

a. If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with Part VI of this chapter.

b. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

9VAC25-580-220. Reporting and cleanup of spills and overfills.

A. Owners and operators of UST systems must contain and immediately clean up a spill or overfill and report to the ~~board~~ department within 24 hours and begin corrective action in accordance with Part VI of this chapter in the following cases:

1. Spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons or that causes a sheen on nearby surface water; and

2. Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302).

B. Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours owners and operators must immediately notify the ~~board~~ department.

NOTE: Pursuant to 40 CFR §§ 302.6 and 355.40, a release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under §§ 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 USC §§ 9602 and 9603) and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

9VAC25-580-240. Initial response.

Upon confirmation of a release in accordance with 9VAC25-580-210 or after a release from the UST system is identified in

any other manner, owners and operators must perform the following initial response actions within 24 hours of a release:

1. Report the release to the ~~board~~ department (e.g., by telephone or electronic mail);

2. Take immediate action to prevent any further release of the regulated substance into the environment; and

3. Identify and mitigate fire, explosion, and vapor hazards.

9VAC25-580-250. Initial abatement measures and site check.

A. Unless directed to do otherwise by the ~~board~~ department, owners and operators must perform the following abatement measures:

1. Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

2. Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and groundwater;

3. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

4. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;

5. Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by subdivision 2 of 9VAC25-580-210 or the closure site assessment of subsection A of 9VAC25-580-330. In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release. Samples shall be tested according to established EPA analytical methods or methods approved the ~~board~~ department; and

6. Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with 9VAC25-580-270.

B. Within 20 days after release confirmation, or within another reasonable period of time determined by the ~~board~~ department upon written request made and approved within 20 days after release confirmation, owners and operators must submit a report to the ~~board~~ department summarizing the initial abatement steps taken under subsection A of this section and any resulting information or data.

9VAC25-580-260. Site characterization.

A. Owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in 9VAC25-580-230 and 9VAC25-580-240. This information must include, but is not necessarily limited to, the following:

1. Data on the material released and the estimated quantity of release;

2. Data from available sources or site investigations concerning the following:

a. Site assessment to include: data on the physical/chemical properties of the contaminant; nature and quantity and extent of the release; evidence that free product is found to need recovery; geologic/hydrologic site characterization; current and projected land/water uses; water quality; subsurface soil conditions; evidence that contaminated soils are in contact with the groundwater; locations of subsurface conduits (e.g., sewers, utility lines, etc.); and climatological conditions. Samples collected for this site characterization shall be tested according to established EPA analytical methods or methods approved by the ~~board~~ department;

b. Risk (exposure) assessment to include: evidence that wells of the area have been affected; use and approximate locations of wells potentially affected by the release; identification of potential and impacted receptors; migration routes; surrounding populations; potential for additional environmental damage;

c. Remediation assessment to include: potential for remediation and applicability of different remediation technologies to the site.

3. Results of the site check required under subdivision A 5 of 9VAC25-580-250; and

4. Results of the free product investigations required under subdivision A 6 of 9VAC25-580-250, to be used by owners and operators to determine whether free product must be recovered under 9VAC25-580-270.

B. Within 45 days of release confirmation or another reasonable period of time determined by the ~~board~~ department upon written request made and approved within 45 days after release confirmation, owners and operators must submit the information collected in compliance with subsection A of this section to the ~~board~~ department in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the ~~board~~ department.

9VAC25-580-270. Free product removal.

At sites where investigations under subdivision A 6 of 9VAC25-580-250 indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the ~~board~~ department while continuing, as necessary, any actions initiated under 9VAC25-580-240 through 9VAC25-580-260, or preparing for actions required under 9VAC25-580-280. In meeting the requirements of this section, owners and operators must:

1. Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local, state and federal regulations;

2. Use abatement of free product migration as a minimum objective for the design of the free product removal system;

3. Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

4. Unless directed to do otherwise by the ~~board~~ department, prepare and submit to the ~~board,~~ department within 45 days after confirming a release~~,~~ a free product removal report that provides at least the following information:

a. The name of the persons responsible for implementing the free product removal measures;

b. The estimated quantity, type, and thickness of free product observed or measured in wells, bore holes, and excavations;

c. The type of free product recovery system used;

d. Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

e. The type of treatment applied to, and the effluent quality expected from, any discharge;

f. The steps that have been or are being taken to obtain necessary permits for any discharge; and

g. The disposition of the recovered free product.

9VAC25-580-280. Corrective action plan.

A. At any point after reviewing the information submitted in compliance with 9VAC25-580-240, 9VAC25-580-250, and 9VAC25-580-260, the ~~board~~ department may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the ~~board~~ department. Alternatively, owners and operators may, after fulfilling the requirements of 9VAC25-580-240, 9VAC25-580-250, and 9VAC25-580-260, choose to submit a corrective action plan for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the ~~board,~~ department and must modify their plan as necessary to meet this standard.

B. In conjunction with the information provided under subdivision A 2 of 9VAC25-580-260 (site assessment, risk (exposure) assessment, and remediation assessment), the corrective action plan must include the following information:

1. Detailed conceptual design including narrative description of technologies and how they will be applied at the site;

2. Projected remediation end points/degree of remediation;

3. Schedule of project implementation;

4. Schedule to achieve projected end points;

5. Operational and post-operational monitoring schedules (to include data submittals);

6. Proposed disposition of any wastes and discharges (if applicable);

7. Actions taken to obtain any necessary federal, state and local permits to implement the plan; and

8. Proposed actions to notify persons directly affected by the release or the planned corrective action.

C. The ~~board~~ department will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the ~~board~~ department will consider the following factors as appropriate:

1. The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

2. The hydrogeologic characteristics of the facility and the surrounding area;

3. The proximity, quality, and current and future uses of nearby surface water and groundwater;

4. The potential effects of residual contamination on nearby surface water and groundwater;

5. The site, risk (exposure), and remediation assessments as required by subdivision A 2 of 9VAC25-580-260; and

6. Any information assembled in compliance with this part.

D. Upon approval of the corrective action plan or as directed by the ~~board~~ department, owners and operators must implement the plan, including modifications to the plan made by the ~~board~~ department. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the ~~board~~ department.

E. Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action plan is approved provided that they:

1. Notify the ~~board~~ department of their intention to begin cleanup and obtain written approval to proceed with an agreed upon activity;

2. Comply with any conditions imposed by the ~~board~~ department, including halting cleanup or mitigating adverse consequences from cleanup activities; and

3. Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the ~~board~~ department for approval.

9VAC25-580-300. Public participation.

A. For each confirmed release that requires a corrective action plan, the ~~board~~ department will require the owner and operator to provide notice to the public by means designed to reach those members of the public directly affected by the release or the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

B. The ~~board~~ department must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

C. Before approving a corrective action plan, the ~~board~~ department may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

D. The ~~board~~ department will require the owner and operator to give public notice that complies with subsection A of this section if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the ~~board~~ department.

E. These public participation requirements do not supersede any public participation requirements of other regulations.

F. In the event the owner and operator have failed to give the required notice to the public, the ~~board~~ department will provide such notice to the extent required by applicable federal law.

G. In those cases where the ~~board~~ department implements the corrective plan, the ~~board~~ department will provide such notice to the extent required by applicable federal law.

9VAC25-580-320. Permanent closure and changes-in-service.

Owners and operators must obtain a permit and the required inspections in accordance with the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

A permit from the building official must be obtained prior to permanent tank closure or a change-in-service. No UST system shall be permanently closed or changed-in-service unless and until the system is inspected in accordance with the provisions of the Virginia Uniform Statewide Building Code (§ 36-97 et seq. of the Code of Virginia).

If such closure is in response to immediate corrective actions that necessitate timely tank removal, then the building official must be notified and the official's directions followed until a permit is issued.

In the case of state-owned facilities the Department of General Services shall function as the building official in accordance with § 36-98.1 of the Code of Virginia.

In the case of federal facilities the building official must be contacted. Owners and operators must obtain a permit and the required inspections in accordance with the provisions of the Virginia Uniform Statewide Building Code.

1. Owners and operators must within 30 days after either permanent closure or a change-in-service submit an amended UST notification form to the ~~board~~ department.

2. The required assessment of the excavation zone under 9VAC25-580-330 must be performed after notifying the building official but before completion of the permanent closure or a change-in-service.

3. To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. When the owner or operator suspects that the residual sludges are hazardous in nature the Department of Environmental Quality regulations shall be followed to facilitate the proper treatment, storage, manifesting, transport, and disposal. All tanks taken out of service permanently must be removed from the ground, filled with an inert solid material, or closed in place in a manner approved by the ~~board~~ department.

4. Continued use of an UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 9VAC25-580-330.

NOTE: The following cleaning and closure procedures may be used to comply with this section:

a. American Petroleum Institute Recommended Practice RP 1604, Closure of Underground Petroleum Storage Tanks;

b. American Petroleum Institute Standard 2015, Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry from Decommissioning through Recommissioning;

c. American Petroleum Institute Recommended Practice 2016, Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks;

d. American Petroleum Institute Recommended Practice RP 1631, Interior Lining and Periodic Inspection of Underground Storage Tanks, may be used as guidance for compliance with this section;

e. National Fire Protection Association Standard 326, Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair; and

f. The National Institute for Occupational Safety and Health Publication 80-106, Criteria for a Recommended Standard *** Working in Confined Space may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

9VAC25-580-330. Assessing the site at closure or change-in-service.

A. Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample type or types (soil or water) and sample location or locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater and other factors appropriate for identifying the presence of a release. Samples shall be tested according to established EPA analytical methods or methods approved by the ~~board~~ department. Where the suspected release is a petroleum product, the samples shall be analyzed for total petroleum hydrocarbons (TPH). The requirements of this section are satisfied if one of the external release detection methods allowed in subdivisions 5 and 6 of 9VAC25-580-160 is operating in accordance with the requirements in 9VAC25-580-160 at the time of closure, and indicates no release has occurred.

B. In all cases where a sample or samples are analyzed, the owner and operator shall submit, along with the amended UST notification form as required in subdivision 1 of 9VAC25-580-320, a copy of the laboratory results (including a statement as to the test method used), a description of the area sampled, and a site map depicting tanks, piping, and sample location or locations.

C. If contaminated soils, contaminated groundwater or free product as a liquid or vapor is discovered under subsection A of this section, or by any other manner, owners and operators must begin corrective action in accordance with Part VI (9VAC25-580-230 et seq.) of this chapter.

9VAC25-580-340. Applicability to previously closed UST systems.

When directed by the ~~board~~ department, the owner and operator of an UST system permanently closed before December 22, 1988, must assess the excavation zone and close the UST system in accordance with this part if releases from the UST may, in the judgment of the ~~board~~ department, pose a current or potential threat to human health and the environment.

9VAC25-580-350. Closure records.

Owners and operators must maintain records in accordance with 9VAC25-580-120 that are capable of demonstrating compliance with closure requirements under this part. The results of the excavation zone assessment required in 9VAC25-580-330 must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

1. By the owners and operators who took the UST system out of service;

2. By the current owners and operators of the UST system site; or

3. By mailing these records to the ~~board~~ department if they cannot be maintained at the closed facility.

9VAC25-580-360. ~~Delegation of authority.~~ (Repealed.)

~~The Director of the Department of Environmental Quality, or in his absence a designee acting for him, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

9VAC25-580-370. Requirements for delivery prohibition.

A. No person shall deliver to, deposit into, or accept a petroleum product or other regulated substance into an underground storage tank that has been identified under subdivision G 2 of this section by the ~~board~~ department to be ineligible for such delivery, deposit, or acceptance. Unless authorized in writing by the ~~board~~ department, no person shall alter, deface, remove, or attempt to remove a tag that prohibits delivery, deposit, or acceptance of a petroleum product or other regulated substance to an underground storage tank.

B. When an inspection or other information provides reason to believe one or more of the following violations exists, the ~~board~~ department shall initiate a proceeding in accordance with subsection D of this section:

1. Spill prevention equipment is not installed on the UST system properly as required by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

2. Overfill protection equipment is not installed on the UST system properly as required by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

3. Release detection equipment is not installed on the UST system properly or is disabled or a release detection method is not being performed as required by 9VAC25-580-50 or 9VAC25-580-60;

4. Corrosion protection equipment is not installed on the UST system properly as required by 9VAC25-580-50 or 9VAC25-580-60 or is disabled;

5. Secondary containment is not installed on the UST system properly as required by 9VAC25-580-50, 9VAC25-580-60, or 9VAC25-580-150 or is disabled; or

6. The ~~board~~ department has reason to believe that an UST system is leaking and the owner or operator has failed to initiate and complete the investigation and confirmation requirements of 9VAC25-580-190, 9VAC25-580-200, and 9VAC25-580-210.

C. For purposes of subsection B of this section, spill prevention, overfill prevention, corrosion protection, release detection, or secondary containment equipment that is not verifiable as installed is not installed.

D. The ~~board~~ department shall provide written notice to the owner and operator pursuant to subdivision G 1 of this section that it will conduct an informal fact finding pursuant to § 2.2-4019 of the Code of Virginia to determine whether the underground storage tank shall be ineligible for delivery, deposit, or acceptance of a petroleum product or other regulated substance. The fact finding shall be scheduled as soon as practicable after the notice, and within 10 business days in any event. Upon a finding to impose delivery prohibition, the ~~board~~ department shall affix a tag to the fill pipe of the underground storage tank prohibiting delivery, deposit, or acceptance of a petroleum product or other regulated substance.

E. When the ~~board~~ department issues a notice of alleged violation based on an inspection or other information that provides reason to believe a UST system is not in compliance with the requirements of Part II (9VAC25-580-50 et seq.), III (9VAC25-580-80 et seq.), IV (9VAC25-580-130 et seq.), or X (9VAC25-580-380 et seq.) of this chapter not listed in subsection B of this section, the requirements of 9VAC25-580-240 through 9VAC25-580-280, or the requirements of 9VAC25-590 (Petroleum Underground Storage Tank Financial Responsibility Requirements), and the owner or operator fails to comply with the notice of alleged violation within the time prescribed by the ~~board~~ department, the ~~board~~ department may proceed in accordance with subsection D of this section.

F. The ~~board~~ department may classify all underground storage tanks containing petroleum or any other regulated substance at a facility as ineligible for delivery, deposit, or acceptance of a petroleum product or other regulated substance if one or more underground storage tanks at the facility has been classified as ineligible for more than 90 days and the ineligible underground storage tank has neither been closed in accordance with 9VAC25-580-310 or 9VAC25-580-320 nor returned to compliance. The ~~board~~ department shall provide written notice to the owner and operator pursuant to subdivision G 1 of this section that it will conduct an informal fact finding pursuant to § 2.2-4019 of the Code of Virginia to determine whether all the underground storage tanks shall be ineligible for delivery, deposit, or acceptance of a petroleum product or other regulated substance. The fact finding shall be scheduled as soon as practicable after the notice, and within 10 business days in any event.

G. Notice.

1. The ~~board~~ department shall provide written notice of an informal fact finding to consider delivery prohibition to the owner and operator. The notice shall meet the requirements of § 2.2-4019 of the Code of Virginia. The notice shall further advise the owner and operator of the possibility of a special order pursuant to subsection I of this section.

2. The presence of the delivery prohibition tag on the fill pipe of an ineligible underground storage tank shall be sufficient notice to any person, including the owner, the operator, and product deliverers, that the underground storage tank is ineligible for delivery or deposit. The ~~board~~ department may use other methods in addition to the delivery prohibition tag to provide notice to product deliverers.

H. An owner or operator shall notify the ~~board~~ department in writing once an ineligible underground storage tank has been returned to compliance and provide a written report detailing all actions that have been taken to return the UST system to compliance, as well as supporting evidence such as test reports, invoices, receipts, inventory records, etc. As soon as practicable after confirming that the underground storage tank is in compliance with the requirements of this chapter or 9VAC25-590, or both, but in no event later than two business days, the ~~board~~ department shall remove or authorize the owner or operator, in writing, to remove the delivery prohibition tag.

I. If the ~~board~~ department determines that a violation exists that warrants the imposition of delivery prohibition, the ~~board~~ department may further consider whether the threat posed by the violation is outweighed by the need for fuel from the underground storage tank in question to meet an emergency situation or the need for availability of or access to motor fuel in any rural and remote area. If the ~~board~~ department finds that such a condition outweighs the immediate risk of the violation, the ~~board~~ department may defer imposition of delivery prohibition for up to 180 days. In every such case the director shall consider (i) issuing a special order under the authority of subdivision 9 of § 10.1-1186 of the Code of Virginia prescribing a prompt schedule for abating the violation and (ii) imposing a civil penalty.

J. The ~~board~~ department may temporarily authorize an owner or operator to accept delivery into an ineligible underground storage tank if such activity is necessary to test or calibrate the underground storage tank or dispenser system.

K. Nothing in this section shall prevent the ~~board~~ department or the director from exercising any other enforcement authority including, without limitation, their authority to issue emergency orders and their authority to seek injunctive relief.

9VAC25-580-380. General requirements.

A. Implementation of requirements. Owners and operators must comply with the requirements of this part for UST systems with field-constructed tanks and airport hydrant systems as follows:

1. For UST systems installed before January 1, 2018, the requirements are effective according to the following schedule:

Requirement	Effective Date
Upgrading UST systems; general operating requirements; and operator training	January 1, 2021
Release detection	January 1, 2021
Release reporting, response, and investigation; closure; financial responsibility and notification (except as provided in subsection B of this section)	January 1, 2018

2. For UST systems installed on or after January 1, 2018, the requirements apply at installation.

B. Not later than January 1, 2021, all owners of previously deferred UST systems must submit a one-time notice of tank system existence to the ~~board~~ department, using the UST Notification Form. Owners and operators of UST systems in use as of January 1, 2018, must demonstrate financial responsibility at the time of submission of the notification form.

C. Except as provided in 9VAC25-580-390, owners and operators must comply with the requirements of Parts I (9VAC25-580-10 et seq.) through VII (9VAC25-580-310 et seq.) and IX (9VAC25-580-370 et seq.) of this chapter and 9VAC25-590.

D. In addition to the codes of practice listed in 9VAC25-580-50, owners and operators may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, Petroleum Fuel Facilities, when designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks.

9VAC25-580-390. Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

A. Exception to piping secondary containment requirements. Owners and operators may use single walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems. Piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons not part of an airport hydrant system must meet the secondary containment requirement when installed or replaced.

B. Upgrade requirements. Not later than January 1, 2021, airport hydrant systems and UST systems with field-constructed tanks where installation commenced before January 1, 2018, must meet the following requirements or be permanently closed pursuant to Part VII (9VAC25-580-310 et seq.) of this chapter.

1. Corrosion protection. UST system components in contact with the ground that routinely contain regulated substances must meet one of the following:

a. Except as provided in subsection A of this section, the new UST system performance standards for tanks at subdivision 1 of 9VAC25-580-50 and for piping at subdivision 2 at 9VAC25-580-50; or

b. Be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory and meets the following:

(1) Cathodic protection must meet the requirements of subdivisions 1 b (2), (3), and (4) of 9VAC25-580-50 for tanks and subdivisions 2 b (2), (3), and (4) of 9VAC25-580-50 for piping.

(2) Tanks older than 10 years without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the ~~board~~ department to adequately assess the tank for structural soundness and corrosion holes.

Note: The following codes of practice may be used to comply with subsection B of this section:

(a) NACE International Standard Practice SP0285, External Control of Underground Storage Tank Systems by Cathodic Protection;

(b) NACE International Standard Practice SP0169, Control of External Corrosion on Underground or Submerged Metallic Piping Systems;

(c) National Leak Prevention Association Standard 631, Chapter C, Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection; or

(d) American Society for Testing and Materials Standard G158, Standard Guide for Three Methods of Assessing Buried Steel Tanks.

2. Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all UST systems with field-constructed tanks and airport hydrant systems must comply with new UST system spill and overfill prevention equipment requirements specified in subdivision 3 of 9VAC25-580-50.

C. Walkthrough inspections. In addition to the walkthrough inspection requirements in 9VCA25-580-85, owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR Part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection according to 9VAC25-580-85 B.

1. Hydrant pits – visually check for any damage, remove any liquid or debris, and check for any leaks; and

2. Hydrant piping vaults – check for any hydrant piping leaks.

D. Release detection. Owners and operators of UST systems with field-constructed tanks and airport hydrant systems must begin meeting the release detection requirements described in this part not later than January 1, 2021.

1. Methods of release detection for field-constructed tanks and airport hydrant systems. Owners and operators of shop fabricated USTs that are part of airport hydrant systems and field-constructed tanks with a capacity less than or equal to 50,000 gallons must meet the release detection requirements in Part IV (9VAC25-580-130 et seq.) of this chapter. Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons must meet either the requirements in Part IV of this chapter (except subdivisions 5 and 6 of 9VAC25-580-160 must be combined with inventory control as stated in this subdivision) or use one or a combination of the following alternative methods of release detection:

a. Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

b. Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;

c. Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;

d. Perform vapor monitoring (conducted in accordance with subdivision 5 of 9VAC25-580-160 for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

e. Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5% of flow-through; and

(1) Perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

(2) Perform vapor monitoring or groundwater monitoring (conducted in accordance with subdivision 5 or 6 of 9VAC25-580-160, respectively, for the stored regulated substance) at least every 30 days; or

f. Another method approved by the ~~board~~ department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subdivisions D 1 a through D 1 e of this section. In comparing methods, the ~~board~~ department shall consider the size of release that the method can detect and the frequency and reliability of detection.

2. Methods of release detection for piping. Owners and operators of underground piping associated with field-constructed tanks less than or equal to 50,000 gallons must meet the release detection requirements in Part IV of this chapter. Owners and operators of underground piping associated with airport hydrant systems and field-constructed tanks greater than 50,000 gallons must follow either the requirements in Part IV (except subdivisions 5 and 6 of 9VAC25-580-160 must be combined with inventory control as stated in this subdivision) or use one or a combination of the following alternative methods of release detection:

a. (1) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the following table:

Maximum Leak Detection Rate Per Test Section Volume		
Test Section Volume (Gallons)	Semiannual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)	Annual Test - Leak Detection Rate Not To Exceed (Gallons Per Hour)
< 50,000	1.0	0.5

≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

(2) Piping segment volumes equal to or greater than 100,000 gallons not capable of meeting the maximum 3.0 gallons per hour leak rate for the semiannual test may be tested at a leak rate up to 6.0 gallons per hour according to the following schedule:

Phase in for Piping Segments ≥ 100,000 Gallons in Volume	
First test	Not later than January 1, 2021, (may use up to 6.0 gph leak rate)
Second test	Between January 1, 2021, and January 1, 2024, (may use up to 6.0 gph leak rate)
Third test	Between January 1, 2024, and January 1, 2025, (must use 3.0 gph for leak rate)
Subsequent tests	After January 1, 2025, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table above

b. Perform vapor monitoring (conducted in accordance with subdivision 5 of 9VAC25-580-160 for a tracer compound placed in the tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

c. Perform inventory control (conducted in accordance with Department of Defense Directive 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5% of flow-through; and

(1) Perform a line tightness test (conducted in accordance with subdivision 2 a of this subsection using the leak rates for the semiannual test) at least every two years; or

(2) Perform vapor monitoring or groundwater monitoring (conducted in accordance with subdivision 5 or 6 of 9VAC25-580-160, respectively, for the stored regulated substance) at least every 30 days; or

d. Another method approved by the ~~board~~ department if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subdivisions D 2 a, D 2 b, and D 2 c of this section. In comparing methods, the ~~board~~ department shall consider the size of release that the method can detect and the frequency and reliability of detection.

3. Recordkeeping for release detection. Owners and operators must maintain release detection records according to the recordkeeping requirements in 9VAC25-580-180.

E. Applicability of closure requirements to previously closed UST systems. When directed by the ~~board~~ department, the owner and operator of an UST system with field-constructed tanks or airport hydrant system permanently closed before January 1, 2018, must assess the excavation zone and close the UST system in accordance with Part VII of this chapter if releases from the UST may, in the judgment of the ~~board~~ department, pose a current or potential threat to human health and the environment.

VA.R. Doc. No. R23-7160; Filed September 9, 2022, 2:30 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: **9VAC25-590. Petroleum Underground Storage Tank Financial Responsibility Requirements (amending 9VAC25-590-10, 9VAC25-590-40, 9VAC25-590-60, 9VAC25-590-70, 9VAC25-590-90, 9VAC25-590-100, 9VAC25-590-105, 9VAC25-590-110, 9VAC25-590-140 through 9VAC25-590-170, 9VAC25-590-190 through 9VAC25-590-220; repealing 9VAC25-590-230).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.34:9 of the Code of Virginia; 42 USC § 6901 et seq.; 40 CFR Parts 280 and 281.

Effective Date: November 23, 2022.

Agency Contact: Russell P. Ellison, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2670, FAX (804) 698-4266, or email russell.ellison@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-590-10. Definitions.

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

"Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action or compensation for bodily injury or property damage, or both, neither expected nor intended by the tank owner or operator.

"Annual aggregate" means the maximum financial responsibility requirement that an owner or operator is required to demonstrate annually.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Bodily injury" means the death or injury of any person incident to an accidental release from a petroleum underground storage tank; but not including any death, disablement, or injuries covered by workers' compensation, disability benefits or unemployment compensation law or other similar law. Bodily injury may include payment of medical, hospital, surgical, and funeral expenses arising out of the death or injury of any person. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

"Chief financial officer" in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

"Corrective action" means all actions necessary to abate, contain and cleanup a release from an underground storage tank to mitigate the public health or environmental threat from such releases and to rehabilitate state waters in accordance with Parts V (9VAC25-580-190 et seq.) and VI (9VAC25-580-230 et seq.) of 9VAC25 Chapter 580, Underground Storage Tanks: Technical Standards and Corrective Action Requirements. The term does not include those actions normally associated with closure or change in service as set out in Part VII (9VAC25-580-310 et seq.) of 9VAC25 Chapter 580 or the replacement of an underground storage tank.

"Department" means the Department of Environmental Quality.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10 K report submitted to the U.S. Securities and Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Utilities Service; or (iv) a year-end financial statement authorized under 9VAC25-590-60 B or C of this chapter. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Gallons of petroleum pumped" means either the amount pumped into or the amount pumped out of a petroleum underground storage tank.

"Group self-insurance pool" or "pool" means a pool organized by two or more owners and/or operators of underground storage tanks for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by § 62.1-44.34:12 of the Code of Virginia.

"Legal defense cost" means any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the ~~board~~ department to require corrective action or to recover the costs of corrective action, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; (ii) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (iii) by any person to enforce the terms of a financial assurance mechanism.

"Local government" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state, or other special purpose government which provides essential services.

"Member" means an owner or operator of an underground storage tank who has entered into a member agreement and thereby becomes a member of a group self-insurance pool.

"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from an underground storage tank.

NOTE: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Owner" means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

The term "owner" shall not include any person, who, without participating in the management of an underground storage tank or being otherwise engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the holder's security interest in the tank.

"Owner" or "operator," when the owner or operator are separate parties, refers to the person that is obtaining or has obtained financial assurances.

"Person" means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, association, any state or agency thereof, municipality, county, town, commission, political subdivision of a state, any interstate body, consortium, joint venture, commercial entity, the government of the United States or any unit or agency thereof.

"Petroleum" means petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 pounds per square inch absolute).

"Petroleum marketing facilities" includes all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"Property damage" means the loss or destruction of, or damage to, the property of any third party including any loss, damage or expense incident to an accidental release from a petroleum underground storage tank. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

"Provider of financial assurance" means a person that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250, including a guarantor, insurer, group self-insurance pool, surety, issuer of a letter of credit or certificate of deposit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water, or upon lands, subsurface soils or storm drain systems.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored;

3. Septic tank;

4. Pipeline facility (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671, et seq.),

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001, et seq.), or

c. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundment, pit, pond, or lagoon;

6. Stormwater or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"9VAC25-580" means the Underground Storage Tanks: Technical Standards and Corrective Action Requirements regulation promulgated by the board.

9VAC25-590-40. Amount and scope of financial responsibility requirement.

A. Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks at least in the following per-occurrence amounts:

1. For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; $1 million.

2. For all other owners or operators of petroleum underground storage tanks; $500,000.

B. Owners and operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

1. For owners and operators of 1 to 100 petroleum underground storage tanks, $1 million; and

2. For owners and operators of 101 or more petroleum underground storage tanks, $2 million.

C. Owners and operators of petroleum underground storage tanks may use the Virginia Petroleum Storage Tank Fund in combination with one or more of the mechanisms specified in 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250 to satisfy the financial responsibility as required by this section. The fund may be used to demonstrate financial responsibility for the owner or operator in excess of the amounts specified in 9VAC25-590-210 C 1 up to the per occurrence and annual aggregate requirements specified in this section for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.

D. Owners and operators who demonstrate financial responsibility shall maintain copies of those records on which the determination is based. The following documents may be used for purposes of demonstrating financial responsibility by owners or operators to support a financial responsibility requirement determination:

1. Copies of invoices from petroleum suppliers which indicate the gallons of petroleum pumped into all underground storage tanks on an annual basis.

2. Copies of disposal or recycling receipts which indicate the gallons of petroleum pumped out of all underground storage tanks on an annual basis.

3. Letters from petroleum suppliers or disposal or recycling firms on the supplier's, disposer's or recycler's letterhead, which are signed by the appropriate financial officer and which indicate the gallons of petroleum pumped into or out of all of the owner's or operator's underground storage tanks on an annual basis.

4. Any other form of documentation which the ~~board~~ department may deem to be acceptable evidence to support the financial responsibility requirement determination.

E. For the purposes of this section, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.

F. If the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for: (i) taking corrective action; (ii) compensating third parties for bodily injury and property damage caused by sudden accidental releases; or (iii) compensating third parties for bodily injury and property damage caused by nonsudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in subsections A and B of this section.

G. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required for each mechanism shall be the amount specified in subsection B of this section.

H. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the appropriate amount of annual aggregate assurance specified in subsection B of this section, by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

I. The amounts of assurance required under this section exclude legal defense costs.

J. The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

9VAC25-590-60. Financial test of self-insurance.

A. An owner or operator and/or guarantor, may satisfy the requirements of 9VAC25-590-40 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator and/or guarantor shall meet the requirements of subsection B or C and subsection D of this section based on year-end financial statements for the latest completed financial reporting year.

B. 1. The owner or operator and/or guarantor shall have a tangible net worth at least equal to the total of:

a. The applicable aggregate financial responsibility amount required by 9VAC25-590-40 B for which a financial test is used to demonstrate financial responsibility, except as provided in 9VAC25-590-210; and

b. The aggregate aboveground storage tank financial responsibility amount required under 9VAC25-640, for which a financial test is used to demonstrate financial responsibility.

2. In addition to the requirements set forth in subdivision 1 of this subsection, the owner or operator and/or guarantor shall also have a tangible net worth of at least 10 times:

a. The sum of the corrective action cost estimates, the current closure and postclosure care cost estimates, and amount of liability coverage for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to the EPA under 40 CFR §§ 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147, to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 or the Virginia Waste Management Board under 40 CFR 264.143, 264.145 and 264.147 (as incorporated by reference in 9VAC20-60-264) and 40 CFR 265.143, 265.145 and 265.147 (as incorporated by reference in 9VAC20-60-265) of the Virginia Hazardous Waste Management Regulations; and

b. The sum of current plugging and abandonment cost estimates for which a financial test for self-insurance is used in each state of business operations to demonstrate financial responsibility to EPA under 40 CFR 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145 (Underground Injection Control Program).

3. The owner or operator, and/or guarantor shall comply with either subdivision a or b of this subdivision:

a. (1) The financial reporting year-end financial statements of the owner or operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and

(2) The financial reporting year-end financial statements of the owner or operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

b. (1) (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or

(b) Report annually the tangible net worth of the owner or operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet shall have assigned a financial strength rating which at least equals the amount of financial responsibility required by the owner or operator under subdivisions 1 and 2 of this subsection. Relevant Dun and Bradstreet ratings are as follows (current Dun and Bradstreet ratings will be used for demonstration requirements which exceed the annual aggregate amounts listed below):

Annual Aggregate Requirement	Dun and Bradstreet Rating
$20,000	EE ($20,000 to $34,999)
$40,000	DC ($50,000 to $74,999)
$80,000	CB ($125,000 to $199,999)
$150,000	BB ($200,000 to $299,999)
$200,000	BB ($200,000 to $299,999)
$300,000	BA ($300,000 to $499,999)
$500,000	1A ($500,000 to $749,999)
$750,000	2A ($750,000 to $999,999)
$1,000,000	3A ($1,000,000 to 9,999,999); and

(2) The financial reporting year-end financial statements of the owner or operator and/or guarantor, if, independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. The owner or operator and/or guarantor shall have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I or Appendix XI.

C. 1. The owner or operator and/or guarantor shall have a tangible net worth at least equal to the total of:

a. The applicable aggregate amount required by 9VAC25-590-40 B for which a financial test is used to demonstrate

financial responsibility, except as provided in 9VAC25-590-210; and

b. The aggregate aboveground storage tank financial responsibility amount required under 9VAC25-640 for which a financial test is used to demonstrate financial responsibility.

2. In addition to the requirements set forth in subdivision 1 of this subsection, the owner or operator and/or guarantor shall also have a tangible net worth of at least six times:

a. The financial test requirements for self insurance of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage in each state of business operations to the EPA under 40 CFR 264.101(b), 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147, to another state implementing agency under a state program authorized by EPA under 40 CFR Part 271 or the Virginia Waste Management Board under 40 CFR 264.143, 264.145 and 264.147 (as incorporated by reference in 9VAC20-60-264) and 40 CFR 265.143, 265.145, and 265.147 (as incorporated by reference in 9VAC20-60-265) of the Virginia Hazardous Waste Management Regulations; and

b. The financial test requirements for self-insurance of current plugging and abandonment cost estimates in each state of business operations to EPA under 40 CFR 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145 (Underground Injection Control Program).

3. The financial reporting year-end financial statements of the owner or operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

4. The financial reporting year-end financial statements of the owner or operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

5. If the financial statements of the owner or operator and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the owner or operator and/or guarantor shall obtain a special report by an independent certified public accountant stating that:

a. The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest financial reporting year-end financial statements of the owner or operator and/or guarantor with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to the accountant's attention which caused him to believe that the specified data should be adjusted.

6. The owner or operator and/or guarantor shall have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II or Appendix XI.

D. To meet the financial demonstration test under subsection B or C of this section, the chief financial officer of the owner or operator and/or guarantor shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate alternative or Appendix XI, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an owner or operator using the financial test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

F. The ~~board~~ department may require reports of financial condition at any time from the owner or operator and/or guarantor. If the ~~board~~ department finds, on the basis of such reports or other information, that the owner or operator and/or guarantor no longer meets the financial test requirements of subsection B or C and subsection D of this section, the owner or operator shall obtain alternate coverage within 30 days after notification of such finding.

G. If the owner or operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, or within 30 days of notification by the ~~board~~ department that he or she no longer meets the requirements of the financial test, the owner or operator shall notify the ~~board~~ department of such failure within 10 days.

9VAC25-590-70. Guarantee.

A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

1. A firm that:

a. Possesses a controlling interest in the owner or operator;

b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or

c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

2. A firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial

test criteria of 9VAC25-590-60 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I or Appendix XI and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year, the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the owner or operator, and the ~~board~~ department. If the ~~board~~ department notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-590-60 B or C and D, the guarantor shall notify the owner or operator within 10 days of receiving such notification from the ~~board~~ department. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator and the ~~board~~ department receive the notification, as evidenced by the return receipts. The owner or operator shall obtain alternate coverage as specified in 9VAC25-590-190.

C. The guarantee shall be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

D. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be paid directly to the ~~board~~ department in accordance with instructions from the ~~board~~ department under 9VAC25-590-170.

9VAC25-590-90. Surety bond.

A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded identically as specified in Appendix V, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

Under the terms of the bond, all amounts paid by the surety under the bond will be paid directly to the ~~board~~ department in accordance with instructions from the ~~board~~ department under 9VAC25-590-170.

9VAC25-590-100. Letter of credit.

A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the ~~board~~ department will be paid by the issuing institution directly to the ~~board~~ department in accordance with instructions from the ~~board~~ department under 9VAC25-590-170.

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator, and the ~~board~~ department by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator and the ~~board~~ department receive the notice, as evidenced by the return receipts.

9VAC25-590-105. Certificate of deposit.

A. An owner or operator may satisfy the requirements of 9VAC25-590-40, wholly or in part, by assigning all rights, title, and interest of a certificate of deposit to the ~~State Water Control Board~~ Department of Environmental Quality, Commonwealth of Virginia. The owner or operator shall maintain the certificate of deposit until the requirements of 9VAC25-590-180 are met. The original assignment and the certificate of deposit, if applicable, must be submitted to the ~~board~~ department to prove that the certificate of deposit has been obtained and meets the requirements of this section. A copy of the certificate of deposit shall be maintained at the underground storage tank site or the owner's or operator's place of work located in Virginia. The issuing institution shall be a bank or other financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) and whose operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

B. The owner or operator shall be entitled to demand, receive, and recover the interest and income from the certificate of deposit as it becomes due and payable as long as the market value of the certificate of deposit plus any other mechanisms used continue to at least equal the amount of financial responsibility the owner or operator is required to demonstrate under 9VAC25-590-40.

C. In the event of failure of the owner or operator to comply with the requirements of 9VAC25-590-140, the ~~board~~ department shall cash the certificate of deposit.

D. Payments made under the terms of the certificate of deposit will be deposited by the issuing institution directly into the Virginia Petroleum Storage Tank Fund. Payments from the fund shall be approved by the ~~board~~ department.

E. The wording of the assignment shall be identical to the wording specified in Appendix XIII.

9VAC25-590-110. Trust fund.

A. An owner or operator may satisfy the requirements of 9VAC25-590-40 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the S~~tate Water Control Board~~ department, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the owner or operator. The wording of the trust agreement shall be identical to the wording specified in Appendix VII, and shall be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism or mechanisms that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the ~~board~~ department for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the ~~board~~ department for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection D or E of this section, the ~~board~~ department will instruct the trustee to release to the owner or operator such funds as the ~~board~~ department specifies in writing.

9VAC25-590-140. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator, and the ~~board~~ department.

1. Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator, and the ~~board~~ department receive the notice of termination, as evidenced by the return receipts.

2. Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the owner or operator and the ~~board~~ department receive the notice of termination, as evidenced by the return receipts. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the owner or operator and the ~~board~~ department receive the notice of termination, as evidenced by the return receipts.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 9VAC25-590-190, the owner or operator shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall immediately notify the ~~board~~ department of such failure and submit:

1. The name and address of the provider of financial assurance;

2. The effective date of termination; and

3. The evidence of the financial assurance mechanism subject to the termination maintained in accordance with 9VAC25-590-160 B.

9VAC25-590-150. Reporting by owner or operator.

A. An owner or operator shall submit the appropriate original forms listed in 9VAC25-590-160 B documenting current evidence of financial responsibility to the ~~board~~ department within 30 days after the owner or operator identifies or confirms a release from an underground storage tank required to be reported under 9VAC25-580-220 or 9VAC25-580-240. For all subsequent releases within the same period of time for which the documents submitted according to this subsection are still effective, the owner or operator shall submit a letter which identifies the owner's or operator's name and address and the underground storage tanks' location by site name, street address, ~~board~~ department incident designation number and a statement that the financial responsibility documentation previously provided to the ~~board~~ department is currently in force.

B. An owner or operator shall submit the appropriate forms listed in 9VAC25-590-160 B documenting current evidence of financial responsibility to the ~~board~~ department if the owner or operator fails to obtain alternate coverage as required by this

chapter within 30 days after the owner or operator receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor;

2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;

3. Failure of a guarantor to meet the requirements of the financial test; or

4. Other incapacity of a provider of financial assurance.

C. An owner or operator shall submit the appropriate forms listed in 9VAC25-590-160 B documenting current evidence of financial responsibility to the ~~board~~ department as required by 9VAC25-590-60 G and 9VAC25-590-140 B.

D. An owner or operator shall certify compliance with the financial responsibility requirements of this chapter as specified in the new tank notification form (Form 7530) when notifying the ~~board~~ department of the installation of a new underground storage tank under 9VAC25-580-70.

E. The ~~board~~ department may require an owner or operator to submit evidence of financial assurance as described in 9VAC25-590-160 B or other information relevant to compliance with this chapter at any time.

9VAC25-590-160. Recordkeeping.

A. Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an underground storage tank until released from the requirements of this chapter under 9VAC25-590-180. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of work in this Commonwealth. Records maintained off-site shall be made available upon request of the ~~board~~ department.

B. Owners or operators shall maintain the following types of evidence of financial responsibility:

1. An owner or operator using an assurance mechanism specified in 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250 shall maintain a copy of the instrument worded as specified.

2. An owner or operator using a financial test or guarantee, or a local government financial test or a local government guarantee supported by the local government financial test, shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

3. A local government owner or operator using the local government bond rating test under 9VAC25-590-250 shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

4. A local government owner or operator using the local government guarantee under 9VAC25-590-250, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 9VAC25-590-250 shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

5. An owner or operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the signed insurance policy or group self-insurance pool plan and membership agreement, with the endorsement or certificate of insurance and any amendments to the agreements.

6. An owner or operator using a local government fund under 9VAC25-590-250 shall maintain the following documents:

a. A copy of the state constitutional provision or local government statute, charter, ordinance or order dedicating the fund; and

b. Year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under 40 CFR 280.107(c) (as incorporated by reference in 9VAC25-590-250) using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance, the amount of funding during the year, and the closing balance in the fund.

If the fund is established under 40 CFR 280.107(c) (as incorporated by reference in 9VAC25-590-250) using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum (under 40 CFR 280.107(c)(1)) (as incorporated by reference in 9VAC25-590-250), or attestation by the Virginia Attorney General as specified under 40 CFR 280.107(c)(2) (as incorporated by reference in 9VAC25-590-250).

7. A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

8. a. An owner or operator using an assurance mechanism specified in 9VAC25-590-60 through 9VAC25-590-110, 9VAC25-590-210, or 9VAC25-590-250 shall maintain an updated copy of a certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The owner or operator shall update this certification whenever the financial assurance mechanism or mechanisms used to demonstrate financial responsibility changes.

9VAC25-590-170. Drawing on financial assurance mechanism.

A. Except as specified in subsection D of this section, the ~~board~~ department shall require the guarantor, surety, or institution issuing a letter of credit or certificate of deposit to pay to the ~~board~~ department an amount up to the limit of funds provided by the financial assurance mechanism if:

1. The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or certificate of deposit; or

2. The conditions of subsection B of this section are satisfied.

B. The ~~board~~ department shall deposit the financial assurance funds forfeited pursuant to subsection A of this section into the Virginia Petroleum Storage Tank Fund. The ~~board~~ department may use the financial responsibility funds obtained pursuant to subsection A of this section to conduct corrective action or to pay a third party claim when:

1. The ~~board~~ department makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Part VI (9VAC25-580-230 et seq.) of 9VAC25-580; or

2. The ~~board~~ department has received either:

a. Certification from the owner or operator and the third party liability claimant or claimants and from attorneys representing the owner or operator and the third party liability claimant or claimants that a third party liability claim should be paid. The certification shall be worded identically as specified in Appendix X, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted; or

b. A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from an underground storage tank covered by financial assurance under this chapter and the ~~board~~ department determines that the owner or operator has not satisfied the judgment.

C. If the ~~board~~ department determines that the amount of corrective action costs and third party liability claims eligible for payment under subsection B of this section may exceed the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment. The ~~board~~ department shall direct payment of the financial responsibility funds for third party liability claims in the order in which the ~~board~~ department receives certifications under subdivision B 2 a of this section and valid court orders under subdivision B 2 b of this section.

D. A local government acting as guarantor under 40 CFR 280.106(e) (as incorporated by reference in 9VAC25-590-250), the local government guarantee without standby trust, shall make payments as directed by the ~~board~~ department under the circumstances described in subsection A, B or C of this section.

9VAC25-590-190. Bankruptcy or other incapacity of owner, operator or provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the ~~board~~ department by certified mail of such commencement and submit the appropriate forms listed in 9VAC25-590-160 B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator and the ~~board~~ department by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-590-70.

C. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a local government owner or operator as debtor, the local government owner or operator shall notify the ~~board~~ department by certified mail of such commencement and submit the appropriate forms listed in 9VAC25-590-160 B documenting current financial responsibility.

D. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local government owner or operator and the ~~board~~ department by certified mail of such commencement as required under the terms of the guarantee specified in 40 CFR 280.106 (as incorporated by reference in 9VAC25-590-250).

E. An owner or operator that obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool plan, surety bond, letter of credit, or certificate of deposit. The owner or operator shall obtain alternate financial assurance as specified in this regulation within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate

coverage within 30 days after such notification, he shall immediately notify the ~~board~~ department in writing.

F. Within 30 days after receipt of written notification that the Virginia Petroleum Storage Tank Fund has become incapable of covering assured corrective action or third party compensation costs, the owner or operator shall obtain alternate financial assurance in accordance with 9VAC25-590-40.

9VAC25-590-200. Replenishment of guarantees, letters of credit, certificates of deposit, or surety bonds.

A. If at any time a letter of credit, certificate of deposit, surety bond, or guarantee is drawn upon by instruction of the ~~board~~ department and the ~~board~~ department has expended all or part of the funds for corrective action or to pay a third party liability claim(s), the owner or operator by the anniversary date of the financial assurance mechanism shall:

1. Replenish the value of the financial assurance mechanism to equal the full amount of coverage required; or

2. Acquire another financial assurance mechanism for the amount by which the face value of the letter of credit, certificate of deposit, surety bond, or guarantee has been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9VAC25-590-40. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

9VAC25-590-210. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund will be used for costs in excess of the financial responsibility requirements specified under subsection C of this section up to $1 million per occurrence for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks in accordance with the following:

1. Corrective action disbursements for accidental releases with no associated third party disbursements from the fund shall not exceed:

a. $995,000 for the $5,000 corrective action requirement;

b. $990,000 for the $10,000 corrective action requirement;

c. $980,000 for the $20,000 corrective action requirement;

d. $970,000 for the $30,000 corrective action requirement;

e. $950,000 for the $50,000 corrective action requirement.

Third party disbursements for accidental releases with no corrective action disbursements from the fund shall not exceed:

a. $985,000 for the $15,000 third party requirement;

b. $970,000 for the $30,000 third party requirement;

c. $940,000 for the $60,000 third party requirement;

d. $880,000 for the $120,000 third party requirement;

e. $850,000 for the $150,000 third party requirement.

Combined corrective action and third party disbursements from the fund shall not exceed:

a. $980,000 for the $20,000 combined requirement;

b. $960,000 for the $40,000 combined requirement;

c. $920,000 for the $80,000 combined requirement;

d. $850,000 for the $150,000 combined requirement;

e. $800,000 for the $200,000 combined requirement.

The first priority for disbursements from the fund shall be for corrective action costs necessary to protect human health and the environment.

2. Reasonable and necessary costs of compensating third parties for bodily injury and property damage shall be paid only (i) in accordance with final court orders in cases which have been tried to final judgment no longer subject to appeal, (ii) in accordance with final arbitration awards not subject to appeal, or (iii) where the ~~board~~ department approved the settlement of claim between the owner or operator and the third party prior to execution by the parties. The reasonableness and necessity of costs shall be determined based upon documented or actual damage, loss in value, and other relevant factors.

The Commonwealth has not waived its sovereign immunity and does not believe that it is a necessary party to a private action against an owner or operator for third party bodily injury and property damage.

3. Owner or operator managed cleanups. An owner or operator, including an operator of a facility or an owner or operator of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9VAC25-590-10 and an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored, responding to a release and conducting a ~~board~~ department approved corrective action plan in accordance with Parts V and VI (9VAC25-580-190 through 9VAC25-580-310) may proceed to pay for all costs incurred for such activities. An accounting submitted to the ~~board~~ department of all costs incurred will be reviewed and those costs in excess of the financial responsibility requirements up to $1 million which are reasonable and have been approved by the ~~board~~ department will be reimbursed from the fund.

4. Owners or operators shall pay the financial responsibility requirement specified in this section for each occurrence.

5. No person shall receive reimbursement from the fund for third party bodily injury or property damage:

a. Where the release, occurrence, injury or property damage is caused, in whole or in part, by the willful misconduct or negligence of the owner or operator, his employee, contractor, or agent, or anyone within his privity or knowledge;

b. Where the claim cost has been reimbursed or is reimbursable by an insurance policy;

c. Where the costs or damages were incurred pursuant to § 10.1-1232 of the Code of Virginia and the regulations promulgated thereunder;

d. Where the release was reported before December 22, 1989; or

e. Where the owner or operator does not demonstrate the reasonableness and necessity of the claim costs.

B. No person, including an operator of a facility or an owner or operator of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9VAC25-590-10 and an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored, shall receive reimbursement from the fund for any costs or damages incurred:

1. Where the person, his employee, contractor or agent, or anyone within the privity or knowledge of that person, has violated substantive environmental regulations under 9VAC25-580 or this chapter;

2. Where the release occurrence is caused, in whole or in part, by the willful misconduct or negligence of the person, his employee, contractor or agent, or anyone within the privity or knowledge of that person;

3. Where the person, his employee, contractor or agent, or anyone within the privity or knowledge of that person has (i) failed to carry out the instructions of the ~~board~~ department, committed willful misconduct or been negligent in carrying out or conducting actions under Part V or VI (9VAC25-580-190 through 9VAC25-580-310) or (ii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out or conducting actions under Parts V or VI (9VAC25-580-190 through 9VAC25-580-310);

4. Where the claim has been reimbursed or is reimbursable by an insurance policy;

5. Where the costs or damages were incurred pursuant to § 10.1-1232 of the Code of Virginia and the regulations promulgated thereunder;

6. For corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank, or an owner of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in 9VAC25-590-10, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored; or

7. Prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to 62.1-44.34:13 of the Code of Virginia.

C. 1. The fund will be used to demonstrate financial responsibility requirements for owners or operators in excess of the amounts specified in this subdivision up to the per occurrence and annual aggregate requirements specified in 9VAC25-590-40 for both taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases from petroleum underground storage tanks.

a. Owners and operators with 600,000 gallons or less of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $5,000 per occurrence for taking corrective action and $15,000 per occurrence for compensating third parties, with an annual aggregate of $20,000.

b. Owners and operators with between 600,001 to 1,200,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $10,000 per occurrence for taking corrective action and $30,000 per occurrence for compensating third parties, with an annual aggregate of $40,000.

c. Owners and operators with between 1,200,001 to 1,800,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $20,000 per occurrence for taking corrective action and $60,000 per occurrence for compensating third parties, with an annual aggregate of $80,000.

d. Owners and operators with between 1,800,001 to 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $30,000 per occurrence for taking corrective action and $120,000 per occurrence for compensating third parties, with an annual aggregate of $150,000.

e. Owners and operators with in excess of 2,400,000 gallons of petroleum pumped on an annual basis into all underground storage tanks owned or operated, $50,000 per occurrence for taking corrective action and $150,000 per occurrence for compensating third parties, with an annual aggregate of $200,000.

2. The fund may be used to satisfy only the portion of an owner or operator's financial responsibility requirement specified in subdivision 1 of this subsection and, therefore, shall be used in combination with one or more of the mechanisms specified in 9VAC25-590-60 through 9VAC25-590-110 and 9VAC25-590-250.

3. The requirements of 9VAC25-590-40 B apply solely to financial responsibility demonstration requirements under

this section, and shall not affect reimbursements paid under this section.

D. This fund may also be used for the following:

1. Costs incurred by the ~~board~~ department for taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the ~~board~~ department to protect human health and the environment.

2. Costs incurred by the ~~board~~ department for taking corrective action up to $1 million for any release of petroleum into the environment from an underground storage tank:

a. Whose owner or operator cannot be determined by the ~~board~~ department within 90 days; or

b. Whose owner or operator is incapable, in the judgment of the ~~board~~ department, of carrying out such corrective action properly.

3. Costs incurred by the ~~board~~ department for taking corrective action for any release of petroleum into the environment from tanks which are otherwise specifically listed in 9VAC25-590-10 as exemptions in the definition of an underground storage tank.

4. All other uses authorized by § 62.1-44.34:11 of the Code of Virginia.

E. The ~~board~~ department shall seek recovery of fund moneys expended for corrective action in accordance with § 62.1-44.34:11 of the Code of Virginia where the owner or operator has violated substantive environmental regulations under 9VAC25-580 or this chapter.

F. The ~~board~~ department shall have the right of subrogation for moneys expended from the fund as compensation for bodily injury, death, or property damage against any person who is liable for such injury, death or damage.

G. No funds shall be paid for reimbursement of costs incurred by an owner or operator for corrective action and for compensating third parties for bodily injury and property damage prior to December 22, 1989.

H. No disbursements shall be made from the fund for owners or operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

I. No funds shall be paid in excess of the minimum disbursement necessary to cleanup each occurrence to the acceptable level of risk, as determined by the ~~board~~ department in its sole discretion.

9VAC25-590-220. Notices to the ~~State Water Control Board~~ department.

All requirements of this regulation for notification to the ~~State Water Control Board~~ department shall be addressed as follows:

Director

Department of Environmental Quality

1111 East Main Street, Suite 1400

P.O. Box 1105

Richmond, VA 23218

9VAC25-590-230. ~~Delegation of authority.~~ (Repealed.)

~~The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

VA.R. Doc. No. R23-7159; Filed September 9, 2022, 2:30 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: **9VAC25-610. Groundwater Withdrawal Regulations (amending 9VAC25-610-10, 9VAC25-610-20, 9VAC25-610-42, 9VAC25-610-50, 9VAC25-610-80, 9VAC25-610-90 through 9VAC25-610-106, 9VAC25-610-110 through 9VAC25-610-200, 9VAC25-610-220, 9VAC25-610-240 through 9VAC25-610-330, 9VAC25-610-350, 9VAC25-610-380, 9VAC25-610-390; adding 9VAC25-610-25, 9VAC25-610-275, 9VAC25-610-285, 9VAC25-610-287; repealing 9VAC25-610-360).**

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

Effective Date: November 23, 2022.

Agency Contact: Joseph Grist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4031, FAX (804) 698-4178, or email joseph.grist@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" as necessary, adding permit rationale, adding criteria for requesting and granting a public

hearing in a permit action, adding requirements related to controversial permits and controversial permit reporting, removing provisions delegating authority, and updating the definition of "board" and citations to the Code of Virginia.

9VAC25-610-10. Definitions.

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

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

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

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

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

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

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

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

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

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-610-270 and 9VAC25-610-275.

"Department" means the Department of Environmental Quality.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9VAC25-610-20. Purpose.

The Ground Water Management Act of 1992 recognizes and declares that the right to reasonable control of all groundwater resources within the Commonwealth belongs to the public and that in order to conserve, protect and beneficially utilize the groundwater resource and to ensure the public welfare, safety and health, provisions for management and control of groundwater resources are essential. This chapter delineates the procedures and requirements to be followed when establishing groundwater management areas and the issuance of groundwater withdrawal permits by the board or department pursuant to the Ground Water Management Act of 1992.

9VAC25-610-25. Permit rationale.

In granting a permit pursuant to this chapter, the department shall provide in writing a clear and concise statement of the legal basis, scientific rationale, and justification for the decision reached. When the decision of the department is to deny a permit the department shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the denial, the scientific justification for the same, and how the department's decision is in compliance with applicable laws and regulations. Copies of the decision, certified by the director, shall be mailed by certified mail to the permittee or applicant.

9VAC25-610-42. Private well registration.

A. Each certified water well systems provider shall register with the ~~board~~ department each private well, as defined in 9VAC25-610-10, that is constructed in a groundwater management area after September 22, 2016.

B. The registration shall be made within 30 calendar days of the completion of well construction.

C. Such registration shall be submitted to the department on a form, paper or electronic, provided by the department for registration purposes.

D. The following information, at a minimum, shall be required for each registration:

1. Contact information, including:

   a. The well owner's name and mailing address; and

   b. The certified water well system provider's name and mailing address.

2. The well location, including:

   a. The physical address, tax map number, or grid parcel identification number (GPIN) of the property at which the well is located;

   b. The subdivision name and appropriate section, block and lot numbers, if applicable; and

   c. The latitude, longitude, and datum of the well.

3. The type of use of the well water.

4. Well construction information, including:

   a. The well designation name or number;

   b. The start and completion dates of well construction;

   c. The depth of the well and borehole depth;

   d. Borehole sizes;

   e. Height of casing above the land surface, if applicable;

f. Size, depth, and material weight per foot or wall thickness of the casing, if applicable;

g. Size, type, and mesh of the screen or water zones, if applicable; and

h. The type of grout, grouting method, and type of seal, if applicable.

5. If a pump test is conducted, the pump test information, including:

a. Date and duration of test;

b. Pre-pumped static water level; and

c. Stabilized measured pumping level and yield.

6. Production pump intake depth, if applicable.

7. Drillers log.

8. The certified water well system provider's certification statement.

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 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~~ department; and

11. Withdrawal of groundwater discharged from free flowing springs where the natural flow of the spring has not been increased by any method.

9VAC25-610-80. Declaration of groundwater management areas.

A. If the board finds that any of the conditions listed in 9VAC25-610-70 exist, and further determines that the public welfare, safety and health require that regulatory efforts be initiated, the board shall declare the area in question a groundwater management area, by regulation.

B. Such regulations shall be promulgated in accordance with the agency's Public Participation Guidelines (9VAC25-11) and the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. The regulation shall define the boundaries of the groundwater management area and identify the aquifers to be included in the groundwater management area. Any number of aquifers that either wholly or partially overlie one another may be included within the same groundwater management area.

D. After adoption the ~~board~~ department shall mail by postal or electronic delivery a copy of the regulation to the mayor or chairman of the governing body of each county, city or town within which any part of the groundwater management area lies.

9VAC25-610-90. Application for a permit by groundwater users in existing groundwater management areas withdrawing prior to July 1, 1992.

Persons withdrawing groundwater or who have rights to withdraw groundwater prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Areas and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

1. Any person who was issued a certificate of groundwater right or a permit to withdraw groundwater prior to July 1, 1991, and who was withdrawing groundwater pursuant to said permit or certificate on July 1, 1992, shall file an application on or before December 31, 1992, to continue said withdrawal. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by the existing certificate or permit or by reports required by Water Withdrawal Reporting Regulations) (9VAC25-200).

2. Any person who was issued a certificate of groundwater right or a permit to withdraw groundwater prior to July 1, 1991, and who had not initiated the withdrawal prior to July 1, 1992, may initiate a withdrawal on or after July 1, 1992, pursuant to the terms and conditions of the certificate or permit and shall file an application for a groundwater withdrawal permit on or before December 31, 1995, to continue said withdrawal. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by the existing certificate or permit or by reports

required by Water Withdrawal Reporting Regulations (9VAC25-200).

3. Any person who was issued a permit to withdraw groundwater on or after July 1, 1991, and prior to July 1, 1992, shall not be required to apply for a groundwater withdrawal permit until the expiration of the permit to withdraw groundwater or 10 years from the date of issuance of the permit to withdraw groundwater whichever occurs first. Such persons shall reapply for a groundwater withdrawal permit as described in 9VAC25-610-96.

4. Any person withdrawing groundwater for agricultural or livestock watering purposes on or before July 1, 1992, shall file an application for a groundwater withdrawal permit on or before December 31, 1993. The applicant shall demonstrate the claimed prior withdrawals by voluntary withdrawal reports required by Water Withdrawal Reporting Regulations) (9VAC25-200) when such reports have been filed with the board. When such reports are not available, estimates of withdrawal will be accepted that are based on the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps, energy consumption per hour, and pumping capacity; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or other methods approved by the ~~board~~ department.

5. Any political subdivision, or authority serving a political subdivision, holding a certificate of groundwater right or a permit to withdraw groundwater issued prior to July 1, 1992, for the operation of a public water supply well for the purpose of providing supplemental water during drought conditions, shall file an application on or before December 31, 1992. Any political subdivision, or authority serving a political subdivision, shall submit, as part of the application, a water conservation and management plan as described in 9VAC25-610-100 B.

6. Any person who is required to apply in subdivision 1, 2, or 5 of this section and who uses the certificated or permitted withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a groundwater withdrawal permit.

7. Any person described in subdivision 1, 2, 3, or 5 of this section who files a complete application by the date required may continue to withdraw groundwater pursuant to the existing certificate or permit until such time as the ~~board~~ department takes action on the outstanding application for a groundwater withdrawal permit.

8. Any person described in subdivision 4 of this section who files a complete application by the date required may continue his existing withdrawal until such time as the ~~board~~ department takes action on the outstanding application for a groundwater withdrawal permit.

9. Any person described in subdivision 1, 2, 3, 4, or 5 of this section who files an incomplete application by the date required may continue to withdraw groundwater as described in subdivisions 7 and 8 of this section provided that all information required to complete the application is provided to the ~~board~~ department within 60 days of the ~~board's~~ department's notice to the applicant of deficiencies. Should such person not provide the ~~board~~ department the required information within 60 days, he shall cease withdrawals until he provides any additional information to the ~~board~~ department and the ~~board~~ department concurs that the application is complete.

10. A complete application for those persons described in subdivision 1, 2, 3, 4, or 5 of this section shall contain:

a. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

b. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the ~~board~~ department. Such application forms are available from the Department of Environmental Quality;

c. A signature as described in 9VAC25-610-150;

d. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(1) The depth of the well;

(2) The diameter, top and bottom, and material of each cased interval;

(3) The diameter, top and bottom, for each screened interval; and

(4) The depth of pump intake;

e. Locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

f. A map identifying the service areas for public water supplies;

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

h. Persons described in subdivision 5 of this section shall submit a water conservation and management plan as described in 9VAC25-610-100;

i. Withdrawal reports required by the existing groundwater certificate or permit, reports required by Water Withdrawal Reporting Regulations (9VAC25-200), or estimates of withdrawals as described in subdivision 4 of this section to support any claimed prior withdrawal; and

j. A copy of the Virginia Department of Health waterworks operation permit, or equivalent, where applicable.

11. The ~~board~~ department may waive the requirement for information listed in subdivision 10 of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

12. Any person described in subdivision 1, 2, 3, or 5 of this section who fails to file an application by the date required creates the presumption that all claims to groundwater withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned, he shall have filed an application with a letter of explanation to the board by November 21, 1993. Any such person failing to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned who wishes to withdraw groundwater shall apply for a new withdrawal as described in 9VAC25-610-94.

13. Any person described in subdivision 4 of this section who fails to file an application by the date required creates the presumption that all claims to groundwater withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned, he may do so by filing an application with a letter of explanation to the board within 60 days of the original required date or within 60 days of January 1, 1999, whichever is later. Any such person failing to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned who wishes to withdraw groundwater shall apply for a new withdrawal as described in 9VAC25-610-94.

9VAC25-610-92. Application for a permit by existing users when a groundwater management area is declared or expanded on or after July 1, 1992.

Persons withdrawing groundwater when a groundwater management area is declared or expanded on or after July 1, 1992, and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

1. Any person withdrawing groundwater in an area that is declared to be a groundwater management area on or after July 1, 1992, shall file an application for a groundwater permit within six months of the effective date of the regulation creating or expanding the groundwater management area. The applicant shall demonstrate the claimed prior withdrawals through withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200), or other methods approved by the ~~board~~ department if reporting information pursuant to the Water Withdrawal Reporting Regulations is not available. In the case of agricultural groundwater withdrawals not required to report by Water Withdrawal Reporting Regulations, estimates of withdrawal will be accepted that are based on the area irrigated, depth of irrigation, and annual number of irrigations; pumping capacity and annual pumping time; annual energy consumption for pumps, energy consumption per hour, and pumping capacity; number and type of livestock watered annually; number and type of livestock where water is used for cooling purposes; or other methods approved by the ~~board~~ department.

2. Any person withdrawing groundwater who uses the withdrawal to operate a public water supply system shall provide a copy of the waterworks operation permit, or equivalent, with the required application for a groundwater withdrawal permit.

3. Any person who is required to apply for a groundwater withdrawal permit and files a complete application within six months after the effective date of the regulation creating or expanding a groundwater management area may continue their existing documented withdrawal until such time as the ~~board~~ department takes action on the outstanding application for a groundwater withdrawal permit.

4. Any person who is required to apply for a groundwater withdrawal permit and files an incomplete application within six months after the effective date of the regulation creating or expanding a groundwater management area may continue to withdraw groundwater as described in subdivision 3 of this section provided that all the information required to complete the application is provided to the ~~board~~ department within 60 days of the ~~board's~~ department's notice to the applicant of deficiencies. Should such person not provide the ~~board~~ department the required information within 60 days, he shall cease withdrawals until he provides any additional information to the ~~board~~ department and the ~~board~~ department concurs that the application is complete.

5. A complete application for those persons described in subdivision 1 of this section shall contain:

a. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

b. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the ~~board~~ department. Such application forms are available from the Department of Environmental Quality;

c. A signature as described in 9VAC25-610-150;

d. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(1) The depth of the well;

(2) The diameter, top and bottom, and material of each cased interval;

(3) The diameter, top and bottom, for each screened interval; and

(4) The depth of pump intake;

e. Locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

f. A map identifying the service areas for public water supplies;

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

h. Withdrawal reports required by Water Withdrawal Reporting Regulations (9VAC25-200), other documentation demonstrating historical water use approved by the ~~board~~ department to support claimed prior withdrawals if Water Withdrawal Reporting information is unavailable or estimates of withdrawals as described in subdivision 1 of this section to support any claimed prior withdrawal; and

i. A copy of the Virginia Department of Health waterworks operation permit where applicable.

6. The ~~board~~ department may waive the requirement for information listed in subdivision 5 of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

7. Any person who fails to file an application within six months after the effective date creating or expanding a groundwater management area creates the presumption that all claims to groundwater withdrawal based on historic use have been abandoned. Should any such person wish to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned, they may do so by filing an application with a letter of explanation to the ~~board~~ department within eight months after the date creating or expanding the groundwater management area. Any such person failing to rebut the presumption that claims to groundwater withdrawal based on historic use have been abandoned who wishes to withdraw groundwater shall apply for a new withdrawal as described in 9VAC25-610-94.

9VAC25-610-94. Application for a new permit, expansion of an existing withdrawal, or reapplication for a current permitted withdrawal.

Persons wishing to initiate a new withdrawal, expand an existing withdrawal, or reapply for a current permitted withdrawal in any groundwater management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

1. A groundwater withdrawal permit application shall be completed and submitted to the ~~board~~ department and a groundwater withdrawal permit issued by the ~~board~~ department prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50 or authorized by a general permit adopted by the board as a regulation.

2. A complete groundwater withdrawal permit application for a new or expanded withdrawal, or reapplication for a current withdrawal, shall contain the following:

a. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

b. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the ~~board~~ department. Such application forms are available from the Department of Environmental Quality;

c. A signature as described in 9VAC25-610-150;

d. A completed well construction report for all existing wells associated with the application submitted on the Water Well Completion Report, Form GW2;

e. The application shall include locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

f. A map identifying the service areas for public water supplies;

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

h. A water conservation and management plan as described in 9VAC25-610-100;

i. The application shall include notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 days of receipt of the written request, the location and operation of

the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery;

j. An alternatives analysis that evaluates sources of water supply other than groundwater, including sources of reclaimed water, and the lowest quality of water needed for the intended beneficial use as described in 9VAC25-610-102;

k. Documentation justifying the need for future water supply as described in 9VAC25-610-102;

l. A plan to mitigate potential adverse impacts from the proposed withdrawal on existing groundwater users. In lieu of developing individual mitigation plans, multiple applicants may choose to establish a mitigation program to collectively develop and implement a cooperative mitigation plan that covers the entire area of impact of all members of the mitigation program; and

m. Other relevant information that may be required by the ~~board~~ department to evaluate the application.

3. In addition to requirements contained in subdivision 2 of this section, the ~~board~~ department may require any or all of the following information prior to considering an application complete.

a. The installation of monitoring wells and the collection and analysis of drill cuttings, continuous cores, geophysical logs, water quality samples, or other hydrogeologic information necessary to characterize the aquifer system present at the proposed withdrawal site.

b. The completion of pump tests or aquifer tests to determine aquifer characteristics at the proposed withdrawal site.

4. The ~~board~~ department may waive the requirement for information listed in subdivision 2 or 3 of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

9VAC25-610-96. Duty to reapply for a permit.

A. Any permittee with an effective permit shall submit a new permit application at least 270 days before the expiration date of an effective permit unless permission for a later date has been granted by the ~~board~~ department. If a complete application for a new permit has been filed in a timely manner, and the ~~board~~ department is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit, the permit may be administratively continued.

B. Permittees who have effective permits shall submit a new application 270 days prior to any proposed modification to their activity or withdrawal system that will:

1. Result in an increase of withdrawals above permitted limits; or

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

C. The applicant shall provide all information described in 9VAC25-610-94 for any reapplication. The information may be provided by referencing information previously submitted to the department that remains accurate and relevant to the permit application. The ~~board~~ department may waive any requirement of 9VAC25-610-94 if it has access to substantially identical information.

9VAC25-610-98. Incomplete or inaccurate applications.

A. Where the ~~board~~ department finds an application to be incomplete under the requirements of 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94, the ~~board~~ department shall require the submission of additional information after an application has been filed, and may suspend processing of the application until such time as the applicant has supplied the missing or deficient information and the ~~board~~ department finds the application complete. An incomplete permit application for a new or expanded withdrawal may be suspended from processing 180 days from the date that the applicant received notification that the application is deficient. Once an application has been suspended from processing, the applicant must submit a new complete application; however, no additional permit fee will be assessed. Further, where the applicant becomes aware that one or more relevant facts from a permit application were omitted, or that incorrect information was submitted in a permit application or in any report to the ~~board~~ department, the applicant shall immediately submit such facts or the correct information.

B. When an application does not accurately describe an existing or proposed groundwater withdrawal, the ~~board~~ department may require the applicant to revise the existing application or submit a new application before the application will be processed.

9VAC25-610-100. Water conservation and management plans.

A. Any application to initiate a new withdrawal or expand an existing withdrawal in any groundwater management area or the reapplication at the end of a permit cycle for all permits shall require a water conservation and management plan before the application or reapplication is considered complete. The ~~board~~ department shall review all water conservation and management plans and assure that such plans contain all elements required in subsection B of this section. The approved plan shall become an enforceable part of the approved permit.

B. A water conservation and management plan is an operational plan to be referenced and implemented by the permittee. Water conservation and management plans shall be consistent with local and regional water supply plans in the applicant's geographic area developed as required by 9VAC25-780. The water conservation and management plan shall be specific to the type of water use and include the following:

1. For municipal and nonmunicipal public water supplies:

a. Where practicable, the plan should require use of water-saving equipment and processes for all water users including technological, procedural, or programmatic improvements to the facilities and processes to decrease the amount of water withdrawn or to decrease water demand. The goal of these requirements is to assure the most efficient use of groundwater. Information on the water-saving alternatives examined and the water savings associated with the alternatives shall be provided. Water conservation and management plans shall discuss high volume water consumption by users on the system and where conservation measures have previously been implemented and shall be applied. Also, where appropriate, the use of water-saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code (13VAC5-63) shall be identified in the plan;

b. A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a leak detection and repair program shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks;

c. A water use education program that contains requirements for the education of water users and training of employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource. The program shall include a schedule for information distribution and the type of materials used;

d. An evaluation of water reuse options and assurances that water shall be reused in all instances where reuse is practicable. Potential for expansion of the existing reuse practices or adoption of additional reuse practices shall also be included; and

e. Requirements for mandatory water use reductions during water shortage emergencies declared by the local governing body or water authority consistent with §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include, where appropriate, ordinances in municipal systems prohibiting the waste of water generally and requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies. The water conservation and management plan shall also contain requirements for mandatory water use restrictions during water shortage emergencies that restricts or prohibits all nonessential uses such as lawn watering, car washing, and similar nonessential residential, industrial, and commercial uses for the duration of the water shortage emergency. Penalties for failure to comply with mandatory water use restrictions shall be included in municipal system plans.

2. For nonpublic water supply applicants - commercial and industrial users:

a. Where applicable, the plan should require use of water-saving equipment and processes for all water users including technological, procedural, or programmatic improvements to the facilities and processes to decrease the amount of water withdrawn or to decrease water demand. The goal of these requirements is to assure the most efficient use of groundwater. Information on the water-saving alternatives examined and the water savings associated with the alternatives shall be provided. Also, where appropriate, the use of water-saving fixtures in new and renovated plumbing as provided in the Uniform Statewide Building Code (13VAC5-63) shall be identified in the plan;

b. A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a leak detection and repair program shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks;

c. A water use education program that contains requirements for the education of water users and training of employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource. The program shall include a schedule for information distribution and the type of materials used;

d. An evaluation of water reuse options and assurances that water shall be reused in all instances where reuse is practicable. Potential for expansion of the existing reuse practices or adoption of additional reuse practices shall also be included; and

e. Requirements for complying with mandatory water use reductions during water shortage emergencies declared by the local governing body or water authority in accordance with §§ 15.2-923 and 15.2-924 of the Code of Virginia. This shall include, where appropriate, ordinances

prohibiting the waste of water generally and requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies. The water conservation and management plan shall also contain requirements for mandatory water use restrictions during water shortage emergencies that restricts or prohibits all nonessential uses such as lawn watering, car washing, and similar nonessential industrial and commercial uses for the duration of the water shortage emergency.

3. For nonpublic water supply applicants - agricultural users:

a. Requirements for the use of water-saving plumbing and processes to decrease the amount of water withdrawn or to decrease water demand. Plans submitted for the use of groundwater for irrigation shall identify the specific type of irrigation system that will be utilized, the efficiency rating of the irrigation system in comparison to less efficient systems, the irrigation schedule used to minimize water demand, and the crop watering requirements. Multiple types of irrigation methods may be addressed in the plan. For livestock watering operations, plans shall include livestock watering requirements (per head) and processes to minimize waste of water. These requirements shall assure that the most practicable use is made of groundwater. If these options are not implemented in the plan, information on the water-saving alternatives examined and the water savings associated with the alternatives shall be provided;

b. A water loss reduction program, which defines the applicant's leak detection and repair program. The water loss reduction program shall include requirements for an audit of the total amount of groundwater used in the distribution system and operational processes during the first two years of the permit cycle. Implementation of a leak detection and repair program shall be required within one year of the date the permit is issued. The program shall include a schedule for inspection of equipment and piping for leaks;

c. A water use education program that contains requirements for the training of employees controlling water consuming processes to assure that water conservation principles are well known by the users of the resource. The program shall include a schedule for training employees. This requirement may be met through training employees on water use requirements contained in irrigation management plans or livestock management plans;

d. An evaluation of potential water reuse options and assurances that water shall be reused in all instances where reuse is practicable and not prohibited by other regulatory programs; Potential for expansion of the existing reuse practices or adoption of additional reuse practices shall also be included; and

e. Requirements for mandatory water use reductions during water shortage emergencies and compliance with ordinances prohibiting the waste of water generally. This shall include requirements providing for mandatory water use restrictions in accordance with drought response and contingency ordinances implemented to comply with 9VAC25-780-120 during water shortage emergencies.

f. The permittee may submit portions of Agricultural Management Plans or Irrigation Management Plans developed to comply with requirements of federal or state laws, regulations, or guidelines to demonstrate the requirements of subdivisions B 3 a through d of this section are being achieved.

9VAC25-610-102. Evaluation of need for withdrawal and alternatives.

A. The applicant shall identify the purpose of the proposed withdrawal by providing a narrative description of the water supply issues that form the basis of the proposed withdrawal.

B. The applicant shall subsequently demonstrate to the satisfaction of the ~~board~~ department that the withdrawal meets an established water supply need.

1. In establishing local need for a public water supply, the applicant shall provide the following information:

a. Existing supply sources, yields and demands, including:

(1) Peak day and average daily withdrawal;

(2) Total consumptive use component of the withdrawal, including identification of the amount needed for human consumption;

(3) Types of water uses; and

(4) Existing water conservation measures and drought response plan, including what conditions trigger their implementation.

b. Projected demands in 10 year increments over a minimum 30-year planning period that includes the following:

(1) Projected demand contained in the local or regional water supply plan developed in accordance with 9VAC25-780 or for the project service area if such area is smaller than the planning area; or

(2) Statistical population (growth) trends, projected demands by use type including projected demand with and without water conservation measures.

2. In establishing need for agricultural water supply, the applicant shall provide the following information:

a. For crop irrigation: crop, acreage, crop spacing, crop watering requirements for the particular crop (crop rooting depth), soil types, soil holding capacity (available water capacity), allowable soil water depletion, historic precipitation records (precipitation contribution), peak irrigation months, irrigation scheduling approaches

(tensiometers vs. feel method), irrigation type (drip, overhead, center pivot etc.), and irrigation system efficiency rating.

b. For livestock watering: kind and size of animal, rate and composition of gain, presence of pregnant animals or lactating animals, type of diet, level of dry matter intake, level of activity, quality of the water, temperature of the water offered, and surrounding air temperature.

3. In establishing need for commercial water supply, the applicant shall provide the following information:

a. Number of employees by month for an average year;

b. Average gallons per day used per month;

c. Average daily water use rate per employee per month; and

d. Identification of peak month of water demand.

4. In establishing need for industrial water supply, the applicant shall provide the following information:

a. SIC or NAICS industry code;

b. Number of employees by month for an average year;

c. Average gallons per day used per month;

d. Average daily water use rate per employee per month;

e. Identification of peak month of water demand;

f. Amount of withdrawal per unit of output or similar metric identified by the user; and

g. Monthly amount of water used for industrial processes.

C. The applicant shall provide an alternatives analysis that evaluates sources of water supply other than groundwater and the availability and use of lower qualities of groundwater that can still be put to beneficial use. For all proposed withdrawals, the applicant shall demonstrate to the satisfaction of the ~~board~~ department:

1. Opportunities to reduce and minimize the use of groundwater have been identified and the requested amount is the minimum amount of groundwater necessary for the proposed activity;

2. The project utilizes the lowest quality water for the proposed activity;

3. Alternate sources of supply other than groundwater, including surface water and water reuse, were considered for use in the proposed activity particularly for consumptive use purposes; and

4. Practicable alternatives, including design alternatives, have been evaluated for the proposed activity. Measures that would avoid or result in less adverse impact to high quality groundwater shall be considered to the maximum extent practicable.

D. Any alternatives analysis conducted specifically for public water supply projects shall include:

1. All applicable alternatives contained in the local or regional water supply plan developed in accordance with 9VAC25-780;

2. Alternatives that are practicable that had not been identified in the local or regional water supply plan developed in accordance with 9VAC25-780;

3. Water conservation measures that could be considered as a means to reduce demand for each alternative considered by the applicant; and

4. A narrative description that outlines the opportunities and status of regionalization efforts undertaken by the applicant, including the interconnectivity of water systems and the ability for applicants to purchase water from other water supplies.

E. The alternatives analysis shall discuss the criteria used to evaluate each alternative including, but not limited to:

1. Demonstration that the proposed alternative meets the project purpose and project demonstrated need;

2. Availability of the alternative to the applicant;

3. Evaluation of interconnectivity of water supply systems and the ability to purchase water from other supplies when applicable (both existing and proposed); and

4. Evaluation of the cost of the alternative on an equivalent basis.

9VAC25-610-104. Surface water and groundwater conjunctive use systems.

A. Surface water and groundwater conjunctive use systems for public water supplies.

1. Applicants proposing to withdraw groundwater as part of a surface water and groundwater conjunctive use system for public water supplies shall provide the following information to the ~~board~~ department in addition to information required by 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94 as part of their permit application:

a. A detailed description of the surface water and groundwater conjunctive use system, including:

(1) Identification of all surface water sources, including pond and reservoir volumes where applicable;

(2) Identification of the wells used on a continual basis to supplement surface water supply needs and wells to be utilized in periods of reduced surface water availability. Well construction information for all wells shall be submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(a) The depth of the well;

(b) The diameter, top and bottom, and material of each cased interval;

(c) The diameter, top and bottom, for each screened interval; and

(d) The depth of pump intake.

(3) A description of the storage system, excluding surface water sources described in subdivision 1 a (1) of this subsection;

(4) A copy of the Engineering Description Sheet developed by the Virginia Department of Health for the withdrawal; and

(5) A line drawing of the water supply system illustrating the water balance of the system.

b. Records documenting the amount of water withdrawn on a daily basis for each water source during average weather conditions and during drought conditions;

c. Documentation of the seasonal supply of surface water during both average and drought conditions;

d. Documentation of any seasonal changes in demand that occur during an annual cycle of the specified beneficial use or uses; and

e. Other relevant information that may be required by the ~~board~~ department to evaluate the application.

2. The applicant shall demonstrate that the groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use or uses.

3. The ~~board~~ department shall evaluate the proposed groundwater withdrawal for consistency with criteria specified in 9VAC25-610-110.

4. In addition to conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, 9VAC25-610-130, and 9VAC25-610-140, the permit shall specify the maximum amount of groundwater that may be withdrawn during the term of the permit and shall address variations in the groundwater withdrawal amounts that may occur.

5. The ~~board~~ department may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

6. Applicants may request approval to withdraw groundwater amounts that exceed the withdrawal limits established in subdivision 4 of this section from wells that are part of a conjunctive use system to meet human consumption needs during periods of drought by applying for a supplemental drought relief permit as described in 9VAC25-610-106.

B. Surface water and groundwater conjunctive use systems for uses other than public water supplies.

1. Applicants proposing to withdraw groundwater as part of a surface water and groundwater conjunctive use system for uses other than public water supplies shall provide the following information to the ~~board~~ department in addition to information required by 9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94 as part of their permit application:

a. A detailed description of the surface water and groundwater conjunctive use system, including:

(1) Identification of all surface water sources, including pond and reservoir volumes where applicable;

(2) Identification of the wells used on a continual basis to supplement surface water supply needs and wells to be utilized in periods of reduced surface water availability. Well construction information for all wells shall be submitted on the Water Well Completion Report, Form GW2, which includes the following information:

(a) The depth of the well;

(b) The diameter, top and bottom, and material of each cased interval;

(c) The diameter, top and bottom, for each screened interval; and

(d) The depth of pump intake.

(3) A description of the storage system, excluding surface water sources described in subdivision 1 a (1) of this subsection; and

(4) A map delineating the area in which the water will be beneficially used.

b. Records documenting the amount of water withdrawn on a monthly basis and annual basis for each water source during average weather conditions and during drought conditions;

c. Documentation of the seasonal supply of surface water during both average and drought conditions;

d. Documentation of any seasonal changes in demand that occur during an annual cycle of the specified beneficial use or uses;

e. Other relevant information that may be required by the ~~board~~ department to evaluate the application.

2. The applicant shall demonstrate that the groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use or uses.

3. The ~~board~~ department shall evaluate the proposed groundwater withdrawal for consistency with criteria specified in 9VAC25-610-110.

4. In addition to conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-130, and 9VAC25-610-140, the permit shall specify the maximum amount of groundwater that may be withdrawn during the term of the permit and shall address variations in the groundwater withdrawal amounts that may occur.

5. The ~~board~~ department may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

9VAC25-610-106. Supplemental drought relief wells.

A. Public water supplies wishing to withdraw groundwater for human consumption during periods of drought through the use of supplemental drought relief wells in any groundwater management area and not excluded from requirements of this chapter by 9VAC25-610-50 shall apply for a permit.

B. A groundwater withdrawal permit application shall be completed and submitted to the ~~board~~ department and a groundwater withdrawal permit issued by the ~~board~~ department prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50 or authorized by a general permit adopted by the board as a regulation.

C. A complete groundwater withdrawal permit application for supplemental drought relief wells shall contain the following:

1. The permit fee as required by the Fees for Permits and Certificates Regulations (9VAC25-20);

2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the ~~board~~ department. Such application forms are available from the Department of Environmental Quality;

3. A signature as described in 9VAC25-610-150;

4. Well construction documentation for all wells associated with the application submitted on the Water Well Completion Report, Form GW2, which includes the following information:

a. The depth of the well;

b. The diameter, top and bottom, and material of each cased interval;

c. The diameter, top and bottom, for each screened interval; and

d. The depth of pump intake.

5. The application shall include locations of all wells associated with the application shown on United States Geological Survey 7-1/2 minute topographic maps. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The detailed location map shall be of sufficient detail such that all wells may be easily located for site inspection;

6. A map identifying the service areas for public water supplies;

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

8. A water conservation and management plan as described in 9VAC25-610-100;

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

10. A plan to mitigate potential adverse impacts from the proposed withdrawal on existing groundwater users. In lieu of developing individual mitigation plans, multiple applicants may choose to establish a mitigation program to collectively develop and implement a cooperative mitigation plan that covers the entire area of impact of all members of the mitigation program;

11. Documentation on the maximum amount of groundwater needed annually to meet human consumption needs; and

12. Other relevant information that may be required by the ~~board~~ department to evaluate the application.

D. Permits issued by the ~~board~~ department for groundwater withdrawals from supplemental drought relief wells shall include the following permit conditions:

1. Permits shall include a maximum amount of groundwater allowed to be withdrawn over the term of the permit.

2. The permit shall specify an annual limit on the amount of groundwater to be withdrawn based on the amount of groundwater needed annually to meet human consumption needs. Groundwater withdrawals from supplemental drought relief wells shall be subject to monthly groundwater withdrawal limits.

3. Permits shall specify that groundwater withdrawn from supplemental drought relief wells shall be used to meet human consumption needs.

4. Permits shall specify that groundwater shall only be withdrawn from supplemental drought relief wells after mandatory water restrictions have been implemented pursuant to approved water conservation and management plans as required by § 62.1-265 of the Code of Virginia.

5. A permit shall contain the total depth of each permitted well in feet.

6. A permit shall specify the screened intervals of wells authorized for use by the permit.

7. A permit shall contain the designation of the aquifers to be utilized.

8. A permit may contain conditions limiting the withdrawal amount of a single well or a group of wells within a withdrawal system to a quantity specified by the ~~board~~ department.

9. A groundwater withdrawal permit for a public water supply shall contain a condition allowing daily withdrawals at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the ~~board~~ department to reduce or eliminate groundwater withdrawals by public water suppliers if necessary to protect human health or the environment.

10. The permit shall state that no pumps or water intake devices are to be placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

11. All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users shall install in-line totalizing flow meters to read gallons, cubic feet, or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in groundwater withdrawal reports. An alternative method for determining flow may be approved by the ~~board~~ department on a case-by-case basis.

b. Permits shall contain requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.

c. Permits shall contain required monitoring including type, intervals, and frequency sufficient to yield data that are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

d. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of at least 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

12. All permits shall prohibit withdrawals from wells not authorized in the permit.

13. All permits shall include requirements to report the amount of water withdrawn from each permitted well or well system on forms provided by the ~~board~~ department with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

14. Groundwater withdrawal permits issued under this chapter shall have an effective and expiration date that will determine the life of the permit. Groundwater withdrawal permits shall be effective for a fixed term not to exceed 15 years. Permit duration of less than the maximum period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

15. Each permit shall have a condition allowing the reopening of the permit for the purpose of modifying the conditions of the permit to meet new regulatory standards duly adopted by the board.

16. Each well that is included in a groundwater withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the Department of Environmental Quality well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the ~~board~~ department and are available from the Department of Environmental Quality.

E. The permit shall address variations in the groundwater withdrawal amounts that may occur.

F. In addition to the permit conditions listed in subsection D of this section, the ~~board~~ department may issue any permit with terms, conditions, or limitations necessary to protect the public welfare, safety, and health, or to protect the resource.

G. The ~~board~~ department shall evaluate the application for supplemental drought relief wells based on the following criteria:

1. The applicant demonstrates that no pumps or water intake devices are placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

2. The applicant demonstrates that the amount of groundwater withdrawal requested is the smallest amount of

withdrawal necessary to support human consumption when mandatory water use restrictions have been implemented.

3. The applicant provides a water conservation and management plan as described in 9VAC25-610-100 and implements the plan as an enforceable condition of the groundwater withdrawal permit.

4. The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

5. The ~~board's~~ department's technical evaluation demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant or that there are no existing groundwater withdrawers within the area of impact of the proposed withdrawal.

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

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

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

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

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

6. The ~~board~~ department conducts a technical evaluation of the effects of the proposed withdrawal with the stabilized cumulative effects of all existing lawful withdrawals to identify if the withdrawal will lower water levels in any confined aquifer below a point that represents 80% of the distance between the land surface and the top of the aquifer.

7. The ~~board's~~ department's technical evaluation demonstrates that the proposed groundwater withdrawal will not result in salt water intrusion or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing groundwater users or the groundwater resource. This provision shall not exclude the withdrawal of brackish water provided that the proposed withdrawal will not result in unmitigated adverse impacts.

9VAC25-610-110. Evaluation criteria for permit applications.

A. The ~~board~~ department shall not issue any permit for more groundwater than will be applied to the proposed beneficial use.

B. The ~~board~~ department shall issue groundwater withdrawal permits to persons withdrawing groundwater or who have rights to withdraw groundwater prior to July 1, 1992, in the Eastern Virginia or Eastern Shore Groundwater Management Area and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The ~~board~~ department shall issue a groundwater withdrawal permit for persons meeting the criteria of subdivision 1 of 9VAC25-610-90 for the total amount of groundwater withdrawn in any consecutive 12-month period between July 1, 1987, and June 30, 1992; however, with respect to a political subdivision, an authority serving a political subdivision or a community waterworks regulated by the Department of Health, the ~~board~~ department shall issue a groundwater withdrawal permit for the total amount of water withdrawn in any consecutive 12-month period between July 1, 1980, and June 30, 1992.

2. The ~~board~~ department shall issue a groundwater withdrawal permit for persons meeting the criteria of subdivision 2 of 9VAC25-610-90 for the total amount of groundwater withdrawn and applied to a beneficial use in any consecutive 12-month period between July 1, 1992, and June 30, 1995.

3. The ~~board~~ department shall issue a groundwater withdrawal permit for persons meeting the criteria of subdivision 4 of 9VAC25-610-90 for the total amount of groundwater withdrawn in any consecutive 12-month period between July 1, 1983, and June 30, 1993. The ~~board~~ department shall evaluate all estimates of groundwater withdrawal based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only reasonable estimates will be used to document a permit limit.

4. The ~~board~~ department shall issue a groundwater withdrawal permit for persons meeting the criteria of subdivision 5 of 9VAC25-610-90 for the amount of

groundwater withdrawal needed to annually meet human consumption needs as proven in the water conservation and management plan approved by the ~~board~~ department. The ~~board~~ department shall include conditions in such permits that require the implementation of mandatory use restrictions before such withdrawals can be exercised.

5. When requested by persons described in subdivisions 1, 2, and 4 of 9VAC25-610-90 the ~~board~~ department may issue groundwater withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on documentation of water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. The applicant shall provide evidence of withdrawal amounts through metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

C. The ~~board~~ department shall issue groundwater withdrawal permits to persons withdrawing groundwater when a groundwater management area is declared or expanded after July 1, 1992, and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The ~~board~~ department shall issue a groundwater withdrawal permit to nonagricultural users for the total amount of groundwater withdrawn in any consecutive 12-month period during the five years preceding the effective date of the regulation creating or expanding the groundwater management area.

2. The ~~board~~ department shall issue a groundwater withdrawal permit to agricultural users for the total amount of groundwater withdrawn in any consecutive 12-month period during the 10 years preceding the effective date of the regulation creating or expanding the groundwater management area. The ~~board~~ department shall evaluate all estimates of groundwater withdrawal based on projected water demands for crops and livestock as published by the Virginia Cooperative Extension Service, the United States Natural Resources Conservation Service, or other similar references and make a determination whether they are reasonable. In all cases only reasonable estimates will be used to document a permit limit.

3. When requested by the applicant the ~~board~~ department may issue groundwater withdrawal permits that include withdrawal amounts in excess of those which an applicant can support based on historic usage. These additional amounts shall be based on documentation of water savings achieved through water conservation measures. The applicant shall demonstrate withdrawals prior to implementation of water conservation measures, type of water conservation measure implemented, and withdrawals after implementation of water conservation measures. The applicant shall provide evidence of withdrawal amounts through metered withdrawals and estimated amounts shall not be accepted to claim additional withdrawal amounts due to water conservation. Decreases in withdrawal amounts due to production declines, climatic conditions, population declines, or similar events shall not be used as a basis to claim additional withdrawal amounts based on water conservation.

D. The ~~board~~ department shall issue groundwater withdrawal permits to persons wishing to initiate a new withdrawal, expand an existing withdrawal, or reapply for a current withdrawal in any groundwater management area who have submitted complete applications and are not excluded from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

1. The applicant shall provide all information required in subdivision 2 of 9VAC25-610-94 prior to the ~~board's~~ department's determination that an application is complete. The ~~board~~ department may require the applicant to provide any information contained in subdivision 3 of 9VAC25-610-94 prior to considering an application complete based on the anticipated impact of the proposed withdrawal on existing groundwater users or the groundwater resource.

2. The ~~board~~ department shall perform a technical evaluation to determine the areas of any aquifers that will experience at least one foot of water level declines due to the proposed withdrawal and may evaluate the potential for the proposed withdrawal to cause salt water intrusion into any portions of any aquifers or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing groundwater users or the groundwater resource. Prior to public notice of a draft permit developed in accordance with the findings of the technical evaluation and at the request of the applicant, the results of the technical evaluation, including all assumptions and input, will be provided to the applicant for review.

3. The ~~board~~ department shall issue a groundwater withdrawal permit when it is demonstrated, by a complete application and the ~~board's~~ department's technical evaluation, to the ~~board's~~ department's satisfaction that the maximum safe supply of groundwater will be preserved and protected for all other beneficial uses and that the applicant's proposed withdrawal will have no significant unmitigated impact on existing groundwater users or the groundwater resource. In order to assure that the applicant's proposed withdrawal complies with the above stated requirements, the

demonstration shall include, but not be limited to, compliance with the following criteria:

a. The applicant demonstrates that no other sources of water supply, including reclaimed water, are practicable.

b. The applicant demonstrates that the groundwater withdrawal will originate from the aquifer that contains the lowest quality water that will support the proposed beneficial use.

c. The applicant demonstrates that no pumps or water intake devices are placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

d. The applicant demonstrates that the amount of groundwater withdrawal requested is the smallest amount of withdrawal necessary to support the proposed beneficial use and that the amount is representative of the amount necessary to support similar beneficial uses when adequate conservation measures are employed.

e. The applicant provides a water conservation and management plan as described in 9VAC25-610-100 and implements the plan as an enforceable condition of the groundwater withdrawal permit.

f. The applicant provides certification by the local governing body that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

g. The ~~board's~~ department's technical evaluation demonstrates that the area of impact of the proposed withdrawal will remain on property owned by the applicant or that there are no existing groundwater withdrawers within the area of impact of the proposed withdrawal.

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

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

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

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

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

h. The ~~board's~~ department's technical evaluation demonstrates that the stabilized effects from the proposed withdrawal in combination with the stabilized combined effects of all existing lawful withdrawals will not lower water levels, in any confined aquifer that the withdrawal impacts, below a point that represents 80% of the distance between the land surface and the top of the aquifer. Compliance with the 80% drawdown criteria will be determined at the points where the predicted one-foot drawdown contour is predicted for the proposed withdrawal.

i. The ~~board's~~ department's technical evaluation demonstrates that the proposed groundwater withdrawal will not result in salt water intrusion or the movement of waters of lower quality to areas where such movement would result in adverse impacts on existing groundwater users or the groundwater resource. This provision shall not exclude the withdrawal of brackish water provided that the proposed withdrawal will not result in unmitigated adverse impacts.

4. The ~~board~~ department shall also take the following factors into consideration when evaluating a groundwater withdrawal permit application or special conditions associated with a groundwater withdrawal permit:

a. The nature of the use of the proposed withdrawal;

b. The public benefit provided by the proposed withdrawal;

c. The proposed use of innovative approaches such as aquifer storage and recovery systems, surface water and groundwater conjunctive use systems, multiple well systems that blend withdrawals from aquifers that contain different quality groundwater in order to produce potable water, and desalinization of brackish groundwater;

d. Prior public investment in existing facilities for withdrawal, transmission, and treatment of groundwater;

e. Climatic cycles;

f. Economic cycles;

g. The unique requirements of nuclear power stations;

h. Population and water demand projections during the term of the proposed permit;

i. The status of land use and other necessary approvals; and

j. Other factors that the ~~board~~ department deems appropriate.

E. When proposed uses of groundwater are in conflict or available supplies of groundwater are not sufficient to support all those who desire to use them, the ~~board~~ department shall prioritize the evaluation of applications in the following manner:

1. Applications for human consumption shall be given the highest priority;

2. Should there be conflicts between applications for human consumption, applications will be evaluated in order based on the date that said applications were considered complete; and

3. Applications for all uses, other than human consumption, will be evaluated following the evaluation of proposed human consumption in order based on the date that said applications were considered complete.

F. Criteria for review of reapplications for groundwater withdrawal permit.

1. The ~~board~~ department shall consider all criteria in subsection D of this section prior to reissuing a groundwater withdrawal permit. Existing permitted withdrawal amounts shall not be the sole basis for determination of the appropriate withdrawal amounts when a permit is reissued.

2. The ~~board~~ department shall reissue a permit to any public water supply user for an annual amount no less than the amount equal to that portion of the permitted withdrawal that was used by said system to support human consumption during 12 consecutive months of the previous term of the permit.

9VAC25-610-120. Public water supplies.

The ~~board~~ department shall evaluate all applications for groundwater withdrawals for public water supplies as described in 9VAC25-610-110. The ~~board~~ department shall make a preliminary decision on the application and prepare a draft groundwater withdrawal permit and forward the draft permit to the Virginia Department of Health. The ~~board~~ department shall not issue a final groundwater withdrawal permit until such time as the Virginia Department of Health issues a waterworks operation permit, or equivalent. The ~~board~~ department shall establish withdrawal limits for such permits as described in 9VAC25-610-140 A 4 and 5. Under the Virginia Department of Health's Waterworks Regulation any proposed use of reclaimed, reused, or recycled water contained in a groundwater withdrawal application to support a public water supply is required to be approved by the Virginia Department of Health.

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

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this chapter shall be construed to relieve the groundwater withdrawal permit holder of the duty to comply with all applicable federal and state statutes and prohibitions. At a minimum, a person must obtain a well construction permit or a well site approval letter from the Virginia Department of Health prior to the construction of any well for any withdrawal authorized by the Department of Environmental Quality. Any permit violation is a violation of the law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit application.

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

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

1. Avoid all adverse impacts to lawful groundwater users which could result from the withdrawal; and

2. Where impacts cannot be avoided, provide mitigation of the adverse impact as described in 9VAC25-610-110 D 3 g.

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

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

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

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

E. Duty to provide information. The permittee shall furnish to the ~~board~~ department, within a reasonable time, any information that the ~~board~~ department may request to determine whether cause exists for modifying or revoking, reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to

the ~~board~~ department, upon request, copies of records required to be kept by the permittee.

F. Monitoring and records requirements.

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

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

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

4. Records of monitoring information shall include as appropriate:

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

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

c. The date the analyses were performed;

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

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

f. The results of such analyses; and

g. Chain of custody documentation.

G. Permit action.

1. A permit may be modified or revoked as set forth in Part VI (9VAC25-610-290 et seq.) of this chapter.

2. If a permittee files a request for permit modification or revocation, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the ~~board~~ department makes a final case decision. This provision shall not be used to extend the expiration date of the effective permit.

3. Permits may be modified or revoked upon the request of the permittee, or upon ~~board~~ department initiative, to reflect the requirements of any changes in the statutes or regulations.

9VAC25-610-140. Establishing applicable standards, limitations or other permit conditions.

A. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, and 9VAC25-610-130, each permit shall include conditions with the following requirements:

1. A permit shall contain the total depth of each permitted well in feet;

2. A permit shall specify the screened intervals of wells authorized for use by the permit;

3. A permit shall contain the designation of the aquifers to be utilized;

4. A permit shall contain conditions limiting the withdrawal amount of a single well or a group of wells that comprise a withdrawal system to a quantity specified by the ~~board~~ department. A permit shall contain a maximum annual withdrawal and a maximum monthly groundwater withdrawal limit;

5. A groundwater withdrawal permit for a public water supply shall contain a condition allowing daily withdrawals at a level consistent with the requirements and conditions contained in the waterworks operation permit, or equivalent, issued by the Virginia Department of Health. This requirement shall not limit the authority of the ~~board~~ department to reduce or eliminate groundwater withdrawals by public water suppliers if necessary to protect human health or the environment;

6. The permit shall state that no pumps or water intake devices are to be placed lower than the top of the uppermost confined aquifer that a well utilizes as a groundwater source or lower than the bottom of an unconfined aquifer that a well utilizes as a groundwater source in order to prevent dewatering of a confined aquifer, loss of inelastic storage, or damage to the aquifer from compaction.

7. All permits shall specify monitoring requirements as conditions of the permit.

a. Permitted users who are issued groundwater withdrawal permits based on 9VAC25-610-110 B 3 and C 2 shall install either in-line totalizing flow meters or hour meters that record the hours of operation of withdrawal pumps on each permitted well prior to beginning the permitted use. Flow meters shall produce volume determinations within plus or minus 10% of actual flows. Hour meters shall produce run times within plus or minus 10% of actual run times. Hour meter readings will be multiplied by the maximum capacity of the withdrawal pump to determine withdrawal amounts. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals

and the period during which the meter was defective must be clearly identified in groundwater withdrawal reports. An alternative method for determining flow may be approved by the ~~board~~ department on a case-by-case basis.

b. Permitted users who are issued groundwater withdrawal permits based on any section of this chapter not included in subdivision 7 a of this subsection shall install in-line totalizing flow meters to read gallons, cubic feet, or cubic meters on each permitted well prior to beginning the permitted use. Such meters shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals and the period during which the meter was defective must be clearly identified in groundwater withdrawal reports. An alternative method for determining flow may be approved by the ~~board~~ department on a case-by-case basis.

c. Permits shall contain requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods when required as a condition of the permit.

d. Permits shall contain required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity and including, when appropriate, continuous monitoring and sampling.

e. Each permitted well shall be equipped in a manner such that water levels can be measured during pumping and nonpumping periods without dismantling any equipment. Any opening for tape measurement of water levels shall have an inside diameter of at least 0.5 inches and be sealed by a removable plug or cap. The permittee shall provide a tap for taking raw water samples from each permitted well.

8. All permits shall prohibit withdrawals from wells not authorized in the permit.

9. All permits shall include requirements to report the amount of water withdrawn from each permitted well and well system on forms provided by the ~~board~~ department with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year.

10. Groundwater withdrawal permits issued under this chapter shall have an effective and expiration date which will determine the life of the permit. Groundwater withdrawal permits shall be effective for a fixed term not to exceed 15 years. Permit duration of less than the maximum period of time may be recommended in areas where hydrologic conditions are changing or are not adequately known. The term of any permit shall not be extended by modification beyond the maximum duration. Extension of permits for the same activity beyond the maximum duration specified in the original permit will require reapplication and issuance of a new permit.

11. Each permit shall have a condition allowing the reopening of the permit for the purpose of modifying the conditions of the permit to meet new regulatory standards duly adopted by the board.

12. Each well that is included in a groundwater withdrawal permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records the Department of Environmental Quality well identification number, the groundwater withdrawal permit number, the total depth of the well and the screened intervals in the well, at a minimum. Such well identification plates shall be in a format specified by the ~~board~~ department and are available from the Department of Environmental Quality.

B. In addition to the conditions established in 9VAC25-610-100, 9VAC25-610-110, 9VAC25-610-120, 9VAC25-610-130, and subsection A of this section, each permit may include conditions with the following requirements where applicable:

1. A withdrawal limit may be placed on one or more of the wells that constitute a withdrawal system;

2. A permit may contain quarterly, monthly, or daily withdrawal limits or withdrawal limits based on any other frequency as determined by the ~~board~~ department;

3. A permit may contain conditions requiring water quality and water levels monitoring at specified intervals in any wells deemed appropriate by the ~~board~~ department;

4. A permit may contain conditions specifying water levels and water quality action levels in pumping and observation/monitoring wells to protect against or mitigate water quality levels or aquifer degradation. The ~~board~~ department may require permitted users to initiate control measures which include the following:

a. Pumping arrangements to reduce groundwater withdrawal in areas of concentrated pumping;

b. Location of wells to eliminate or reduce groundwater withdrawals near saltwater-freshwater interfaces;

c. Requirement of selective withdrawal from other available aquifers than those presently used or proposed;

d. Selective curtailment, reduction or cessation of groundwater withdrawals to protect the public welfare, safety, or health or to protect the resource;

e. Conjunctive use of freshwater and saltwater aquifers, or waters of less desirable quality where water quality of a specific character is not essential;

f. Construction and use of observation or monitoring wells;

g. Well construction techniques that prohibit the hydraulic connection of aquifers that contain different quality

waters, such as gravel packing, that could result in deterioration of water quality in an aquifer; and

h. Such other necessary control or abatement techniques as are practicable to protect and beneficially utilize the groundwater resource.

5. A permit may contain conditions limiting water level declines in pumping wells and observation wells;

6. All permits may include requirements to report water quality and water level information on forms provided by the ~~board~~ department with a frequency dependent on the nature and effect of the withdrawal, but in no case less than once per year; and

7. Permits shall require implementation of water conservation and management plans developed to comply with requirements of 9VAC25-610-100.

C. In addition to conditions described in 9VAC25-610-130 and subsections A and B of this section, the ~~board~~ department may issue any groundwater withdrawal permit with any terms, conditions and limitations necessary to protect the public welfare, safety, and health or to protect the resource.

9VAC25-610-150. Signatory requirements.

A. Application. Any application for a permit under this chapter must bear the applicant's signature or the signature of a person acting in the applicant's behalf with the authority to bind the applicant. Electronic submittals containing the original signature page, such as that contained in a scanned document file, are acceptable.

B. Reports. All reports required by permits and other information requested by the ~~board~~ department shall be signed by:

1. The permittee; or

2. A duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing to the ~~board~~ department by a person described in subsection A of this section; and

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated withdrawal system or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the ~~board~~ department prior to or together with any separate information, or applications to be signed by an authorized representative.

C. Certification of application and reports. Any person signing a document under subsection A or B of this section shall make the following certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

9VAC25-610-160. Draft permit.

A. Upon receipt of a complete application for a new or expanded withdrawal or a complete application to modify an existing withdrawal, the ~~board~~ department shall make a tentative decision to issue or deny the permit. If a tentative decision is to issue the permit then a draft permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft permit:

1. Conditions, withdrawal limitations, standards and other requirements applicable to the permit;

2. Monitoring and reporting requirements;

3. Requirements for mitigation of adverse impacts; and

4. Requirements for a water conservation and management plan.

B. If the tentative decision is to deny the permit, the ~~board~~ department shall do so in accordance with 9VAC25-610-340.

9VAC25-610-170. Application for a special exception.

A. Any person who wishes to initiate a groundwater withdrawal in any groundwater management area and is not exempted from the provisions of this chapter by 9VAC25-610-50 may apply for a special exception in unusual cases where requiring the proposed user to obtain a groundwater withdrawal permit would be contrary to the purpose of the Ground Water Management Act of 1992.

B. A special exception application shall be completed and submitted to the ~~board~~ department and a special exception issued by the ~~board~~ department prior to the initiation of any withdrawal not specifically excluded in 9VAC25-610-50. Special exception application forms shall be in a format specified by the ~~board~~ department and are available from the Department of Environmental Quality.

C. Due to the unique nature of applications for special exceptions the ~~board~~ department shall determine the completeness of an application on a case-by-case basis. The ~~board~~ department may require any information required in

9VAC25-610-90, 9VAC25-610-92, or 9VAC25-610-94, prior to considering an application for a special exception complete.

D. Where the ~~board~~ department finds an application incomplete, the ~~board~~ department shall 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~~ department finds the application complete. An incomplete permit application for a special exception may be suspended from processing 180 days from the date that the applicant received notification that the application is deficient. Further, where the applicant becomes aware that he omitted one or more relevant facts from a special exception application, or submitted incorrect information in a special exception application or in any report to the ~~board~~ department, he shall immediately submit such facts or the correct information.

9VAC25-610-180. Water conservation and management plans.

A. The ~~board~~ department may require water conservation and management plans or specific elements of water conservation and management plans as described in 9VAC25-610-100 B prior to considering an application for special exception complete.

B. In instances where a water conservation and management plan is required, the ~~board~~ department may include the implementation of such plans as an enforceable condition of the applicable special exception.

9VAC25-610-190. Criteria for the issuance of special exceptions.

A. The ~~board~~ department shall issue special exceptions only in unusual situations where the applicant demonstrates to the ~~board's~~ department's satisfaction that requiring the applicant to obtain a groundwater withdrawal permit would be contrary to the intended purposes of the Ground Water Management Act of 1992.

B. The ~~board~~ department may require compliance with any criteria described in 9VAC25-610-110.

9VAC25-610-200. Public water supplies.

The ~~board~~ department shall not issue special exceptions for the normal operations of public water supplies.

9VAC25-610-220. Establishing applicable standards, limitations or other special exception conditions.

The ~~board~~ department may issue special exceptions which include any requirement for permits as described in 9VAC25-610-140. Special exceptions shall not be renewed, except in the case of special exceptions that have been issued to allow groundwater withdrawals associated with state-approved groundwater remediation activities. In the case of reissuance of a special exception for a state-approved groundwater remediation activity, the ~~board~~ department may require the holder of the special exception to submit any information required in 9VAC25-610-90, 9VAC25-610-92, and 9VAC25-610-94, and may require compliance with any criteria described in 9VAC25-610-110. In the case where any other activity that is being supported by the specially excepted withdrawal will require that the withdrawal extend beyond the term of the existing special exception, the groundwater user shall apply for a permit to withdraw groundwater.

9VAC25-610-240. Draft special exception.

A. Upon receipt of a complete application, the ~~board~~ department shall make a tentative decision to issue or deny the special exception. If a tentative decision is to issue the special exception then a draft special exception shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft special exception:

1. Conditions, withdrawal limitations, standards and other requirements applicable to the special exception;

2. Monitoring and reporting requirements; and

3. Requirements for mitigation of adverse impacts.

B. If the tentative decision is to deny the special exception, the ~~board~~ department shall return the application to the applicant. The applicant may then apply for a groundwater withdrawal permit for the proposed withdrawal in accordance with Part III (9VAC25-610-85 et seq.) of this chapter.

9VAC25-610-250. Public notice of permit or special exception action and public comment period.

A. Every draft permit described in 9VAC25-610-160 A and draft special exception shall be given public notice, paid for by the applicant, by publication once in a newspaper of general circulation in the area affected by the withdrawal.

B. Notice of each draft permit described in 9VAC25-610-160 A and draft special exception will be mailed by the ~~board~~ department to each local governing body within the groundwater management area within which the proposed withdrawal will occur on or before the date of public notice.

C. The ~~board~~ department shall allow a period of at least 30 days following the date of the public notice for interested persons to submit written comments on the tentative decision and to request a public hearing.

D. The contents of the public notice of a draft permit or draft special exception action shall include:

1. Name and address of the applicant. If the location of the proposed withdrawal differs from the address of the applicant the notice shall also state the location in sufficient detail such that the specific location may be easily identified;

2. Brief description of the beneficial use that the groundwater withdrawal will support;

3. The name and depth below ground surface of the aquifer that will support the proposed withdrawal;

4. The amount of groundwater withdrawal requested expressed as an average gallonage per day;

5. A statement of the tentative determination to issue or deny a permit or special exception;

6. A brief description of the final determination procedure;

7. The address, email address, and phone number of a specific person or persons at the department's office from whom further information may be obtained; and

8. A brief description on how to submit comments and request a public hearing.

E. Public notice shall not be required for submission or approval of plans and specifications or conceptual engineering reports not required to be submitted as part of the application or for draft permits for existing groundwater withdrawals when such draft permits are based solely on historic withdrawals.

F. When a permit or special exception is denied the ~~board~~ department will do so in accordance with 9VAC25-610-340.

9VAC25-610-260. Public access to information.

All information pertaining to groundwater permit processing or in reference to any activity requiring a groundwater permit under this chapter shall be available to the public unless the applicant has made a showing that the information is protected by the applicant as a trade secret covered by § 62.1-44.21 of the Code of Virginia. All information claimed confidential must be identified as such at the time of submission to the ~~board~~ department.

9VAC25-610-270. Public comments and public hearing.

A. The director shall consider all written comments and requests for a public hearing received during the comment period, and shall make a determination on the necessity of a public hearing in accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-610-275. All proceedings, public hearings, and decisions from it will be in accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-610-275.

B. Any applicant or permittee aggrieved by an action of the ~~board~~ department or director taken without a formal hearing or inaction of the ~~board~~ department or director may request in writing a formal hearing pursuant to § 62.1-44.25 of the Code of Virginia.

9VAC25-610-275. Criteria for requesting and granting a public hearing on an individual permit or a special exception action.

A. During the public comment period on a permit action in those instances where a public hearing is not mandatory under state or federal law or regulation, interested persons may request a public hearing to contest the action or terms and conditions of a permit.

B. Requests for a public hearing shall contain the following information:

1. The name and postal mailing or email address of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative;

3. The reason for the request for a public hearing;

4. A brief, informal statement setting forth the factual nature and extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations to those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the basic laws of the State Water Control Board.

C. Upon completion of the public comment period on a permit action, the director shall review all timely requests for public hearing filed during the comment period on the permit action and, within 30 calendar days following the expiration of the time period for the submission of requests, shall grant a public hearing, unless the permittee or applicant agrees to a later date if the director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with or in violation of the basic laws of the State Water Control Board for a water permit action, a federal law, or any regulation promulgated thereunder.

D. The director of DEQ shall notify by email or postal mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing.

E. If the request for a public hearing is granted, the director shall:

1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing the notice of the decisions to grant the public hearing.

2. Cause or require the applicant to publish notice of a public hearing to be published once in a newspaper or general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

F. The public comment period shall remain open for 15 days after the close of the public hearing if required by § 62.1-44.15:01 of the Code of Virginia.

G. The director may, at the director's discretion, convene a public hearing in a permit action.

9VAC25-610-280. Public notice of hearing.

A. Public notice of any public hearing held pursuant to 9VAC25-610-270 and 9VAC25-610-275 shall be circulated as follows:

1. Notice shall be published once in a newspaper of general circulation in the area affected by the proposed withdrawal at least 30 days in advance of the public hearing; and

2. Notice of the public hearing shall be sent to all persons and government agencies which received a copy of the public notice of the draft permit or special exception and to those persons requesting a public hearing or having commented in response to the public in accordance with ~~§ 62.1-44.15:02 of the Code of Virginia~~ 9VAC25-610-275.

B. The cost of public notice shall be paid by the applicant.

C. The content of the public notice of any public hearing held pursuant to 9VAC25-610-270 and 9VAC25-610-275 shall include at least the following:

1. Name and address of each person whose application will be considered at the public hearing, the amount of groundwater withdrawal requested expressed as an average gallonage per day, and a brief description of the beneficial use that will be supported by the proposed groundwater withdrawal.

2. The precise location of the proposed withdrawal and the aquifers that will support the withdrawal. The location should be described, where possible, with reference to route numbers, road intersections, map coordinates or similar information.

3. A brief reference to the public notice issued for the permit or special exception application and draft permit or special exception, including identification number and date of issuance unless the public notice includes the public hearing notice.

4. Information regarding the time and location for the public hearing.

5. The purpose of the public hearing.

6. A concise statement of the relevant issues raised by the persons requesting the public hearing.

7. Contact person and the mailing address, email address, phone number, and name of the Department of Environmental Quality office at which interested persons may obtain further information or request a copy of the draft permit or special exception.

8. A brief reference to the rules and procedures to be followed at the public hearing.

D. Public notice of any formal hearing held pursuant to 9VAC25-610-270 B shall be in accordance with Procedural Rule No.1 (9VAC25-230).

E. The public comment period shall remain open for 15 days after the close of the public hearing required by § 62.1-44.15:01 of the Code of Virginia.

9VAC25-610-285. Controversial permits.

Before rendering a final decision on a controversial permit, the department shall publish a summary of public comments received during the applicable public comment period and public hearing. After such publication, the department shall publish responses to the public comment summary and hold a public hearing to provide an opportunity for individuals who previously commented, either at a public hearing or in writing during the applicable public comment period, to respond to the department's public comment summary and response. No new information will be accepted at that time. In making its decision, the department shall consider (i) the verbal and written comments received during the comment period and the public hearing made part of the record, (ii) any commentary of the board, and (iii) the agency files.

9VAC25-610-287. Controversial permits reporting.

At each regular meeting of the board, the department shall provide an overview and update regarding any controversial permits pending before the department that are relevant. Immediately after such presentation by the department, the board shall have an opportunity to respond to the department's presentation and provide commentary regarding such pending permits.

9VAC25-610-290. Rules for modification and revocation.

Permits and special exceptions shall be modified or revoked only as authorized by this part of this chapter as follows:

1. A permit or special exception may be modified in whole or in part, or revoked;

2. Permit or special exception modifications shall not be used to extend the term of a permit or special exception; and

3. Modification or revocation may be initiated by the ~~board~~ department, at the request of the permittee, or other person at the ~~board's~~ department's discretion under applicable laws or the provisions of this chapter.

9VAC25-610-300. Causes for revocation.

A. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100 a permit or special exception can be revoked for cause. Causes for revocation are as follows:

1. Noncompliance with any condition of the permit or special exception;

2. Failure to fully disclose all relevant facts or misrepresentation of a material fact in applying for a permit or special exception, or in any other report or document required by the Act, this chapter or permit or special exception conditions;

3. The violation of any regulation of the board or order of the ~~board~~ department, or any order of a court, pertaining to groundwater withdrawal;

4. A determination that the withdrawal authorized by the permit or special exception endangers human health or the environment and cannot be regulated to acceptable levels by permit or special exception modification;

5. A material change in the basis on which the permit or special exception was issued that requires either a temporary or permanent reduction, application of special conditions or elimination of any groundwater withdrawal controlled by the permit or special exception.

B. After public notice and opportunity for a formal hearing pursuant to 9VAC25-230-100 a permit or special exception may be revoked when any of the developments described in 9VAC25-610-310 occur.

9VAC25-610-310. Causes for modification.

A. A permit or special exception may, at the ~~board's~~ department's discretion, be modified for any cause as described in 9VAC25-610-300.

B. A permit or special exception may be modified when any of the following developments occur:

1. When new information becomes available about the groundwater withdrawal covered by the permit or special exception, or the impact of the withdrawal, which was not available at permit or special exception issuance and would have justified the application of different conditions at the time of issuance;

2. When groundwater withdrawal reports submitted by the permittee indicate that the permittee is using less than 60% of the permitted withdrawal amount for a five-year period;

3. When a change is made in the regulations on which the permit or special exception was based; or

4. When changes occur which are subject to "reopener clauses" in the permit or special exception.

9VAC25-610-320. Transferability of permits and special exceptions.

A. Transfer by modification. Except as provided for under automatic transfer in subsection B of this section, a permit or special exception shall be transferred only if the permit has been modified to reflect the transfer.

B. Automatic transfer. Any permit or special exception shall be automatically transferred to a new owner as allowed by the minor modification process described in 9VAC25-610-330 B 8 if:

1. The current owner notifies the ~~board~~ department within 30 days in advance of the proposed transfer of ownership;

2. The notice to the ~~board~~ department includes a notarized written agreement between the existing permittee and proposed new permittee containing a specific date of transfer of permit or special exception responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity;

3. The ~~board~~ department does not within the 30-day time period notify the existing permittee and the proposed permittee of its intent to modify, revoke, or reissue the permit or special exception; and

4. The permit transferor and the permit transferee provide written notice to the ~~board~~ department of the actual transfer date.

9VAC25-610-330. Minor modification.

A. Upon request of the holder of a permit or special exception, or upon ~~board~~ department initiative with the consent of the holder of a permit or special exception, minor modifications may be made in the permit or special exception without following the public involvement procedures.

B. For groundwater withdrawal permits and special exceptions, minor modifications may only:

1. Correct typographical errors;

2. Require reporting at a greater frequency than required in the permit or special exception;

3. Add additional or more restrictive monitoring requirements than required in the permit or special exception;

4. Replace an existing well provided that the replacement well is screened in the same aquifer or aquifers as the existing well, the replacement well is in the near vicinity of the existing well, the groundwater withdrawal does not increase, and the area of impact does not increase;

5. Add additional wells so long as the additional wells are screened in the same aquifer or aquifers as the existing well,

additional wells are in the near vicinity of the existing well, the total groundwater withdrawal does not increase, and the area of impact does not increase;

6. Combine the withdrawals governed by multiple permits into one permit when the systems that were governed by the multiple permits are physically connected, as long as the interconnection will not result in additional groundwater withdrawal and the area of impact will not increase;

7. Change an interim compliance date in a schedule of compliance to no more than 120 days from the original compliance date and provided it will not interfere with the final compliance date;

8. Allow for a change in ownership or operational control when the ~~board~~ department determines that no other change in the permit or special exception is necessary, provided that a written agreement containing a specific date for transfer of permit or special exception responsibility, coverage and liability from the current to the new owner has been submitted to the ~~board~~ department; and

9. Revise a water conservation and management plan to update conservation measures being implemented by the permittee that increase the amount of groundwater conserved.

9VAC25-610-350. Enforcement.

The ~~board~~ department may enforce the provisions of this chapter utilizing all applicable procedures under the Ground Water Management Act of 1992 or any other section of the Code of Virginia that may be applicable.

9VAC25-610-360. ~~Delegation of authority.~~ (Repealed.)

~~The director, or his designee, may perform any act of the board provided under this chapter, except as limited by subdivision 9 of § 62.1-256 of the Code of Virginia.~~

9VAC25-610-380. Statewide information requirements.

The ~~board~~ department 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~~ department 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 Energy are exempt from any information reporting requirements.

9VAC25-610-390. Statewide right to inspection and entry.

Upon presentation of credentials the ~~board~~ department, or any duly authorized agent, shall have the power to enter, at reasonable times and under reasonable circumstances, any establishment or upon any property, public or private, located anywhere in the Commonwealth for the purposes of obtaining information, conducting surveys or inspections, or inspecting wells and springs to ensure compliance with any regulations adopted by the board or permits, standards, policies, rules, ~~regulations,~~ rulings, and special orders which the ~~board or~~ department may adopt, issue or establish to carry out the provisions of the Ground Water Management Act of 1992 and this chapter.

VA.R. Doc. No. R23-7151; Filed September 9, 2022, 2:30 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: **9VAC25-630. Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management (amending 9VAC25-630-10, 9VAC25-630-20).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Effective Date: November 23, 2022.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1913, FAX (804) 698-4178, or email betsy.bowles@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-630-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"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 a poultry waste end-user or poultry waste broker 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.

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where both of the following conditions are met:

1. Animals (other than aquatic 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 purpose 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.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Commercial poultry processor" or "processor" means any animal food manufacturer, as defined in § 3.2-5400 of the Code of Virginia, that contracts with poultry growers for the raising of poultry.

"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.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or the director's designee.

"Fact sheet" means the document prepared by the department that summarizes the requirements set forth in this chapter regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers.

"General permit" means 9VAC25-630-50.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for a poultry waste end-user or poultry waste broker who is not subject to the general permit, the requirements of 9VAC25-630-80 constitute the NMP.

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the poultry grower, poultry waste end-user, or poultry waste broker whose poultry waste management activities are covered under the general permit.

"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 who 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" or "end-user" means any recipient of transferred poultry waste who stores or who 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.

"Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table.

"Standard rate" means a land application rate for poultry waste approved by the board as specified in this regulation.

"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.

9VAC25-630-20. Purpose; ~~delegation of authority;~~ effective date of permit.

A. This regulation governs the management of poultry waste at confined poultry feeding operations not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit and poultry waste utilized or stored by poultry waste end-users or poultry waste brokers. It establishes requirements for proper nutrient management, waste storage, and waste tracking and accounting of poultry waste.

~~B. The Director of the Department of Environmental Quality, or the director's designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

~~C.~~ B. This general permit will become effective on February 17, 2021. This general permit will expire 10 years from the effective date.

VA.R. Doc. No. R23-7275; Filed September 9, 2022, 2:31 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-640. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (amending 9VAC25-640-10, 9VAC25-640-50, 9VAC25-640-70, 9VAC25-640-80, 9VAC25-640-110, 9VAC25-640-115, 9VAC25-640-120, 9VAC25-640-150 through 9VAC25-640-230, 9VAC25-640-250:2 through 9VAC25-640-250:8, 9VAC25-640-250:10; repealing 9VAC25-640-240).**

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

Effective Date: November 23, 2022.

Agency Contact: Josiah Bennett, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2660, FAX (804) 698-4178, or email josiah.bennett@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-640-10. Definitions.

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

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include 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.).

"Accidental discharge" means any sudden or nonsudden discharge of oil from a facility that results in a need for containment and clean up which was neither expected nor intended by the operator.

"Annual aggregate" means the maximum financial responsibility requirement that an operator is required to demonstrate annually.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, pursuant to this chapter, "board" means the Department of Environmental Quality.

"Change in service" means change in operation, conditions of the stored product, specific gravity, corrosivity, temperature or pressure that has occurred from the original that may affect the tank's suitability for service.

"Containment and clean up" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

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

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10-K report submitted to the U.S. Securities & Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural Utilities Service; or (iv) a year-end financial statement authorized under 9VAC25-640-70 B or C. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Group self-insurance pool" or "pool" means a pool organized by two or more operators of facilities for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by § 62.1-44.34:16 of the Code of Virginia.

"Legal defense cost" means any expense that an operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the

~~board~~ department to require containment or clean up or to recover the costs of containment and clean up, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; or (ii) by any person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state or other special purpose government which provides essential services.

"Member" means an operator of an aboveground storage tank or pipeline who has entered into a member agreement and thereby becomes a member of a group self-insurance pool.

"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a discharge from an AST. Note: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oil and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel. For purposes of this chapter, the definition of operator is restricted to operators of facilities.

"Person" means an individual; trust; firm; joint stock company; corporation, including a government corporation; partnership; association; any state or agency thereof; municipality; county; town; commission; political subdivision of a state; any interstate body; consortium; joint venture; commercial entity; the government of the United States or any unit or agency thereof.

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"Provider of financial assurance" means a person that provides financial assurance to an operator of an aboveground storage tank through one of the mechanisms listed in 9VAC25-640-70 through 9VAC25-640-120, including a guarantor, insurer, group self-insurance pool, surety, certificate of deposit, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into groundwater, surface water, or upon lands, subsurface soils or storm drain systems.

"Storage capacity" means the total capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with the requirements of 9VAC25-91 has no storage capacity.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. For purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground connecting pipes, is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored;

3. Septic tanks;

4. Pipeline facilities (including gathering lines) regulated under:

a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671 et seq.);

b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001 et seq.); or

c. Any intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;

5. Surface impoundments, pits, ponds, or lagoons;

6. Storm water or wastewater collection systems;

7. Flow-through process tanks;

8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" means every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

9VAC25-640-50. Amount and scope of required financial responsibility.

A. Operators shall demonstrate per occurrence and annual aggregate financial responsibility for containment and clean up of discharges of oil in an amount equal to (i) five cents per gallon of the aggregate aboveground storage capacity for ASTs in all Virginia facilities up to a maximum of $1 million and (ii) $5 million for pipelines.

B. If the operator uses separate mechanisms or combinations of mechanisms to demonstrate financial responsibility for the containment and clean up of oil, (i) the amount of assurance provided by the combination of mechanisms shall be in the full amount specified in subsection A of this section, and (ii) the operator shall demonstrate financial responsibility in the appropriate amount of annual aggregate assurance specified in subsection A of this section by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

C. The amounts of assurance required under this section exclude legal defense costs.

D. The required demonstration of financial responsibility does not in any way limit the liability of the operator under § 62.1-44.34:18 of the Code of Virginia.

E. Operators which demonstrate financial responsibility shall maintain copies of those records on which the determination is based. The following documents may be used by operators to support a financial responsibility requirement determination:

1. Copies of the registration form required under 9VAC25-91.

2. Any other form of documentation that the ~~board~~ department may deem to be acceptable evidence to support the financial responsibility requirement determination.

F. For purposes of the financial test of self-insurance, an operator and/or guarantor shall have a tangible net worth at least equal to the applicable amount required by subsection A of this section plus any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility.

9VAC25-640-70. Financial test of self-insurance.

A. An operator and/or guarantor may satisfy the requirements of 9VAC25-640-50 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the operator and/or guarantor shall meet the requirements of subsection B or C and subsection D of this section based on year-end financial statements for the latest completed financial reporting year.

B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial responsibility.

2. The operator and/or guarantor shall comply with either subdivision a or b below:

a. (1) The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and

(2) The financial reporting year-end financial statements of the operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

b. (1) (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy

Information Administration, or the Rural Utilities Service; or

(b) Report annually the tangible net worth of the operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet must have assigned a financial strength rating which at least equals the amount of financial responsibility required by the operator in 9VAC25-640-50.

(2) The financial reporting year-end financial statements of the operator and/or guarantor, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

3. The operator and/or guarantor shall have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I.

C. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial responsibility.

2. The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

3. The financial reporting year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. If the financial statements of the operator and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Utilities Service, the operator and/or guarantor shall obtain a special report by an independent certified public accountant stating that:

a. The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest financial reporting year-end financial statements of the operator and/or guarantor with the amounts in such financial statements; and

b. In connection with that comparison, no matters came to the accountant's attention that caused him to believe that the specified data should be adjusted.

5. The operator and/or guarantor shall have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To meet the financial demonstration test under subsections B or C of this section, the chief financial officer of the operator and/or guarantor shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded identically as specified in Appendix I with the appropriate alternative, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an operator using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, the operator shall obtain alternative coverage and submit to the ~~board~~ department the appropriate original forms listed in 9VAC25-640-170 B within 150 days of the end of the year for which financial statements have been prepared.

F. The ~~board~~ department may require reports of financial condition at any time from the operator and/or guarantor. If the ~~board~~ department finds, on the basis of such reports or other information, that the operator and/or guarantor no longer meets the financial test requirements of subsection B or C and D of this section, the operator shall obtain alternate coverage and submit to the ~~board~~ department the appropriate original forms listed in 9VAC25-640-170 B within 30 days after notification of such finding.

G. If the operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, or within 30 days of notification by the ~~board~~ department that he no longer meets the requirements of the financial test, the operator shall notify the ~~board~~ department of such failure within 10 days.

9VAC25-640-80. Guarantee.

A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

1. A firm that:

a. Possesses a controlling interest in the operator;

b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or

c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the operator; or

2. A firm engaged in a substantial business relationship with the operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 9VAC25-640-70 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and shall deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee, notice to the operator and the ~~board~~ department. If the ~~board~~ department notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-640-70 B or C and D, the guarantor

shall notify the operator within 10 days of receiving such notification from the ~~board~~ department. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator shall obtain alternate coverage as specified in 9VAC25-640-200.

C. The guarantee shall be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

9VAC25-640-110. Letter of credit.

A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the operator and the ~~board~~ department by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the operator and the ~~board~~ department receives the notice, as evidenced by the return receipts.

9VAC25-640-115. Certificate of deposit.

A. An operator may satisfy the requirements of 9VAC25-640-50, wholly or in part, by assigning all rights, title, and interest of a certificate of deposit to the ~~State Water Control Board~~ Department of Environmental Quality, Commonwealth of Virginia. The operator shall maintain the certificate of deposit until the requirements of 9VAC25-640-190 are met. The original assignment and the certificate of deposit, if applicable, must be submitted to the ~~board~~ department to prove that the certificate of deposit has been obtained and meets the requirements of this section. A copy of the certificate of deposit shall be maintained at the aboveground storage tank site or the operator's place of work located in Virginia. The issuing institution shall be a bank or other financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC) and whose operations are regulated and examined by the Commonwealth of Virginia, by a federal agency, or by an agency of another state.

B. The operator shall be entitled to demand, receive, and recover the interest and income from the certificate of deposit as it becomes due and payable as long as the market value of the certificate of deposit plus any other mechanisms used continue to at least equal the amount of financial responsibility the operator is required to demonstrate.

C. In the event of failure of the operator to comply with the requirements of 9VAC25-640-150, the ~~board~~ department shall cash the certificate of deposit.

D. Payments made under the terms of the certificate of deposit will be deposited by the issuing institution directly into the Virginia Petroleum Storage Tank Fund. Payments from the fund shall be approved by the ~~board~~ department.

E. The wording of the assignment shall be identical to the wording specified in Appendix X.

9VAC25-640-120. Trust fund.

A. An operator may satisfy the requirements of 9VAC25-640-50 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the ~~State Water Control Board~~ department, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the operator. The wording of the trust agreement shall be identical to the wording specified in Appendix VII.

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the operator may submit a written request to the ~~board~~ department for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the operator may submit a written request to the ~~board~~ department for release of the excess.

F. Within 60 days after receiving a request from the operator for release of funds as specified in subsection D or E of this section, the ~~board~~ department will instruct the trustee to release to the operator such funds as the ~~board~~ department specifies in writing.

9VAC25-640-150. Cancellation or nonrenewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the operator and the ~~board~~ department.

Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the operator and the ~~board~~ department receives the notice of termination, as evidenced by the return receipts.

Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the operator and the ~~board~~ department receives the notice of termination, as evidenced by the return receipts. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the operator and the ~~board~~ department receives the notice of termination, as evidenced by the return receipts.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 9VAC25-640-200, the operator shall obtain alternate coverage as specified in this section and shall submit to the ~~board~~ department the appropriate original forms listed in 9VAC25-640-170 B documenting the alternate coverage within 60 days after receipt of the notice of termination. If the operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the operator shall immediately notify the ~~board~~ department of such failure and submit:

1. The name and address of the provider of financial assurance;

2. The effective date of termination; and

3. A copy of the financial assurance mechanism subject to the termination maintained in accordance with 9VAC25-640-170.

9VAC25-640-160. Reporting by operator.

A. An operator shall submit the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility to the ~~board~~ department within 30 days after the operator identifies or confirms a discharge from an aboveground storage tank or pipeline required to be reported under 9VAC25-91. For all subsequent discharges within the same period of time for which the documents submitted according to this subsection are still effective, the operator shall submit a letter that identifies the operator's name and address and the aboveground storage tank's or pipeline's location by site name, street address, ~~board~~ department incident designation number and a statement that the financial responsibility documentation previously provided to the ~~board~~ department is currently in force.

B. An operator shall notify the ~~board~~ department if the operator fails to obtain alternate coverage as required by this chapter within 30 days after the operator receives notice of:

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor.

2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism.

3. Failure of a guarantor to meet the requirements of the financial test.

4. Other incapacity of a provider of financial assurance.

C. An operator shall submit the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility to the ~~board~~ department as required by 9VAC25-640-70 E and F and 9VAC25-640-150 B.

D. An operator shall submit to the ~~board~~ department the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility upon substitution of its financial assurance mechanisms as provided by 9VAC25-640-140.

E. The ~~board~~ department may require an operator to submit evidence of financial assurance as described in 9VAC25-640-170 B or other information relevant to compliance with this chapter at any time. The ~~board~~ department may require submission of originals or copies at its sole discretion.

9VAC25-640-170. Recordkeeping.

A. Operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an aboveground storage tank or pipeline, or both, until released from the requirements of this regulation under 9VAC25-640-190. An operator shall maintain such evidence at the aboveground storage tank site or the operator's place of work in this Commonwealth. Records maintained off-site shall be made available upon request of the ~~board~~ department.

B. Operators shall maintain the following types of evidence of financial responsibility:

1. An operator using an assurance mechanism specified in 9VAC25-640-70 through 9VAC25-640-120 shall maintain the original instrument worded as specified.

2. An operator using a financial test or guarantee shall maintain (i) the chief financial officer's letter, and (ii) year-end financial statements for the most recent completed financial reporting year or the Dun and Bradstreet rating on which the chief financial officer's letter was based. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

3. An operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

4. a. An operator using an assurance mechanism specified in 9VAC25-640-70 through 9VAC25-640-120 shall maintain an original certification of financial responsibility worded identically as specified in Appendix IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The operator shall maintain a new original certification at or before the time specified in 9VAC25-640-160 or whenever the financial assurance mechanisms used to demonstrate financial responsibility changes.

5. For submissions required under 9VAC25-640-160:

a. The operator must provide an insurance endorsement or certificate, or a notice of extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit, provided the form of the insurance endorsement or certificate, or notice of extension is approved by the ~~board~~ department;

b. The operator need not provide a new original guarantee, letter of credit, certificate of deposit, or trust fund, provided the same mechanism is to continue to act as the operator's demonstration mechanism for the subsequent year or years;

c. The operator must provide a new original mechanism as specified in subdivision 2 of this subsection;

d. The operator need not provide a new original certification of acknowledgment, provided the associated trust agreement has not changed;

e. The operator must provide a new original certification of financial responsibility.

9VAC25-640-180. Drawing on financial assurance mechanisms.

A. The ~~board~~ department may require the guarantor, surety, or institution issuing a letter of credit or certificate of deposit to pay to the ~~board~~ department an amount up to the limit of funds provided by the financial assurance mechanism if:

1. a. The operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, certificate of deposit; and

b. The ~~board~~ department determines or suspects that a discharge from an aboveground storage tank or pipeline covered by the mechanism has occurred and so notifies the operator, or the operator has notified the ~~board~~ department pursuant to 9VAC25-91 of a discharge from an aboveground storage tank or pipeline covered by the mechanism; or

2. The conditions of subsection B of this section are satisfied.

B. The ~~board~~ department shall deposit the financial assurance funds forfeited pursuant to subsection A of this section into the Virginia Petroleum Storage Tank Fund. The ~~board~~ department may use the financial responsibility funds obtained pursuant to subsection A of this section to conduct containment and cleanup when it makes a final determination that a discharge has occurred and immediate or long-term containment and/or clean up for the discharge is needed, and the operator, after appropriate notice and opportunity to comply, has not conducted containment and clean up as required under 9VAC25-91.

9VAC25-640-190. Release from the requirements.

An operator is no longer required to maintain financial responsibility under this chapter for an aboveground storage tank or pipeline after the tank or pipeline has been permanently closed pursuant to the requirements of 9VAC25-91, except when the ~~board~~ department determines clean up of a discharge from the aboveground storage tank or pipeline is required.

9VAC25-640-200. Bankruptcy or other incapacity of operator provider of financial assurance.

A. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an operator as debtor, the operator shall notify the ~~board~~ department by certified mail of such commencement.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the operator and the ~~board~~ department by certified mail of such commencement as required under the terms of the guarantee specified in 9VAC25-640-80.

C. An operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, group self-insurance pool coverage policy, surety bond, certificate of deposit, or letter of credit. The operator shall obtain alternate financial assurance as specified in this chapter and submit to the ~~board~~ department the appropriate original forms specified in 9VAC25-640-170 B within 30 days after receiving notice of such an event. If the operator does not obtain alternate coverage within 30 days after such notification, he shall immediately notify the ~~board~~ department in writing.

9VAC25-640-210. Replenishment of guarantees, letters of credit, certificate of deposit, or surety bonds.

A. If at any time a guarantee, letter of credit, certificate of deposit, or surety bond is drawn upon by instruction of the ~~board~~ department and the ~~board~~ department has expended all or part of the funds for containment and cleanup, the operator by the anniversary date of the financial mechanism from which the funds were drawn shall:

1. Replenish the value of financial assurance to equal the full amount of coverage required; or

2. Acquire another financial assurance mechanism for the amount by which the face value of the letter of credit, certificate of deposit, surety bond, or guarantee has been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9VAC25-640-50. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

9VAC25-640-220. Virginia Petroleum Storage Tank Fund.

A. The Virginia Petroleum Storage Tank Fund will be used for reasonable and necessary costs, in excess of the financial responsibility amounts specified below, incurred by an operator for containment and cleanup of a petroleum release from a facility of a product subject to § 62.1-44.34:13 of the Code of Virginia as follows:

1. Reasonable and necessary per occurrence containment and cleanup costs incurred by an operator whose net annual profits from all facilities in Virginia do not exceed $10 million:

a. For a release from a facility with a storage capacity less than 25,000 gallons, per occurrence costs in excess of $2,500 up to $1 million;

b. For a release from a facility with a storage capacity from 25,000 gallons to 100,000 gallons, per occurrence costs in excess of $5,000 up to $1 million;

c. For a release from a facility with a storage capacity from 100,000 gallons to four million gallons, per occurrence costs in excess of $.05 per gallon of aboveground storage capacity up to $1 million; and

d. For a release from a facility with a storage capacity greater than four million gallons, per occurrence costs in excess of $200,000 up to $1 million.

e. For purposes of this subdivision, the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.

2. Reasonable and necessary per occurrence containment and cleanup costs incurred by an operator whose net annual profits from all facilities in Virginia exceed $10 million:

a. For a release from a facility with a storage capacity less than four million gallons, per occurrence costs in excess of $200,000 up to $1 million;

b. For a release from a facility with a storage capacity from four million gallons to 20 million gallons, per occurrence costs in excess of $.05 per gallon of aboveground storage capacity of up to $1 million; and

c. For a release from a facility with a storage capacity greater than 20 million gallons no access to the fund will be permitted.

d. For purposes of this subdivision, the financial responsibility requirements for an operator are based on the total aboveground storage capacity for all facilities operated in Virginia.

B. The Virginia Petroleum Storage Tank Fund will be used for reasonable and necessary per occurrence costs of containment and cleanup incurred for releases reported after December 22, 1989, by the operator of a facility in excess of $500 up to $1 million for any release of petroleum into the environment from an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

C. The Virginia Petroleum Storage Tank Fund may be used for all other uses authorized in § 62.1-44.34:11 of the Code of Virginia.

D. An operator of a facility responding to a release and conducting ~~board-approved~~ department-approved corrective action may proceed to pay for all costs incurred for such activities. Documentation submitted to the ~~board~~ department of all costs incurred will be reviewed and those documented costs in excess of the financial responsibility requirements up to $1 million that are reasonable and necessary and have been approved by the ~~board~~ department will be reimbursed from the fund.

E. Operators shall pay the financial responsibility requirement specified in this section for each occurrence.

F. Section 62.1-44.34:11 A of the Code of Virginia provides that no person shall receive reimbursement from the fund:

1. For costs incurred for corrective action taken prior to December 22, 1989 by an owner or operator of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in § 62.1-44.34:10 of the Code of Virginia, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

2. For costs incurred prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a

facility of a product subject to § 62.1-44.34:13 of the Code of Virginia.

3. For containment and cleanup costs that are reimbursed or are reimbursable from other applicable state or federal programs.

4. If the operator of a facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.

5. If the owner or operator of an underground storage tank or the operator of an aboveground storage tank facility fails to report a release of petroleum or a discharge of oil to the ~~board~~ department as required by applicable statutes, laws or regulations.

6. Unless a reimbursement claim has been filed with the ~~board~~ department within two years from the date the ~~board~~ department issues a site remediation closure letter for that release or July 1, 2000, whichever is later.

G. In addition to the statutory prohibitions quoted in subsection F of this section, no person shall receive reimbursement from the fund for containment and cleanup:

1. Where the release is caused, in whole or in part, by the willful misconduct or negligence of the operator, his employee, contractor, or agent, or anyone within his privity or knowledge;

2. Where the claim cost has been reimbursed or is reimbursable by an insurance policy;

3. Where the operator does not demonstrate the reasonableness and necessity of the claim costs;

4. Where the person, his employee, contractor or agent, or anyone within the privity or knowledge of that person has (i) failed to carry out the instructions of the ~~board~~ department, (ii) committed willful misconduct or been negligent in carrying out the instructions of the ~~board~~ department, or (iii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out the instructions of the ~~board~~ department; and

5. Where the costs or damages were incurred pursuant to § 10.1-1232 of the Code of Virginia and the regulations promulgated thereunder.

H. No disbursements shall be made from the fund for operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

I. No funds shall be paid in excess of the minimum disbursement necessary to contain and cleanup each occurrence to the acceptable level of risk, as determined by the ~~board~~ department.

J. The ~~board~~ department may perform a detailed review of all documentation associated with a reimbursement claim up to seven years following payment of the claim. Based upon the results of the review, the ~~board~~ department may take actions to address any deficiencies found in the claim documentation. Such actions may include, but are not limited to, publishing a list of audit concerns associated with the claim, withholding payment of future claims, and/or recovering costs paid on prior claims.

K. The ~~board~~ department shall seek recovery of all costs and expenses incurred by the Commonwealth for investigation, containment and cleanup of a discharge of oil or threat of discharge against any person liable for a discharge of oil as specified in Article 11 (§ 62.1-44.34:14 et seq.) of the State Water Control Law; however, the ~~board~~ department shall seek recovery from an operator of expenditures from the fund only in the amount by which such expenditures exceed the amount authorized to be disbursed to the operator under subdivisions A 1 and A 2 of this section. This limitation on recovery shall not apply if the release was caused, in whole or in part, by the willful misconduct or negligence of the owner or operator, his employee, contractor, or agent, or anyone within his privity or knowledge.

9VAC25-640-230. Notices to the ~~State Water Control Board~~ department.

All requirements of this chapter for notification to the ~~State Water Control Board~~ department shall be addressed as follows:

Director, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218.

9VAC25-640-240. ~~Delegation of authority.~~ (Repealed.)

~~The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

9VAC25-640-250:2. APPENDIX II. GUARANTEE.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the ~~State Water Control Board~~ Department of Environmental Quality of the Commonwealth of Virginia and obligees, on behalf of [operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9VAC25-640-70 B or C and D and agrees to comply with the requirements for guarantors as specified in 9VAC25-640-80.

(2) Operator operates the following aboveground storage tank(s) and/or pipelines covered by this guarantee:

[List for each facility: the name and address of facility where tanks assured by this financial test are located, either the

registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this guarantee. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This guarantee satisfies the requirements of 9VAC25-640 for assuring funding for taking containment and clean up measures necessitated by a discharge of oil; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified aboveground storage tank(s) and/or pipelines in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the operator); "On behalf of our affiliate" (if guarantor is a related firm of the operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with operator)] [operator], guarantor guarantees to the ~~State Water Control Board~~ Department of Environmental Quality that:

In the event that operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the ~~State Water Control Board~~ Department of Environmental Quality has determined or suspects that a discharge has occurred at an aboveground storage tank and/or pipeline covered by this guarantee, the guarantor, upon instructions from the ~~State Water Control Board~~ Department of Environmental Quality, shall pay the funds to the ~~State Water Control Board~~ Department of Environmental Quality in accordance with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above.

In the event that the ~~State Water Control Board~~ Department of Environmental Quality determines that operator has failed to perform containment and clean up for discharges arising out of the operation of the above-identified tank(s) and/or pipelines in accordance with 9VAC25-91, the guarantor upon written instructions from the ~~State Water Control Board~~ Department of Environmental Quality shall pay the funds to the ~~State Water Control Board~~ Department of Environmental Quality in accordance with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any financial reporting year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9VAC25-640-70 B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to operator and the ~~State Water Control Board~~ Department of Environmental Quality. The guarantee will terminate 120 days from the date of receipt of the notice by operator and the ~~State Water Control Board~~ Department of Environmental Quality, as evidenced by the return receipt.

(5) Guarantor agrees to notify operator and the ~~State Water Control Board~~ Department of Environmental Quality by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of operator pursuant to 9VAC25-91 or 9VAC25-640.

(7) Guarantor agrees to remain bound under this guarantee for so long as operator shall comply with the applicable financial responsibility requirements of 9VAC25-640 for the above-identified tank(s) and/or pipelines, except that guarantor may cancel this guarantee by sending notice by certified mail to operator and the ~~State Water Control Board~~ Department of Environmental Quality, such cancellation to become effective no earlier than 120 days after receipt of such notice by operator and the ~~State Water Control Board~~ Department of Environmental Quality, as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;

(e) Bodily damage or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the ~~State Water Control Board~~ Department of Environmental Quality or by operator.

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of 9VAC25-640 as such regulations were constituted on the effective date shown immediately below.

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

9VAC25-640-250:3. APPENDIX III. ENDORSEMENT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Name: _____ [name of each covered location] _____

Address: _____ [address of each covered location] _____

Policy Number: _____

Period of Coverage: ____ [current policy period] _____

Name of Insurer:

_____

_____

Address of Insurer:

_____

_____

Name of Insured: _____

Address of Insured:

_____

_____

_____

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following aboveground storage tanks and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under 9VAC25-640:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

for containment and clean up of a discharge of oil in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability are [insert the dollar amount of the containment and clean up "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks, pipelines or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

b. The Insurer is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and clean up, with a right of reimbursement by the insured for any such payment made by the Insurer.

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

c. Whenever requested by the ~~State Water Control Board~~ Department of Environmental Quality, the Insurer agrees to furnish to ~~State Water Control Board~~ the Department of Environmental Quality a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the Insurer, except for on-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured and the ~~State Water Control Board~~ Department of Environmental Quality. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured and the ~~State~~

~~Water Control Board~~ Department of Environmental Quality.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the Insurer within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in Appendix III of 9VAC25-640 and has been so certified by the State Corporation Commission of the Commonwealth of Virginia. I further certify that the Insurer is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia.

[Signature of authorized representative of Insurer]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer]

[Address of Representative]

9VAC25-640-250:4. APPENDIX IV. CERTIFICATE OF INSURANCE.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Name: _____ [name of each covered location] _____

Address: ____ [address of each covered location] _____

_____

_____

Policy Number: _____

Endorsement (if applicable): _____

Period of Coverage: ____ [current policy period] _____

Name of Insurer:

_____

_____

Address of Insurer:

_____

_____

Name of Insured: _____

Address of Insured: _____

Certification:

1. [Name of Insurer], [the Insurer, as identified above, hereby certifies that it has issued liability insurance covering the following aboveground storage tank(s) and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under 9VAC25-640:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

for containment and clean up of discharges of oil; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks, pipelines or locations, indicate the type of coverage applicable to each tank, pipeline or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability are [insert the dollar amount of the containment and clean up "each occurrence" and "annual aggregate" limits of the Insurer's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this certificate applies.

b. The Insurer is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and clean up with a right of reimbursement by the insured for any such payment made by the Insurer.

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

c. Whenever requested by the ~~State Water Control Board~~ Department of Environmental Quality, the Insurer agrees to furnish to the ~~State Water Control Board~~ Department of Environmental Quality a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the Insurer, except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured and the ~~State Water Control Board~~ Department of Environmental Quality. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured and the ~~State Water Control Board~~ Department of Environmental Quality.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the Insurer within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix IV of 9VAC25-640 and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia.

[Signature of authorized representative of Insurer]

[Type name] [Title], Authorized Representative of [name of Insurer]

[Address of Representative]

9VAC25-640-250:5. APPENDIX V. PERFORMANCE BOND.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Date bond executed: _____

Effective date: _____

Principal: [legal name and address of operator] _____

Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization] _____

State of incorporation (if applicable): _____

Surety(ies): [name(s) and business address(es)] _____

Scope of Coverage:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism. For pipelines, list the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.

List the coverage guaranteed by the bond: containment and clean up of oil from a discharge arising from operating the aboveground storage tank and/or pipeline.]

Penal sums of bond:

Containment and Clean up (per discharge) $ _____

Annual Aggregate $ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the ~~State Water Control Board~~ Department of Environmental Quality of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under § 62.1-44.34:16 of the Code of Virginia and under 9VAC25-640 to provide financial assurance for containment and clean up necessitated by discharges of oil; [if coverage is different for different tanks or locations or pipelines, indicate the type of coverage applicable to each tank or location or pipeline] arising from

operating the aboveground storage tanks and/or pipelines identified above;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully contain and clean up, in accordance with the ~~State Water Control Board's~~ Department of Environmental Quality's instructions for containment and clean up of discharges of oil arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 9VAC25-640, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the ~~State Water Control Board~~ Department of Environmental Quality that the Principal has failed to contain and clean up in accordance with 9VAC25-91 and the ~~State Water Control Board's~~ Department of Environmental Quality's instructions, the Surety(ies) shall either perform containment and clean up in accordance with 9VAC25-91 and the ~~board's~~ department's instructions, or pay funds in an amount up to the annual aggregate penal sum to the ~~State Water Control Board~~ Department of Environmental Quality as directed by the ~~State Water Control Board~~ Department of Environmental Quality under 9VAC25-640-180. The ~~State Water Control Board~~ Department of Environmental Quality in its sole discretion may elect to require the surety to pay the funds or to perform containment and cleanup up to the annual aggregate penal sum.

Upon notification by the ~~State Water Control Board~~ Department of Environmental Quality that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the ~~State Water Control Board~~ Department of Environmental Quality has determined or suspects that a discharge has occurred, the Surety(ies) shall pay funds in an amount not exceeding the annual aggregate penal sum to the ~~State Water Control Board~~ Department of Environmental Quality as directed by the ~~State Water Control Board~~ Department of Environmental Quality under 9VAC25-640-180.

The Surety(ies) submit to the jurisdiction of the Circuit Court of the City of Richmond to adjudicate any claim against it (them) by the ~~State Water Control Board~~ Department of Environmental Quality and waive any objection to venue in that court. Interest shall accrue at the judgment rate of interest on the amount due beginning seven days after the date of notification by the ~~State Water Control Board~~ Department of Environmental Quality. In the event the ~~State Water Control Board~~ Department of Environmental Quality shall institute legal action to compel performance by the Surety under this agreement, the Surety shall be liable for all costs and legal fees incurred by the ~~board~~ department to enforce this agreement.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond. The Surety(ies) hereby agrees that it(they) has been notified of all material facts regarding this contract of suretyship and waiver(s) any defense founded in concealment of material facts. The Surety(ies) represents that the person executing this agreement has full authority to execute the agreement. Surety(ies) hereby waive(s) any right to notice of breach or default of the Principal. The ~~State Water Control Board~~ Department of Environmental Quality may enforce this agreement against the Surety(ies) without bringing suit against the Principal. The ~~State Water Control Board~~ Department of Environmental Quality shall not be required to exhaust the assets of the Principal before demanding performance by the Surety. No lawful act of the ~~State Water Control Board~~ Department of Environmental Quality, including without limitation any extension of time to the Principal, shall serve to release any surety, whether or not that act may be construed to alter or vary this agreement. Release of one cosurety shall not act as the release of another. This agreement shall be construed to affect its purpose to provide remedial action for discharges of petroleum.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail or overnight courier to the

Principal and the ~~State Water Control Board~~ Department of Environmental Quality, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the ~~State Water Control Board~~ Department of Environmental Quality, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of 9VAC25-640 as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit: $ _____

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ _____

9VAC25-640-250:6. APPENDIX VI. IRREVOCABLE STANDBY LETTER OF CREDIT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

[Name and address of issuing institution]

[Name and address of the Director]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No._____ in your favor, at the request and for the account of [operator name] of [address] up to the aggregate amount of [in words] U.S. dollars ($[insert dollar amount]), available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit, No._____; and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1- 44.34:16 of the Code of Virginia."

This letter of credit may be drawn on to cover containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines identified below in the amount of [in words] $ [insert dollar amount] per occurrence and [in words] $ [insert dollar amount] annual aggregate:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank covered by this instrument.

For pipelines, list: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by an operator that is not the direct result of a discharge of oil from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which an operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640-50.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify operator and the ~~State Water Control Board~~ Department of Environmental Quality by certified mail or overnight courier that we have decided not to extend this letter of credit beyond the current expiration date. In the event that operator and the

~~State Water Control Board~~ Department of Environmental Quality are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by the ~~State Water Control Board~~ Department of Environmental Quality, as shown on the signed return receipt, or until the current expiration date, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall pay to you the amount of the draft promptly and directly in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of 9VAC25-640 as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

9VAC25-640-250:7. APPENDIX VII. TRUST AGREEMENT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the operator], a [name of state] [insert "corporation," "partnership," "association," "proprietorship," or appropriate identification of type of entity], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of _____" or "a national bank"], the "Trustee."

Whereas, the ~~State Water Control Board~~ Department of Environmental Quality of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an operator of an aboveground storage tank and/or pipeline shall provide assurance that funds will be available when needed for containment and clean up of a discharge of oil arising from the operation of the aboveground storage tank and/or pipeline. The attached Schedule A contains for each facility the name and address of the facility where tanks covered by this trust agreement are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number and for pipelines the home office address and names of the cities and counties in the Commonwealth where the pipeline is located;

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) "9 VAC 25-640" is the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation promulgated by the ~~State Water Control Board~~ Department of Environmental Quality for the Commonwealth of Virginia.

Section 2. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the ~~State Water Control Board~~ Department of Environmental Quality of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. Payments made by the provider of financial assurance pursuant to the ~~State Water Control Board's~~ Department of Environmental Quality's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the ~~State Water Control Board~~ Department of Environmental Quality.

Section 3. Payment for Containment and Clean up.

The Trustee shall make payments from the Fund as the ~~State Water Control Board~~ Department of Environmental Quality shall direct, in writing, to provide for the payment of the costs of containment and clean up of a discharge of oil arising from operating the tanks and/or pipelines covered by this Agreement.

The Fund may not be drawn upon to cover any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator

that is not the direct result of a discharge from an oil aboveground storage tank or pipeline;

(e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640-50.

The Trustee shall reimburse the Grantor, or other persons as specified by the ~~State Water Control Board~~ Department of Environmental Quality, from the Fund for containment and clean up in such amounts as the ~~State Water Control Board~~ Department of Environmental Quality shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the ~~State Water Control Board~~ Department of Environmental Quality specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 4. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 5. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(a) Securities or other obligations of the Grantor, or any other operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. § 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 6. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 7. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 8. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 9. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 10. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 11. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 8.

Section 12. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the ~~State Water Control Board~~ Department of Environmental Quality to the Trustee shall be in writing, signed by the Executive Director of the Department of Environmental Quality, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the ~~State Water Control Board~~ Department of Environmental Quality hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the ~~State Water Control Board~~ Department of Environmental Quality, except as provided for herein.

Section 13. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the ~~State Water Control Board~~ Department of Environmental Quality if the Grantor ceases to exist.

Section 14. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 13, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the ~~State Water Control Board~~ Department of Environmental Quality, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 15. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the ~~State Water Control Board~~ Department of Environmental Quality issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 16. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section 17. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and

attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of 9VAC25-640 as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

[Signature of notary]

[Name of notary] [Date] My Commision expires: _____.

State of _____

County of _____

Of this [date], before me personally came [operator's representative] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of notary public]

[Name of notary public]

My Commission expires: _____

9VAC25-640-250:8. APPENDIX VIII. CERTIFICATE OF GROUP SELF-INSURANCE [POOL MEMBERSHIP].

(NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Name: [name of each covered location]

Address: [address of each covered location]

Policy number:

Endorsement (if applicable):

Period of coverage: [current policy period]

Name of Group self-insurance pool:

Address of Group self-insurance pool:

Name of Member:

Address of Member:

Certification:

1. [Name of Group Self-Insurance Pool], the group self-insurance pool, "Pool," as identified above, hereby certifies that it has entered into a Membership Agreement (Agreement) with the member to provide liability coverage for the following aboveground storage tank(s) and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation (9VAC25-590-640) for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage containment and cleanup of discharges of oil"] caused by either sudden accidental releases or nonsudden accidental releases; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the Pool Plan (Plan) and Agreement; [if coverage is different for different tanks, pipelines, or locations, indicate the type of coverage applicable to each tank, pipeline, or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability of the Pool are [insert the dollar amount] of the containment and cleanup "each occurrence" and "annual aggregate" limits of the Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks, pipelines, or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location insert the dollar amount] corrective action per occurrence and [insert dollar amount] third party liability per occurrence and [insert dollar amount] annual aggregate [If the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the Plan or Agreement. This coverage is provided under the Plan dated [insert date] and the Agreement entered into between [name of member] and [name of Pool]. The effective date of said Agreement is [date].

2. The Pool further certifies the following with respect to the coverage described in paragraph 1:

a. Bankruptcy or insolvency of the member shall not relieve the Pool of its obligations under the policy to which this certificate applies.

b. The Pool is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, containment and cleanup with a right of reimbursement by the member for any such payment made by the Pool. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

c. Whenever requested by the ~~State Water Control Board~~ Department of Environmental Quality, the Pool agrees to furnish to the ~~State Water Control Board~~ Department of Environmental Quality a signed duplicate original of the Agreement and Plan and all endorsements.

d. Cancellation or any other termination of the coverage by the Pool, except for nonpayment of premium or misrepresentation by the member, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the member and the ~~State Water Control Board~~ Department of Environmental Quality. Cancellation for nonpayment of premium or misrepresentation by the member will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the member and the ~~State Water Control Board~~ Department of Environmental Quality.

e. The Pool covers claims otherwise covered by the Agreement and Plan that are reported to the Pool within six months of the effective date of cancellation or nonrenewal of the Agreement except where the new or renewed Agreement has the same retroactive date or a retroactive date earlier than that of the prior Agreement and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such Agreement renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the Agreement and Plan.

I hereby certify that the wording of this instrument is identical to the wording in APPENDIX XII of 9VAC25-640 and that the Pool is licensed by the Commonwealth of Virginia's State Corporation Commission pursuant to 14VAC5-3805.

[Signature of Authorized Representative of Pool]

[Type name], [Authorized Representative] of [name of Pool]

[Address of representative]

9VAC25-640-250:10. APPENDIX X. ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

[Name and Address of Bank]

City _____ _____, 20__

___ FOR VALUE RECEIVED, the undersigned assigns all right, title, and interest to the ~~State Water Control Board~~ Department of Environmental Quality, Commonwealth of Virginia, and its successors and assigns the ~~State Water Control Board~~ Department of Environmental Quality the principal amount of the instrument, including all moneys deposited now or in the future to that instrument, indicated below:

__If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No. _____

This assignment is given as security to the ~~State Water Control Board~~ Department of Environmental Quality in the amount of _____ Dollars ($_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the ~~State Water Control Board~~ Department of Environmental Quality.

Additional Security. This assignment shall secure the payment of any financial obligation of [name of operator] to the ~~State Water Control Board~~ Department of Environmental Quality to cover containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines identified below in the amount of [in words] $ [insert dollar amount] per occurrence and [in words] $ [insert dollar amount] annual aggregate:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank covered by this instrument.

For pipelines, list: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

The certificate of deposit may not be drawn on to cover any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by an operator that is not the direct result of a discharge of oil from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which an operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640-50.

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial responsibility obligations of [name of operator] to the ~~State Water Control Board~~ Department of Environmental Quality to cover containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines at the [facility name and address]. The undersigned authorizes the ~~State Water Control Board~~ Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the ~~State Water Control Board's~~ Department of Environmental Quality's discretion to fund containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines at the [facility name] or in the event of [operator's] failure to comply with the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements, 9VAC25-640. The undersigned agrees that the ~~State Water Control Board~~ Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. [The undersigned] agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

The party or parties to this Assignment also certify that the wording of this Assignment is identical to the wording specified in Appendix X of 9VAC25-640 as such regulations were constituted on the date this Assignment was executed.

SEAL

[Operator]

[print Operator's name] [Date]

SEAL

[Operator]

[print Operator's name] [Date]

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above assignment has been properly recorded by placing a hold in the amount of $ _____ for the benefit of the ~~State Water Control Board~~ Department of Environmental Quality, Commonwealth of Virginia.

___ If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

[Signature] [Date]

[print name]

[Title]

Mailing address of branch or lending office

Area code and telephone number of branch or lending office

VA.R. Doc. No. R23-7163; Filed September 9, 2022, 2:31 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-650. Closure Plans and Demonstration of Financial Capability (amending 9VAC25-650-10, 9VAC25-650-20, 9VAC25-650-50 through 9VAC25-650-120, 9VAC25-650-140 through 9VAC25-650-200).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.18:3 of the Code of Virginia.

Effective Date: November 23, 2022.

Agency Contact: Allan Brockenbrough, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23240, telephone (804) 836-2321, FAX (804) 698-4178, or email allan.brockenbrough@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-650-10. Definitions.

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

"Active life" means the length of time a facility discharges to state waters or is subject to regulation under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31).

"Anniversary date" means the date of issuance of a financial mechanism.

"Assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Ceases operations" means to cease conducting the normal operation of a facility under circumstances in which it is reasonable to expect that such operation will not be resumed by the owner at the facility. The term shall not include the sale or transfer of a facility in the ordinary course of business or a permit transfer in accordance with board regulations. Ceases operations shall include, but not be limited to, the following:

1. Bankruptcy or insolvency of the owner or operator or suspension or revocation of a charter or license to operate the facility or to furnish sewer services;

2. Failure to operate and maintain a facility in accordance with the Operations and Maintenance Manual for the facility, such that a substantial or imminent threat to public health or the environment is created;

3. Failure to comply with the requirements of the VPDES permit for the facility, such that a substantial or imminent threat to public health or the environment is created;

4. Notification of termination of service by a utility providing electricity or other resource essential to the normal operation of the facility.

"Closure plan" means a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if a facility ceases operations.

"Current annual inflation factor" means the annual inflation factor derived from the most recent implicit price deflator for gross national product published by the U.S. Department of Commerce in its Survey of Current Business.

"Current closure cost estimate" means the most recent of the estimates prepared in accordance with the requirements of this chapter.

"Current dollars" means the figure represented by the total of the cost estimate multiplied by the current annual inflation factor.

"CWA" means the Clean Water Act (33 USC § 1251 et seq.) (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

"Department" means the ~~Virginia~~ Department of Environmental Quality.

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

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

"Facility" or "activity" means any VPDES point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VPDES program.

"Facility closure plan" means a facility closure plan prepared in accordance with 9VAC25-790-120 E 3.

"Local government" means a municipality, county, city, town, authority, commission, school board, political subdivision of a state, or other special purpose local government which provides essential services.

"Owner or operator" means the owner or operator of any facility or activity subject to regulation under the VPDES program.

"Parent corporation" means a corporation that directly owns at least 50% of the voting stock of the corporation that is the facility owner or operator; the latter corporation is deemed a "subsidiary" of the parent corporation.

"Permit" means an authorization, certificate, license, or equivalent control document issued by the department or a general permit issued as a regulation adopted by the board to implement the requirements of this chapter. For the purposes of this chapter, permit includes coverage issued under a VPDES general permit. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or proposed permit.

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

"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, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agricultural or agricultural stormwater run off.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or

2. 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 and gas production and disposed of in a well if the well used either to facilitate production or for disposal purposes is approved by the ~~board~~ department, and if the ~~board~~ department determines that the injection or disposal will not 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 for other reasonable uses; provided that: (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or a 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; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the board, are "pollution" for the terms and purposes of this chapter.

"Private residence" means any building, buildings, or part of a building owned by a private entity which serves as a permanent residence where sewage is generated. Private residences include, but are not limited to, single family homes, town houses, duplexes, condominiums, mobile homes, and apartments. Private residences do not include hotels, motels, seasonal camps, and industrial facilities that do not also serve as residences.

"Privately owned sewerage system" means any device or system that is:

1. Used in the treatment (including recycling and reclamation) of sewage. This definition includes sewers, pipes, pump stations or other conveyances only if they convey wastewater to a privately owned sewerage system; and

2. Not owned by the United States, a state, or a local government.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Sewage" means the water-carried human wastes from residences, buildings, industrial establishments, or other places together with such industrial wastes, underground, surface, storm, or other water, as may be present.

"Special order" means an order of the ~~board~~ department issued under the provisions of § 62.1-44.15:1.1 of the Code of Virginia, which require that an owner file with the ~~board~~ department a plan to abate, control, prevent, remove, or contain a substantial and imminent threat to public health or the environment that is likely to occur if the facility ceases operations.

"Signature" means the name of a person written with his own hand.

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

"Substantial business relationship" means the extent of a business relationship necessary under applicable Virginia law to make a guarantee contract incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent and ongoing business transactions, in addition to the guarantee itself, such that a currently existing business relationship between the guarantor and the owner or operator is demonstrated to the satisfaction of the director.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

"Treatment works" means any devices and systems used for the storage, treatment, recycling, or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Virginia Pollutant Discharge Elimination System (VPDES) Permit" means a document issued by the department or a general permit issued as a regulation adopted 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 and the use of biosolids or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

9VAC25-650-20. Purpose.

The purpose of this regulation is to require owners or operators of certain privately owned sewerage systems that treat sewage from private residences to file with the ~~board~~ department a plan to abate, control, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if the facility ceases operations. For the purposes of this regulation, such a plan shall be termed a closure plan. Such plan shall also include the demonstration of financial assurance required in 9VAC25-650-30 to implement the plan.

9VAC25-650-50. General purpose and scope.

A. Any owner or operator of a privately owned sewerage system subject to this regulation shall file with the ~~board~~ department a plan to abate, control, prevent, remove, or contain any substantial imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations. Such plan shall be referred to as a closure plan. The closure plan shall include a detailed written estimate of the cost to implement the plan. The owner or operator shall file a closure plan and associated cost estimate for the facility with the ~~board~~ department concurrently with the owner's or operator's first VPDES permit application for issuance or reissuance for the facility. Closure plans and cost estimates filed with the ~~board~~ department shall be reviewed by the owner or operator and updated as necessary at the end of each VPDES permit term. Revised and updated closure plans shall be filed with the ~~board~~ department concurrently with each subsequent VPDES permit application.

B. Closure plans and cost estimates shall be subject to review by the ~~board~~ department. The owner or operator shall be notified in writing within 60 days of receipt of the closure plan and cost estimate of the ~~board's~~ department's decision to approve or disapprove the proposed closure plan and cost estimate. If the ~~board~~ department disapproves the closure plan or cost estimate, the ~~board~~ department shall notify the owner or operator as to what measures, if any, the owner or operator may take to secure approval. If the owner or operator submits a closure plan that is not approvable by the ~~board~~ department, the ~~board~~ department may, at its sole discretion, promulgate a closure plan and cost estimate for the facility, subject to appeal by the owner or operator only as to content under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. Closure plans shall be implemented when the ~~board~~ department has determined, at its sole discretion, that the facility has ceased operations. The owner or operator of a privately owned facility shall notify the ~~board~~ department within 24 hours of the facility ceasing operations as defined in this chapter.

D. In order to assure that the costs associated with protecting public health and the environment are to be recovered from the owner or operator in the event that a facility subject to this regulation ceases operation, the owner or operator of such facility shall submit to the ~~board~~ department one or a combination of the financial assurance mechanisms described in this chapter. Financial assurance mechanisms shall be in amounts calculated as the inflation-adjusted cost estimate using the procedures set forth in this chapter.

E. In the case of new facilities or increased discharges from existing facilities, the selected financial assurance mechanism or mechanisms shall be filed with the ~~board~~ department no less than 90 days prior to the discharge or increased discharge to state waters.

F. The ~~board~~ department may disapprove the proposed evidence of financial assurance if the mechanism or mechanisms submitted do not adequately assure that funds will be available for implementation of the closure plan. The owner or operator shall be notified in writing of the ~~board's~~ department's decision to approve or disapprove the proposed mechanism. If the ~~board~~ department disapproves the financial assurance mechanism, the ~~board~~ department shall notify the owner or operator as to what measures, if any, the owner or operator may take to secure approval.

G. Closure plans, cost estimates, and financial assurance mechanisms shall remain in place for the active life of the facility and for the time required to complete the activities specified in the closure plan.

9VAC25-650-60. Closure plans.

A. The owner or operator of a privately owned sewerage system subject to this chapter shall provide a closure plan which abates, controls, prevents, removes, or contains any substantial threat to public health or the environment that is reasonably likely to occur if the facility ceases operations.

B. Closure plans shall be submitted to the ~~board~~ department by the owner or operator concurrently with its application for a VPDES permit for the facility or as otherwise required by special order. Existing closure plans filed with the ~~board~~ department shall be reviewed by the owner or operator, modified as necessary, and resubmitted to the ~~board~~ department concurrently with an owner's or operator's application for a reissued VPDES permit. The submittal shall include a written summary of the results of the review and any modifications to the closure plan.

C. Closure plans shall consist of one or more of the following:

1. The cessation of the discharge of pollutants to state waters, followed by closure of the facility in accordance with the facility closure plan prepared in accordance with 9VAC25-790-120 E 3 and approved by the department.

2. Connection to an alternative treatment works, such as a POTW, including rerouting of all influent flow, followed by closure of the VPDES permitted facility in accordance with the facility closure plan prepared in accordance with 9VAC25-790-120 E 3 and approved by the department.

3. Transfer of the facility to a local government, provided that written agreement of the receiving local government to obtain a VPDES permit and operate and maintain the facility in accordance with the VPDES permit and all other applicable laws and regulations, is obtained and included as part of the closure plan.

4. Contract operation of the facility for a period of two years after initial implementation of the closure plan, regardless of the date of initial implementation. Contract operation shall be by a named private company or other entity licensed to operate wastewater treatment facilities in the Commonwealth of Virginia and licensed to operate the specific facility to which the closure plan applies. A closure plan consisting of or including contract operation shall include a written, signed contract executed by the contract operator, contingent only upon approval of the closure plan by the ~~board~~ department. The contract shall specify that the contract operator shall operate the facility for the term of the contract in accordance with the terms and conditions of the owner's or operator's VPDES permit for the facility. The contract shall also specify that the contract operator shall assume, without exception, all responsibilities and liabilities associated with the facility's discharge to state waters and with the owner's or operator's VPDES permit in the event the closure plan is implemented. The owner or operator of the facility and the owner of the private company or entity contracted to operate the facility under the closure plan shall not be the same person.

5. An alternative plan which will abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if the facility ceases operations.

D. Closure plans shall designate and authorize a named third party who, upon notification by the ~~board~~ department, will implement the closure plan. The closure plan shall include written agreement by the named third party, bearing that person's signature, to implement the closure plan in accordance with the requirements of the closure plan for the duration of the VPDES permit term. Where the closure plan includes contract operation of the facility, the named third party may be the contract operator.

E. Closure plans may not consist of the transfer or sale of the facility to another private entity which also would be subject to this regulation.

9VAC25-650-70. Transfer of ownership or permit.

A. If a privately owned sewerage system subject to this regulation is to be sold or if ownership is to be transferred in the normal course of business, the owner or operator shall notify the ~~board~~ department, in written form through certified mail, of such intended sale or transfer at least 30 days prior to such sale or transfer. The notification shall provide the full name, address, and telephone number of the person to whom the facility is to be sold or transferred. The notice shall include a written agreement between the existing and the new permittee containing a specific date for transfer of permit responsibilities, coverage, and liabilities between them.

B. Changes in the ownership or operational control of a facility may be made as a minor modification with prior written approval of the ~~board~~ department in accordance with 9VAC25-31-380, except as otherwise provided in this section. When a transfer of ownership or operational control occurs, the new owner or operator shall demonstrate compliance with this chapter and the ~~board~~ department shall approve the financial mechanism prior to the transfer of the permit. Upon demonstration to the ~~board~~ department by the new owner or operator of compliance with this chapter, the ~~board~~ department shall notify the old owner or operator that the old owner or operator no longer needs to comply with this chapter as of the date of demonstration.

9VAC25-650-80. Cost estimate for facility closure.

A. The owner or operator shall prepare for approval by the ~~board~~ department, a detailed written estimate of the cost of implementing the closure plan. The written cost estimate shall be submitted concurrently with the closure plan.

1. The closure plan cost estimate shall equal the full cost of implementation of the closure plan in current dollars.

2. The closure cost estimate shall be based on and include the costs to the owner or operator of hiring a third party to implement the closure plan. The third party may not be either a parent corporation or subsidiary of the owner or operator.

3. The closure cost estimate may not incorporate any salvage value that may be realized by the sale of wastes, facility structures or equipment, land or other facility assets at the time of implementation of the closure plan.

B. During the term of the VPDES permit, the owner or operator shall adjust the implementation cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial assurance mechanism used to comply with this chapter. The adjustment may be made by recalculating the implementation cost in current dollars, or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its Survey of Current Business, as specified below. The inflation factor is the result of dividing the latest published annual deflator by the deflator for the previous year.

1. The first adjustment is made by multiplying the implementation cost estimate by the latest inflation factor. The result is the adjusted implementation cost estimate.

2. Subsequent adjustments are made by multiplying the latest adjusted cost estimate by the latest inflation factor.

C. During the term of the VPDES permit, the owner or operator shall revise the implementation cost estimate concurrently with any revision made to the closure plan which increases the implementation cost. The revised implementation cost estimate shall be adjusted for inflation as specified in subdivisions B 1 and B 2 of this section.

D. The owner or operator may reduce the implementation cost estimate and the amount of financial assurance provided under this section, if it can be demonstrated that the cost estimate exceeds the cost of implementation of the closure plan. The owner or operator shall obtain the approval of the ~~board~~ department prior to reducing the amount of financial assurance.

E. The owner or operator shall provide continuous coverage to implement the closure plan until released from financial assurance requirements by the ~~board~~ department.

9VAC25-650-90. Trust Agreement.

A. An owner or operator of a privately owned sewerage system may satisfy the requirements of this chapter by establishing an irrevocable trust fund that conforms to the requirements of this section and by submitting an originally signed duplicate of the trust agreement to the ~~board~~ department. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission (Commonwealth of Virginia).

B. The trust agreement shall be irrevocable and shall continue until terminated at the written direction of the grantor, the trustee, and the ~~board~~ department, or by the trustee and the ~~board~~ department if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final administration expenses, shall be delivered to the grantor. The wording of the trust agreement shall be identical to the wording as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted. The trust agreement shall be accompanied by a formal letter of certification of acknowledgement as specified in this chapter.

TRUST AGREEMENT

Trust agreement, the "Agreement," entered into as of (date) by and between (name of the owner or operator), a (name of state) (insert "corporation," "partnership," "association," "proprietorship," or appropriate identification of type of entity), the "Grantor," and (name of corporate trustee), (insert "Incorporated in the state of _____" or "a national bank"), the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an owner or operator of a private sewage treatment facility shall provide assurance that funds will be available when needed for implementation of a closure plan. The attached Schedule A contains the name and address of the facility covered by this trust agreement;

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department of Environmental Quality of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund. Payments made by the provider of financial assurance pursuant to the Director of the Department of Environmental Quality's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the

Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the ~~State Water Control Board~~ Department of Environmental Quality.

Section 3. Payment for Implementation of the Closure Plan.

The Trustee shall make payments from the Fund as the Director, Department of Environmental Quality shall direct, in writing, to provide for the payment of the costs of implementation of the closure plan for the facility covered by the financial assurance mechanism identified in this Agreement.

The Trustee shall reimburse the Grantor, or other persons as specified by the ~~State Water Control Board~~ Department of Environmental Quality, from the Fund for implementation of the closure plan in such amounts as the Director of the Department of Environmental Quality shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director of the Department of Environmental Quality specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 4. Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 5. Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other operator of the facility, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC § 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(iii) Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 6. Commingling and Investment.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC § 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 7. Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 8. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 9. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 10. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 11. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 12. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the ~~State Water Control Board~~ Department of Environmental Quality to the Trustee shall be in writing, signed by the Director of the Department of Environmental Quality, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the ~~State Water Control Board~~ Department of Environmental Quality hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the ~~State Water Control Board~~ Department of Environmental Quality, except as provided for herein.

Section 13. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section 17, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Director of the Department of Environmental Quality, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 14. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the ~~State Water Control Board~~ Department of Environmental Quality issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 15. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia.

Section 16. Amendment of Agreement.

This Agreement may be amended by an instrument executed in writing executed by the Grantor, the Trustee, and the Director of the Department of Environmental Quality, Commonwealth of Virginia, or by the Trustee and the Director of the Department of Environmental Quality, Commonwealth of Virginia, if the Grantor ceases to exist.

Section 17. Annual Valuation.

The Trustee will annually, at the end of the month coincident with or preceding the anniversary date of establishment of the Fund, furnish the Grantor and to the Director of the Department of Environmental Quality, Commonwealth of Virginia, a statement confirming the value of the Trust. Any securities in the Fund will be valued at market value as of no more than 30

days prior to the date of the statement. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Director of the Department of Environmental Quality, Commonwealth of Virginia will constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 18. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 9VAC25-650-90 B as such regulations were constituted on the date written above.

(Signature of Grantor)

(Name of the Grantor)

(Title)

Attest:

(Signature of Trustee)

(Name of the Trustee)

(Title)

(Seal)

(Signature of Witness)

(Name of Witness)

(Title)

(Seal)

CERTIFICATE OF ACKNOWLEDGMENT

State of _____

County of _____

On this (date), before me personally came (owner's or operator's representative) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that is was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

(Signature of Notary Public)

(Name of Notary Public)

My Commission expires:_____

SCHEDULE A

Name of Facility

Address of facility

Closure Cost Estimate

VPDES Permit Number

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage. Schedule A of the trust agreement shall be updated within 60 days after a change in the amount of the approved cost estimate covered by the agreement.

D. If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the ~~board~~ department for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the owner or operator may submit a written request to the director for release of the excess.

F. Within 60 days after receiving a request from the owner or operator for release of funds as specified in subsection D or E of this section, the ~~board~~ department will instruct the trustee to release to the owner or operator such funds, if any, that the ~~board~~ department determines to be eligible for release and specifies in writing.

G. Whenever the cost estimate changes, the owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new cost estimate, the owner or operator shall, within 10 days of the change in the approved cost estimate, deposit a sufficient amount into the trust so that its value after payment at least equals the amount of the new estimate, or obtain other financial assurance as specified in this article to cover the difference. If the value of the trust fund is greater than the total amount of the cost estimate, the owner or operator may submit a written request to the ~~board~~ department for release of the amount that is in excess of the cost estimate.

H. After beginning implementation of the closure plan, an owner or operator or any other person authorized to implement the closure plan may request reimbursement for implementation expenditures by submitting itemized bills to the ~~board~~ department. Within 60 days after receiving bills for plan implementation activities, the ~~board~~ department shall instruct the trustee to make reimbursements in those amounts

as the ~~board~~ department determines are in accordance with the closure plan or are otherwise justified.

I. The ~~board~~ department shall agree to terminate the trust when:

1. The owner or operator substitutes alternate financial assurance as specified in this article; or

2. The ~~board~~ department notifies the owner or operator that he is no longer required to maintain financial assurance for the implementation of the closure plan.

9VAC25-650-100. Surety bond.

A. An owner or operator may satisfy the requirements of this chapter by obtaining a surety bond that conforms to the requirements of this section and by submitting an originally signed duplicate of the bond to the ~~board~~ department. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be on surety company letterhead and worded as follows, except that instructions in parentheses shall be replaced with the relevant information and the parentheses deleted.

PERFORMANCE BOND

Date bond executed: _____

Period of coverage: _____

Effective date: _____

Principal: (legal name and address of owner or operator) _____

Type of organization: (insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization) _____

State of incorporation (if applicable): _____

Surety: (name(s) and business address) _____

Scope of Coverage:

(List the name of and the address where the private sewage treatment facility assured by this mechanism is located. List the coverage guaranteed by the bond: operation, maintenance, and closure of the privately owned sewage treatment facility)

Penal sum of bond: $ _____

Surety's bond number: _____

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, Commonwealth of Virginia, ("DEQ") in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required under § 62.1-44.18:3 of the State Water Control Law of the Code of Virginia to provide financial assurance to implement a plan to abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment that is reasonably likely to occur if such facility ceases operations (closure plan);

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully implement the closure plan in accordance with the Director of the DEQ's instructions to implement the plan for the facility described above, or if the Principal shall provide alternate financial assurance, acceptable to DEQ and obtain the Director's written approval of such assurance, within 60 days after the date the notice of cancellation is received by the Director of the DEQ from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond when the Principal has failed to fulfill the conditions described above. Upon notification by the Director of the DEQ that the owner or operator has failed to fulfill the conditions above or that the DEQ has determined that the facility has ceased operations, the Surety(ies) shall either implement the closure plan or forfeit the full amount of the penal sum as directed by the Director of the DEQ under 9VAC25-650-140.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Director of the DEQ, Commonwealth of Virginia, 1111 East Main Street, Suite 1400, Richmond, Virginia 23219, provided, however, that cancellation shall not occur (1) during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and Director of the DEQ as shown on the signed return receipt; or (2) while a compliance procedure is pending.

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf

of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 9VAC25-650-100 B as such regulations were constituted on the date this bond was executed.

PRINCIPAL

(Signature(s))

(Name(s))

(Title(s))

(Corporate seal)

CORPORATE SURETY(IES)

(Name and address)

State of Incorporation:

Liability limit: $ _____

(Signature(s))

(Name(s) and title(s))

(Corporate seal)

(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)

Bond premium: $ _____

C. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

D. The bond shall guarantee that the owner or operator or any other authorized person will:

1. Implement the closure plan in accordance with the approved closure plan and other requirements in any permit for the facility;

2. Implement the closure plan following an order to do so issued by the ~~board~~ department or by a court.

E. The surety bond shall guarantee that the owner or operator shall provide alternate financial assurance as specified in this part within 60 days after receipt by the ~~board~~ department of a notice of cancellation of the bond from the surety.

F. If the approved cost estimate increases to an amount greater than the amount of the penal sum of the bond, the owner or operator shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance, as specified in this part to cover the increase. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the ~~board~~ department. Notice of an increase or decrease in the penal sum shall be sent to the ~~board~~ department by certified mail within 60 days after the change.

G. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the ~~board~~ department. Cancellation cannot occur, however:

1. During the 120 days beginning on the date of receipt of the notice of cancellation by the ~~board~~ department as shown on the signed return receipt; or

2. While an enforcement procedure is pending.

H. The surety shall provide written notification to the ~~board~~ department by certified mail no less than 120 days prior to the expiration date of the bond, that the bond will expire and the date the bond will expire.

I. In regard to implementation of a closure plan either by the owner or operator, by an authorized third party, or by the surety, proper implementation of a closure plan shall be deemed to have occurred when the ~~board~~ department determines that the closure plan has been completed. Such implementation shall be deemed to have been completed when the provisions of the facility's approved closure plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the closure plan have been complied with.

9VAC25-650-110. Letter of credit.

A. An owner or operator may satisfy the requirements of this chapter by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section and by submitting an originally signed duplicate of the letter of credit to the ~~board~~ department. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be on financial institution letterhead and worded as follows, except that instructions in parentheses are to be replaced with the relevant information and the parentheses deleted.

IRREVOCABLE STANDBY LETTER OF CREDIT

(Name and address of issuing institution)

Beneficiary:

Director

Department of Environmental Quality (DEQ)

P.O. Box 1105

Richmond, Virginia 23218

1111 East Main Street, Suite 1400

Richmond, Virginia 23218

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No._____ in your favor, at the

request and for the account of (owner or operator name) of (address) up to the aggregate amount of (in words) U.S. dollars, ($(insert dollar amount)), available upon presentation of

(1) your sight draft, bearing reference to this letter of credit, No._____ and

(2) your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of § 62.1-44.18:3 of the Code of Virginia."

This letter of credit may be drawn on to implement the closure plan for the facility identified below in the amount of (in words) ($(insert dollar amount)). (Name of facility and address of the facility assured by this mechanism, and number of hookups served by the system.)

This letter of credit is effective as of (date) and shall expire on (date), but such expiration date shall be automatically extended for a period of (at least the length of the original term) on (expiration date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify the Director of the DEQ and the owner or operator by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that the owner or operator is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by the Director of the DEQ and the owner or operator, as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall submit the amount of the draft directly to DEQ in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording required in 9VAC25-650-110 B as such regulations were constituted on the date shown immediately below.

Attest:

(Signature(s) and title(s) of official(s) of issuing institution)

(Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code").

C. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for implementation of the closure plan. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date it shall, at least 120 days before the expiration date, notify both the owner or operator and the ~~board~~ department by certified mail of that decision. The 120-day period will begin on the date of receipt by the ~~board~~ department as shown on the signed return receipt. Expiration cannot occur, however, while an enforcement procedure is pending. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance to be in effect prior to the expiration date of the letter of credit.

D. Whenever the approved cost estimate increases to an amount greater than the amount of credit, the owner or operator shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this part to cover the increase. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the ~~board~~ department. The issuing institution shall send the notice of an increase or decrease in the amount of the credit to the ~~board~~ department by certified mail within 60 days of the change.

E. Following a determination by the ~~board~~ department that the owner or operator has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the owner or operator or has ceased operations at the facility or has failed to implement the closure plan in accordance with the approved plan or other permit or special order requirements, the ~~board~~ department will draw on the letter of credit.

F. The owner or operator may cancel the letter of credit only if alternate financial assurance acceptable to the ~~board~~ department is substituted as specified in this part or if the owner or operator is released by the ~~board~~ department from the requirements of this chapter.

G. The ~~board~~ department shall return the original letter of credit to the issuing institution for termination when:

1. The owner or operator substitutes acceptable alternate financial assurance for implementation of the closure plan as specified in this part; or

2. The ~~board~~ department notifies the owner or operator that he is no longer required by this part to maintain financial assurance for implementation of the closure plan for the facility.

9VAC25-650-120. Certificate of deposit.

A. An owner or operator may satisfy the requirements of this chapter, wholly or in part, by assigning all rights, title and interest of a certificate of deposit to the ~~board~~ department, conditioned so that the owner or operator shall comply with the approved facility closure plan filed for the facility. The issuing institution shall be an entity that has the authority to issue certificates of deposit in the Commonwealth of Virginia and

whose operations are regulated and examined by a federal agency or the State Corporation Commission (Commonwealth of Virginia). The owner or operator must submit the originally signed assignment and the originally signed certificate of deposit, if applicable, to the ~~board~~ department.

B. The assignment shall be on financial institution letterhead and worded as follows, except that instructions in parentheses shall be replaced with the relevant information and the parentheses deleted.

ASSIGNMENT OF CERTIFICATE OF DEPOSIT ACCOUNT

City,_____
20_____

FOR VALUE RECEIVED, the undersigned assigns all right, title and interest to the Virginia Department of Environmental Quality, Commonwealth of Virginia and its successors and assigns the Virginia Department of Environmental Quality the principal amount of the instrument, including all monies deposited now or in the future to that instrument, indicated below:

__If checked here, this assignment includes all interest now and hereafter accrued.

Certificate of Deposit Account No.

This assignment is given as security to the Virginia Department of Environmental Quality in the amount of _____ Dollars ($_____).

Continuing Assignment. This assignment shall continue to remain in effect for all subsequent terms of the automatically renewable certificate of deposit.

Assignment of Document. The undersigned also assigns any certificate or other document evidencing ownership to the Virginia Department of Environmental Quality.

Additional Security. This assignment shall secure the payment of any financial assurance obligations of the (name of owner/operator) to the Virginia Department of Environmental Quality for closure activities at the (facility name and permit number) located (physical address).

Application of Funds. The undersigned agrees that all or any part of the funds of the indicated account or instrument may be applied to the payment of any and all financial assurance obligations of (name of owner/operator) to the Virginia Department of Environmental Quality for closure activities at the (facility name and address). The undersigned authorizes the Virginia Department of Environmental Quality to withdraw any principal amount on deposit in the indicated account or instrument including any interest, if indicated, and to apply it in the Virginia Department of Environmental Quality's discretion to fund closure at the (facility name) or in the event of (name of owner or operator)'s failure to comply with the regulation entitled Closure Plans and Demonstration of Financial Capability, 9VAC25-650-10 et seq. The undersigned agrees that the Virginia Department of Environmental Quality may withdraw any principal and/or interest from the indicated account or instrument without demand or notice. The undersigned agrees to assume any and all loss of penalty due to federal regulations concerning the early withdrawal of funds. Any partial withdrawal of principal or interest shall not release this assignment.

The party or parties to this Assignment set their hand or seals, or if corporate, has caused this assignment to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors the day and year above written.

SEAL

(Owner)

(Print name)

SEAL

(Owner)

(Print name)

THE FOLLOWING SECTION IS TO BE COMPLETED BY THE BRANCH OR LENDING OFFICE:

The signature(s) as shown above compare correctly with the name(s) as shown on record as owner(s) of the Certificate of Deposit indicated above. The above Assignment has been properly recorded by placing a hold in the amount of $_____for the benefit of the Virginia Department of Environmental Quality.

__If checked here, the accrued interest on the Certificate of Deposit indicated above has been maintained to capitalize versus being mailed by check or transferred to a deposit account.

I certify that the wording of this Assignment is identical to the wording required in 9VAC25-650-120 B as such regulations were constituted on the date shown immediately below.

(Signature)

(Date)

(Print name)

(Title)

C. The amount of the certificate of deposit shall be at least equal to the current closure cost estimate for the facility for which the permit application has been filed or any part thereof not covered by other financial assurance mechanisms. The owner or operator shall maintain the certificate of deposit and assignment until all activities required by the approved facility closure plan have been completed.

D. The owner or operator shall be entitled to demand, receive and recover the interest and income from the certificate of

deposit as it becomes due and payable as long as the market value of the certificate of deposit plus any other mechanisms used continue to at least equal the amount of the current closure cost estimate.

E. Following a determination by the ~~board~~ department that the owner or operator has ceased operations at the facility or has failed to complete closure activities in accordance with the approved facility closure plan or other permit or special order, the ~~board~~ department shall cash the certificate of deposit.

F. Whenever the approved closure cost estimate increases to an amount greater than the amount of the certificate of deposit, the owner or operator shall, within 60 days of the increase, cause the amount of the certificate of deposit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this chapter to cover the increase. Whenever the cost estimate decreases, the owner or operator may reduce the amount of the certificate of deposit to the new estimate following written approval by the ~~board~~ department. The owner or operator must submit a certificate of deposit and assignment reflecting the new cost estimate within 60 days of the change in the cost estimate.

G. The ~~board~~ department shall return the original assignment and certificate of deposit, if applicable, to the issuing institution for termination when:

1. The owner or operator substitutes acceptable alternate financial assurance for implementation of the closure plan as specified in this chapter; or

2. The ~~board~~ department notifies the owner or operator that the owner or operator is no longer required by this chapter to maintain financial assurance for implementation of the closure plan for the facility.

9VAC25-650-140. Drawing on financial assurance mechanism.

A. The ~~board~~ department shall require the surety or institution issuing a letter of credit or certificate of deposit to submit to the ~~board~~ department the amount of funds stipulated by the ~~board~~ department, up to the limit of funds provided by the financial assurance mechanism when:

1. The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the surety bond, letter of credit or certificate of deposit; or

2. The conditions of subsection B of this section are satisfied.

B. The b~~oard~~ department makes a final determination that a privately owned sewerage system has ceased operation.

9VAC25-650-150. Waiver of requirements.

A. The ~~board~~ department may waive the filing of the closure plan required pursuant to this chapter for any person who operates a privately owned sewerage system or treatment works subject to this regulation that was permitted prior to January 1, 2001, and discharges less than 5,000 gallons per day upon a finding that such person has not violated any regulation of the board or order of the ~~board~~ department, any condition of a permit to operate the facility, or any provision of the State Water Control Law, § 62.1-44.2 et seq. of the Code of Virginia for a period of not less than five years.

B. No waiver shall be approved by the ~~board~~ department until after the governing body of the locality in which the facility is located approves the waiver after a public hearing.

C. The ~~board~~ department may revoke a waiver at any time for good cause.

9VAC25-650-160. Release of the owner or operator from the financial assurance requirements.

A. Where the closure plan results in the termination of discharge to state waters and a VPDES permit for the discharge is no longer required, the ~~board~~ department shall verify, within 60 days after receiving certification from the owner or operator that the closure plan has been completed in accordance with the requirements of the approved closure plan, permit or other order, whether the closure plan has been completed. Unless the ~~board~~ department has reason to believe that the closure plan has not been implemented in accordance with the appropriate plan or other requirements, the ~~board~~ department shall notify the owner or operator in writing that the owner or operator is no longer required to maintain financial assurance for the particular facility. Such notice shall release the owner or operator only from the requirements for financial assurance for the facility; it does not release the owner or operator from legal responsibility for meeting the facility closure standards. If no written notice of termination of financial assurance requirements or of failure to properly implement the closure plan is received by the owner or operator within 60 days after certifying proper implementation of the closure plan, the owner or operator may request the ~~board~~ department for an immediate decision in which case the ~~board~~ department shall respond within 10 days after receipt of such request.

B. Where a VDPES permit for the facility is no longer required under State Water Control Law, the ~~board~~ department shall notify the owner or operator in writing that the owner or operator is no longer required to maintain financial assurance for the facility. Such notice shall release the owner or operator only from the requirements for financial assurance for the facility.

9VAC25-650-170. Cancellation or renewal by a provider of financial assurance.

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator. Termination of a surety bond or a letter of credit may not occur until 120 days after the date on which the

owner or operator receives the notice of termination, as evidenced by the return receipt.

B. If a provider of financial assurance cancels or fails to renew for reasons other than incapacity of the provider as specified in 9VAC25-650-180, the owner or operator shall obtain alternate coverage as specified in this section and shall submit to the ~~board~~ department the appropriate original forms listed in 9VAC25-650-90, 9VAC25-650-100, 9VAC25-650-110, or 9VAC25-650-120 documenting the alternate coverage within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall immediately notify the ~~board~~ department of such failure and submit:

1. The name and address of the provider of financial assurance;

2. The effective date of termination; and

3. A copy of the financial assurance mechanism subject to the termination maintained in accordance with this chapter.

9VAC25-650-180. Incapacity of owners or operators, or financial institution.

A. An owner or operator shall notify the ~~board~~ department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding.

B. An owner or operator who fulfills the requirements of 9VAC25-650-50 D by obtaining a trust fund, a letter of credit, a surety bond, or certificate of deposit will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing a surety bond, letter of credit, or certificate of deposit to issue such mechanisms. The owner or operator shall establish other financial assurance within 60 days of such event.

9VAC25-650-200. Notices to the ~~State Water Control Board~~ Department of Environmental Quality.

All requirements of this chapter for notification to the ~~State Water Control Board~~ Department of Environmental Quality shall be addressed as follows:

Mailing Address:	Location Address:
Director	Director
Department of Environmental Quality	Department of Environmental Quality
P.O. Box 1105	1111 East Main Street, Suite 1400
Richmond, Virginia 23218	Richmond, Virginia 23219

VA.R. Doc. No. R23-7245; Filed September 9, 2022, 2:31 a.m.

Final Regulation

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

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-10, 9VAC25-720-40; repealing 9VAC25-720-140).**

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

Effective Date: November 23, 2022.

Agency Contact: Mark Richards, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4392, FAX (804) 698-4032, or email mark.richards@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" as necessary and removing provisions delegating authority.

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

"Board" means the State Water Control Board (SWCB). When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"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.

"Department" means the Department of Environmental Quality.

"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 or the department 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 Energy unless the ~~board~~ department 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 or the department, 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.

9VAC25-720-40. Implementing Nitrogen and Phosphorus Waste Load Allocations in the Chesapeake Bay Watershed.

A. Nitrogen and phosphorus waste load allocations assigned to individual significant dischargers in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C may be exchanged in accordance with the Chesapeake Bay Watershed Nutrient Credit Exchange Program established under Article 4.02 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia. Exchanges must account for the delivery factor applicable to each discharge based upon its location within the river basin and calculated by the Chesapeake Bay Program watershed model.

B. The nitrogen and phosphorus waste load allocations assigned to individual significant dischargers in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C are considered to be bioavailable to aquatic life. On a case-by-case basis, a discharger may demonstrate to the satisfaction of the ~~board~~ department that a significant portion of the nutrients discharged by the facility is not bioavailable to aquatic life. In these cases, the ~~board~~ department may limit the permitted discharge to reflect only that portion of the assigned waste load allocation that is bioavailable. Such limits shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay watershed and water quality models.

C. Unless otherwise noted, the nitrogen and phosphorus waste load allocations assigned to individual significant dischargers in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70

C, 9VAC25-720-110 C, and 9VAC25-720-120 C are considered total loads including nutrients present in the intake water from the river, as applicable. On a case-by-case basis, an industrial discharger may demonstrate to the satisfaction of the ~~board~~ department that a significant portion of the nutrient load originates in its intake water. In these cases, the ~~board~~ department may limit the permitted discharge to reflect only the net nutrient load portion of the assigned waste load allocation. Such limits shall be consistent with the assumptions and methods used to derive the allocations through the Chesapeake Bay watershed and water quality models.

D. The board may amend this regulation to adjust individual nitrogen and phosphorus waste load allocations. Reasons for considering such an adjustment include, but are not limited to:

1. A discharger completes or does not complete a plant expansion as evidenced by issuance of a Certificate To Operate by December 31, 2010; or

2. A river basin nutrient load allocation is not achieved.

Any adjustment to an individual waste load allocation must ensure water quality standards are maintained.

9VAC25-720-140. ~~Delegation section.~~ (Repealed.)

~~The director or his designee may perform any action contained in this regulation except those prohibited by § 62.1-44.14 of the State Water Control Law.~~

VA.R. Doc. No. R23-7258; Filed September 9, 2022, 2:32 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 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: **9VAC25-740. Water Reclamation and Reuse Regulation (amending 9VAC25-740-10, 9VAC25-740-30, 9VAC25-740-40 through 9VAC25-740-100, 9VAC25-740-110 through 9VAC25-740-180, 9VAC25-740-200; repealing 9VAC25-740-210).**

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

Effective Date: November 23, 2022.

Agency Contact: Valerie Rourke, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9126, FAX (804) 698-4032, or email valerie.rourke@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" and the definition of "board" and removing delegation of authority provisions.

9VAC25-740-10. Definitions.

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

"Beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife resources and habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. The preservation of instream flows for purposes of the protection of navigation, maintenance of waste assimilation capacity, the protection of fish and wildlife resources and habitat, recreation, cultural and aesthetic values is an instream beneficial use of Virginia's waters. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses.

"Biological nutrient removal" or "BNR" means treatment that achieves annual average concentrations less than or equal to 8.0 mg/l total nitrogen (N) and 1.0 mg/l total phosphorus (P).

"Board" means the ~~Virginia State Water Control Board or~~ State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Bulk irrigation reuse" means reuse of reclaimed water for irrigation of an area greater than five acres on one contiguous property.

"Conjunctive system" means a system consisting of a wastewater treatment works and reclamation system having no or minimal separation of treatment processes between the treatment works and the reclamation system.

"Controlled use" means a use of reclaimed water authorized in accordance with this chapter.

"Corrective action threshold" or "CAT" means a bacterial, turbidity, or total residual chlorine standard for reclaimed water at which measures shall be implemented to correct operational problems of the reclamation system within a specified period, or divert flow from the reclamation treatment process in accordance with this chapter.

"Department" means the Department of Environmental Quality.

"Design flow" means the capacity at which a treatment works is designed to reliably treat an average 24-hour influent flow

rate, assessed over a period of a month for all months of operation within a year, including appropriate peak factors provided to meet applicable reliability and redundancy requirements. The average 24-hour influent flow rate shall be based on projected estimates of influent flow to be received by the treatment works.

"Designated design flow" means the design flow of a reclamation system that may be some percentage of or equal to the design flow of a treatment works providing source water to the reclamation system to produce reclaimed water.

"Direct beneficial use" means the use of reclaimed water in a manner protective of the environment and public health that involves transport of the reclaimed water from the point of reclamation treatment and production to the point of use without an intervening discharge to waters of the state.

"Direct injection" means the discharge of reclaimed water directly into groundwater.

"Direct potable reuse" means the discharge of reclaimed water directly into a drinking water treatment facility or into a drinking water distribution system. This includes storage facilities associated with the drinking water treatment facility or drinking water distribution system that are not surface or ground waters of the state.

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

"Disinfection" means the destruction, inactivation, or removal of pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants; UV radiation; or other processes.

"Disposal" means the discharge of effluent to injection wells, effluent outfalls, subsurface drain fields, or other facilities utilized primarily for the release of effluents into the environment without deriving a direct beneficial use.

"Domestic sewage" means sewage derived from the normal family or household activities, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets.

"Drip irrigation" means the slow and uniform above-ground application of water to individual plants and vegetated cover using tubing and drip devices or emitters. Drip irrigation may include below-ground applications of reclaimed water as specified in 9VAC25-740-90 B.

"Effluent," unless specifically stated otherwise, means treated wastewater that is not reused after flowing out of any treatment works.

"End user" means a person or entity that directly uses reclaimed water.

"Filtration" means the passing of wastewater through a conventional technology, such as sand, anthracite or cloth; or an advanced technology, such as microfiltration, ultrafiltration, nanofiltration or reverse osmosis membrane.

"Food crops commercially processed" means food crops that, prior to sale to the public or others, have undergone chemical or physical processing sufficient to remove or destroy pathogens.

"Food crops not commercially processed" means food crops that, prior to sale to the public or others, have not undergone chemical or physical processing sufficient to remove or destroy pathogens.

"Gray water" means untreated wastewater from bathtubs, showers, lavatory fixtures, wash basins, washing machines, and laundry tubs. It does not include wastewater from toilets, urinals, kitchen sinks, dishwashers, or laundry water from soiled diapers.

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

"Harvested rainwater" means rainwater that has been collected off of a rooftop through a system that concentrates the rooftop flow and conveys this to a storage device, container, or vessel with the intention of using this water before discharge to waterways via sanitary sewer systems, septic tank or other onsite treatment and disposal systems, or a land based discharge.

"Indirect nonpotable reuse" means the discharge of reclaimed water to a receiving surface water for the purpose of intentionally augmenting a water source, followed by withdrawal from the water source with or without mixing and transport to the withdrawal location, for reuse or distribution for reuse other than indirect potable reuse.

"Indirect potable reuse" or "IPR" means the discharge of reclaimed water to a receiving surface water for the purpose of intentionally augmenting a water supply source, with subsequent withdrawal after mixing with the ambient surface water and transport to the withdrawal location, followed by treatment and distribution for drinking water and other potable water purposes.

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

"Irrigation" means the application of water to land for plant use at a rate that undesirable plant water stress does not occur.

"Landscape impoundment" means a body of water that contains reclaimed water, is not intended for public contact, and is used primarily for aesthetic enjoyment. Landscape

impoundments include, but are not limited to, decorative pools, fountains, ponds and lagoons; located outdoors or indoors.

"Level 1" means a degree of treatment at which reclaimed water has received, at a minimum, secondary treatment with filtration and higher-level disinfection, and meets all other applicable standards specified in 9VAC25-740-70.

"Level 2" means a degree of treatment at which reclaimed water has received, at a minimum, secondary treatment and standard disinfection, and meets all other applicable standards specified in 9VAC25-740-70.

"Municipal wastewater" means sewage.

"Nonbulk irrigation reuse" means the reuse of reclaimed water for irrigation of individual areas less than or equal to five acres.

"Nonpotable water" means any water, including reclaimed water, not meeting the definition of potable water.

"Nonsystem storage" means storage for reclaimed water that is other than system storage and is used at a location downstream of the service connection to the reclaimed water distribution system to equalize flow to end users.

"Nutrient management plan" or "NMP" means a plan prepared by a nutrient management planner certified by the Department of Conservation and Recreation to manage the amount, placement, timing, and application of plant nutrients from liquid, solid or semisolid manures, fertilizers, biosolids, or other materials, for the purpose of producing crops and reducing nutrient loss to the environment.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for the production or distribution of reclaimed water, or any facility or operation that produces or distributes reclaimed water.

"Permit" means an authorization, certificate, license, or equivalent control document issued by the ~~board~~ department to implement the requirements of this chapter.

"Point of compliance" or "POC" means a point at which compliance with the standards of this chapter is required.

"Pollutants of concern" means any pollutants that might reasonably be expected to be discharged to a publicly or privately owned treatment works in sufficient amounts to pass through or interfere with the works, contaminate sludge generated by the works, cause problems in the collection system of the works, or jeopardize the health of employees at the works and the public.

"Potable water" means water fit for human consumption and domestic use that is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served.

"Public access area" means an area that is intended to be accessible to the general public, such as golf courses, cemeteries, parks, athletic fields, school yards, and landscape areas. Public access areas include private property that is not open to the public at large, but is intended for frequent use by many persons. Presence of authorized farm personnel or other authorized treatment plant, utilities system, or reuse system personnel does not constitute public access.

"Reclaimed water" means water resulting from the treatment of domestic, municipal or industrial wastewater that is suitable for a water reuse that would not otherwise occur. Specifically excluded from this definition is "gray water." For the purposes of this chapter, "harvested rainwater" and "stormwater" are also excluded from this definition.

"Reclaimed water agent" means a person or entity that holds a permit to distribute reclaimed water to one or more end users.

"Reclaimed water distribution system" means a network of pipes, pumping facilities, storage facilities, and appurtenances designed to convey and distribute reclaimed water from one or more reclamation systems to end uses.

"Reclamation" means the treatment of domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.

"Reclamation system" means a treatment works that treats domestic, municipal, or industrial wastewater or sewage to produce reclaimed water for a water reuse that would not otherwise occur.

"Reject water storage" means storage for water diverted by a reclamation system or satellite reclamation system that does not meet applicable reclaimed water standards.

"Reliability Class I" means a measure of reliability that requires a treatment works design to provide continuous satisfactory operation during power failures, flooding, peak loads, equipment failure, and maintenance shut-down. This class includes design features, such as additional electrical power sources, additional flow storage capacity, and additional treatment units that provide operation in accordance with the issued certificate or permit requirements. The definition of Reliability Class I contained in this chapter is in addition to but does not supersede the definition of Reliability Class I contained in the Sewage Collection and Treatment Regulations (9VAC25-790).

"Reuse" or "water reuse" means the use of reclaimed water for a direct beneficial use, an indirect potable reuse, an indirect

nonpotable reuse, or a controlled use in accordance with this chapter.

"Reuse system" means an installation or method of operation that uses reclaimed water for a water reuse in accordance with this chapter.

"Restricted access" means limited access by humans to areas where nonpotable water, including reclaimed water, is used, resulting in minimal or no potential for human contact.

"Satellite reclamation system" or "SRS" means a conjunctive system that operates within or parallel to a sewage collection system to treat a portion of the available wastewater flow in the collection system to produce reclaimed water for reuse. Satellite reclamation systems do not have a discharge to surface waters, but may return their treatment process wastewater and residuals to the sewage collection system.

"Secondary treatment" means a biological treatment process for wastewater that achieves the minimum level of effluent quality defined by the federal secondary treatment regulation in 40 CFR 133.102 (2001).

"Service area" means a geographic area that receives reclaimed water from a reclaimed water distribution system or directly from a reclamation system for approved reuses within that area.

"Sewage" means the water-carried human wastes and nonwater-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.

"Significant industrial user" or "SIU" shall have the meaning set forth in the VPDES Permit Regulation (9VAC25-31-10).

"Source water" means untreated or partially treated wastewater supplied for reclamation.

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

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

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Supplemental irrigation" means irrigation, which in combination with rainfall, meets but does not exceed the water necessary to maximize production or optimize growth of the irrigated vegetation.

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

"System storage" means storage on or off the site and considered part of a reclamation system, SRS, or reclaimed water distribution system that is used to store reclaimed water produced by the reclamation system or SRS and to equalize flow to or within a reclaimed water distribution system.

"Total maximum daily load" or "TMDL" shall have the meaning set forth in the Water Quality Management Planning Regulation (9VAC25-720).

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste, or that are necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances, extensions, improvements, remodeling, additions, or alterations thereof; or any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

"Underground aquifer" means an aquifer or portion of an aquifer that supplies any public water system or that contains a sufficient quantity of groundwater to supply a public water system, and currently supplies drinking water for human consumption, or that contains fewer than 10,000 mg/l total dissolved solids and is not an exempted aquifer.

"Unintentional reuse" means the unintentional or unplanned use of reclaimed water subsequent to discharge to surface waters of the state, including wetlands, pursuant to a VPDES permit.

"Unrestricted access" means unlimited or minimally limited access by humans to areas where nonpotable water, including reclaimed water, is used, resulting in a high potential for human contact.

"User" means end user.

"Virginia Pollution Abatement permit" or "VPA permit" means a document issued by the ~~board~~ department, pursuant to the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32), authorizing pollutant management activities under prescribed conditions.

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

waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"Wastewater" means untreated liquid and water-carried industrial wastes and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions.

"Water reclamation" means the reclamation of wastewater or treated effluent for reuse.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" shall include all structures, equipment, and appurtenances used in the storage, collection, purification, treatment, and distribution of pure water, except the piping and fixtures inside the building where such water is delivered.

9VAC25-740-30. Applicability and transition.

A. The requirements of this chapter shall apply to water reclamation systems, reclaimed water distribution systems, and water reuse unless specifically excluded under 9VAC25-740-50 A. The requirements shall apply to all new water reclamation systems, reclaimed water distribution systems and, as applicable, water reuses for which Virginia Pollution Abatement (VPA) or Virginia Pollutant Discharge Elimination System (VPDES) permit applications are received after October 1, 2008. The requirements may also be applied to all existing permitted facilities producing, distributing or using reclaimed water through a permit modification or reissuance procedure and shall be applied when such facilities are to be modified or expanded unless specifically excluded under 9VAC25-740-50 A. The owners of existing water reclamation systems, reclaimed water distribution systems and, as applicable, water reuses that do not have a VPA or VPDES permit shall submit a complete VPA or VPDES permit application or other necessary information as prescribed under 9VAC25-740-40 within 180 days of being requested by the ~~board~~ department.

B. For the purposes of this chapter:

1. The incorporation of standards, monitoring requirements and special conditions for water reclamation and reuse into a VPA permit shall be considered a minor modification unless they alter other conditions of the permit specifically related to the pollutant management activity for which the permit was originally issued.

2. Standards, monitoring requirements and special conditions for water reclamation and reuse may be authorized for a VPDES permit through:

a. A modification of the permit where such standards, monitoring requirements, and special conditions would effectively alter other conditions of the permit specifically related to the effluent discharge for which the permit was originally issued, or where the diversion of source water from the VPDES permitted discharge to water reclamation and reuse has the potential to cause a significant adverse impact to other beneficial uses of the receiving state water, or both; or

b. An administrative authorization where such standards, monitoring requirements, and special conditions would not alter other conditions of the permit specifically related to the effluent discharge for which the permit was originally issued, and where the diversion of source water from the VPDES permitted discharge to water reclamation and reuse does not have the potential to cause a significant adverse impact to other beneficial uses of the receiving state water. The administrative authorization shall have the full effect of the VPDES permit until such time that it is incorporated into the VPDES permit through reissuance or modification.

3. Modification of a VPA or VPDES permit or the issuance of an administrative authorization associated with a VPDES permit described in subdivisions 1 and 2 of this subsection shall require an application in accordance with 9VAC25-740-100.

9VAC25-740-40. Permitting requirements.

A. The owner of the reclamation system and the owner of the reclaimed water distribution system or the reclaimed water agent shall obtain a VPDES or VPA permit to produce and distribute reclaimed water, unless otherwise excluded from the requirements of this chapter under 9VAC25-740-50 A. Where both the reclamation system and the reclaimed water distribution system are under common ownership and management, one permit may be issued to the owner. Permit coverage may be provided through modification or reissuance of an existing VPA permit, or reissuance of or administrative authorization for an existing VPDES permit to include standards, monitoring requirements and special conditions that address water reclamation and reuse.

B. The owner of a satellite reclamation system (SRS) shall obtain a VPA permit. Alternatively and at the discretion of the ~~board~~ department, a SRS may be authorized under a VPA or VPDES permit issued to a wastewater treatment works that is under common ownership or management with the SRS and receives wastewater and residuals discharged by the SRS.

C. Each end user shall enter into a service agreement or contract with all reclaimed water agents from which the end user receives reclaimed water prior to receipt of such water. Monitoring and management of individual end users shall be by the reclaimed water agents with whom the end users have a service connection, and through the service agreements or contracts between the reclaimed water agents and the individual end users unless affected by a permit issued to an end user as described in subsection F of this section.

D. Where a reclamation system and a reclaimed water distribution system that receives reclaimed water from the reclamation system are under separate ownership and management, and the reclaimed water distribution system does not distribute reclaimed water to end users other than to the owner or management of that system, the reclaimed water distribution system may not require a permit provided a service agreement or contract is established between the reclamation system and the reclaimed water distribution system.

E. A separate permit may be required for end users receiving reclaimed water directly from more than one reclamation system, SRS, reclaimed water distribution system, or a combination thereof. An end user may be authorized under the permit issued to one of the reclamation systems, SRSs, or reclaimed water distribution systems that supply reclaimed water to the end user, provided the end user is under common ownership or management with the permitted system.

F. Property irrigated with reclaimed water from a reclamation system, SRS, or reclaimed water distribution system under common ownership or management with that property, shall be regulated by the permit issued to the reclamation system, SRS, or reclaimed water distribution system providing reclaimed water to the irrigated property.

G. A reclamation system shall not discharge reclaimed or reject water to surface waters of the state in lieu of providing storage, discharging to another permitted reuse system, if applicable; returning reclaimed or reject water to a wastewater treatment works; or suspending production of reclaimed water; without authorization to discharge under a VPDES permit.

9VAC25-740-45. Emergency authorization for the production, distribution, or reuse of reclaimed water.

A. The ~~board~~ department may issue an emergency authorization for the production, distribution, or reuse of reclaimed water when it finds that due to drought there is an insufficient public water supply that may result in a substantial threat to public safety. The emergency authorization may be issued only after:

1. Conservation measures mandated by local or state authorities have failed to protect public safety, and

2. The Virginia Department of Health has been notified of the application to issue an emergency authorization and has been provided not less than 14 days to submit comments or recommendations to the ~~board~~ department on the application.

B. An emergency authorization may be issued in addition to an Emergency Virginia Water Protection Permit (as provided in 9VAC25-210) for a new or increased public water supply withdrawal.

C. An emergency authorization may be issued to only existing VPDES or VPA permitted municipal treatment works that:

1. Are not currently authorized to produce, distribute, or reuse reclaimed water in accordance with 9VAC25-740-40;

2. Are currently capable of producing reclaimed water meeting minimum standard requirements of 9VAC25-740-90 for proposed reuses listed in the application for an emergency authorization; and

3. Do not have significant industrial users (SIUs), or do have SIUs and a pretreatment program developed, approved, and maintained in accordance with Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation.

D. An emergency authorization may be issued for only reuses of reclaimed water deemed necessary by the ~~board~~ department. In no case shall an emergency authorization be issued in lieu of a VPDES permit action for a reuse that involves a discharge of reclaimed water to surface waters.

E. An application for an emergency authorization issued pursuant to this section shall provide the information specified in 9VAC25-740-105. No later than 180 days after the issuance of an emergency authorization, the holder of the authorization shall apply for coverage under a VPDES or VPA permit in accordance with 9VAC25-740-40. Thereafter, the emergency authorization shall remain in effect until the ~~board~~ department acts upon the application for the VPDES or VPA permit in accordance with 9VAC25-740-30 B.

F. There shall be no public comment period for the issuance of an emergency authorization.

9VAC25-740-50. Exclusions and prohibitions.

A. Exclusions. Exclusion from the requirements of this chapter does not relieve any owner of the operations identified in this section of the responsibility to comply with any other applicable federal, state, or local statutes, regulations, or ordinances. The following are excluded from the requirements of this chapter:

1. Activities permitted by the Virginia Department of Health (VDH), such as, but not limited to, septic tank drainfield systems and other onsite sewage treatment and disposal systems, and water treatment plant recycle flows. This exclusion does not apply to alternative onsite sewage systems as defined in 12VAC5-613 (Regulations for Alternative Onsite Sewage Systems) with an average daily sewage flow in excess of 1,000 gallons per day that are concurrently permitted by the ~~board~~ department and VDH to allow sewage reclamation and reuse in addition to onsite sewage treatment and disposal.

2. Utilization of gray water, harvested rainwater, or stormwater.

3. Nonpotable water produced and utilized on-site by the same treatment works for facilities permitted through a VPDES or VPA permit. This includes the use of nonpotable water at the treatment works site for incidental landscape

irrigation that is not identified as land treatment defined in the Sewage Collection and Treatment Regulations (9VAC25-790). The treatment works site shall include property that is either contiguous to or in the immediate vicinity of the parcel of land upon which the treatment works is located, provided such property is under common ownership or management with the treatment works. This exclusion does not apply to nonpotable water produced by treatment works authorized by the VPDES General Permit for Domestic Sewage Discharges Less Than or Equal to 1,000 Gallons Per Day (9VAC25-110).

4. Recycle flows within a treatment works.

5. Industrial effluents or other industrial water streams created prior to final treatment and used for water re-circulation, recycle, or reuse systems located on the same property as the industrial facility, provided:

a. The water used in these systems does not contain or is not expected to contain pathogens or other constituents in sufficient quantities and with a potential for human contact as may be harmful to human health;

b. These systems are closed or isolated to prevent worker contact with the water of the systems; or

c. Other measures are in place, including but not limited to, applicable federal and state occupational safety and health standards and requirements, to adequately inform and protect employees from pathogens or other constituents that may be harmful to human health in the water to be re-circulated, recycled or reused at the facility.

6. Land treatment systems described in the Sewage Collection and Treatment Regulations (9VAC25-790). Such use of wastewater effluent, either existing or proposed, must be authorized by a VPA or VPDES permit and must be on land owned or under the direct long-term control of the permittee.

7. Unintentional reuse.

8. Existing indirect nonpotable reuse projects that as of January 29, 2014, are authorized by a VPDES permit to discharge to surface waters of the state.

9. Existing indirect potable reuse projects that upon October 1, 2008, are authorized by a VPDES permit to discharge to surface waters of the state, and future expansions of these projects.

10. Direct injection of reclaimed water into any underground aquifer authorized by EPA under the Safe Drinking Water Act, Underground Injection Control Program (UIC), 40 CFR Part 144; or other applicable federal and state laws and regulations.

B. Prohibitions. The following are prohibited under this chapter:

1. Direct potable reuse;

2. The reuse of reclaimed water distributed to one-family or two-family dwellings. This prohibition does not apply to reuses of reclaimed water outside of and on the same property as one-family or two-family dwellings where the reclaimed water is not distributed to such reuses by way of plumbing within the dwellings;

3. The reuse of reclaimed water to fill residential swimming pools, hot tubs or wading pools;

4. The reuse of reclaimed water for food preparation or incorporation as an ingredient into food or beverage for human consumption;

5. Bypass of untreated or partially treated wastewater from the reclamation system or any intermediate unit process to the point of reuse unless the bypass complies with standards and requirements specified in 9VAC25-740-70 and is for essential maintenance to assure efficient operation;

6. The return of reclaimed water to the reclaimed water distribution system after the reclaimed water has been delivered to an end user; and

7. Reduction of the discharge from a VPDES permitted treatment works due to diversion of source water flow for reclamation and reuse such that the physical, chemical, or biological properties of the receiving state waters are affected in a manner that would cause a significant adverse impact to other beneficial uses.

9VAC25-740-55. Variances.

A. The ~~board~~ department may grant a variance to this chapter for design, construction, operation, or maintenance requirements contained in the chapter by following the appropriate procedures set forth in this section.

B. Any person or entity wishing to initiate a project for the production, distribution, or reuse of reclaimed water that is not excluded from the provisions of this chapter by 9VAC25-740-50 may apply for a variance to the design, construction, operation, or maintenance requirements of this chapter where requiring the project to comply with such requirements would be contrary to the purpose of State Water Control Law, specifically § 62.1-44.2 of the Code of Virginia. The ~~board~~ department may grant a variance if it finds that the hardship imposed, which may be economic, outweighs the benefits of the project and that the granting of such variance would not adversely impact public health or the environment.

C. An application for a variance shall be made in writing and shall include the following:

1. A citation of the regulation from which a variance is requested;

2. The nature and duration of variance requested;

3. A statement of the hardship to the applicant and the anticipated impacts to public health and welfare or the environment if a variance were granted;

4. Suggested conditions that might be imposed on the granting of a variance that would limit any anticipated detrimental impacts on public health or the environment;

5. Other information, if any, believed to be pertinent by the applicant; and

6. Such other information as may be required to make the determination in accordance with subsection B of this section.

D. The ~~board~~ department shall act on any application for a variance submitted pursuant to this section within 60 days of application receipt. In the ~~board's~~ department's decision to grant or deny a variance for a project to produce, distribute, or reuse reclaimed water, the ~~board~~ department shall consider, at a minimum, the following:

1. The effect that such a variance would have on the adequate operation of the project, including operator safety (in accordance with the requirements of the Virginia Department of Labor and Industry, Occupation Safety and Health Administration);

2. The cost and other economic considerations imposed by the regulatory requirement for which the variance has been requested; and

3. The effect that such a variance would have on the protection of public health or the environment.

E. Disposition of a variance request.

1. If the ~~board~~ department proposes to deny a variance request submitted pursuant to this section, the ~~board~~ department shall provide the applicant an opportunity to an informal fact-finding proceeding in accordance with § 2.2-4019 of the Code of Virginia. Thereafter, the ~~board~~ department may reject any application for a variance and shall notify the applicant in writing of this decision and the basis for the rejection. The ~~board's~~ department's notice, in this case, constitutes a case decision.

2. If the ~~board~~ department proposes to grant a variance request submitted pursuant to this section, the applicant shall be notified in writing of this decision. Such notice shall:

a. Identify the project for which the variance has been granted;

b. Describe the variance;

c. Specify the period of time for which the variance will be effective; and

d. State that the variance shall be terminated when the project comes into compliance with the applicable design, construction, operation, or maintenance requirements of this chapter and may be terminated upon a finding by the ~~board~~ department that the project has failed to comply with any requirements or schedules issued in conjunction with the variance.

3. The effective date of a variance described in subdivision 2 of this subsection shall be 15 days following the date of notice to the applicant.

F. All variances granted for the design, construction, operation, or maintenance of a project to produce, distribute, or reuse reclaimed water are nontransferable. Any requirements of the variance shall become part of the permit for the project subsequently issued, reissued, or modified by the ~~board~~ department.

G. Where this chapter references the Sewage Collection and Treatment Regulations (9VAC25-790) for design, construction, operation, or maintenance requirements affecting components of a project to produce, distribute, or reuse reclaimed water, an application for a variance to such requirements shall be in accordance with variance procedures described in 9VAC25-790.

9VAC25-740-60. Relationship to other board regulations.

A. Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32). The VPA Permit Regulation delineates the procedures and requirements to be followed in connection with the VPA permits issued by the ~~board~~ department pursuant to the State Water Control Law. Any treatment works treating domestic, municipal or industrial wastewater that produces reclaimed water or a facility that distributes reclaimed water in a manner that does not result in a discharge to surface waters shall obtain a VPA permit. Design, operation, and maintenance standards prescribed by this chapter for water reclamation and reuse shall be incorporated into the VPA permit application and the VPA permit when applicable. Water reclamation and reuse requirements contained in a VPA permit shall be enforced through existing enforcement mechanisms of the permit.

B. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31). The VPDES Permit Regulation delineates the procedures and requirements to be followed in connection with VPDES permits issued by the ~~board~~ department pursuant to the Clean Water Act and the State Water Control Law. Any treatment works treating domestic, municipal, or industrial wastewater that produces reclaimed water and has a discharge to surface waters or a reclaimed water distribution system that has a discharge to surface waters shall obtain a VPDES permit. Design, operation, and maintenance standards for water reclamation and reuse shall be incorporated into the VPDES permit application and the VPDES permit when applicable. Water reclamation and reuse requirements contained in a VPDES permit shall be enforced through existing enforcement mechanisms of the permit.

C. Sewage Collection and Treatment Regulations (9VAC25-790). The Sewage Collection and Treatment Regulations establish standards for the operation, construction, or modification of a sewerage system or treatment works, including land treatment systems. This chapter prescribes design, operation and maintenance standards for water reclamation and reuse.

D. Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed (9VAC25-40). Sections 62.1-44.19:12 through 62.1-44.19:19 of the Code of Virginia, which establishes the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed (9VAC25-40), allows for credit to be given for reductions in total nitrogen and total phosphorus discharged loads through recycle or reuse of wastewater when determining technology requirements associated with new or expanded discharges.

E. General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820). The General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia regulates point sources of nutrients and establishes a framework for nutrient credit trading and offsets. Water reclamation and reuse provides an opportunity to reduce point source nutrient loads.

F. Local and Regional Water Supply Planning (9VAC25-780). The Local and Regional Water Supply Planning regulation requires every county, city, and town to develop a water plan in accordance with established planning criteria. Where appropriate, the plan may consider nontraditional means of increasing supplies such as interconnection, desalination, recycling and reuse.

G. Water Withdrawal Reporting (9VAC25-200). The Water Withdrawal Reporting regulation requires industrial VPDES permittees to annually report to the board the source and location of water withdrawals and the type of use information specified by 9VAC25-200. Where the VPDES permitted discharge volume deviates by greater than ± 10% of the water withdrawal volume, the permittee is required to report the deviation.

9VAC25-740-70. Treatment and standards for reclaimed water.

A. Treatment and standards for reclaimed water are provided in Table 70-A.

Table 70-A

Treatment and Standards for Reclaimed Water

1. Level 1	
a. Treatment	Secondary treatment with filtration and higher-level disinfection.
b. Bacterial Standards	(1) Fecal coliform[1]: monthly geometric mean[2] less than or equal to 14 colonies/100ml; corrective action threshold at greater than 49 colonies/100 ml; or
	(2) E. coli[1]: monthly geometric mean[2] less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 35 colonies/100 ml; or
	(3) Enterococci[1]: monthly geometric mean[2] less than or equal to 11 colonies/100 ml; corrective action threshold at greater than 24 colonies/100 ml.
c. Total Residual Chlorine (TRC)[3]	Corrective action threshold at less than 1.0 mg/l[4] after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.
d. pH	6.0 – 9.0 standard units
e. Five-day Biochemical Oxygen Demand (BOD_5)	(1) BOD_5: monthly average less than or equal to 10 mg/l; or (2) Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)[5]: monthly average less than or equal to 8 mg/l.
f. Turbidity[6]	Daily average of discrete measurements recorded over a 24-hour period less than or equal to 2.0 nephelometric turbidity units (NTU); corrective action threshold at greater than 5.0 NTU.
2. Level 2	
a. Treatment	Secondary treatment and standard disinfection.

b. Bacterial Standards	(1) Fecal coliform[1]: monthly geometric mean[2] less than or equal to 200 colonies/100ml; corrective action threshold at greater than 800 colonies/100 ml; or
	(2) E. coli[1]: monthly geometric mean[2] less than or equal to 126 colonies/100 ml; corrective action threshold at greater than 235 colonies/100 ml; or
	(3) Enterococci[1]: monthly geometric mean[2] less than or equal to 35 colonies/100 ml; corrective action threshold at greater than 104 colonies/100 ml.
c. Total Residual Chlorine (TRC)[3]	Corrective action threshold at less than 1.0 mg/l[4] after a minimum contact time of 30 minutes at average flow or 20 minutes at peak flow.
d. pH	6.0 – 9.0 standard units
e. Five-day Biochemical Oxygen Demand (BOD_5)	(1) BOD_5: monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l; or (2) Carbonaceous Biochemical Oxygen Demand ($CBOD_5$)[5]: monthly average less than or equal to 25 mg/l; maximum weekly average 40 mg/l.
f. Total Suspended Solids (TSS)	Monthly average less than or equal to 30 mg/l; maximum weekly average 45 mg/l.

[1]After disinfection.

[2]For the purpose of calculating the geometric mean, bacterial analytical results below the detection level of the analytical method used shall be reported as values equal to the detection level.

[3]Applies only if chlorine is used for disinfection.

[4]TRC less than 1.0 mg/l may be authorized by the ~~board~~ department if demonstrated to provide comparable disinfection through a chlorine reduction program in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790).

[5]Applies only if $CBOD_5$ is used in lieu of BOD_5.

[6]Where ultraviolet radiation will be used for disinfection of Level 1 reclaimed water, other turbidity standards may apply in accordance with 9VAC25-740-110 A 2 a.

B. Point of compliance (POC).

1. Reclaimed water produced by reclamation systems and SRSs for reuse shall meet all applicable standards in accordance with this chapter, excluding the turbidity standard for Level 1 treatment, at the POC. The POC for Level 1 and Level 2 treatment shall be after all reclaimed water treatment and prior to discharge to a reclaimed water distribution system. Where chlorination is used for disinfection of the reclaimed water, the POC for the TRC standard shall be the monitoring location specified in 9VAC25-740-80 A 2. The POC for the turbidity standard of Level 1 treatment shall be just upstream of disinfection.

2. Where the ~~board~~ department determines that reclaimed water monitoring is required for a system storage facility or a reclaimed water distribution system, the number and location of POCs for these facilities shall be determined on a case-by-case basis and shall be described in the following documents for approval by the ~~board~~ department:

a. For system storage facilities other than those considered part of reclaimed water distribution systems, in the operations and maintenance manual of the reclamation system or SRS where the storage facility is located; and

b. For reclaimed water distribution systems, including system storage facilities considered part of these systems, in the reclaimed water management plan pursuant to 9VAC25-740-100 C 1 h.

C. Reclaimed water that fails to comply with the standards shall be managed as follows:

1. Should reclaimed water reach the corrective action threshold (CAT) for turbidity in the standard for Level 1, or for TRC in the standards for Level 1 or 2, whichever applies, the operator of the reclamation system shall immediately initiate a review of treatment operations and data to identify the cause of the CAT monitoring results to bring the reclaimed water back into compliance with the standards.

Resampling or diversion shall occur within one hour of first reaching the CAT. Procedures for resampling, operational review and diversion shall be as described in an approved operations and maintenance manual for the reclamation system. If subsequent monitoring results of the resamples collected within one hour of the first CAT monitoring results for turbidity or TRC continue to reach the CAT of the standards, the reclaimed water shall be considered substandard or reject water and shall be diverted to either storage for subsequent additional treatment or retreatment, or discharged to another permitted reuse system requiring a lower level of treatment not less than Level 2 or to a VPDES permitted effluent disposal system provided the reject water meets the effluent limits of the permit. If the reclamation system is unattended, the diversion of reject water shall be initiated and performed with automatic equipment. There shall be no automatic restarts of distribution to reuse until the treatment problem is corrected. Failure to divert the substandard or reject water after one hour of CAT monitoring results shall be considered a violation of this chapter. Upon resuming discharge of reclaimed water to the reclaimed water distribution system for which the CAT was reached, resampling for turbidity or TRC shall occur within one hour to verify proper treatment.

2. Should reclaimed water reach the CAT for bacteria (i.e., fecal coliform, E. coli or enterococci) in the standards for Level 1 or 2, whichever applies, the operator of the reclamation system shall immediately initiate a review of treatment operations and data to identify the cause of the CAT monitoring results to bring the reclaimed water back into compliance with the standards. Procedures for operational review shall be as described in an approved operations and maintenance manual for the reclamation system. Two consecutive bacterial monitoring results that reach the CAT of the standards shall be considered a violation of this chapter.

3. Repeated, although temporary, failure to comply with all other standards by the reclamation system may be considered a violation of this chapter determined by the frequency and magnitude of the noncompliant monitoring results and other relevant factors. Failure to resample after determination that monitoring results are not in compliance with the standards, to make adjustments to the treatment process to bring the reclaimed water back into compliance with the standards, or to divert substandard or reject water in accordance with subdivision 1 of this subsection shall be considered a violation of this chapter.

D. Treatment or standards other than or in addition to the treatment and standards in subsection A of this section may be necessary based on the quality and character of the wastewater to be reclaimed or the intended reuse or reuses of the reclaimed water. Such alternative or additional treatment or standards may be exempt from this chapter unless required by the ~~board~~ department to protect public health and the environment.

E. Standards for the reclamation of industrial wastewater shall be determined on a case-by-case basis relative to the proposed reuse or reuses of the reclaimed water and for the purpose of protecting public health and the environment. Industrial wastewater may also be subject to disinfection requirements of Level 1 or Level 2 if the industrial wastewater contains sewage or is expected to contain organisms pathogenic to humans, such as, but not limited to, wastewater from the production and processing of livestock and poultry. The point of compliance for reclamation standards of industrial wastewater shall also be determined on a case-by-case basis.

9VAC25-740-80. Reclaimed water monitoring requirements for reuse.

A. The monitoring requirements for the standards provided under 9VAC25-740-70 A, are as follows:

1. Turbidity analysis:

a. Analysis shall be performed by a continuous, on-line turbidity meter equipped with an automated data logging or recording device and an alarm to notify the operator when the CAT for turbidity in the standard for Level 1 has been reached. Compliance with the average turbidity standard shall be determined daily, based on the arithmetic mean of hourly or more frequent discrete measurements recorded during a 24-hour period. Monitoring for the turbidity CAT shall be continuous.

b. Should the on-line turbidity meter go out of service for either planned or unplanned repair, the permittee shall be allowed to manually collect samples for turbidity analysis at four-hour intervals up to a maximum of five days. Following the five-day period of repair, continuous, on-line monitoring with a turbidity meter shall resume.

2. Sampling and analysis for residual concentrations of disinfectants, including total residual chlorine (TRC):

a. For Level 1:

(1) Shall be continuous on-line monitoring, equipped with an automated data logging or recording device and an alarm to notify the operator when the CAT for the disinfectant has been reached. For disinfectants other than chlorine, continuous on-line monitoring shall be provided at the point of compliance monitoring. For TRC, continuous on-line monitoring shall be provided at the end of the contact tank or contact period. Monitoring for the TRC CAT shall be continuous.

(2) Should the on-line disinfectant monitoring equipment go out of service for either planned or unplanned repair, the permittee shall be allowed to manually collect samples for disinfectant analysis at four-hour intervals up to a maximum of five days. Following the five-day period of repair, continuous, on-line disinfectant monitoring shall resume.

b. For Level 2, shall be based on the designated design flow of the reclamation system and be the same sampling

type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). For chemical disinfectants other than TRC, monitoring shall be provided at the point of compliance in accordance with 9VAC25-740-70 B. For TRC, monitoring shall be provided at the end of the contact tank or contact period.

3. Sampling for TSS and BOD_5 or $CBOD_5$ shall be at least weekly or more frequently based on the designated design flow of the reclamation system, and shall be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). Compliance with the monthly average TSS and BOD_5 or $CBOD_5$ standards shall be determined monthly, based on the arithmetic mean of all samples collected during the month. Compliance with the maximum weekly average TSS and BOD_5 or $CBOD_5$ standards shall be determined monthly, using the same procedures applied in the VPDES permit program for point source discharges.

4. Sampling for fecal coliform, E. coli or enterococci:

a. Shall for Level 1, be grab samples collected at a time when wastewater characteristics are most representative of the treatment facilities and disinfection processes for water reuse, and at the frequencies provided in Table 80-A. Compliance with the geometric mean standards for fecal coliform, E. coli, or enterococci shall be determined monthly, based on all bacteriological monitoring results for that month. Monitoring of the CAT for fecal coliform, E. coli, or enterococci shall be based on the bacteriological monitoring results determined for each day a sample is collected.

Table 80-A

Reclamation System Designated Design Flow (MGD)[1]	Bacterial Sampling Frequency[2]
>0.500	Daily with the ability to reduce to no less than four days per week[3]
0.050 to 0.500	Four days per week with the ability to reduce to no less than three days per week[3]
<0.050	Three days per week with no reduction allowed

[1]MGD means million gallons per day.

[2]For reclamation systems treating municipal wastewater, bacterial samples shall be collected between 10 a.m. and 4 p.m. to coincide with peak flows to the reclamation system. An exception to this requirement may be approved upon demonstration to the ~~board~~ department that peak flows to the reclamation system occur outside this period.

[3]Monitoring frequency may be reduced after demonstrating compliance with bacterial standards for Level 1 and adequate correlation between bacterial monitoring results and measurements for surrogate disinfection parameters, such as TRC and turbidity.

b. Shall for Level 2, be based on the designated design flow of the reclamation system and be the same sampling type and frequency as specified for sewage treatment works in the Sewage Collection and Treatment Regulations (9VAC25-790). Compliance with the geometric mean standard and monitoring of the CAT for fecal coliform, E. coli or enterococci shall be in accordance with the same procedures specified for Level 1 in subdivision 4 a of this subsection.

5. Samples for pH shall be grab samples collected at least daily. Compliance with the range of the pH standard shall be determined daily based on the pH of the samples.

B. Samples collected for TSS, BOD_5 or $CBOD_5$, and fecal coliform, E. coli or enterococci analyses, shall be analyzed by laboratory methods accepted by the ~~board~~ department.

C. A reclamation system that produces reclaimed water intermittently or seasonally shall monitor only when the reclamation system discharges to a reclaimed water distribution system, a nonsystem storage facility, or directly to a reuse.

D. Monitoring of reclaimed water held in system storage for a period greater than 24 hours at a reclamation system or SRS may be required by the ~~board~~ department where (i) the system storage facility discharges to a reclaimed water distribution system, a nonsystem storage facility, or directly to a reuse; and (ii) conditions exist at the facility to degrade the reclaimed water to a quality failing to comply with applicable minimum reclaimed water standards for the intended reuses of that water. When monitoring of reclaimed water in or from system storage is required, monitoring parameters and frequencies shall be determined by the ~~board~~ department on a case-by-case basis.

E. Monitoring other than or in addition to that described under subsection A of this section may be required for treatment of reclaimed water that is provided pursuant to 9VAC25-740-70 D and 9VAC25-740-70 E.

9VAC25-740-90. Minimum standard requirements for reuses of reclaimed water.

A. Minimum standard requirements for reclaimed water shall be determined, in part, by the reuse or reuses of that water. For specific reuses, the minimum standard requirements of reclaimed water are provided in Table 90-A.

Table 90-A

Minimum Standard Requirements for Reuses of Reclaimed Water

Reuse Category	Reuse	Minimum Standard Requirements [a]
1. Urban – Unrestricted Access	All types of landscape irrigation in public access areas (i.e., golf courses, cemeteries, public parks, school yards and athletic fields) Toilet flushing [b] Firefighting or protection and fire suppression [b] Outdoor reuse (i.e., lawn watering and noncommercial car washing) [b] Commercial car washes Commercial air conditioning systems	Level 1
2. Irrigation – Unrestricted Access [c]	Irrigation for any food crops not commercially processed, including crops eaten raw	Level 1
3. Irrigation – Restricted Access [c, d, e]	Irrigation for any food crops commercially processed	Level 2
	Irrigation for nonfood crops and turf, including fodder, fiber and seed crops; pasture for foraging livestock; sod farms; ornamental nurseries; and silviculture	
4. Landscape Impoundments [f]	Potential for public access or contact	Level 1
	No potential for public access or contact	Level 2
5. Construction [e]	Soil compaction Dust control Washing aggregate Making concrete Irrigation to establish vegetative erosion control [g]	Level 2
6. Industrial [e]	Commercial laundries Ship ballast [h]	Level 1
	Livestock watering [i] Aquaculture [j] Stack scrubbing Street washing Boiler feed Once-through cooling [k] Recirculating cooling towers [k]	Level 2

[a]For reclaimed industrial wastewater, minimum standards required shall be determined on a case-by-case basis relative to the proposed reuse or reuses.

[b]These reuses of reclaimed water are prohibited in accordance with 9VAC25-740-50 B 2 where they would involve the distribution of reclaimed water to a one-family or two-family dwelling in order to occur.

[c]Reclaimed water treated to Level 1 or 2 may be used for surface irrigation, including spray irrigation. Reclaimed water treated to Level 2 may be used for spray irrigation if the area to be irrigated restricts access to the public and has appropriate setbacks in accordance with 9VAC25-740-170. Reclaimed water treated to Level 1 or 2 may be used for irrigation of food crops eaten raw, excluding root crops, only when there will be no direct contact (or

indirect contact via aerosol carry) between the reclaimed water and edible portions of the crop.

[d]For irrigation with reclaimed water treated to Level 2, the following shall be prohibited unless Level 1 disinfection is provided:

1. Grazing by milking animals on the irrigation reuse site for 15 days after irrigation with reclaimed water ceases, and

2. Harvesting, retail sale or allowing access by the general public to ornamental nursery stock or sod farms for 14 days after irrigation with reclaimed water ceases.

[e]Worker contact with reclaimed water treated to Level 2 shall be minimized. Level 1 disinfection shall be provided when worker contact with reclaimed water is likely.

[f]Landscape impoundments may also be used to store reclaimed water for other subsequent reuses of that reclaimed water, such as irrigation, if included in an inventory of reclaimed water storage facilities submitted to the ~~board~~ department pursuant to 9VAC25-740-110 C 15.

[g]Irrigation with reclaimed water to establish vegetative cover at a construction site shall be subject to requirements for irrigation reuse specified in 9VAC25-740-100 C. Continued irrigation of the same site following construction completion shall be subject to the minimum standard requirements of reuse category 1, 2, or 3 contained in this table, determined by the intended reuse of the irrigated site.

[h]Reuse of reclaimed water for ship ballast shall also comply with applicable federal regulations and standards governing the use and discharge of ship ballast.

[i]Level 1 disinfection shall be provided when the reclaimed water is consumed by milking livestock.

[j]Level 1 disinfection shall be provided for aquaculture production of fish to be consumed raw, such as sushi.

[k]Windblown spray generated by once-through cooling or recirculating cooling towers using reclaimed water treated to Level 2, shall not reach areas accessible to workers or the public unless Level 1 disinfection is provided. See also setback requirements in 9VAC25-740-170 for open cooling towers.

B. For any type of reuse not listed in subsection A of this section, including, but not limited to, indirect potable reuse and below-ground drip irrigation reuse that is newly proposed after October 1, 2008, indirect nonpotable reuse that is newly proposed after January 29, 2014, or any reuse of reclaimed industrial water, including reuses listed in subsection A of this section, the ~~board~~ department may prescribe specific reclaimed water standards and monitoring requirements needed to protect public health and the environment. When establishing these requirements for the proposed reuse, the ~~board~~ department shall consider the following factors:

1. The risk of the proposed reuse to public health with specific input from the Virginia Department of Health;

2. The degree of public access and human exposure to reclaimed water by the proposed reuse;

3. The reclaimed water treatment necessary to prevent nuisance conditions by the proposed reuse;

4. The reclaimed water treatment necessary for the proposed reuse to comply with this and other applicable regulations of the board;

5. The potential for improper or unintended use of the reclaimed water;

6. Other federal or state laws, regulations and guidelines that would apply to the proposed reuse;

7. The similarity of the proposed reuse to reuses listed in this chapter with regard to potential impact to public health and the environment;

8. Whether the proposed reuse may be excluded or prohibited by 9VAC25-740-50; and

9. For new indirect potable reuse proposals, residence or transport time, mixing ratios, and other relevant information deemed necessary by the ~~board~~ department.

C. For any indirect potable reuse (IPR) project that is newly proposed after January 29, 2014, the following are required:

1. A multiple barrier approach shall be used in the planning, design, and operation of the project. Multiple barriers to be employed for the project shall be described in the application for a permit in accordance with 9VAC25-740-100 D.

2. All reclaimed water generated by a reclamation system for IPR shall meet, at a minimum, Level 1 reclaimed water standards, reclaimed water standards developed pursuant to subsection B of this section, and any other standards that may apply, including but not limited to, the Water Quality Standards (9VAC25-260) and total maximum daily loads (TMDLs). Where there is more than one standard for the same pollutant, the more stringent standard shall apply.

3. The public health risks of and the need to impose new or more stringent reclaimed water standards for an IPR project shall be reevaluated with specific input from the Virginia Department of Health upon each renewal of the permit issued to the reclamation system that produces reclaimed water for the project. Factors to be considered in the reevaluation shall include, at a minimum, applicable factors contained in subsection B of this section.

4. All reclamation systems identified as a component of an IPR project in accordance with 9VAC25-740-100 D 1, including pump stations that are part of the reclamation

systems, shall meet reliability requirements specified in 9VAC25-740-130 C.

5. VPDES permitted treatment works that have SIUs and provide source water for reclamation and subsequent IPR shall, if required, have a pretreatment program or a program equivalent to a pretreatment program in accordance with 9VAC25-740-150 E.

9VAC25-740-100. Application for permit.

A. The need for an owner to obtain a permit or modification or reissuance of an existing permit from the ~~board~~ department for a proposed or an existing reclamation system, reclaimed water distribution system, satellite reclamation system (SRS), or, as applicable, water reuse, shall be determined in accordance with 9VAC25-740-30. Where required, permit coverage for these systems or activities shall be provided in accordance with 9VAC25-740-40, contingent upon receipt of a complete application from the owner. The application shall contain supporting documentation and information required by subsections B and C of this section.

B. General information. For projects that involve water reclamation and the distribution of reclaimed water, the following information shall be submitted with an application for a permit. Information required for this subsection may be provided by referencing specific information previously submitted to the ~~board~~ department unless changes have occurred that require the submission of new or more current information. For projects that involve exclusively the distribution of reclaimed water, information for only subdivisions 1, 2, and 5 of this subsection shall be submitted with an application for a permit.

1. A description of the design and a site plan showing operations and unit processes of the proposed project, including and as applicable, treatment, storage, distribution, reuse and disposal facilities, and reliability features and controls. Treatment works, reclamation systems and reclaimed water distribution systems previously permitted need not be included, unless they are directly tied into the new units or are critical to the understanding of the complete project. Design approaches shall be consistent with accepted engineering practice and any applicable state regulations.

2. A general location map, showing orientation of the project with reference to at least two geographic features (e.g., numbered roads, named streams or rivers, etc.). A general location map for a reclaimed water distribution system may be included in the map of a service area required in accordance with subdivision C 1 a of this section.

3. Information regarding each wastewater treatment works that diverts or will divert source water to the reclamation system to be permitted, including:

a. All unit processes used for the treatment of wastewater at the facility prior to diversion to the reclamation system;

b. Any SIUs that indirectly discharge to the wastewater treatment works; and

c. Analyses of the source water to be diverted by the facility to the reclamation system.

4. Information regarding the sewage collection system that diverts or will divert sewage to the SRS to be permitted, including:

a. The name of the sewage collection system and the owner of that system;

b. Any SIUs that discharge directly or indirectly to the collection line from which sewage will be diverted to the SRS, excluding any downstream SIUs whose discharge has no potential to backflow to the SRS intake. This information shall include the location of the SIUs and distance between the SIUs and the SRS along the sewage collection line or lines; and

c. Characterization of the sewage to be diverted from the sewage collection system to the SRS at the point of diversion. Analysis of the sewage may be required where SIUs described in subdivision 4 b of this subsection discharge to the sewage collection system.

5. Information regarding each reclamation system or SRS to be permitted, including:

a. The standards specified in 9VAC25-740-70 A to be achieved;

b. Any other physical, chemical, and biological characteristics and constituent concentrations that may affect the intended reuse of the reclaimed water with respect to adverse impacts to public health or the environment; and

c. Designated design flow.

6. For the purpose of determining any significant adverse impacts to other beneficial uses, information regarding the VPDES permitted wastewater treatment works or the sewage collection system that will provide a new or increased diversion of source water to a reclamation system or SRS for the production of reclaimed water and information, as applicable, regarding the SRS that includes:

a. The latitude and longitude of the treatment works discharge location to a surface water or the SRS return discharge location in the sewage collection system;

b. The mean monthly discharge of the treatment works or return discharge of the SRS for each month during the most recent 60 or more consecutive months at the time of application, or where this information is not available, estimated values for the mean monthly discharge of the treatment works or return discharge of the SRS for each month during a period of 12 consecutive months;

c. The maximum monthly diversion of source water from the treatment works to a reclamation system or from the

sewage collection system to a SRS for each month during a period of 12 consecutive months;

d. Pertaining only to sewage collection systems that provide source water, the name of the treatment works at the terminus of the sewage collection system; and

e. The information specified in subdivisions 6 a, b, and c of this subsection for each increase in source water diverted by the treatment works or the sewage collection system to a reclamation system or SRS, respectively, among multiple increases to occur in planned phases, and the anticipated dates of the phased increases.

7. Information describing measures to be immediately implemented for the management of wastewater and reclaimed water by a conjunctive system in the event that primary reuses of reclaimed water generated by the system cease or fail, and where the system:

a. Relies primarily or completely on water reclamation and reuse to eliminate wastewater;

b. Relies on:

(1) Irrigation as the primary or only reuse of reclaimed water, or

(2) One or more large end users, each consuming a significant volume of reclaimed water, such that the ability of the conjunctive system to manage wastewater would be adversely impacted if any such end user were to discontinue receiving reclaimed water from the conjunctive system; and

c. Does not have the ability to implement two or more of the options described in 9VAC25-740-110 C 1.

8. Information required per subdivision 7 of this subsection shall be included in the reclaimed water management plan described in subsection C of this section where the conjunctive system is acting as a reclaimed water agent by directly distributing reclaimed water to an end user or end users, including an end user that is also the applicant or permittee.

9. Information, if applicable, regarding any type of proposed reuse not listed in this chapter, by which the ~~board~~ department can evaluate the need to prescribe specific reclaimed water treatment and monitoring requirements in accordance with 9VAC25-740-90 B.

C. Reclaimed water management (RWM) plan.

1. A RWM plan shall be submitted in support of a permit application for a new or expanded reclamation system, SRS, or reclaimed water distribution system acting as a reclaimed water agent by directly distributing reclaimed water to an end user or end users, including an end user that is also the applicant or permittee. A RWM plan shall not be required for a reclamation system that distributes reclaimed water exclusively for indirect potable reuse. The RWM plan shall contain the following:

a. A description and map of the expected service area to be covered by the RWM plan for the term of the permit for the project (i.e., five years for a VPDES or 10 years for a VPA permit). The map shall identify all reuses according to reuse categories shown in 9VAC25-740-90 A or other categories for reuses that are or shall be authorized pursuant to 9VAC25-740-90 B, and their locations within the service area. The map shall also identify and show the location of all public potable water supply wells and springs, and public water supply intakes, within the boundaries of the service area. The description and map of the service area shall be updated by the permittee with each permit renewal.

b. A current inventory of impoundments, ponds or tanks that are used for system storage of reclaimed water and, as applicable, reject water storage under the control of the permittee, and nonsystem storage located within the service area of the RWM plan in accordance with 9VAC25-740-110 C 15.

c. A water balance that accounts for the volumes of reclaimed water to be generated, stored, reused and discharged (i.e., through a VPDES permitted outfall, back to a sewage collection system, or otherwise disposed). The water balance shall include projected volumes of seasonal and annual reclaimed water demand for each reuse category.

d. An example of service agreements or contracts to be established by the applicant or permittee with end users regarding implementation of and compliance with the RWM plan. A service agreement or contract shall contain conditions and requirements specified in subdivisions 3 b and c of this subsection and in 9VAC25-740-170 that apply to the particular planned reuse of each end user. Terms of the agreement shall require property owners to report to the applicant or permittee all potable and nonpotable water supply wells on their property and to comply with appropriate setback distances for wells where reclaimed water will be used on the same property. Within the agreement or contract, the applicant or permittee shall also reserve the right to perform routine or periodic inspections of an end user's reclaimed water reuses and storage facilities, and to terminate the agreement or contract and withdraw service for any failure by the end user to comply with the terms and conditions of the agreement or contract if corrective action for such failure is not taken by the end user.

e. A description of monitoring of end users by the applicant or permittee to verify compliance with the terms of their agreements or contracts. Monitoring shall include, at a minimum, metering the volume of reclaimed water consumed by end users.

f. An education and notification program required in accordance with 9VAC25-740-170 A.

g. A cross-connection and backflow prevention program that:

(1) Evaluates the potential for cross-connections of the reclaimed water distribution system to a potable water system and backflow to the reclaimed water distribution system from industrial end users;

(2) Evaluates the public health risks associated with possible backflow from industrial end users;

(3) Describes inspections to be performed by the applicant or permittee at the time end users connect to the reclaimed water distribution system and periodically thereafter to prevent cross-connections to a potable water system and backflow from industrial end users as determined necessary through the program evaluation;

(4) Insures that cross-connection and backflow prevention design criteria specified in 9VAC25-740-110 B for reclaimed water distribution systems are implemented; and

(5) Requires a backflow prevention device on the reclaimed water service connection to an industrial end user, unless evaluation by the cross-connection and backflow prevention program determines that there is minimal risk to public health associated with possible backflow from the industrial end user or that there will be no backflow from the industrial end user capable of contaminating the reclaimed water supply.

h. A description of how the quality of reclaimed water in the reclaimed water distribution system shall be maintained to meet and, if determined necessary by the ~~board~~ department, monitored to verify compliance with the minimum standard requirements specified in 9VAC25-740-90 for the intended reuse or reuses of the reclaimed water, excluding CAT standards. Where monitoring of reclaimed water in the distribution system is required, monitoring parameters and frequencies shall be determined by the ~~board~~ department on a case-by-case basis.

i. Information specified in subdivision B 7 of this section for conjunctive systems described in subdivision B 8 of this section.

j. Where the applicant or permittee is the provider of reclaimed water, the exclusive end user of that reclaimed water and is not otherwise excluded under 9VAC25-740-50 A, information for only subdivisions 1 a, b, and c of this subsection is required.

2. All irrigation reuses of reclaimed water shall be limited to supplemental irrigation.

3. Nutrient management requirements for irrigation reuse will be established in the RWM plan according to the concentration of total N and total P in the reclaimed water compared to biological nutrient removal (BNR) as defined in 9VAC25-740-10.

a. Except as specified in subdivision 4 of this subsection, a nutrient management plan (NMP) shall not be required for irrigation reuse of reclaimed water treated to achieve BNR or nutrient levels below BNR.

b. For bulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP shall be required of the end user.

(1) Where the applicant or permittee is the end user, the NMP shall be submitted with the RWM plan to the ~~board~~ department and shall be the responsibility of the applicant or permittee to properly implement.

(2) Where the end user is other than the applicant or permittee, the NMP shall be required as a condition of the service agreement or contract specified in subdivision 1 d of this subsection between the applicant or permittee and the end user. The end user shall be responsible for obtaining, maintaining and following a current NMP; providing a copy of the most current NMP to the applicant or permittee prior to initiating bulk irrigation reuse of reclaimed water; and providing proof of compliance with the NMP at the request of the permittee.

c. For nonbulk irrigation reuse of reclaimed water not treated to achieve BNR, a NMP shall not be required. However, the RWM plan shall describe other measures to be implemented by the applicant or permittee to manage nutrient loads by nonbulk irrigation reuse of reclaimed water not treated to achieve BNR within the service area. These shall include, but are not limited to the following:

(1) The inclusion of language in the service agreement or contract specified in subdivision 1 d of this subsection, explaining proper use of the reclaimed water by the end user for the purpose of managing nutrients;

(2) Routine distribution of literature not less than annually, to individual nonbulk irrigation end users addressing the proper use of reclaimed water for irrigation in accordance with 9VAC25-740-170 A; and

(3) Monthly monitoring of N and P loads by nonbulk irrigation reuses to the service area of the RWM plan based on the total monthly metered nonbulk irrigation reuse of reclaimed water for the service area and the monthly average concentrations of total N and total P in the reclaimed water. Results of this monitoring shall be included in the annual report to the ~~board~~ department submitted in accordance with 9VAC25-740-200 C.

4. Independent of the reclaimed water nutrient content, a NMP shall be required for a bulk irrigation reuse site where:

a. A wastewater treatment works, reclamation system, SRS, or reclaimed water distribution system and the irrigation reuse site or sites are under common ownership or management; and

b. In addition to irrigation reuse:

(1) There is no option to dispose of the reclaimed water through a VPDES permitted discharge, or

(2) There is an option to dispose of the reclaimed water through a VPDES permitted discharge, but the VPDES permit does not allow discharge of the full nutrient load under design flow (e.g., a treatment works with a VPDES permitted discharge implements water reclamation and reuse in lieu of providing treatment to meet nutrient effluent limits at design flow).

5. A NMP required per subdivision 4 of this subsection shall be approved by the Department of Conservation and Recreation (DCR) and submitted with the RWM plan to the ~~board~~ department. The applicant or permittee shall be responsible for proper implementation of the NMP.

6. If required for a specific irrigation reuse, the NMP shall be prepared by a nutrient management planner certified by DCR and shall be maintained current in accordance with the Nutrient Management Training and Certification Regulations, 4VAC5-15. A copy of the NMP for each irrigation reuse site shall be maintained at the site or at a location central to all sites covered by the plan. Another copy shall be provided to and retained by the applicant or permittee.

7. A site plan is required for each bulk irrigation reuse site and area of proposed expansion to an existing irrigation reuse site, displayed on the most current U.S. Geological Survey topographic maps (7.5 minutes series, where available) and showing the following:

a. The boundaries of the irrigation site;

b. The location of all potable and nonpotable water supply wells and springs, public water supply intakes, occupied dwellings, property lines, areas accessible to the public, outdoor eating, drinking and bathing facilities; surface waters, including wetlands; limestone rock outcrops and sinkholes within 250 feet of the irrigation site; and

c. Setbacks areas around the irrigation site in accordance with 9VAC25-740-170.

8. The site plan for a bulk irrigation reuse site shall be prepared by:

a. The applicant or permittee for submission with the RWM plan to the ~~board~~ department when the irrigation site is under common ownership or management with a wastewater treatment works, a reclamation system, SRS, or reclaimed water distribution system from which it receives reclaimed water for irrigation; or

b. The bulk irrigation end user for submission with the service agreement or contract between the end user and the applicant or permittee when the irrigation site is not under common ownership or management with a wastewater treatment works, a reclamation system, SRS, or reclaimed water distribution system from which it receives reclaimed water for irrigation.

9. For the addition of new end users or new reuses not contained in the original RWM plan submitted with the application for a permit, the permittee shall submit to the ~~board~~ department for approval an amendment to the RWM plan identifying the new end users or new reuses prior to connection and reclaimed water service to the new end users or initiating the new reuses. For each new end user or new reuse, the permittee shall also provide all applicable information required by this subsection. Amendment of the RWM plan for the addition of new end users or new reuses after the issuance or reissuance of the permit shall not be considered a modification of the permit unless the new end users or new reuses will require the addition of different reclaimed water standards, monitoring requirements and conditions not contained in the permit.

D. Indirect potable reuse (IPR). For an application to permit an IPR project, the following additional information shall be submitted by the applicant or permittee to the ~~board~~ department:

1. Identification of the following components of an IPR project:

a. The reclamation system that will produce reclaimed water discharged to the water supply source (WSS).

b. The WSS to which the reclamation system identified in subdivision 1 a of this subsection will discharge reclaimed water.

c. The waterworks that will withdraw water from the WSS identified in subdivision 1 b of this subsection to produce potable water.

2. Identification of all uses in addition to IPR of the WSS identified in subdivision 1 of this subsection. Such uses shall be those deemed acceptable by the Virginia Department of Health or the Waterworks Regulations (12VAC5-590).

3. A description of multiple barriers to be implemented by the reclamation system or waterworks, or both, to produce water of a quality suitable for IPR. Multiple barriers shall include at a minimum:

a. Source control and protection. This involves the control of contaminants with potential to adversely impact public health by preventing or minimizing the entry of these contaminants into the wastewater collection system prior to reclamation or the WSS prior to withdrawal by the waterworks. Source control and protection shall, at a minimum, address pretreatment requirements for SIUs in accordance with 9VAC25-740-150 E and education requirements in accordance with 9VAC25-740-170 A 1, and shall describe other measures to reduce the introduction of contaminants from domestic sources that may include, but are not limited to, community collection programs for hazardous wastes and unused pharmaceuticals.

b. Effective and reliable treatment. This involves the use of treatment processes at both the reclamation system and the waterworks that, in combination with any natural

attenuation provided by the environmental buffer to be described per subdivision 3 c of this subsection, shall reliably achieve the water quality necessary for IPR. A description of reclamation system treatment processes for IPR may be satisfied by referencing application information submitted in accordance with subsection B of this section.

c. Environmental buffers and natural attenuation. This involves the use of an environmental buffer, such as a surface water used as a WSS, to provide further removal or degradation of certain contaminants when exposed to naturally occurring physical, chemical, and biological processes in the environment over time.

d. Monitoring programs. This involves monitoring at progressive stages of treatment or barriers of the project to verify that they are working effectively and reliably to achieve the necessary water quality for IPR.

e. Responses to adverse conditions. To address those circumstances where the reclamation system of the IPR project experiences a catastrophic treatment failure that cannot be corrected by subsequent treatment or barriers, or fails to produce reclaimed water meeting the standards or limits at the point of discharge to the WSS, the application for the IPR project shall contain:

(1) A contingency plan that describes all alternatives to be implemented in lieu of discharging the substandard reclaimed water to the WSS.

(2) A notification program for the reclamation system of the IPR project as described in 9VAC25-740-170 A 2.

4. An evaluation of the combined effectiveness of all the barriers described in subdivision 3 of this subsection to achieve the water quality necessary for IPR.

5. Any information deemed necessary by the ~~board~~ department to establish reclaimed water standards and monitoring requirements for the IPR project in accordance with 9VAC25-740-90 B. This shall include, but is not limited to, residence or transport times, mixing ratios, and other applicable modeling of the reclamation system discharge or contaminants introduced by the discharge to the WSS.

6. A water balance for the reclamation system that accounts for the volumes of reclaimed water to be generated, stored, discharged to the WSS, and withdrawn for IPR.

7. Any change by the reclamation system to provide reclaimed water for other reuses or end users in addition to IPR shall require submission of a RWM plan in accordance with subdivision C 1 of this section. The water balance for the RWM plan shall include the water balance required per subdivision 6 of this subsection for the IPR project.

8. A copy of the contractual agreement established between the reclamation system and the waterworks of the IPR project, identifying the responsibilities of each party to implement multiple barriers described in accordance with subdivision 3 of this subsection, unless the reclamation system and waterworks are under common ownership or management.

9VAC25-740-110. Design criteria.

A. Reclamation system.

1. The design of systems for the reclamation of municipal wastewater or source water derived from a municipal wastewater treatment works shall adhere to the standards of design and construction specified in the Sewage Collection and Treatment Regulations (9VAC25-790) and other applicable engineering standards and regulations. Design standards for reclamation systems of industrial wastewater or source water derived from an industrial wastewater treatment works shall be determined and evaluated on a case-by-case basis.

2. Ultraviolet (UV) disinfection for reclamation systems:

a. For Level 1 reclaimed water:

(1) Designs for UV disinfection shall be validated in accordance with NWRI Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse, Second Edition (2003) (guidelines) to meet a UV design dosage greater than or equal to 100,000 uWsec/cm^2 (MS-2 dose) under peak flow and a minimum UV transmittance of 55% at 254 nm. A lower UV disinfection dosage may be authorized by the ~~board~~ department if demonstrated to meet at least one of the bacteria standards for Level 1 specified in 9VAC25-740-70 A, and where microbial testing is used to validate the efficacy of the UV disinfection dose in accordance with the guidelines. For the lower disinfection dose, the ~~board~~ department may develop reclaimed water turbidity standards and minimum UV transmittance requirements that are unique to the UV disinfection process of the reclamation system.

(2) The UV disinfection system shall be designed to supply the minimum dose specified in subdivision 2 a (1) of this subsection at all times. The system may be automated to immediately adjust the UV disinfection dosage in response to changes in the UV system influent reclaimed water flow and quality.

b. UV disinfection for Level 2 reclaimed water shall be designed, constructed, and operated in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) for UV disinfection of secondary effluent.

B. Reclaimed water distribution system.

1. All reclaimed water distribution systems shall be designed and constructed in accordance with this chapter and applicable sections of the Sewage Collection and Treatment Regulations (9VAC25-790) pertaining to force mains, so that:

a. Reclaimed water does not come into contact with or otherwise contaminate a potable water system;

b. The structural integrity of the system is provided and maintained; and

c. The capability for inspection, maintenance, and testing is maintained.

2. For a reclaimed water distribution system, the following shall be implemented as part of the cross-connection and backflow prevention program submitted with the RWM plan:

a. There shall be no direct cross-connections between the reclaimed water distribution system and a potable water supply system.

b. The reclaimed water distribution system shall be in compliance with the cross connection control and backflow prevention requirements of Article 4 (12VAC5-590-580 et seq.) of Part II of the Commonwealth of Virginia Waterworks Regulations and, when applicable, the reclaimed water distribution system shall also be in compliance with the Virginia Statewide Building Code (13VAC5-63).

c. Potable water may be used to supplement reclaimed water for a reuse, provided there is an air gap separation of at least eight inches between the potable water and the reclaimed water or a reduced pressure principle backflow prevention device installed at the potable water service connection to the reuse. The installation of the reduced pressure principal backflow prevention device shall allow for proper inspection and testing of the device.

d. Reclaimed water shall not be returned to the reclaimed water distribution system after the reclaimed water has been delivered to an end user.

3. In-ground reclaimed water distribution pipelines shall be installed and maintained to achieve minimum separation distance and configurations as follows:

a. No reclaimed water distribution pipeline shall pass within 50 feet of a potable water supply well, potable water supply spring or water supply intake that are part of a regulated waterworks. The same separation distance shall be required between a reclaimed water distribution pipeline and a nonpublic or private potable water supply well or spring, but may be reduced to not less than 35 feet provided special construction and pipe materials are used to obtain adequate protection of the potable water supply.

b. Reclaimed water distribution pipeline shall be separated horizontally by at least 10 feet from a water main. The distance shall be measured edge-to-edge. When local conditions prohibit this horizontal separation, the reclaimed water distribution pipeline may be laid closer provided that the water main is in a separate trench or an undisturbed earth shelf located on one side of the reclaimed water distribution pipeline and the bottom of the water main is at least 18 inches above the top of the reclaimed water distribution pipeline. Where this vertical separation cannot be obtained, the reclaimed water distribution pipeline shall be constructed of water pipe material in accordance with AWWA specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C600-05, effective December 1, 2005) for the pipe material, with a minimum test pressure of 30 psi.

c. Distribution pipeline that conveys Level 1 reclaimed water shall be separated horizontally by at least two feet from a sewer line. The distance shall be measured edge-to-edge. When local conditions prohibit this horizontal separation, the reclaimed water distribution pipeline may be laid closer provided that the sewer line is in a separate trench or an undisturbed earth shelf located on one side of the reclaimed water distribution pipeline and the bottom of the reclaimed water distribution pipeline is at least 18 inches above the top of the sewer line. Where this vertical separation cannot be obtained, either the reclaimed water distribution pipeline or the sewer line shall be constructed of water pipe material in accordance with AWWA specifications and pressure tested in place without leakage prior to backfilling. The hydrostatic test shall be conducted in accordance with the AWWA standard (ANSI/AWWA C600-05, effective December 1, 2005) for the pipe material, with a minimum test pressure of 30 psi.

d. Reclaimed water distribution pipeline shall cross under water main such that the top of the reclaimed water distribution pipeline is at least 18 inches below the bottom of the water main. When local conditions prohibit this vertical separation, the reclaimed water distribution pipeline shall be constructed of AWWA specified water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790). Where reclaimed water distribution pipeline crosses over water main, the reclaimed water distribution pipeline shall:

(1) Be laid to provide a separation of at least 18 inches between the bottom of the reclaimed water distribution pipeline and the top of the water main.

(2) Be constructed of AWWA approved water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).

(3) Have adequate structural support to prevent damage to the water main.

(4) Have joints placed equidistant and as far as possible from the water main joints.

e. Sewer line shall cross under distribution pipeline that conveys Level 1 reclaimed water such that the top of the

sewer line is at least 18 inches below the bottom of the reclaimed water distribution pipeline. When local conditions prohibit this vertical separation, the sewer line shall be constructed of AWWA specified water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790). Where sewer line crosses over distribution pipeline that conveys Level 1 reclaimed water, the sewer line shall:

(1) Be laid to provide a separation of at least 18 inches between the bottom of the sewer line and the top of the reclaimed water distribution pipeline.

(2) Be constructed of AWWA approved water pipe and pressure tested in place without leakage prior to backfilling, in accordance with the provisions of the Sewage Collection and Treatment Regulations (9VAC25-790).

(3) Have adequate structural support to prevent damage to the reclaimed water distribution pipeline.

(4) Have joints placed equidistant and as far as possible from the reclaimed water distribution pipeline joints.

f. No reclaimed water distribution pipeline shall pass through or come into contact with any part of a sewer manhole. Distribution pipeline that conveys Level 1 reclaimed water shall be separated horizontally by at least two feet from a sewer manhole whenever possible. The distance shall be measured from the edge of the pipe to the edge of the manhole structure. When local conditions prohibit this horizontal separation, the manhole shall be of watertight construction and tested in place.

4. No setback distance is required to any nonpotable water supply well and no vertical or horizontal separation distances are required between above-ground reclaimed water pipelines and potable water, sewer or wastewater pipelines.

5. All reclaimed water outlets shall be of a type, or secured in a manner, that permits operation by authorized personnel. Public access to reclaimed water outlets shall be controlled in areas where reclaimed water outlets are accessible to the public as follows:

a. If quick connection couplers are used on above-ground portions of the reclaimed water distribution system, they shall differ materially from those used on the potable water supply.

b. Use of above-ground hose bibs, spigots or other hand-operated connections that are standard on local potable water distribution systems shall be prohibited for use on the local reclaimed water distribution system. If above-ground hose bibs, spigots or other hand-operated connections are used on the reclaimed water distribution system, they must differ materially from those used on the local potable water distribution system and must be clearly distinguishable as reclaimed water connections (i.e., painted purple, valve operation with a special tool) so as not to be mistaken for potable water connections. Where below-grade vaults are used to house reclaimed water connections, the connections in the vault may have standard potable water distribution system thread and bib size services provided the bib valves can be operated only by a special tool. The below-grade vaults shall also be labeled as being part of the reclaimed water distribution system (i.e., painted purple, labeled).

6. Existing potable water distribution systems, sewer and wastewater collection systems, and irrigation distribution systems may be converted for use as reclaimed water distribution systems. Not less than 90 days prior to such conversions, excluding the conversion of irrigation distribution systems that are not under common ownership or management with reclamation systems, SRSs, or reclaimed water distribution systems providing reclaimed water to the irrigation distribution systems, the following shall be submitted to the ~~board~~ department for approval:

a. A system conversion plan that contains:

(1) Information on the location and identification of the facilities to be converted;

(2) Information on the location of all connections to the facilities to be converted;

(3) A description of procedures to be used to ensure that all connections and cross-connections shall be eliminated. This may include physical inspections, dye testing, or other testing procedures;

(4) A description of the physical and operational modifications necessary to convert the existing system to a reclaimed water distribution system that shall comply with applicable design criteria in subsections B and C of this section, and the operations and maintenance requirements of 9VAC25-740-140 D 2;

(5) A description of cleaning and disinfection procedures to be followed before the converted facilities will be placed into operation for reclaimed water distribution. For the conversion of existing sewer and wastewater collection systems, cleaning and disinfection of the system shall be conducted in accordance with AWWA standards (ANSI/AWWA C651-05, effective June 1, 2005). Procedures to dispose of flush water from cleaning or disinfection shall be those described in the operations and maintenance manual of the system for the disposal of flush water from maintenance activities;

(6) An assessment of the physical condition and integrity of facilities to be converted; and

(7) Reasonable assurance that cross-connections will not result, public health will be protected, and the integrity of potable water, wastewater, and reclaimed water systems will be maintained when the conversion is made.

b. An operations and maintenance manual for the system converted to a reclaimed water distribution system in

accordance with 9VAC25-740-140 B, containing at a minimum the items specified in 9VAC25-740-140 D.

7. Tank trucks may be used to transport and distribute reclaimed water only if the following requirements are met:

a. The truck is not used to transport potable water that is used for drinking water or food preparation;

b. The truck is not used to transport waters or other fluids that do not meet the requirements of this chapter, unless the tank has been evacuated and properly cleaned prior to the addition of the reclaimed water;

c. The truck is not filled through on-board piping or removable hoses that may subsequently be used to fill tanks with water from a potable water supply; and

d. The reclaimed water contents of the truck are clearly identified as nonpotable water on the truck.

8. Reclaimed water distribution systems shall have the following identification, notification and signage:

a. Reclaimed water piping with an outer diameter greater than or equal to one inch, installed in-ground after January 29, 2014, or above-ground shall display the words "CAUTION: RECLAIMED WATER - DO NOT DRINK" by one or more of the following methods:

(1) Stenciling or stamping the piping with two-inch to three-inch letters on opposite sides of the piping, placed at intervals of three to four feet. For piping less than two inches and greater than or equal to one inch outer diameter, lettering shall be at least 5/8 inch, placed on opposite sides of the piping and repeated at intervals of one foot.

(2) Wrapping the piping with purple (Pantone 522) polyethylene vinyl wrap or adhesive tape, placed longitudinally at three-foot intervals. The width of the wrap or tape shall be at least three inches, and shall display the required caution statement in either white or black lettering.

(3) Permanently affixing purple (Pantone 522) vinyl adhesive tape on top of the piping, parallel to the axis of the piping, fastened at least every 10 feet to each pipe section, and continuously for the entire length of the piping. The width of the tape shall be at least three inches, and shall display the required caution statement in either white or black lettering.

(4) Using an alternate method that assures the caution statement will be displayed to provide an equivalent degree of public notification and protection if approved by the ~~board~~ department.

b. Additional methods, if provided, to identify reclaimed water piping with an outer diameter greater than or equal to one inch (e.g., permanently color coding the piping Pantone 522 purple), shall not obscure any portion of the caution statement required pursuant to subdivision 8 a of this subsection.

c. Reclaimed water piping with an outer diameter less than one inch shall require the following:

(1) Where installed in-ground after January 29, 2014, or above ground, the piping shall be permanently color coded purple (Pantone 522). Longitudinal purple striping of the piping may be allowed provided the cumulative width of the stripes is greater than or equal to 25% of the outer pipe diameter.

(2) Where installed within a building or structure, the piping shall have in addition to color coding required per subdivision 8 c (1) of this subsection, the words "CAUTION: RECLAIMED WATER – DO NOT DRINK" embossed, stenciled, stamped, or affixed with adhesive tape on the piping, placed on opposite sides of the piping, and repeated at intervals of one foot. Lettering of the caution statement shall be of a size easily read by a person with normal vision at a distance of two feet.

d. All other above-ground portions of the reclaimed water distribution system including reclaimed water valves, outlets (including fire hydrants) and other appurtenances shall be color coded, taped, labeled, tagged or otherwise marked to notify the public and employees that the source of the water is reclaimed water, not intended for drinking or food preparation. For reclaimed water treated to Level 2, such notification shall also inform employees to practice good personal hygiene for incidental contact with reclaimed water and the public to avoid contact with the reclaimed water.

e. Each mechanical appurtenance of a reclaimed water distribution system shall be colored purple and legibly marked "RECLAIMED WATER" to identify it as a part of the reclaimed water distribution system and to distinguish it from mechanical appurtenances of a potable water distribution system or a wastewater collection system.

f. Valve boxes for reclaimed water distribution systems shall be painted purple. Valve covers for reclaimed water distribution lines shall not be interchangeable with potable water supply valve covers.

g. Existing potable water distribution systems, sewer or wastewater collection systems, or irrigation distribution systems that are converted to reclaimed water distribution systems in accordance with subdivision 6 of this subsection after January 29, 2014, shall be retrofitted to meet identification, notification, and signage requirements of subdivision 8 of this subsection with the following exceptions:

(1) For converted systems requiring the submission of a conversion plan and an operations and maintenance manual in accordance with subdivision 6 of this subsection, existing in-ground converted piping shall be retrofitted to a distance of not less than 10 feet from locations where the piping crosses or is crossed by a potable water supply line or sanitary sewer line.

(2) For all other converted systems, identification, notification, and signage requirements specified in subdivision 8 of this subsection for in-ground piping shall not apply.

9. All reclaimed water distribution systems shall be maintained to minimize losses and to ensure safe and reliable conveyance of reclaimed water such that the reclaimed water will not be degraded below the standards, excluding CAT standards, required for the intended reuse or reuses in accordance with 9VAC25-740-90.

C. Storage requirements.

1. To ensure reliable reclamation system operation in accordance with the requirements of this chapter, all reclamation systems shall have the ability to implement one or more of the following options:

a. Store reclaimed water;

b. Discharge reclaimed water to another permitted reuse system, if applicable;

c. Discharge reclaimed water to surface waters of the state under a VPDES permit;

d. Suspend all or a portion of water reclamation for planned periods; or

e. In the case of a satellite reclamation system, discharge reclaimed water into the sewage collection system from which it received source water for reclamation.

2. Storage for reclaimed water shall be required only when subdivision 1 b, c, or d of this subsection or, as applicable, subdivision 1 e of this subsection are not available or approved by the ~~board~~ department.

3. Separate, off-line storage shall be provided for reject water of the reclamation system unless the reject water can be diverted to another permitted reuse system, discharged to surface waters of the state under a VPDES permit, returned directly to an appropriate point of treatment in the reclamation system, or in the case of a satellite reclamation system, sent to the sewage collection system from which the reclamation system received water for reclamation. Where reject water is stored, provisions shall be incorporated into the design of the reclamation system to distribute the reject water from storage to other parts of the reclamation system for additional or repeated treatment.

4. Storage for reject water may also be used for emergency storage to ensure Reliability Class I of the reclamation system in accordance with 9VAC25-740-130.

5. Reject water and reclaimed water may be stored in watertight tanks placed above-ground or in-ground. Labeling of tanks used for reject water storage, system storage or nonsystem storage shall be in accordance with 9VAC25-740-160 B, and shall, at a minimum, identify the contents of each tank as either reject water or reclaimed water.

6. For all impoundments or ponds that are used for reject water storage or system storage, with the exception of impoundments and ponds specified in subdivision 7 of this subsection, the following are required:

a. A minimum two-foot freeboard shall be maintained at all times. Any emergency discharge or overflow device and the disposition of the overflow discharge shall be identified in the engineering report.

b. There shall be a minimum two-foot separation distance between the bottom of the impoundment or pond and the seasonal high water table.

c. The impoundment or pond shall have a properly designed and installed synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness. Synthetic liners shall be installed in accordance with the manufacturer's specifications and recommendations. The soil liner shall be composed of separate lifts not to exceed six inches. The maximum coefficient of permeability for the synthetic and soil liners shall not exceed $1x10^{-6}$ cm/sec and $1x10^{-7}$ cm/sec, respectively. A plan of quality assurance and quality control which substantiates the adequacy of the liner and its installation shall be included in or shall accompany the preliminary engineering report or supporting documentation for the CTC. Documentation of quality assurance and quality control activities on liner installation along with permeability test results, shall be submitted with the statement of construction completion to the ~~board~~ department.

d. If the requirements of subdivision 6 b or c of this subsection cannot be met, the ~~board~~ department may allow use of the impoundment or pond for storage provided that a groundwater monitoring plan for the facility is submitted to the ~~board~~ department for review and approval. The plan shall identify the direction of groundwater flow and the proposed location and depth of groundwater monitoring wells at the location of the impoundment or pond, parameters to be monitored, a monitoring schedule, and procedures for proper sample collection and handling.

e. The design of the impoundment or pond shall prevent the entry of surface water or storm water runoff from outside the facility embankment or berm.

f. Where the embankment of the impoundment or pond is composed of soil, the embankment shall have:

(1) A top width of at least five feet;

(2) Interior and exterior slopes no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are used;

(3) Shallow-rooted vegetative cover or other soil stabilization to prevent erosion; and

(4) Erosion stops and water seals installed on all piping that penetrates the embankment.

g. There shall be routine maintenance of the impoundment or pond liner, embankments and access areas.

h. Impoundments and ponds shall be sited to avoid areas of uneven subsidence, sinkholes, or unstable soils unless provisions are made for their correction. Results from field and laboratory tests from an adequate number of test borings and soil samples shall be the basis for computations pertaining to permeability and stability analyses.

i. Impoundments or ponds shall not be located on a floodplain unless protected from inundation or damage by a 100-year frequency flood event.

j. There shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 100 feet for storage of Level 1 reclaimed water and 200 feet for storage of Level 2 reclaimed water or reject water.

7. Reject water storage and system storage impoundments or ponds that exist upon October 1, 2008, shall be exempt from the design, construction, and operation requirements specified in subdivision 6 of this subsection until such time these facilities are modified or expanded, or unless they have failed to comply with other existing regulatory or permitting requirements.

8. The capacity of reject water storage and system storage facilities, including impoundments, ponds or tanks, shall be as follows:

a. For reject water, the capacity of the storage facility shall, at a minimum, be the volume equal to the designated design flow of the reclamation system unless other options exist for immediate disposal or retreatment of the reject water in addition to storage.

b. For reclaimed water, the capacity of the storage facility shall be determined by the seasonal variability in demand, intended reuses with intermittent, variable demand, such as fire protection or fighting; and the availability of other options to generate or manage reclaimed water as specified in subdivision 1 of this subsection.

(1) Where there is no or minimal seasonal variability in demand and no other options are available for alternative generation or management of all or a portion of the reclaimed water, the capacity of the storage facility shall, at a minimum, be the volume equal to three times that portion of the reclamation system designated design flow for which no other options to generate or manage the reclaimed water from the reclamation system are permitted.

(2) Where there is seasonal variability in demand and no other options are available for alternative generation or management of all or a portion of the reclaimed water during periods of low seasonal demand, storage facilities shall have sufficient storage capacity to assure the retention of the reclaimed water under conditions and circumstances that preclude reuse. The methods, assumptions and calculations used to determine the system storage requirements shall be provided and justified in the preliminary engineering report or supporting documentation for the CTC. Analytical means of determining system storage requirements, such as water balance calculations or computer hydrological programs, shall be used and shall account for all water inputs into the system. Analysis shall be based on site-specific data. Irrigation efficiencies or rainfall efficiencies shall not be used in storage volume determinations.

9. Requirements specified in subdivision 6 of this subsection shall not apply to impoundments or ponds used for nonsystem storage with the exception of those specified in subdivision 11 of this subsection.

10. Landscape impoundments may also be used for nonsystem storage of reclaimed water prior to another subsequent reuse, such as irrigation.

11. Impoundments or ponds used for nonsystem storage of reclaimed water, including landscape impoundments, for subsequent irrigation reuse on sites under common ownership or management with the reclamation system or satellite reclamation system that provides reclaimed water to the sites, shall comply with the design, construction and operation requirements specified in subdivision 6 of this subsection.

12. For impoundments or ponds used for nonsystem storage of reclaimed water, the following setback distances shall apply:

a. There shall be a 50-foot minimum setback distance measured horizontally from the perimeter of the impoundment or pond to property lines.

b. For an impoundment or pond with a liner meeting the requirements specified in subdivision 6 c of this subsection, there shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 100 feet for storage of Level 1 reclaimed water and 200 feet for storage of Level 2 reclaimed water.

c. For an unlined impoundment or pond, there shall be a minimum setback distance measured horizontally from the perimeter of the storage impoundment or pond to potable water supply wells and springs, and public water supply intakes, of 200 feet for storage of Level 1 reclaimed water and 400 feet for storage of Level 2 reclaimed water.

13. Where more than one setback distance applies to storage for reclaimed water or reject water, the greater setback distance shall govern.

14. Reclaimed water system storage facilities shall be designed and operated to prevent a discharge to surface

waters of the state except in the event of a storm greater than the 25-year, 24-hour storm. Reclaimed water nonsystem storage facilities, including landscape impoundments used for nonsystem storage, shall be designed and operated to prevent a discharge to surface waters of the state, except in the event of a storm greater than the 10-year, 24-hour storm.

15. Permittees shall maintain current inventories of reject water storage, system storage and nonsystem storage facilities located within the service area of the RWM plan. An inventory or a revised inventory shall be submitted as part of the RWM plan in the permit application. For the addition of new storage facilities to an inventory after permit issuance, the permittee shall submit to the ~~board~~ department an amended inventory at least 30 days before reclaimed water will be introduced into the new storage facilities. An inventory of reject water storage, system storage and nonsystem storage facilities shall include the following:

a. Name or identifier for each storage facility;

b. Location of each storage facility (including latitude and longitude);

c. Function of each storage facility (i.e., reject water storage, system storage or nonsystem storage);

d. Type of each storage facility (i.e., covered tank, uncovered tank, lined pond, unlined pond, etc.); and

e. Location (latitude and longitude) and distance of the nearest potable water supply well and spring, and public water supply intake, to each storage facility within 450 feet of that facility.

16. Storage requirements as specified in this subsection shall not apply to reclaimed water storage facilities provided at the site of an industrial end user where such facilities are regulated by an existing water permit issued by the ~~board~~ department to the industrial end user, or the industrial end user is also the generator of reclaimed water stored in the facilities and is excluded under 9VAC25-740-50 A.

9VAC25-740-120. Construction requirements.

A. Preliminary engineering report and pilot study.

1. A preliminary engineering report shall be submitted for new water reclamation projects and for modification or expansion of existing reclamation systems, SRSs, and reclaimed water distributions systems. At the request of the applicant or permittee, the ~~board~~ department may waive the need for a preliminary engineering report or portions of a preliminary engineering report for modification or expansion of an existing reclamation system, SRS, or reclaimed water distributions system based on the scope of the proposed project.

2. A pilot study shall be required where treatment is proposed for a reclamation system of an IPR project.

a. The pilot study shall demonstrate the ability of selected treatment processes to:

(1) Meet, at a minimum, the reclaimed water standards prescribed for the IPR project in accordance with 9VAC25-740-90 C, and

(2) Generate a consistent and reliable supply of reclaimed water for the IPR project.

b. The pilot study shall quantify and characterize the quality of source water provided for reclamation and reclaimed water generated by the treatment processes of the reclamation system for a period of not less than 365 days unless reduced by the ~~board~~ department in accordance with subdivision 2 c of this subsection.

c. At the request of the applicant or permittee, the ~~board~~ department may reduce the pilot study duration specified in subdivision 2 b of this subsection or the pilot study scope where the following are met:

(1) The applicant or permittee provides a detailed plan of study for the ~~board's~~ department's review and approval before initiating the pilot study, and

(2) The detailed plan of study justifies to the satisfaction of the ~~board~~ department that a pilot study of shorter duration or reduced scope will be sufficient to achieve the requirements of subdivision 2 a of this subsection. For the purpose of reducing the duration or scope of a pilot study, results of previous pilot studies and operating experiences of similar water reclamation and IPR projects may be used as part of the demonstration required pursuant to subdivision 2 a of this subsection.

d. Results of the pilot study shall be submitted to the ~~board~~ department for review.

B. Certificate to construct and certificate to operate.

1. No owner shall cause or allow the construction, expansion or modification of a reclamation system or SRS except in compliance with a certificate to construct (CTC) from the ~~board~~ department unless otherwise provided for by this chapter. Furthermore, no owner shall cause or allow any reclamation system or SRS to be operated except in compliance with a certificate to operate (CTO) issued by the ~~board~~ department, which authorizes the operation of the reclamation system or SRS, unless otherwise provided for by this chapter. The need for a CTC and CTO for modifications shall be determined by the ~~board~~ department on a case-by-case basis. Conditions may be imposed on the issuance of any CTC or CTO, and no reclamation system or SRS may be constructed, modified, or operated in violation of these conditions.

2. CTC.

a. Upon approval of the proposed design by the ~~board~~ department, including any submitted plans and specifications, if required, the ~~board~~ department will issue a CTC to the owner of such approval to construct or modify his reclamation system or SRS in accordance with the approved plans and specifications.

b. Any deviations from the approved design or the submitted plans and specifications significantly affecting hydraulic conditions (flow profile), unit operations capacity, the functioning of the reclamation system or SRS, or the quality of the reclaimed water, must be approved by the ~~board~~ department before any such changes are made.

3. CTO.

a. Upon completion of the construction or modification of the reclamation system or SRS, the owner shall submit to the ~~board~~ department a Statement of Construction Completion signed by a licensed professional engineer stating that the construction work has been completed in accordance with the approved plans and specifications, or revised only in accordance with subdivision 2 b of this subsection. This statement shall be based upon inspections of the reclamation system or SRS during and after construction or modifications that are adequate to ensure the truth of the statement.

b. Upon receipt of the construction completion statement, the ~~board~~ department may issue a final CTO. However, the ~~board~~ department may delay the granting of the CTO pending inspection, or satisfactory evaluation of reclaimed water test results, to ensure that the work has been satisfactorily completed.

c. A conditional CTO may be issued specifying final approval conditions, with specific time periods for completion of unfinished work, revisions to the operations and maintenance manual, or other appropriate items. The ~~board~~ department may issue a conditional CTO to owners of a reclamation system or SRS for which the required information for completion of construction has not been received. Such CTOs will contain appropriate conditions requiring the completion of any unfinished or incomplete work including subsequent submission of the statement of completion of construction.

d. An interim CTO may be issued to individual unit operations of the treatment system so as to allow utilization of these unit operations prior to completion of the total project. A final CTO shall be issued upon verification that the requirements of this chapter have been complied with.

e. Within 30 days after placing a new or modified reclamation system or SRS into operation, the ~~board~~ department may require reclaimed water produced by the system to be sampled and tested in a manner sufficient to demonstrate compliance with approved specifications and permit requirements. The ~~board~~ department shall be notified of the time and place of the tests, and shall be sent the results of the tests for evaluation as part of the final CTO.

f. Within 90 days of placing the new or modified reclamation system or SRS into operation, the owner shall submit a new or revised operations and maintenance manual for the water reclamation system, SRS, or both, if covered by the same permit. The manual shall contain information as specified in 9VAC25-740-140.

g. The ~~board~~ department may amend or reissue a CTO where there is a change in the manner of treatment or the source of water that is reclaimed at the permitted location, or for any other cause incidental to the protection of the public health and welfare, provided notice is given to the owner.

9VAC25-740-130. Operator requirements and system reliability.

A. Operator requirements. In accordance with the Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (18VAC160-20), each reclamation system shall be assigned a classification based on the treatment processes used to reclaim water and the design capacity of the facility. The classification of both the reclamation system and the operator in responsible charge shall be the same as that specified in the Sewage Collection and Treatment Regulations (9VAC25-790) for sewage treatment works with similar treatment processes and design capacities. The reclamation system shall be manned while in operation and under the supervision of the operator in responsible charge unless the system is equipped with remote monitoring and, as applicable, automated diversion of substandard or reject water in accordance with 9VAC25-740-70 C 1.

B. Reliability Class I as defined in 9VAC25-740-10 is required for Level 1 reclamation systems, satellite reclamation systems, and for pump stations considered part of these systems, unless there is a permitted alternate treatment, discharge or disposal system available with sufficient capacity to handle any reclaimed water flows that do not meet the reclaimed water standards of this chapter or performance criteria established in the operations and maintenance manual.

C. Reliability Class I, as defined in 9VAC25-740-10, is required for a reclamation system identified as a component of an IPR project in accordance with 9VAC25-740-100 D 1, including pump stations that are part of the reclamation system. No exception or variance shall be granted for this requirement.

D. For independent reclamation systems and systems consisting of an industrial wastewater treatment works and reclamation system, the applicability of Reliability Class I requirements as specified in the Sewage Collection and Treatment Regulations (9VAC25-790), shall be determined by the ~~board~~ department for each proposed or existing system.

E. The ~~board~~ department may approve alternative measures to achieve Reliability Class I specified in the Sewage Collection and Treatment Regulations (9VAC25-790) and this chapter if the applicant or permittee can demonstrate in the engineering report, using accepted and appropriate engineering

principles and practices, that the alternative measures will achieve a level of reliability equivalent to Reliability Class I.

9VAC25-740-140. Operations and maintenance.

A. The permittee shall develop and submit to the ~~board~~ department an operations and maintenance manual in accordance with 9VAC25-740-120 B 3 f for each reclamation system, SRS, or combination of these facilities covered by the same permit. The permittee shall maintain the manual and any changes in the practices and procedures followed by the permittee shall be documented and submitted to the ~~board~~ department within 90 days of the effective date of the changes.

B. For each reclaimed water distribution system, the permittee shall develop an operations and maintenance manual to be made available at a location central to the system. The permittee shall maintain the manual and include any changes in the practices and procedures followed by the permittee in the manual. The operations and maintenance manual for a reclaimed water distribution system may be included in the operations and maintenance manual described in subsection A of this section where the reclaimed water distribution system and a reclamation system or SRS, or all these facilities are covered by the same permit.

C. For a reclamation system authorized under the permit of a wastewater treatment works that provides flow to the reclamation system, the operations and maintenance manual of the reclamation system may be made a part of the operations and maintenance manual for the wastewater treatment works.

D. The operations and maintenance manual is a set of detailed instructions developed to facilitate the operator's understanding of operational constraints and maintenance requirements for the reclamation system, SRS, or reclaimed water distribution system; and the monitoring and reporting requirements specified in the permit issued for each system. The scope and content of the manual will be determined by the complexity of the system or systems described by the manual.

1. For a reclamation system or SRS, the operations and maintenance manual shall, at a minimum, contain the following:

a. A description of unit treatment processes within the reclamation system or SRS and step-by-step instructions for the operation of these processes;

b. Routine maintenance and schedules of maintenance for each unit treatment process in the system;

c. The criteria used to make continuous determinations of the acceptability of the reclaimed water being produced and shall include set points for parameters measured by continuous on-line monitoring equipment;

d. Descriptions of sampling and monitoring procedures and record keeping that comply with the requirements of this chapter and any applicable permit conditions;

e. The physical steps and procedures to be followed by the operator when substandard water is being produced, including resampling and operational review in accordance with 9VAC25-740-70 C;

f. The physical steps and procedures to be followed by the operator when the treatment works returns to normal operation and acceptable quality reclaimed water is again being produced;

g. Procedures to be followed during a period when an operator is not present at the treatment works;

h. Information necessary for the proper management of sludge or residuals from reclamation treatment that is not specifically requested in the application for a VPDES or VPA permit; and

i. A contingency plan to eliminate or minimize the potential for untreated or inadequately treated water to be delivered to reuse areas. The plan shall, as applicable, reference and coordinate with the education and notification program specified in 9VAC25-740-170 A for any release of untreated or inadequately treated water to the reclaimed water distribution system.

2. For a reclaimed water distribution system, the operations and maintenance manual shall, at a minimum, contain the following:

a. A map of the distribution system, a description of all components within the distribution system, and step-by-step instructions for the operation of specific mechanical components;

b. Routine and unplanned inspection of the distribution system, including required inspections for the cross-connection and backflow prevention program as specified in 9VAC25-740-100 C 1 g;

c. Routine maintenance and schedules of maintenance for all components of the distribution system. Maintenance shall include, but is not be limited to, initial and routine flushing of the distribution system, measures to prevent or minimize corrosion, fouling and clogging of distribution lines; and detection and repair of broken distribution lines, flow meters or pumping equipment; and

d. Procedures to:

(1) Handle and dispose of any wastes generated by maintenance of the distribution system in a manner protective of the environment;

(2) Prevent the discharge of reclaimed or flush water from distribution system maintenance activities to:

(a) Storm drains;

(b) State waters unless otherwise authorized by the ~~board~~ department; and

(c) Sanitary sewers unless allowed under local sewer use ordinances and authorized by the ~~board~~ department; and

(3) Collect and, as applicable, retreat reclaimed water or treat flush water from distribution system maintenance activities for a subsequent reuse or use approved by the ~~board~~ department.

E. The permittee shall review and revise the operations and maintenance manual, as needed and appropriate, to ensure that the manual contains procedures and criteria addressing the requirements of subsection D of this section for satisfactory system performance. Any revision to the manual shall be reviewed and approved by the ~~board~~ department.

F. The permittee of a reclamation system, SRS, or reclaimed water distribution system shall be responsible for making the facility protective of the environment and public health at all times, including periods of inactivation or closure. Included in the operations and maintenance manual for the reclamation system, SRS, or reclaimed water distribution system, the permittee shall submit a plan for inactivation or closure of the facility, specifying what steps will be taken to protect the environment and public health.

G. Where a bulk irrigation reuse site is under common ownership or management with a reclamation system or SRS that generates reclaimed water applied to the site, the operations and maintenance manual for the reclamation system or SRS shall include the following:

1. Measurements and calculations used to determine supplemental irrigation rates of reclaimed water for the irrigation reuse sites;

2. Operating procedures of the irrigation system;

3. Routine maintenance required for the continued design performance of the irrigation system and reuse sites;

4. Identification and routine maintenance of reclaimed water storage facilities dedicated to bulk irrigation reuse;

5. Schedules for harvesting and crop removal at the irrigation reuse sites;

6. An inventory of spare parts to be maintained for the irrigation system; and

7. Any other information essential to the operation of the irrigation system and reuse sites in accordance with the requirements of this chapter.

9VAC25-740-150. Management of pollutants from significant industrial users.

A. A reclamation system that receives source water from a wastewater treatment works having SIUs shall not be permitted to produce reclaimed water meeting Level 1 standards, unless:

1. The wastewater treatment works providing source water to the reclamation system is a publicly owned treatment works as defined in the VPDES Permit Regulation (9VAC25-31-10), and has a pretreatment program required by and developed in accordance with procedures described in Part VII of the VPDES Permit Regulation (9VAC25-31-730 et seq.); or

2. The reclamation system has evaluated source water from the treatment works for pollutants of concern discharged by SIUs to the treatment works, and has confirmed that such pollutants shall not interfere with the ability of the wastewater treatment works to produce source water suitable for the production of reclaimed water meeting Level 1 standards and any other standards required in accordance with 9VAC25-740-70 D. All such evaluations by the reclamation system shall be submitted to the ~~board~~ department for review and approval, and shall be repeated for each new SIU that proposes to discharge to the treatment works prior to commencing such discharge. The reclamation system shall maintain a current inventory of SIUs discharging to the treatment works.

B. The permittee of a reclamation system authorized to produce reclaimed water treated to Level 1 shall establish a contractual agreement with all treatment works providing source water to the reclamation system unless the reclamation system and the treatment works are authorized by the same permit. The contractual agreement shall, at a minimum, require the treatment works to notify the reclamation system of all SIUs that discharge to the treatment works. Upon execution of the contractual agreement, a copy of the agreement shall be provided to the ~~board~~ department.

C. A satellite reclamation system (SRS) that receives municipal wastewater or sewage from a sewage collection system pipeline with contributions from SIU discharges, excluding any SIUs whose discharge has no potential to reach the SRS intake, shall not be permitted to produce reclaimed water meeting Level 1 standards, unless the SRS has evaluated pollutants of concern discharged by the SIUs and has confirmed that such pollutants shall not interfere with the ability of the SRS to produce reclaimed water meeting Level 1 standards and any other standards required in accordance with 9VAC25-740-70 D. All such evaluations by the SRS shall be submitted to the ~~board~~ department for review and approval, and shall be repeated for each new SIU that proposes to discharge to the sewage collection system and whose discharge has the potential to reach the SRS intake prior to commencing such discharge. The SRS shall maintain a current inventory of all SIUs that discharge pollutants of concern to the sewage collection system capable of reaching the intake of the SRS.

D. The permittee of a SRS authorized to produce reclaimed water treated to Level 1 shall establish a contractual agreement with the sewage collection system providing sewage to the SRS. The contractual agreement shall, at a minimum, require the sewage collection system to notify the SRS of all SIUs that discharge to the sewage collection system. Upon execution of the contractual agreement, a copy of the agreement shall be provided to the ~~board~~ department.

E. Any VPDES permitted treatment works with SIUs that provides source water for reclamation and subsequent indirect potable reuse shall have the following:

1. For publicly owned treatment works, a pretreatment program where required by the VPDES Permit Regulation or deemed necessary by the ~~board~~ department, developed in accordance with procedures described in Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation.

2. For all other treatment works, a program equivalent to a pretreatment program as described in Part VII (9VAC25-31-730 et seq.) of the VPDES Permit Regulation, if deemed necessary by the ~~board~~ department.

9VAC25-740-160. Access control and advisory signs.

A. There shall be no uncontrolled public access to reclamation systems, SRSs, and system storage facilities. Access to any wastewater treatment works directly associated with a reclamation system or SRS shall be controlled in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790). System storage ponds shall be enclosed with a fence or otherwise designed with appropriate features to discourage the entry of animals and unauthorized persons.

B. Where advisory signs or placards are required as described in subsections C and D of this section or 9VAC25-740-110 C 5 for above-ground storage facilities, each sign shall state, at a minimum, "CAUTION: RECLAIMED WATER – DO NOT DRINK" and have the equivalent standard international symbol for nonpotable water. The size of the sign and lettering used shall be such that it can be easily read by a person with normal vision at a distance of 50 feet. Alternate signage and wording that assures an equivalent degree of public notification and protection may be accepted by the ~~board~~ department.

C. For all reuses of reclaimed water treated to Level 2, fencing around the site boundary is not required but public access shall be restricted. Advisory signs shall be posted around reuse areas or reuse site boundaries, and shall additionally state the nature of the reuse and no trespassing.

D. For all reuses of reclaimed water treated to Level 1, advisory signs or placards shall be posted within and at the boundaries of reuse areas. The advisory signs or placards shall additionally state the nature of the reuse. Examples of some notification methods that may be used by permittees include posting advisory signs at entrances to residential neighborhoods where reclaimed water is used for landscape irrigation and posting advisory signs at the entrance to a golf course and at the first and tenth tees.

E. Advisory signs shall be posted adjacent to impoundments or ponds, including landscape impoundments, used for nonsystem storage of reclaimed water.

F. For industrial reuses, advisory signs shall be posted around those areas of the industrial site where reclaimed water is used and at the main entrances to the industrial site to notify employees and the visiting public of the reclaimed water reuse. Access control beyond what is normally provided by the industry is not required.

9VAC25-740-170. Use area requirements.

A. Education and notification program. An education and notification program (program) shall be developed and submitted with the RWM plan in accordance with 9VAC25-740-100 C 1 for reuses that require Level 1 reclaimed water, will be in areas accessible to the public, or are likely to have human contact. For indirect potable reuse (IPR) projects that do not require a RWM plan, the program shall be submitted with the application to permit the project in accordance with 9VAC25-740-100 D. The program shall be the responsibility of the permittee to implement.

1. Education. The education component of the program shall:

a. For end users and the public likely to have contact with reclaimed water, provide information:

(1) To ensure that they are informed of the origin, nature, and characteristics of the reclaimed water; the manner in which the reclaimed water can be used safely; and uses for which the reclaimed water is prohibited or limited;

(2) To individual end users, at the time of their initial connection to the reclaimed water distribution system, which may be provided in the service agreement or contract with the permittee established in accordance with 9VAC25-740-100 C 1 d; and

(3) To individual end users, annually or more often after the reclaimed water distribution system is placed into operation for nonbulk irrigation reuse of reclaimed water not treated to achieve biological nutrient removal (BNR).

b. For IPR projects, provide information to generators of source water for reclamation and IPR that are other than SIUs. This information shall describe methods and practices to avoid or reduce the introduction of contaminants from domestic and commercial sources into the wastewater collection system prior to reclamation and shall be provided to individual generators annually or more often after the reclamation system is placed into operation.

c. Describe all modes of communication to be used to educate and inform, including, but not limited to, meetings, distribution of written information, the news media (i.e., newspapers, radio, television, or the Internet), and advisory signs as described in 9VAC25-740-160.

2. Notification. The notification component of the program shall contain procedures to notify end users and the affected public of discharges of substandard reclaimed water to reuse

that can adversely impact human health, or the loss of reclaimed water service due to planned or unplanned causes.

a. Notifications required for discharge of substandard reclaimed water to reuse.

(1) For reuses other than IPR. Where treatment of the reclaimed water fails more than once during a seven-day period to comply with Level 1 disinfection or other standards developed in accordance with 9VAC25-740-70 D or 9VAC25-740-70 E for the protection of human health, and the noncompliant reclaimed water has been discharged to a reclaimed water distribution system or directly to a reuse, the permittee shall notify the end user of the treatment failures and advise the end user of precautions to be taken to protect human health when using the reclaimed water in areas accessible to the public or where human contact with the reclaimed water is likely. These precautions shall be implemented for a period of seven days or greater depending on the frequency and magnitude of the treatment failure.

(2) For IPR. Where treatment of the reclaimed water fails at any time to comply with standards specified in 9VAC25-740-90 C and is discharged to the water supply source (WSS), the permittee shall notify the owner or management of the waterworks that withdraws water from the affected WSS of the time, duration, volume, and pollutant characteristics of the noncompliant discharge within a period of less than or equal to half the shortest determined travel time between the reclamation system discharge and the waterworks intake, but in no case greater than eight hours. Such notification shall be implemented for a period of seven days or greater depending on the frequency and magnitude of the noncompliant reclaimed water discharge and the ability of subsequent multiple barriers as described in the permit application of the IPR project to mitigate the impact of the discharge on the WSS.

b. Notifications required for loss of service.

(1) For reuses other than IPR. Where reclaimed water service to end users will be interrupted due to planned causes, such as scheduled maintenance or repairs, the permittee shall provide advance notice to end users of the anticipated date and duration of the interrupted service. Where reclaimed water service to end users is disrupted by unplanned causes, such as an upset at the reclamation system, the permittee shall notify end users and the affected public of the disrupted service if it cannot or will not be restored within eight hours of discovery.

(2) For IPR. Where the discharge of the reclamation system to the WSS will be interrupted due to planned causes, such as scheduled maintenance or repairs, the permittee shall provide advance notice to the owner or management of the waterworks that withdraws water from the WSS of the anticipated date, duration, and cause for the interrupted discharge. Where the discharge of the reclamation system is interrupted by unplanned causes, such as an upset at the reclamation system, the permittee shall notify the waterworks owner or management of the interrupted discharge if the discharge cannot or will not be restored within eight hours of initial occurrence.

c. The notification component of the program shall describe all modes of communication that may be used to provide the notifications specified in subdivisions 2 a and b of this subsection. Modes of communication may include, but are not limited to, those described in subdivision 1 c of this subsection for the education component of the education and notification program.

B. Reclaimed water shall be used in a manner that is consistent with this chapter and with the conditions of the VPDES or VPA permit, such that public health and the environmental shall be protected.

C. Reclaimed water delivered to end users shall comply with reclaimed water standards required for the intended reuses at the point of delivery to end users.

D. There shall be no nuisance conditions resulting from the distribution, use, or storage of reclaimed water.

E. For all irrigation reuses of reclaimed water, the following shall be required:

1. There shall be no application of reclaimed water to the ground when it is saturated, frozen or covered with ice or snow, and during periods of rainfall.

2. The chosen method of irrigation shall minimize human contact with the reclaimed water.

3. Reclaimed water shall be prevented from coming into contact with drinking fountains, water coolers, or eating surfaces.

F. For bulk irrigation reuse of reclaimed water, the following shall be required:

1. Irrigation systems shall be designed, installed and adjusted to:

a. Provide uniform distribution of the reclaimed water over the irrigation site;

b. Prevent ponding or pooling of reclaimed water at the irrigation site;

c. Facilitate maintenance and harvesting of irrigated areas and preclude damage to the irrigation system from the use of maintenance or harvesting equipment;

d. Prevent aerosol carry-over from the irrigation site to areas beyond the setback distances described in subsection H of this section; and

e. Prevent clogging from algae or suspended solids.

2. All pipes, pumps, valve boxes and outlets of the irrigation system shall be designed, installed, and identified in accordance with 9VAC25-740-110 B.

3. Any reclaimed water runoff shall be confined to the irrigation reuse site unless authorized by the ~~board~~ department.

G. Overspray of surface waters, including wetlands, from irrigation or other reuses of reclaimed water is prohibited.

H. Setback distances for irrigation reuses of reclaimed water.

1. For sites irrigated with reclaimed water treated to Level 1, the setback distances provided in Table 170-H1 are required:

Table 170-H1
Setback Distances for Irrigation Reuses of Reclaimed Water Treated to Level 1

Feature Requiring Setback	Setback Distance
a. Potable water supply wells and springs and public water supply intakes	100 feet
b. Nonpotable water supply wells	10 feet
c. Limestone rock outcrops and sinkholes	50 feet

2. For sites irrigated with reclaimed water treated to Level 1, no setback distances are required from occupied dwellings and outdoor eating, drinking and bathing facilities. However, aerosol formation shall be minimized within 100 feet of occupied dwellings and outdoor eating, drinking and bathing facilities through the use of low trajectory nozzles for spray irrigation, above-ground drip irrigation, or other means.

3. For sites irrigated with reclaimed water treated to Level 2, the setback distances provided in Table 170-H2 are required:

Table 170-H2
Setback Distances for Irrigation Reuses of Reclaimed Water Treated to Level 2

Feature Requiring Setback	Setback Distance
a. Potable water supply wells and springs and public water supply intakes	200 feet
b. Nonpotable water supply wells	10 feet
c. Surface waters, including wetlands	50 feet
d. Occupied dwellings	200 feet
e. Property lines and areas accessible to the public	100 feet
f. Limestone rock outcrops and sinkholes	50 feet

4. For sites irrigated with reclaimed water treated to Level 2, the setback distances may be reduced as follows:

a. Up to but not exceeding 50% from occupied dwellings and areas accessible to the public if it can be demonstrated that alternative measures shall be implemented to provide an equivalent level of public health protection. Such measures shall include, but are not limited to, disinfection of the reclaimed water equivalent to Level 1, application of the reclaimed water by methods that minimize aerosol formation (e.g., low trajectory nozzles for spray irrigation, above-ground drip irrigation), installation of permanent physical barriers to prevent migration of aerosols from the reclaimed water irrigation site, or any combination thereof. Written consent of affected landowners is required to reduce setback distances from occupied dwellings.

b. Up to 100 % from property lines with written consent from adjacent landowners.

c. To but not less than 100 feet from potable water supply wells and springs, or public water supply intakes if it can be demonstrated that disinfection of the reclaimed water is equivalent to Level 1 and there are no other constituents of the reclaimed water present in quantities sufficient to be harmful to human health.

d. To but not less than 25 feet from surface waters, including wetlands, where reclaimed water shall be applied by methods that minimize aerosol formation (e.g., low trajectory nozzles for spray irrigation, above-ground drip irrigation); or permanent physical barriers are installed to prevent the migration of aerosols from the reclaimed water irrigation site to surface waters.

5. Application of reclaimed water shall not occur during winds of sufficient strength to cause overspray or aerosol drift into or beyond the buffer zones or setbacks specified in subdivisions 1 through 4 of this subsection.

6. For irrigation reuses where more than one setback distance may apply, the greater setback distance shall govern.

7. Unless specifically stated otherwise, all setback distances shall be measured horizontally.

I. Minimum separation distances for in-ground reclaimed water distribution pipelines specified in 9VAC25-740-110 B 3, shall apply to in-ground piping for irrigation systems of reclaimed water.

J. A setback distance of 100 feet horizontally shall be maintained from indoor aesthetic features (i.e., decorative waterfalls or fountains) that use reclaimed water treated to Level 1, to adjacent indoor public eating and drinking facilities where the aesthetic features have the potential to create aerosols and eating and drinking facilities are within the same room or building space.

K. A setback distance of 300 feet horizontally shall be provided from an open cooling tower to the site property line where reclaimed water treated to Level 2 is used in the tower. No setback distance shall be required from an open cooling tower to the site property line where a drift or mist eliminator is installed and properly operated or reclaimed water treated to Level 1 disinfection standards is used in the tower. Treatment of the reclaimed water to Level 1 disinfection standards may be provided by the industrial end user through the contract or agreement established by the permittee in accordance with 9VAC25-740-100 C 1 d.

9VAC25-740-180. Operational flow requirements.

A. When the monthly average flow into a reclamation system or SRS reaches 95% of the designated design flow authorized by the VPDES or VPA permit issued to that system for each month of any three-month period, the permittee shall within 30 days notify the ~~board~~ department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

B. The plan of action described in subsection A of this section shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem that could be reasonably anticipated, resulting from high flows entering the reclamation system or SRS.

C. Upon receipt of the permittee's plan of action described in subsection A of this section, the ~~board~~ department shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

D. Failure to timely submit an adequate plan of action in accordance with subsection A of this section shall be deemed a violation of the permit.

E. Nothing herein shall in any way impair the authority of the ~~board~~ department to take enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

9VAC25-740-200. Reporting.

A. Permittees of water reclamation systems and SRSs shall submit a monthly monitoring report to the ~~board~~ department. The report shall include monitoring results for parameters contained in the VPDES or VPA permit to demonstrate compliance with applicable reclaimed water standards of this chapter.

B. Interruption or loss of reclaimed water supply or discharge of any untreated or partially treated water that fails to comply with standards specified in the VPDES or VPA permit to the service area of intended reuse, shall be reported in accordance with procedures specified in the permit. This report shall also contain a description of any notification provided in accordance with 9VAC25-740-170 A 2.

C. Permittees of reclaimed water distribution systems shall submit an annual report to the ~~board~~ department on or before February 10 of the following year. The annual report shall, at a minimum:

1. Estimate the volume of reclaimed water distributed to the service area of the RWM plan, reported as monthly totals for a 12-month period from January 1 through December 31;

2. Provide for reclaimed water not treated to achieve BNR that is used within the service area of the RWM plan, the monthly average concentrations of total N and total P in the reclaimed water, an estimate of the monthly total volume of reclaimed water used for nonbulk irrigation and for bulk irrigation, the monthly total nutrient loads (N and P) to the service area resulting from nonbulk irrigation reuse and from bulk irrigation reuse, and the area in active reuse for nonbulk irrigation and for bulk irrigation within the service area, all reported for a 12-month period from January 1 through December 31; and

3. Provide a summary of ongoing education and notification program activities, including copies of education materials, as required by 9VAC25-740-170 A.

9VAC25-740-210. ~~Delegation of authority.~~ (Repealed.)

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

VA.R. Doc. No. R23-7282; Filed September 9, 2022, 2:33 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: **9VAC25-770. Virginia Financial Responsibility Requirements for Mitigation Associated with Tidal Dredging Projects (amending 9VAC25-770-10, 9VAC25-770-30, 9VAC25-770-60 through 9VAC25-770-140, 9VAC25-770-160; repealing 9VAC25-770-180).**

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

Effective Date: November 23, 2022.

Agency Contact: Dave Davis, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4105, FAX (804) 698-4032, or email dave.davis@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality, including changing "board" to "department" as necessary and removing provisions delegating authority.

9VAC25-770-10. Definitions.

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

"Applicant" means a person applying for a VWP individual or general permit.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Compensation" or "compensatory mitigation" means actions taken that provide some form of substitute aquatic resource for the impacted aquatic resource.

"Compensatory mitigation plan" means the written plan describing the proposed compensatory mitigation activities required by 9VAC25-210-80 of the Virginia Water Protection Permit Program Regulation.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality (DEQ) or an authorized representative.

"Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.

"Excavate" or "excavation" means ditching, dredging, or mechanized removal of earth, soil or rock.

"General permit" means a permit authorizing a specified category of activities.

"In-lieu fee fund" means a monetary fund operated by a nonprofit organization or governmental agency that receives financial contributions from persons impacting wetlands or streams pursuant to an authorized permitted activity and that expends the moneys received to provide consolidated compensatory mitigation for permitted wetland or stream impacts.

"Law" means the State Water Control Law of Virginia.

"Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent practicable, and then compensating for remaining unavoidable impacts of a proposed action.

"Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is developed and approved in accordance with all applicable federal and state laws or regulations for the establishment, use and operation of mitigation banks, and is operating under a signed banking agreement.

"Permittee" means the person who holds a VWP individual or general permit.

"Person" means any firm, corporation, association, or partnership, one or more individuals, or any governmental unit or agency of it.

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

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

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

"USACE" means the United States Army Corps of Engineers.

"VWP permit" means an individual ~~or general~~ permit issued by the department or a general permit issued as a regulation adopted by the board under § 62.1-44.15:5 of the Code of Virginia that authorizes activities otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as the Commonwealth of Virginia's § 401 certification.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

9VAC25-770-30. Compliance date.

An applicant for a VWP permit for completion of a dredging project in tidal waters must file proof of mitigation bank credit purchase or in-lieu fee fund donation or a financial responsibility mechanism with the ~~board~~ department at least 60 days prior to onset of any activity in permitted impact areas. The compensatory mitigation plan and financial responsibility documentation or proof of mitigation bank credit purchase or in-lieu fee fund donation shall be submitted by the permittee and approved by the ~~board~~ department prior to the onset of any dredging activities in permitted impact areas.

9VAC25-770-60. Transfer of permit.

The new permittee must submit proof of mitigation bank credit purchase or in-lieu fee fund donation or evidence of financial responsibility to the ~~board~~ department in accordance with this chapter within 60 days of the transfer of the permit from the existing permittee to the new permittee. If the old permittee has completed mitigation activities by filing proof of mitigation bank credit purchase or in-lieu fee fund donation

before the transfer of the permit, the new permittee is not required to do so or to provide any additional evidence of financial responsibility. When a transfer of the permit occurs, the old permittee shall continue to comply with the requirements of this chapter until the new permittee has demonstrated that he is complying with the requirements of this chapter. The new permittee shall demonstrate compliance with this chapter within 60 days of the date of the transfer of the permit. Upon demonstration to the ~~board~~ department by the new permittee of compliance with this chapter, the ~~board~~ department shall notify the old permittee that he or she no longer needs to comply with this chapter as of the date of demonstration.

9VAC25-770-70. Compensatory mitigation requirements.

A. Compensatory mitigation for any project subject to a VWP permit must include measures to avoid and reduce impacts to surface waters to the maximum extent practicable, and where impacts cannot be avoided, the means by which compensation will be accomplished to achieve no net loss of wetland acreage and function.

B. The applicable compensatory mitigation standards are described in 9VAC25-210-80 and 9VAC25-210-115 of the Virginia Water Protection Permit Program Regulation. All aspects of the compensatory mitigation plan, including documentation of financial responsibility or proof of mitigation bank credit purchase or in-lieu fee fund donation, shall be finalized, submitted and approved by the ~~board~~ department prior to the onset of any dredging activities in permitted impact areas.

9VAC25-770-80. Cost estimates for in-lieu fee fund donations and mitigation bank credit purchases.

A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee funds must submit to the ~~board~~ department as part of the final mitigation plan proof that the entity is willing to accept the contribution along with a detailed, written cost estimate.

B. Permittees with compensatory mitigation plans that provide for purchase of mitigation bank credits must provide to the ~~board~~ department as part of the final mitigation plan proof that the selected bank has available credits, along with a detailed, written cost estimate.

9VAC25-770-90. Cost estimate for compensatory mitigation activities other than in-lieu fee fund donations or mitigation bank credit purchases.

A. The permittee shall prepare for approval by the ~~board~~ department a detailed written estimate of the cost of implementing compensatory mitigation activities. The written cost estimate shall be submitted concurrently with the final compensatory mitigation plan.

1. The compensatory mitigation plan cost estimate shall equal the full cost of implementation of the plan.

2. The compensatory mitigation cost estimate shall be based on and include the costs to the permittee of hiring a third party to implement the compensatory mitigation plan. The third party may not be either a parent corporation or subsidiary of the permittee.

3. The compensatory mitigation cost estimate may not incorporate any salvage value that may be realized by the sale of materials, facility structures or equipment, land or other facility assets at the time of implementation of the plan.

B. If the length of the estimated project life exceeds one year, the permittee shall add to the total cost estimate an amount to represent an appropriate rate of inflation over the period covering the life of the project.

C. During the term of the VWP permit, the permittee shall revise the cost estimate concurrently with any revision made to the compensatory mitigation plan or at any time unforeseen circumstances occur which increase the implementation cost. The revised implementation cost estimate shall be adjusted for inflation as specified in subsection B of this section.

D. During the term of the VWP permit, the permittee may reduce the cost estimate and the amount of financial responsibility provided under this chapter, if it can be demonstrated that the cost estimate exceeds the cost of implementation of the compensatory mitigation plan. The permittee shall obtain the approval of the ~~board~~ department prior to reducing the amount of financial responsibility.

9VAC25-770-100. Payment of in-lieu fee fund donations and mitigation bank credit purchases.

A. Permittees with compensatory mitigation plans that provide for donations to in-lieu fee funds or mitigation bank credit purchases shall make the entire donation or purchase before the onset of activity in the permitted impact areas. Permittees shall submit documentation of the payment or donation to the ~~board~~ department for approval a minimum of 60 days prior to onset of activity in permitted areas.

B. A permittee may satisfy the requirements of this section, wholly or in part, by submitting a photocopy of the documentation submitted to the USACE pursuant to § 404 of the Clean Water Act (33 USC § 1251 et seq., as amended in 1987) documenting the donation or purchase for the current project along with a photocopy of the document issued by the USACE indicating approval of the documentation, if applicable. Any documentation of the in-lieu fee fund donation or mitigation banking credit purchase pursuant to this subsection must demonstrate clearly that the donation or purchase was made to provide compensatory mitigation for the project that is the subject of the VWP permit.

9VAC25-770-110. Allowable financial mechanisms for compensatory mitigation activities other than in-lieu fee fund donations or mitigation bank credit purchases.

A. If a permittee does not purchase mitigation bank credits or donate to an in-lieu fee fund as part of his compensatory mitigation plan, the permittee must demonstrate financial responsibility using one of the mechanisms specified in 9VAC25-770-120 through 9VAC25-770-150. The mechanisms used to demonstrate evidence of financial responsibility shall ensure that the funds necessary to meet the costs of completing compensatory mitigation requirements for the permitted project as described in 9VAC25-770-70 will be available whenever they are needed. Financial responsibility mechanisms shall be in the amount equal to the cost estimate approved by the ~~board~~ department.

B. The permittee shall provide continuous coverage to implement the compensatory mitigation plan until released from financial responsibility requirements by the ~~board~~ department.

C. The director may reject the proposed evidence of financial responsibility if the mechanism submitted does not adequately assure that funds will be available to complete the necessary compensatory mitigation activities. The permittee shall be notified in writing within 60 days of receipt of a complete financial responsibility submission of the tentative decision to accept or reject the proposed evidence.

9VAC25-770-120. Surety bond.

A. A permittee may satisfy the requirements of this chapter by obtaining a surety bond that conforms to the requirements of this section and by submitting an originally signed duplicate of the bond to the ~~board~~ department. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. Under the terms of the bond, the surety will become liable on the bond obligation when the permittee fails to perform as guaranteed by the bond.

C. The bond shall guarantee that the permittee or any other authorized person will:

1. Implement compensatory mitigation in accordance with the approved compensatory mitigation plan and other requirements in any VWP permit for the project;

2. Implement the compensatory mitigation plan following an order to do so issued by the ~~board~~ department or by a court.

D. The surety bond shall guarantee that the permittee shall provide alternate evidence of financial responsibility as specified in this article within 60 days after receipt by the ~~board~~ department of a notice of cancellation of the bond from the surety.

E. If the approved cost estimate increases to an amount greater than the amount of the penal sum of the bond, the permittee shall, within 60 days after the increase, cause the penal sum of the bond to be increased to an amount at least equal to the new estimate and submit a revised mechanism to the ~~board~~ department. Whenever the cost estimate decreases, the penal sum may be reduced to the amount of the cost estimate following written approval by the ~~board~~ department. Notice of an increase or decrease in the penal sum shall be sent to the ~~board~~ department by certified mail within 60 days after the change.

F. The bond shall remain in force for its term unless the surety sends written notice of cancellation by certified mail to the permittee and to the ~~board~~ department. Cancellation cannot occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the ~~board~~ department as shown on the signed return receipt. The surety shall provide written notification to the ~~board~~ department by certified mail no less than 120 days prior to the expiration date of the bond, that the bond will expire and the date the bond will expire.

G. The ~~board~~ department shall cash the surety bond if it is not replaced 60 days prior to expiration with alternate evidence of financial responsibility acceptable to the ~~board~~ department or if the permittee fails to fulfill the conditions of the bond.

H. In regards to implementation of a compensatory mitigation plan either by the permittee, by an authorized third party, or by the surety, proper implementation of a compensatory mitigation plan shall be deemed to have occurred when the ~~board~~ department determines that compensatory mitigation has been completed. Such implementation shall be deemed to have been completed when the provisions of the permittee's approved compensatory mitigation plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the compensatory mitigation plan have been complied with.

I. The surety bond shall be worded as described in 9VAC25-770-190 A, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

9VAC25-770-130. Letter of credit.

A. A permittee may satisfy the requirements of this chapter by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section and by submitting an originally signed duplicate of the letter of credit to the ~~board~~ department. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for implementation of the compensatory

mitigation plan. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year. If the issuing institution decides not to extend the letter of credit beyond the current expiration date, it shall, at least 120 days before the expiration date, notify both the permittee and the ~~board~~ department by certified mail of that decision. The 120-day period will begin on the date of receipt by the ~~board~~ department as shown on the signed return receipt. If the letter of credit is canceled by the issuing institution, the permittee shall obtain alternate evidence of financial responsibility to be in effect prior to the expiration date of the letter of credit.

C. Whenever the approved cost estimate increases to an amount greater than the amount of credit, the permittee shall, within 60 days of the increase, cause the amount of credit to be increased to an amount at least equal to the new estimate and submit a revised mechanism to the ~~board~~ department. Whenever the cost estimate decreases, the letter of credit may be reduced to the amount of the new estimate following written approval by the ~~board~~ department.

D. The ~~board~~ department shall cash the letter of credit if it is not replaced 60 days prior to expiration with alternate evidence of financial responsibility acceptable to the ~~board~~ department or if the permittee has failed to implement compensatory mitigation in accordance with the approved plan or other permit or special order requirements.

E. In regards to implementation of a compensatory mitigation plan either by the permittee or by an authorized third party, proper implementation of a compensatory mitigation plan shall be deemed to have occurred when the ~~board~~ department determines that compensatory mitigation has been completed. Such implementation shall be deemed to have been completed when the provisions of the permittee's approved compensatory mitigation plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the compensatory mitigation plan have been complied with.

F. The permittee may cancel the letter of credit only if alternate evidence of financial responsibility acceptable to the ~~board~~ department is substituted as specified in this chapter or if the permittee is released by the ~~board~~ department from the requirements of this regulation.

G. The ~~board~~ department shall return the original letter of credit to the issuing institution for termination when:

1. The permittee substitutes acceptable alternate evidence of financial responsibility for implementation of the compensatory mitigation plan as specified in this chapter; or

2. The ~~board~~ department notifies the permittee that he is no longer required by this chapter to maintain evidence of financial responsibility for implementation of the compensatory mitigation plan for the project.

H. The letter of credit shall be worded as described in 9VAC25-770-190 B, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

9VAC25-770-140. Certificate of deposit.

A. A permittee may satisfy the requirements of this chapter, wholly or in part, by obtaining a certificate of deposit and assigning all rights, title and interest of the certificate of deposit to the ~~board~~ department, conditioned so that the permittee shall comply with the approved compensatory mitigation plan filed for the project. The issuing institution shall be an entity that has the authority to issue certificates of deposit in the Commonwealth of Virginia and whose operations are regulated and examined by a federal agency or the State Corporation Commission (Commonwealth of Virginia). The permittee must submit the originally signed assignment and the originally signed certificate of deposit, if applicable, to the ~~board~~ department.

B. The amount of the certificate of deposit shall be at least equal to the current compensatory mitigation cost estimate for the project for which the permit application has been filed or any part thereof not covered by other financial responsibility mechanisms. The permittee shall maintain the certificate of deposit and assignment until all activities required by the approved compensatory mitigation plan have been completed.

C. The permittee shall be entitled to demand, receive and recover the interest and income from the certificate of deposit as it becomes due and payable as long as the market value of the certificate of deposit used continues to at least equal the amount of the current cost estimate for compensatory mitigation activities.

D. The ~~board~~ department shall cash the certificate of deposit if the permittee has failed to implement compensatory mitigation in accordance with the approved plan or other permit or special order requirements.

E. In regards to implementation of a compensatory mitigation plan either by the permittee or by an authorized third party, proper implementation of a compensatory mitigation plan shall be deemed to have occurred when the ~~board~~ department determines that compensatory mitigation has been completed. Such implementation shall be deemed to have been completed when the provisions of the permittee's approved compensatory mitigation plan have been executed and the provisions of any other permit requirements or enforcement orders relative to the compensatory mitigation plan have been complied with.

F. Whenever the approved compensatory mitigation cost estimate increases to an amount greater than the amount of the certificate of deposit, the permittee shall, within 60 days of the increase, cause the amount of the certificate of deposit to be increased to an amount at least equal to the new estimate or obtain another certificate of deposit to cover the increase. Whenever the cost estimate decreases, the permittee may

reduce the amount of the certificate of deposit to the new estimate following written approval by the ~~board~~ department.

G. The ~~board~~ department shall return the original assignment and certificate of deposit, if applicable, to the issuing institution for termination when:

1. The permittee substitutes acceptable alternate evidence of financial responsibility for implementation of the compensatory mitigation plan as specified in this chapter; or

2. The ~~board~~ department notifies the permittee that he is no longer required by this chapter to maintain evidence of financial responsibility for implementation of the compensatory mitigation plan for the project.

H. The assignment shall be worded as described in 9VAC25-770-190 C, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

9VAC25-770-160. Release of permittee from the financial responsibility requirements.

A. The permittee shall submit a notice that compensatory mitigation has been completed in accordance with the requirements of the approved compensatory mitigation plan, permit or other order, within 60 days of completion of all compensatory mitigation requirements. Unless the ~~board~~ department has reason to believe that the compensatory mitigation activities have not been implemented in accordance with the appropriate plan or other requirements, the ~~board~~ department shall notify the permittee in writing that the permittee is no longer required to maintain evidence of financial responsibility for the project. Such notice shall release the permittee only from the requirements for financial responsibility for the project; it does not release the permittee from legal responsibility for meeting the compensatory mitigation requirements.

B. Where a VWP permit for the project is no longer required under law, the ~~board~~ department shall notify the permittee in writing that the permittee is no longer required to maintain evidence of financial responsibility for the project. Such notice shall release the permittee only from the requirements for financial responsibility for the project.

9VAC25-770-180. ~~Delegation of authority.~~ (Repealed.)

~~The Director of the Department of Environmental Quality or a designee acting for him may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

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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: **9VAC25-780. Local and Regional Water Supply Planning (amending 9VAC25-780-70).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.38:1 of the Code of Virginia.

Effective Date: November 23, 2022.

Agency Contact: Ryan Green, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4258, FAX (804) 698-4178, or email ryan.green@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-780-70. Existing water source information.

A. A water plan shall include current information on existing water sources.

B. A water plan shall include, for community water systems using ground water, the name and identification number of the well or wells, the well depth, the casing depth, the screen depth (top and bottom) or water zones, the well diameter, the design capacity for the average daily withdrawal and maximum daily withdrawal, the system capacity permitted by Department of Health, and the annual and monthly permitted amounts contained in ground water withdrawal permits for all wells located within ground water management areas.

C. A water plan shall include, for community water systems using surface water reservoirs, the name of the reservoirs, the sub-basins in which the reservoirs are located, the drainage area, the amount of on-stream storage available for water supply, the design capacity for average daily and maximum daily withdrawals from the reservoirs, the safe yield of the reservoirs, the capacity of any associated water treatment plant, the Department of Health permitted capacity of the systems, and any limitations on withdrawal established by permits issued by the ~~board~~ department. For a community water system that operates a system of interconnected reservoirs, the reporting of the design capacity for withdrawals, designed average daily withdrawal, the designed maximum daily withdrawal and the safe yield may be for the entire system or may be reported as subsets of the system. The plan shall designate which reservoirs and which intakes constitute a system for the purposes of this paragraph. The plan must report the drainage area and amount of storage available for water supply from each reservoir independently.

D. A water plan shall include, for community water systems using stream intakes, the name of the stream or river, the drainage area of the intake, the sub-basin in which the intake is located, the design capacity for average daily and designed maximum daily withdrawal from the stream, the safe yield, the lowest daily flow of record, the design capacity of the pump station, the design capacity of the water treatment plant, the capacity of the system permitted by the Department of Health, and any limitation on withdrawals established by permits issued by the ~~board~~ department.

E. To the extent that information is available, a water plan shall include a list of all self-supplied users of more than 300,000 gallons per month of surface water for nonagricultural uses, the name of the water body utilized, the design capacity for the average daily and maximum daily withdrawal, and any limitation on withdrawals established by permits issued by the ~~board~~ department, the Department of Health, or any other agency.

F. To the extent that information is available, a water plan shall include, for all self-supplied users of more than 300,000 gallons per month of ground water for nonagricultural uses, the name and identification number of the well or wells, the well depth, the casing depth, the screen depth (top and bottom) or water zones, the well diameter, the design capacity for the average daily and maximum daily withdrawal and any limitation on withdrawal established by permits issued by the ~~board~~ department.

G. A water plan shall include the amount of ground or surface water to be purchased from water supply systems outside the geographic boundaries of the planning area on a maximum daily and average annual basis, any contractual limitations on the purchase of the water including but not limited to the term of any contract or agreement, the recipient(s) or areas served by the water purchased, and the name(s) of the supplier(s).

H. A plan shall include the amount of water available to be purchased outside the planning area from any source with the capacity to withdraw more than 300,000 gallons per month of surface and ground water, reported on a maximum daily and average annual basis and any contractual limitations on the purchase of the water including but not limited to the term of any contract or agreement, the geographic region(s) that receive the water purchased, and the name(s) of the supplier(s).

I. A water plan shall include, to the extent possible, a list of agricultural users who utilize more than 300,000 gallons per month, an estimate of total agricultural usage by source, whether the use is irrigation or nonirrigation, and whether the source is surface or ground water.

J. A water plan shall include an estimate of the number of residences and businesses that are self-supplied by individual wells withdrawing less than 300,000 gallons per month and an estimate of the population served by individual wells.

K. When available, a water plan shall include a summary of findings and recommendations from applicable source water assessment plans or wellhead protection programs.

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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: **9VAC25-790. Sewage Collection and Treatment Regulations (amending 9VAC25-790-10, 9VAC25-790-30, 9VAC25-790-50, 9VAC25-790-110, 9VAC25-790-460, 9VAC25-790-880).**

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

Effective Date: November 23, 2022.

Agency Contact: Andrew Hammond, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4101, FAX (804) 698-4178, or email andrew.hammond@deq.virginia.gov.

Summary:

Pursuant to Chapter 356 of the 2022 Acts of Assembly, the amendments conform the regulation to a statutorily change shifting authority to issue and enforce permits from the State Water Control Board to the Department of Environmental Quality.

9VAC25-790-10. Definitions.

Unless otherwise specified, for the purpose of this chapter the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Area engineer" means the licensed professional engineer at the Department of Environmental Quality responsible for review and approval of construction plans and related materials who serves the area where a sewerage system or treatment works is located.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains limited levels of pollutants, such that it is acceptable for use by land application, marketing or distribution in accordance with the Virginia Pollution Abatement Permit Regulation (9VAC25-32) and the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31).

"Biosolids use facility" means a type of treatment works that specifically treats or stores biosolids.

"Board" means the Virginia State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"CTC" means a Certificate to Construct issued in accordance with the provisions of this chapter. This certificate will normally be in the form of a letter granting authorization for construction.

"CTO" means a Certificate to Operate issued in accordance with the provisions of this chapter. This certificate will normally be in the form of a letter granting authorization for operation.

"Critical areas/waters" means areas/waters in proximity to shellfish waters, a public water supply, recreation or other waters where health or water quality concerns are identified by the Virginia Department of Health or the State Water Control Board.

"Conventional design" means the designs for unit operations (treatment system component) or specific equipment that has been in satisfactory operation for a period of one year or more, for which adequate operational information has been submitted to the department to verify that the unit operation or equipment is designed in substantial compliance with this chapter. Equipment or processes not considered to be conventional may be deemed as alternative or nonconventional.

"Department" means the Virginia Department of Environmental Quality.

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

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

"Effluent limitations" means any restrictions imposed by the board or department on quantities, discharge rates, and concentrations of pollutants that are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"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 chapter.

"Indirect discharger" means a nondomestic discharger introducing pollutants to a POTW.

"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 the distribution of treated wastewater of acceptable quality, referred to as effluent, or supernatant from biosolids use facilities or stabilized sewage sludge of acceptable quality, referred to as biosolids, upon, or insertion into, the land with a uniform application rate for the purpose of assimilation, utilization, or pollutant removal. Bulk disposal of stabilized sludge in a confined area, such as in landfills, is not land application.

"Licensee" means an individual holding a valid license issued by the Board for Waterworks and Wastewater Works Operators.

"Licensed operator" means a licensee in the class of the treatment works who is an operator at the treatment works.

"Local review" means a program for obtaining advance approval by the director of an owner's general local plans and specifications for future connections to, or extensions of, existing sewerage systems and of a plan for implementing them, in lieu of obtaining a CTC and CTO for each project within the scope of the plan.

"Manual" and "Manual of Practice" means Part III (9VAC25-790-310 et seq.) of the Sewage Collection and Treatment Regulations.

"Operate" means the act of making a decision on one's own volition (i) to place into or take out of service a unit process or unit processes or (ii) to make or cause adjustments in the operation of a unit process or unit processes at a treatment works.

"Operating staff" means individuals employed or appointed by any owner to work at a treatment works. Included in this definition are licensees whether or not their license is appropriate for the classification and category of the treatment works.

"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 treatment 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 a treatment works.

"Owner" means the Commonwealth or any of its political subdivisions, including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state

waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the State Water Control Law.

"Permit" in the context of this chapter means a CTC or a CTO. Permits issued under 9VAC25-31 or 9VAC25-32 will be identified respectively as VPDES permits or VPA permits.

"Primary sludge" means sewage sludge removed from primary settling tanks designed in accordance with this chapter that is readily thickened by gravity thickeners designed in accordance with this chapter.

"Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into the water. 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 or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by the ~~board~~ department, and if the ~~board~~ department determines that the injection or disposal will not 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 for other reasonable uses; provided that: (a) an alteration of the physical, chemical or biological property of state waters, or either a discharge, or a 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 State Water Control Board are "pollution" for the terms and purposes of this chapter.

"Reliability" means a measure of the ability of a component or system to perform its designated function without failure or interruption of service.

"Responsible charge" means designation by the owner of any individual to have the duty and authority to operate a treatment works.

"Settled sewage" is effluent from a basin in which sewage is held or remains in quiescent conditions for 12 hours or more and the residual sewage sludge is not reintroduced to the effluent following the holding period. Sewage flows not in conformance with these conditions providing settled sewage shall be defined as nonsettled sewage.

"Sewage" means the water-carried and nonwater-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" or "sludge" means any solid, semisolid, or liquid residues which contain materials removed from municipal or domestic wastewater during treatment including primary and secondary residues. Other residuals or solid wastes consisting of materials collected and removed by sewage treatment, septage and portable toilet wastes are so included in this definition. Liquid sludge contains less than 15% dry residue by weight. Dewatered sludge contains 15% or more dry residue by weight.

"Sewerage system" or "sewage collection system" means a sewage collection system consisting of pipelines or conduits, pumping stations and force mains and all other construction, devices and appliances appurtenant thereto, used for the collection and conveyance of sewage to a treatment works or point of ultimate disposal.

"Shall" or "will" means a mandatory requirement.

"Should" means a recommendation.

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

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

"Substantial compliance" means designs that do not exactly conform to the guidelines set forth in Part III as contained in documents submitted pursuant to this chapter but whose construction will not substantially affect health considerations or performance of the sewerage system or treatment works.

"Subsurface disposal" means a sewerage system involving the controlled distribution of treated sewage effluent below the ground surface in a manner that may provide additional treatment and assimilation of the effluent within the soil so as not to create a point source discharge or result in pollution of surface waters.

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

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

"Treatment works" means any device or system used in the storage, treatment, disposal or reclamation of sewage, sewage sludge or combinations of sewage and industrial wastes, including but 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 mean land application of biosolids on private land, as permitted under the Virginia Pollution Abatement Permit Regulation (9VAC25-32) and the Virginia Pollutant Discharge Elimination System Permit Regulation (9VAC25-31).

"Virginia Pollution Abatement (VPA) permit" means a document issued by the ~~board,~~ department pursuant to 9VAC25-32 or a general permit issued as a regulation adopted by the board in accordance with 9VAC25-32-260, authorizing pollutant management activities under prescribed conditions.

"Virginia Pollutant Discharge Elimination System (VPDES) Permit" means a document issued by the ~~board,~~ department pursuant to 9VAC25-31 or a general permit issued as a regulation adopted by the board in accordance with 9VAC25-31-170, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

"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 State Water Control Board under § 62.l-44.15(3a) of the Code of Virginia as the State Water Quality Standards (9VAC25-260).

9VAC25-790-30. Extent.

A. Powers and procedures. The ~~board~~ department reserves the right to utilize any lawful procedure for the enforcement of this chapter and standards contained in this chapter.

B. Establishment. Authority for the regulations and standards contained in this chapter for the operation, construction, or modification of sewerage systems or treatment works are established, pursuant to § 62.1-44.19 of the Code of Virginia.

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

9VAC25-790-50. CTCs and CTOs.

A. No owner shall cause or allow the construction, expansion or modification (change of 25% or more in capacity or performance capability or 20% for a biosolids use facility) of a sewerage system or treatment works except in compliance with a CTC from the director unless as otherwise provided for by this chapter and standards contained in this chapter. Furthermore, no owner shall cause or allow any sewerage systems or treatment works to be operated except in compliance with a CTO issued by the director which authorizes the operation of the sewerage systems treatment works including biosolids use facilities unless otherwise provided for by this chapter and standards contained in this chapter. Conditions may be imposed on the issuance of any CTC or CTO, and no sewerage systems or treatment works may be constructed, modified, or operated in violation of these conditions.

B. Discharges of 1,000 gpd or less. On-site (located within owners property) residential sewage treatment works having a design capacity of 1,000 gallons per day or less may not be governed by this chapter and standards contained in this chapter if the performance reliability of such technology has been established by an approved testing program (9VAC25-790-210). These treatment works are regulated by other applicable regulations of the board (9VAC25-110) and of the Virginia Department of Health (12VAC5-610 and 12VAC5-640). Owners of such treatment works shall make application in accordance with and obtain the necessary permits from the board, department, or the Virginia Department of Health as appropriate via the application procedures established for such treatment works.

9VAC25-790-110. Preliminary engineering proposal.

A. Objective. The objective is to facilitate a determination by the department that the proposed design selected by the owner either requires, or does not require, submission of design documents for a formal technical evaluation to establish that the following standards will be reliably met by operation of the facility or system: (i) compliance with effluent limitations and treatment requirements established by the board or department; and (ii) conformance with applicable minimum requirements established by this chapter and standards contained in this chapter, in order that a CTC be issued.

B. Content. The preliminary engineering proposal when submitted for evaluation shall consist of an engineering report

and preliminary plans which shall contain the necessary data to portray the sewerage system or treatment works problems and solutions. The requirement for a complete preliminary engineering proposal for small flow or minor projects (design flow less than one million gallons per day (mgd)) can be waived by the department in accordance with the letter from the owner's engineer summarizing the agreements reached at the preliminary engineering conference. For all proposals involving sewerage systems or treatment works, whether new or upgraded, the engineer shall make an evaluation of the l00-year flood elevation at the proposed site or sites, using available data and sound hydrologic principles. If a flood potential is indicated, the flood plain boundaries shall be delineated on a site map, showing its relation to the proposed facility or facilities and actions proposed to comply with this chapter shall be included in the preliminary engineering proposal or with the letter summarizing the agreements reached at the preliminary engineering conference. A conceptual plan for closure of the treatment works shall be discussed prior to final design to anticipate such an occurrence. On major projects (design flow of 1 mgd or more) excluding sewerage systems that are exempted from technical evaluation, the preliminary engineering proposal can include as a minimum the following information as applicable:

1. Mapping of present site location and evaluation of site constraints.

2. Data supporting predicted service population.

3. Identification of specific service area for immediate consideration and possible extensions.

4. Data, including reliable measurements or predictions of design flow and analyses of sewage constituents as a basis of process design.

5. Description of treatment process and flow plans identifying the proposed arrangement of basins, piping and related equipment with unit operation design parameters and sizes.

6. Description of sludge management method.

7. Plan for imposed operations requirements, i.e., certain unit operations may be required to operate independently of others in accordance with the reliability classification, while achieving the treatment performance necessary to meet permit limits under average design conditions.

8. Demonstration of compliance with state and local laws and regulations.

9. Summary of findings, conclusions and recommendations.

10. Description of existing institutional constraints or other unresolved problems that influence selection of alternative solutions.

11. Estimate of capital and operating costs of all alternatives presented if available as public information.

12. For those projects for which a Virginia Revolving Loan will be requested, the ways in which the special requirements contained in Title II of P.L. 92-500 will be met (infiltration, cost effectiveness, etc.).

13. Staffing and operating requirements for facility.

14. Identification consistent with all applicable area wide plans, of drainage basin, service area, and metropolitan area plans.

15. Designation of owner's representative for design purposes.

16. For land application proposals, the information required by Part III (9VAC25-790-310 et seq.) of this chapter, as appropriate.

The format for the Preliminary Engineering Proposal is listed in Part IV (9VAC25-790-940 et seq.) of this chapter.

C. Approval. The department will approve or disapprove the preliminary engineering proposal and notify the owner in accordance with 9VAC25-790-80 C.

9VAC25-790-460. Standards.

A. The minimum degree of treatment to be provided shall be adequate in design to produce an effluent in accordance with this chapter, that will comply with the provisions of the State Water Control Law and federal law, and any water quality standards adopted by the State Water Control Board or effluent limitations adopted by the State Water Control Board or Department of Environmental Quality or orders issued by the ~~State Water Control Board or~~ Department of Environmental Quality. The expected performance levels of conventional treatment processes are described in subsection F of this section.

B. Industrial flows. Treatment works receiving industrial wastewater flows at a rate or volume exceeding 90% of the combined average daily influent flow can be designed and operated through the applicable requirements imposed by the State Water Control ~~Board/Department~~ Board or Department of Environmental Quality, provided that public health and welfare protection issues are resolved. Otherwise, consideration shall be given to the character of industrial wastes in the design of the treatment works. In such cases, the treatability characteristics of the combined (sewage and industrial) wastewater shall be provided and addressed in the treatment process design. Pilot-scale testing as described in this chapter may be required to predict the full-scale treatment works operations.

C. Design loadings. Design loading refers to the established capacity of a unit operation or treatment process to reliably achieve a target performance level under projected operating conditions. Component parts and unit operations of the treatment works shall be arranged for greatest operating

convenience, flexibility, economy, and to facilitate installation of future units.

1. Treatment works to serve existing sewerage systems shall be designed on the basis of established average sewage characteristics with sufficient capacity to process peak loadings. Excessive inflow/infiltration is an indication of deficiencies in the sewerage system and the design engineer shall provide an acceptable plan for eliminating or handling these excessive flows so that there will be no discharge of inadequately treated wastewaters or impairment of the treatment process.

2. A new treatment works must be designed in accordance with anticipated loadings. Table 3, found in this section, presents generally accepted minimum design flows and loadings. Deviations from Table 3 shall be based on sound engineering knowledge, experience and acceptable data substantiated in the design consultant's report. Numbers of persons per dwelling shall be based upon planning projections derived from an official source.

3. The design of treatment process unit operations or equipment shall be based on the average rate of sewage flow per 24 hours except where significant deviation from the normal daily or diurnal flow pattern is noted. The design flow for industrial wastewater flow contributions shall be determined from the observed rate of flow during periods of significant discharge or, in the case of proposed or new contributions, the industrial owner shall provide flow projections based on existing facilities of a similar nature. The following factors shall be included in determining design flows:

a. Peak rates of flow delivered through conduits as influent to the treatment process unit operations.

b. Data from similar municipalities, if applicable.

c. Wet weather flows.

4. The design organic loading should be based on the results of acceptable analytical testing of the wastewater or similar wastewater and shall be computed in the same manner used in determining design flow.

5. All piping and channels shall be designed to carry the maximum expected flow. If possible, the influent interceptor or sewer shall be designed for open channel flow at atmospheric pressure. If a force main is used to transmit the influent to the treatment works, a surge or equalization basin should be provided upstream of biological unit operations to provide a more uniform loading. Bottom corners of flow channels shall be filled and any recessed areas or corners where solids can accumulate shall be eliminated. Suitable gates and valves shall be placed in channels to seal off unused sections which might accumulate solids and to provide for maintenance.

D. Pilot plant studies. Pilot plants are defined as small scale performance models of full size equipment or unit operation design. The physical size of pilot plants varies from laboratory bench-scale reactors, with volumetric capacities of one or more liters up to several gallons, up to larger capacity arrangements of pumps, channels, pipes and tankage capable of processing thousands of gallons per day of wastewater.

Pilot scale studies are to include detailed monitoring of treatment performance under operating conditions similar to design sizes, including the proper loading factors. A sampling and analytical testing program is to be developed by the owner and evaluated by the department in order that the results of pilot plant studies can be utilized to verify full size designs.

E. Grease management. An interceptor basin or basins shall be provided to separate oil and grease from wastewater flows discharged to sewage collection systems whenever such contributions will detrimentally affect the capacity of the collection system or treatment works such that permit violations will actually or potentially occur, or such contributions will result in an actual or a potential threat to the safety of the operational staff. Interceptor basins shall be located in compliance with the Statewide Building Code as close to the source of oil and grease as practical. Interceptor basins shall be sized in accordance with the applicable building codes and local standards but shall be designed as a minimum to retain the volume of flow containing the oil or grease for each continuous discharge occurrence. But interceptor basins shall also provide a minimum volume in accordance with the following:

1. Provide two gallons of volume for each pound of grease received; or

2. Provide a minimum retention period of three hours for the average daily volume of flow received.

Interceptor basins shall be routinely maintained, including the periodic, scheduled removal of accumulations of oil and grease, within a portion of the basin volume as necessary, to prevent detrimental effects on system operation. The oil and grease shall be handled and managed in accordance with state and federal laws and regulations.

F. Expected performance. Conventionally designed sewage treatment unit operations and processes should result in an expected performance level when processing design loadings in accordance with this chapter (see Table 4 of this section). A conventional arrangement of unit operations would include primary and secondary phases. The primary phase involves the use of suspended solids setting basins called primary clarifiers. The secondary phase typically includes a biological reactor and secondary clarifier to maintain a population of microorganisms (biomass) capable of achieving a significant reduction of organic matter (Biochemical Oxygen Demand) contained in the sewage. Advanced treatment processes will include primary, secondary and tertiary phases, typically involving filtration unit operations. Conventional processes can be modified to provide for reduced levels of nutrients in the

treated effluent as described in Article 9 (9VAC25-790-870 et seq.) of this part. The use of nonconventional processes to achieve required performance levels shall be considered in accordance with the provisions of Article 2 (9VAC25-790-380 et seq.) of this part.

TABLE 2.
BUFFER ZONE REQUIREMENTS FOR PRIMARY AND SECONDARY SEWAGE TREATMENT UNIT OPERATIONS*.

A. Unit Operations That Are Totally Enclosed(1)	
DESIGN FLOW, gpd	None
1. <1,000	50 feet
2. >1,000 to <500,000	100 feet
3. Greater than 500,000	
B. Unit Operations Using Low Intensity Mixing or Quiescent System(2)	
DESIGN FLOW, gpd	BUFFER ZONE(4)
1. <40,000	200 feet
2. >40,000 to <500,000	300 feet
3. Greater than 500,000	400 feet
C. Unit Operations Using Turbulent High Intensity Aeration or Mixing(3)	
DESIGN FLOW, gpd	BUFFER ZONE(4)
1. <40,000	300 feet
2. >40,000 to <500,000	400 feet
3. Greater than 500,000	600 feet

*Notes:

(1)For example, package plant with units totally enclosed as an integral part of its design and manufacture. A package plant treatment works is defined by these regulations as a preengineered and prefabricated structural arrangement of tankage and channels with all necessary components for onsite assembly and installation. The design flow of package plants should be less than 0.1 mgd. Also frequent agricultural use of Class I treated sludge.

(2)For example, covered basins, bottom tube aerated facultative lagoons or ponds, or surface flow application of treated effluent. Also, frequent agricultural use of Class II treated sludge.

(3)For example, uncovered surface mixed basins or trajectory spray irrigation for land application of treated effluent. Also frequent agricultural use of Class III treated sludge.

(4)Discharge locations shall be located no closer than 100 feet and up to 200 feet from any private or public water supply source.

TABLE 3.
CONTRIBUTING SEWAGE FLOW ESTIMATES TO BE USED AS A DESIGN BASIS FOR NEW SEWAGE WORKS.

Discharge facility(1)	Contributing Design Units	Flow gpd	BOD_5 #day(3)	S.S. #day	Flow duration, hours
Dwellings	Per person	100(2)	0.2	0.2	24
Schools w/showers and cafeteria	Per person	16	0.04	0.04	8
Schools w/o showers w/cafeteria	Per person	10	0.025	0.025	8
Boarding Schools	Per person	75	0.2	0.2	16
Motels @ 65 gal. per person (rooms only)	Per room	130	0.26	0.26	24
Trailer courts @ 3 persons/trailer	Per trailer	300	0.6	0.6	24
Restaurants	Per seat	50	0.2	0.2	16
Interstate or through highway restaurants	Per seat	180	0.7	0.7	16
Interstate rest areas	Per person	5	0.01	0.01	24
Service Stations	Per vehicle serviced	10	0.01	0.01	16
Factories	Per person/per 8-hr. shift	15–35	0.03–0.07	0.03–0.07	Oper. Per.
Shopping centers	Per 1,000 square foot of ultimate floor space	200–300	0.1	0.1	12
Hospitals	Per bed	300	0.6	0.6	24
Nursing Homes	Per bed	200	0.3	0.3	24
Doctor's offices in medical centers	Per 1000 square foot	500	0.1	0.1	12

Laundromats, 9–12 machines	Per machine	500	0.3	0.3	16
Community colleges	Per student & faculty	15	0.03	0.03	12
Swimming pools	Per swimmer	10	0.001	0.001	12
Theaters (drive-in type)	Per car	5	0.01	0.01	4
Theaters (auditorium type)	Per seat	5	0.01	0.01	12
Picnic areas	Per person	5	0.01	0.01	12
Camps, resort day & night w/limited plumbing	Per camp site	50	0.05	0.05	24
Luxury camps w/flush toilets	Per camp site	100	0.1	0.1	24

Notes:

(1)Colleges, universities and boarding institutions of special nature to be determined in accordance with subdivision B 2 of this section.

(2)Includes minimal infiltrations/inflow (I/I) allowance and minor contributions from small commercial/industrial establishments.

(3)#/Day - Denotes pounds per day.

TABLE 4.
EXPECTED PERFORMANCE FOR VARIOUS CONVENTIONAL TREATMENT PROCESSES.

Effluent Value Range(1) (mg/l)

	BOD_5(2)	TSS(2)
A. Primary/secondary treatment process.		
1. Primary	100–180	100–150
2. Facultative Aerated Lagoon	24–45	24–30
a. With Clarification		
b. Without Clarification		
3. Biological contactors	24–50	24–50
4. Activated Sludge	24–30	24–30
5. Biological Plus Filtration(3)	10–20	5–15
6. Primary plus constructed wetlands(4)	24–40	24–40
7. Primary plus Aquatic Ponds(5)	20–30	20–30

B. Advanced treatment process.

	BOD_5	TSS	PO_4-P	NH_3-N
1. Physical chemical(6) and	45–95	20–70	1–10	20–30
a. F	20–70	1–20	1–10	20–30
b. F & AC	5–10	0.1–10	1–10	20–30
2. Biological(7) and				
a. C & S	12–20	12–24	0.5–10	5–30
b. C, S, & F	6–11	0.5–15	0.5–10	5–30
c. C, S, F & AC	1–5	0.1–5	0.1–10	5–30
d. Microscreening				
(1) 21 microns @ 5 GPM/sq. ft.	2–14	1–14	20–30	5–30
(2) 35 microns @ 8 GPM/sq. ft.	5–20	3–17	20–30	5–30
3. BNR(8)	20–30	20–30	2–4	1–3

4. Other biological and natural treatment processes evaluated on a case-by-case basis.

NOTES:

(1)Ranges reflect normal expected upper and lower values for process, performance, considering design and operations variability. Upper range value reflects performance expected for conventional loadings.

(2)Effluent values for soluble phosphorus and ammonia nitrogen are not given for conventional primary and biological processes since these are not designed as nutrient removal processes. However, phosphorus is removed in biological sludge and ammonia is oxidized to nitrate in biological effluents. Typical effluent values range from 4 to 5 mg/l of total phosphorus and from nearly 0 to more than 30 mg/l ammonia, for fully nitrified to unnitrified effluent.

(3)Coagulant and polymer addition prior to filter to be provided.

(4)Subsurface flow microbial-plant filter system with a minimum detention of three days, or surface flow system with a minimum retention of six days.

(5)Aquatic pond providing one acre of surface area (5-foot depth) per 200 population equivalent or less.

(6)Physical - Chemical: means coagulation by aluminum, iron or other metal salts or, precipitation by lime, followed by clarification and may include filtration. Unit processes include, as a minimum, flash mix, flocculation, and sedimentation. Filtration operations will be necessary to achieve effluent TSS levels of 15 mg/l or less.

(7)Biological: means any of the biological treatment processes including activated sludge and its process variations, attached growth systems including various filters, and facultative and fully

aerated lagoons which are capable of producing a secondary effluent containing 30 mg/l BOD_5 and TSS or less.

(8)Biological Nutrient Removal performance will be a function of influent levels of nutrients with typical influent values of 4 to 6 mg/l of PO_4-P and 20 to 40 mg/l of NH_3-N. Additional nitrification operations would be necessary to achieve TKN levels of less than 10 mg/l. Denitrification may produce effluent total nitrogen levels of 5 to 10 mg/l.

LEGEND:

C = Coagulation S = Sedimentation F = Filtration and AC = Activated Carbon

BNR = Biological Nutrient Removal

9VAC25-790-880. Land treatment.

A. Site specific information shall be submitted with the preliminary proposal in accordance with this chapter and standards contained in this chapter.

Land treatment systems shall have adequate land for pretreatment facilities, storage reservoirs, administrative and laboratory buildings, and buffer zones, as well as the application sites (field area). The availability of this land should be determined prior to any detailed site evaluation. Site availability information should be obtained concerning:

1. Availability for acquisition or acceptable control.

2. Present and future land use.

3. Public acceptance.

B. Site design. Conformance to local land use zoning and planning should be resolved between the local government and the owner. Adjacent owners should be contacted by the applicant to establish whether significant opposition to the proposed location, or locations, exists. Concerns of adjacent landowners will be considered in the evaluation of site suitability. Public meetings may be scheduled either during or after the evaluation of final design documents so that the department can discuss the technical issues concerning the system design through public participation procedures. Public hearings may be held as part of the certificate/permit issuance procedures.

1. The estimated established site size should be calculated using a typical maximum annual loading depth of 36 inches for slow rate systems and a maximum depth of 72 inches per year for high rate systems to compute the field area size. In addition, the buffer zone area should be estimated using a typical distance of 200 feet from the extremities of the field areas to adjacent property lines. This total estimated site area should be available and permission obtained to gain access to the site for field investigations.

2. When investigating a potential site for application of wastewater, there are some limiting factors, including topography, soils, and vegetative growth (crop), which shall be evaluated early to determine site suitability for a land treatment system. This evaluation should be made in two phases: a preliminary phase and a field investigation phase.

3. The preliminary phase of site evaluations should include the identification of the proposed location of the land treatment system on a recent U.S.G.S. topographic map (7.5 minute quadrangle) or acceptable reproduction or facsimile thereof. A property line survey map should also be available for use in identifying the site location or locations.

4. The 100-year flood elevation should be identified and the proposed pretreatment unit processes should be roughly located in relation to elevation.

5. Preliminary soils information should include a soil site suitability map and include information to identify soil textures, grades, drainage, erosion potential, suitability for certain crops, etc. Information on soil characteristics may be available from either the National Resources Conservation Service (NRS) Office, the local Cooperative Extension Service Agent, or the Soil and Water Conservation Nutrient Management Specialist.

6. The field area available for effluent application may be estimated using typical criteria based on topography and soil characteristics. Field areas should be delineated on topographic maps of the proposed land treatment site.

7. The land treatment system design consultant should arrange a Preliminary Engineering Conference (PEC), as described in this chapter, as a final step in the preliminary phase of the site evaluation. The requirements for soil borings and backhoe pits as needed to study soils should be established at the PEC. A site visit should be scheduled at the PEC that involves the appropriate regulatory personnel and the owner and design consultant.

8. The land treatment system design consultant may not wish to conduct detailed field investigations of site topography, hydrology and soil characteristics prior to the site visit by regulatory personnel and their advisors. However, the proposed locations of field areas and pretreatment units should be established and identified during the site visit. The location of any existing soil borings, backhoe pits, springs, wells, etc., should also be identified during the site visit. Soil borings and backhoe pits may be excavated prior to, during and following the site visit as required. The requirements for soil permeability and hydraulic conductivity testing should be developed either during or shortly after the site visit.

9. Applicants for development of all land treatment systems shall be required to submit at least the minimum required information as required for the appropriate certificate/permit to be issued.

C. Site features. The soil at a potential site should be identified in terms of its absorption capacity and crop production classification, which is a function of physical and chemical characteristics. Important physical characteristics

include texture, structure and soil depth. Chemical characteristics that may be important include pH, ion exchange capacity, nutrient levels, and organic fraction. The absorption capacity of a soil may be directly related to soil texture and structure. Soil color may provide an indication of the movement of moisture through soil. Hydraulic conductivity may be estimated from in-field tests using acceptable infiltrometer devices. In addition, the absorption characteristics of a soil may be related to its hydraulic conductivity as measured by both in situ and laboratory tests using acceptable procedures (Table 9). The conductivity tests should be conducted in the most restrictive layer within the depth affected by the land application system. Soil productivity and nutrient management characteristics are discussed in the Virginia Pollution Abatement Permit Regulation (9VAC25-32).

1. Soil evaluation for a land treatment system should follow a systematic approach of selecting proper locations for borings or excavations based on topographic position, slopes and drainage. The physical characteristics of site soils should then be verified by an acceptable number of recorded observations that include soil depth to horizon changes, restrictive layers and parent material, color, texture and structure, for borings or excavations to a minimum depth of five feet.

2. If the soil characteristics differ substantially between borings or excavations, without a logical technical reason for the variation, then additional boring and excavation locations should be studied to identify the nature and extent of the changes in soil patterns throughout the proposed site.

3. The soil characteristics of the proposed site should be described by a qualified technical specialist knowledgeable in the principles of soil science, agronomy, and nutrient management. The long-term impact of land application of the treated effluent on site soils and vegetation or crops must be evaluated by the land treatment system design consultant. Certain minimum soil depths are required for approval of a land application site. The minimum required depth for field areas will depend on the type of land application system as well as the soil characteristics.

4. Representative soil samples shall be collected for each major soil type identified by the field investigation and analyzed for certain parameters in accordance with this chapter.

5. Detailed information on the geologic conditions of the proposed site shall be provided by a geologist or other technical specialist, or specialists, knowledgeable in geohydrologic principles.

a. Detailed information on the site hydrology and groundwater shall be provided by a geologist, hydrologist or other technical specialist, or specialists, knowledgeable in hydrologic principles and ground water hydrology.

b. The depth to the permanent ground water table below the site shall be determined. The location, depth and extent of perched water tables as well as the estimated seasonal fluctuations shall be established. The effect of the permanent and seasonal water tables on performance of the particular land treatment system shall be evaluated by the design consultant.

c. The characteristics of ground water movement under the proposed site should be established and evaluated using piezometer installations or other acceptable methods. The potential impact of the land treatment system on aquifer hydraulics and water quality shall be predicted through the use of modeling and appropriate monitoring devices.

d. The present and planned uses of the aquifer(s) identified as affected by the land treatment system should be determined by the consultant.

D. Land treatment methods. The following methods, or combinations thereof, as regulated by the appropriate permit or certificate, are considered conventional technology in accordance with this chapter:

1. Irrigation - slow rate. Wastewater may be applied by spraying, flooding, or ridge and furrow methods. Irrigation methods are designed not to discharge to surface waters.

2. Rapid infiltration. Wastewater may be applied by spreading and spraying. The system shall be designed to meet all certificate/permit requirements and groundwater standards.

3. Overland flow. This method of wastewater renovation is best suited for soils with low permeability. Generally, a permit or certificate for a discharge to surface waters must be issued.

E. Other alternatives. Natural treatment systems such as aquatic ponds, constructed wetlands and biological/plant filters and other aquatic plant systems are somewhat related to land treatment technology. Natural treatment involves the use of plants in a constructed but relatively natural environment for the purpose of achieving treatment objectives. The major difference between nonconventional natural and conventional treatment systems is that conventional systems typically use a highly managed and controlled environment for the rapid treatment of the wastewater. In contrast, nonconventional natural systems use a comparatively unmanaged environment in which treatment occurs at a slower rate.

1. The use of natural treatment as a part of a land treatment system may take several forms including ponds called "Aquatic Processing Units" (APU). Floating plants such as water hyacinths and duckweed are often used in APU treatment.

2. Constructed wetlands are defined as areas where the wastewater surface is controlled near (subsurface flow) or above (free water surface) a soil or media surface for long

enough each year to maintain saturated conditions and the growth of related vegetation such as cattails, rushes, and reeds.

3. Constructed wetlands must provide for groundwater protection and may be used to provide additional treatment to primary, secondary, or highly treated effluents prior to final discharge.

4. Natural (existing) wetlands are considered as state waters and any discharge to them shall be regulated in accordance with an issued discharge permit or certificate.

F. Features. Biological treatment that will produce an effluent either with a maximum BOD_5 of 60 mg/l or less, or be of such quality that can be adequately disinfected, if necessary, shall be provided prior to natural treatment, including use of conventional unit operations prior to the land application of treated effluent and advanced treatment prior to reuse.

Disinfection may be required following or prior to land application and other natural treatment. If spray irrigation equipment is utilized, adequate aerosol management including pre-disinfection shall be provided.

Buffer zones around field areas shall be provided in accordance with the monitored maximum microbiological content of the applied effluent as follows, with no reduction in required minimum distances to water sources and channels:

Fecal Coliform Count[(1)] (No./100 mls)	Minimum Buffer Distance, Feet
200 or less	200[(2)]
23 or less	50[(3)]
2.2 or less	None, but no application during occupation of field area[(3)]
Notes:	
[(1)]Exceeded by no more than 10% or less of samples tested.	
[(2)]No public use of field areas.	
[(3)]Transient public use may occur after a three-hour drying period following application.	

1. The owner shall provide sufficient holding time to store all flow during periods either when crop nutrient uptake is limited or nonexistent, the ground is frozen, surface saturation occurs during wet weather, the ground is covered with snow, or the irrigation site or field areas cannot otherwise be operated. The total volume of holding required shall be based on the storage necessary to provide for climatic conditions and the nutrient management requirements of the field area crop. Operational storage necessary for system maintenance shall be provided. Climatic holding periods shall be based on the most adverse conditions of freezing and precipitation, as taken from accurate recorded historical data that are available for the local area (in no case less than 25 years). The storage volume shall be sufficient to prevent any unpermitted discharges to state waters.

2. A minimum holding period of 120 days shall be required when climatic data is not available. System backup storage shall be determined by the complexity of the entire treatment system. An increase or reduction of minimum storage may be considered on a case-by-case basis based on adequate documentation of agronomic crop production and nutrient utilization.

3. The depth of the volume containment for total storage requirements shall be measured above any minimum depth requirements for maintenance.

4. The owner shall provide a minimum reserve area equivalent in size to 25% of the design field area. Additional reserve area may be required as evaluated by the division, if the general conditions of the field area are deemed marginal or in proximity of critical areas or waters. The reserve area shall be capable of being used as a functional area within 30 days of notice.

5. Some allowance for a reduced reserve shall be allowed if additional storage is provided or if there is an alternate treatment mode (e.g., discharge) that can be utilized by the facility.

6. Design criteria for treatment or storage ponds shall be in accordance with this chapter and standards contained in this chapter. In addition, the following requirements shall be met:

a. A minimum operational water depth shall be maintained.

b. Provisions shall be made to allow complete drainage of the pond for maintenance.

c. Duplicate pumps shall be provided if necessary to transport pond flows, with the capacity of each pump sized to handle the maximum rate of flow plus an allowance to deplete stored volumes.

d. Disinfection may be provided either upstream from ponds, or the pond effluent may require disinfection.

e. When chlorination is utilized to disinfect pumped flows, the detention time of the holding pond chlorination facilities shall provide a minimum of 30 minutes of contact time, based on the maximum design pumping rate in accordance with this chapter and standards contained in this chapter.

G. Design loadings. Loading rates shall be based on the most critical value as determined by the liquid and nutrient application rates, or total application amounts for other constituents (such as boron, salts, pH-alkalinity, copper or sodium, etc.), present in such concentrations as could produce pollution of either the soil, cover crop, or water quality. Total

weekly application (precipitation plus liquid loading rate) shall not exceed two times the design loading rate. This higher than conventional loading rate shall be used only to balance seasonal water deficits, and groundwater quality standards shall not be exceeded unless a variance to the violated standard has been approved by the ~~State Water Control Board~~ department.

1. An overall water balance shall be investigated in accordance with one of the following equations based on design criteria:

a. Irrigation or infiltration

design precipitation + effluent applied = evapotranspiration + hydraulic conductivity.

b. Overland flow

design precipitation + effluent applied = evapotranspiration + hydraulic conductivity + runoff.

2. Design precipitation shall be the wettest year for a 10-year period (return frequency of one year in 10). Minimum time period for this analysis should be 25 years. Average monthly distribution (average percentage of the total annual precipitation that occurs in each month) shall be assumed.

3. Design evapotranspiration (monthly) shall be 75% of average monthly pan evaporation values collected at official weather stations within or contiguous to the Commonwealth of Virginia and should be representative (similar geographically and climatological) of the proposed site.

4. Design hydraulic conductivity shall be a given percentage (see Table 9) of respective laboratory and field measurements that yield the rate at which water passes through the soil under presoaked conditions.

The test methodology should be in accordance with current published procedures made available to the department.

TABLE 9.
DESIGN HYDRAULIC CONDUCTIVITY

Type of Test	Percent of minimum measured value to be used in design
i. Saturated Vertical Hydraulic Conductivity	7
ii. Basin Infiltration	12.5
iii. Cylinder Infiltrometers	3
iv. Air Entry Permeameter	3
v. (Other--to be evaluated by the department)	

5. During periods of application, the applied nitrogen shall be accounted for through (i) crop uptake and harvest; (ii) denitrification; (iii) addition to surface water and ground water, or storage in soil. In winter, site loadings for slow rate systems shall not exceed the hydraulic design for those particular months. Winter application of treated effluent may be provided only (i) to cool season grasses (ii) following three consecutive days of minimum daily temperatures in excess of 25°F and maximum in excess of 40°F.

6. The annual liquid loading depth for plant nitrogen requirements shall be determined by the following equation:

$L = N/2.7C$

Where:

N = Crop nitrogen uptake, lb/acre/yr.

C = Total nitrogen concentration, mg/l

C = TKN + NO2-N + NO3-N

L = Annual liquid loadings depth, ft/yr.

TKN = Total KJELDAHL nitrogen = organic N + NH_3 - N

7. The monthly nitrogen loading rate design should be distributed over the growth cycle of the particular crop, as much as practicable.

8. If other nutrients, organics, or trace elements are present in concentrations critical to either crops, soil, or water quality, then a total mass balance similar to that for nitrogen shall be investigated for each critical element or compound.

9. The land application design average rate shall be determined by the climatic conditions, selected crops, and soil characteristics. However, the maximum application rates in terms of depth of effluent applied to the field area shall be as follows:

a. One-fourth inch per hour.

b. One inch per day.

c. Two inches per week (one inch per week in forest field areas used for year round application).

H. Field area design. Field area is defined as the area of land where renovation of wastewater takes place (area under actual spray or distribution pattern). The field area shall be designed to satisfy the most critical loading parameter (i.e., annual liquid loading depth) according to the following equation:

Field Area (acres) = Q/D*365/(365-S)

Where:

Q = Wastewater flow in (acre-inches/week)

D = Applied depth in inches/week

S = Minimum required storage capacity + annual resting periods during the application season when no waste can be land applied.

1. The minimum storage capacity shall be the average design volume of flow accumulated over a period of 60 days, unless other storage periods are justified by climatic data. It should be noted that the field area equation does not take into

consideration the area needed for reserve capacity or future expansion (no less than 25% of design field area).

2. The field area shall be divided into smaller sections for application to allow for rotational use of these sections. Rotational operation shall be designed to provide the maximum resting periods for field areas. The distribution system shall be designed to meet the requirement for alternating application to the field area sections. Minimum resting periods shall be two days, one day and two weeks for irrigation, overland flow and infiltration-percolation, respectively. Maximum wetting period shall not exceed five days, one week, and one day respectively for irrigation, infiltration-percolation, and overland flow, respectively. Resting and wetting periods depend on soil types, climatic conditions, harvesting requirements, etc.

3. The field area or areas shall be adequately enclosed with suitable fencing to prevent access to livestock and the public where necessary. Signs shall be posted at sufficient intervals (100 to 300 feet) around the entire perimeter of field areas to identify the land treatment operation and specify access precautions.

4. A groundwater monitoring system shall be provided in accordance with the permit or certificate requirements. A minimum of one upgradient and two downgradient monitoring wells shall be provided. The well locations, along with typical well construction specifications, shall be submitted with the proposal. Upon installation, the driller's log shall be submitted. Additional monitoring well locations may be required if deemed necessary upon evaluation of monitoring data. The results of any required sampling and testing of groundwater shall be submitted to the department for evaluation in accordance with the operating permit.

5. Representative agriculturally related soil tests are required on crop dependent systems to ensure adequate vegetative cover. The growing and maintaining of a vegetative cover on application sites is a very integral part of the system. The plants prevent soil erosion and utilize nutrients and water. The system design should provide for a proper balance between applied amounts of water and nutrients. The designer may wish to consult with both agronomic and nutrient management specialists on these matters. The design shall address crop and nutrient management.

6. The wastewater application schedule should be worked around the plans for harvesting. A minimum of 30 days shall be required between the last day of application and utilization of all crops. Crops that will be consumed raw by man shall not be grown in land application field areas.

7. Information on the proposed crops and their intended use may be forwarded to the Virginia Department of Agriculture and Consumer Services for evaluation.

I. Low intensity design. The low intensity application or irrigation field area should be as flat as possible with maximum slopes of 5.0% or less. The design of low intensity irrigation of treated effluent shall provide for nutrient management control. When it is necessary to locate field areas on slopes of eight to 12%, special precautions shall be taken to prevent seepage or runoff of sewage effluent to nearby streams. Dikes or terraces can be provided for field areas, together with runoff collection and return pumping equipment. The maximum field area slope should be 12%. The irrigation field area shall be located a minimum distance of 50 feet from all surface waters.

1. Five feet of well-drained loamy soils are preferred. The minimum soil depth to unconsolidated rock should be three feet. The hydraulic conductivity should be between 0.2-6 inches/hour.

2. The minimum depth to the permanent water table should be five feet. The minimum depth to the seasonal water table should be three feet. Where the permanent water table is less than five feet and the seasonal water table is less than three feet, the field area application rate shall be designed to prevent surface saturation. In addition, underdrain and groundwater pumping equipment may be required.

3. The method of applying the liquid to the field shall be designed to best suit prevailing topographic, climatic, and soil conditions. Two methods of application are:

a. Sprinkler systems with low trajectory nozzles or sprinkler heads to uniformly distribute the applied effluent across a specified portion of the field area. Application is to be restricted in high winds that adversely affect the efficiency of distribution and spread aerosol mists beyond the field areas.

b. Ditch irrigation systems that utilize gravity flow of effluent through ditches or furrows, from which effluent percolates into the soil. For uniformity of distribution, the slope of the field area is to be uniform and constant.

4. The height of spray nozzles, pressure at the spray nozzles and spacing of the laterals shall be adequate to provide uniform distribution of the effluent over the field area. The design height and pressure of the spray nozzles shall avoid damage to vegetation and soil.

5. Adequate provisions shall be made to prevent freezing and corrosion of spray nozzles and distribution lines when the system or a section of the system is not in operation.

6. Appropriate vegetation shall be maintained uniformly on all field areas. Usually water tolerant grasses with high nitrogen uptakes are used. Over seeding with cool season grasses may be necessary during the fall season, prior to October 15 of each year. Silviculture sites and reuse irrigation sites may also be used with this type of land treatment.

J. Rapid infiltration. This form of treatment requires the least amount of land. Renovation is achieved by natural, physical, chemical, and biological processes as the applied effluent

moves through the soil. Effluent is allowed to infiltrate the soil at a relatively high rate, requiring a field area with coarse grained soils. This system is designed for three main purposes (i) ground water recharge; (ii) recovery of renovated water using wells or underdrains with subsequent reuse, or (iii) discharge and recharge of surface streams by interception of ground water.

1. Five feet of sand or loamy sand is preferred. Soil grain size should be greater than.05 mm in size. The hydraulic conductivity should be greater than two inches/hour.

2. The permanent ground water table shall be a minimum of 15 feet below the land surface. With this method, a recharge mound is not uncommon and shall be properly evaluated by the consultant. A minimum distance of 10 feet should be maintained between the land surface and the apex of the recharge mound (during a worse-case situation). Lesser depths may be acceptable where under drainage is provided.

3. Spreading and spraying are the two main application techniques that are suitable for infiltration-percolation.

4. Design application rates will vary according to the site area, soil, geology, and hydrology characteristics.

5. The buffer distances from extremities of field areas to private wells should be at least 400 feet.

K. Overland flow. Renovation of wastewater is accomplished by physical, chemical, and biological means as applied effluent flows through vegetation on a relatively impermeable sloped surface. Wastewater is sprayed or flooded over the upper reaches of the slope and a percentage of the treated water is collected as runoff at the bottom of the slope, with the remainder lost to evapotranspiration and percolation. Overland systems should be capable of producing effluent at or below secondary level; however, additional treatment units may be needed to achieve the permitted effluent limitations.

1. Soils should have minimal infiltration capacity, such as heavy clays, clay loams or soils underlain by impermeable lenses. The restrictive layers in the soil should be between one to two feet from the surface to maintain adequate vegetation. The hydraulic conductivity should be less than 0.2 inches/hour. Field area slopes shall be less than 8.0%. Monitoring wells shall be provided.

2. Renovated water shall be collected at the toe of the slope in cut off ditches or by similar means and channeled to a monitoring point and disinfected as required.

3. The effluent application method should achieve a sheet flow pattern that will produce maximum contact between the applied wastewater and the soil medium. This can be accomplished by lateral distribution methods, low pressure sprays and moderate to high pressure impact sprinklers discharging onto porous pads or aprons designed to distribute the applied flow while preventing erosion. Maximum application rates in terms of depth of effluent should be less than 10 inches per week.

4. Perennial field area vegetation shall be required. Hydrophilic or water tolerant grasses are usually grown with this type of system.

L. Alternative design. Information submitted for approval of other natural treatment systems and reuse alternatives shall include performance data obtained from either full-scale systems similar to the proposed design, or pilot studies conducted over a testing period exceeding one year, to a period of two years, based on test results.

Special consideration should be given to the following factors in planning and design of natural systems:

1. Many aquatic plants are sensitive to cold temperatures and may require the use of a protected environment or operation on a seasonal basis. Some plants may be considered unacceptable for use and their growth must be controlled.

2. Control of insects, particularly mosquitoes, is normally required for constructed wetlands and aquatic plant systems. The use of mosquito-eating fish and water depth adjustments are recommended.

3. Some constituents which may be present in wastewaters, particularly those having high industrial loads, are toxic to many aquatic plants. Therefore, tests should be conducted to identify possible toxics prior to selection of the aquatic plant species.

4. Natural systems utilize a higher life form of less diversity than found in more conventional biological treatment systems. This lack of biological diversity may reduce treatment performance. Constructed wetland and aquatic plant systems could be more susceptible to long term process upsets. Therefore, the effects of fluctuations in climate and wastewater characteristics is extremely important in the design of natural systems.

5. Some aquatic plant and animal species have the potential to create a nuisance condition if inadvertently released to natural waterways. Federal, state and local restrictions on the use of certain aquatic plants and animals shall be considered.

6. Harvesting and the use or disposal of aquatic plants should result in removal of organics, solids and nutrients such as nitrogen and phosphorous from the APU effluent. Management of residual matter shall be in accordance with this chapter and standards contained in this chapter.

VA.R. Doc. No. R23-7276; Filed September 9, 2022, 2:33 a.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **10VAC5-240. Sales-Based Financing (adding 10VAC5-240-10 through 10VAC5-240-40).**

Statutory Authority: § 6.2-2237 of the Code of Virginia.

Effective Date: October 1, 2022.

Agency Contact: Dustin Physioc, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804)786-0831, FAX (804) 371-9416, or email dustin.physioc@scc.virginia.gov.

Summary:

The amendments (i) define terms; (ii) require sales-based financing providers and sales-based financing brokers to register with the State Corporation Commission; and (iii) effectuate the disclosure requirements of Chapter 22.1 (§ 6.2-2228 et seq.) of Title 6.1 of the Code of Virginia. Changes to the proposed regulation, clarify definitions and instructions for using the Sales-Based Financing Disclosure Form.

AT RICHMOND, SEPTEMBER 21, 2022

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2022-00035

Ex Parte: In the Matter of Adopting
Regulations Governing Sales-Based
Financing under Chapter 22.1 of
Title 6.2 of the Code of Virginia

ORDER ADOPTING REGULATIONS

On May 4, 2022, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to adopt regulations pursuant to Chapter 22.1 of Title 6.2 (§ 6.2-2228 et seq.) of the Code of Virginia ("Chapter 22.1"). The Bureau's proposal also contained proposed formatting for a disclosure form ("Disclosure Form") that sales-based financing providers are required to give to sales-based financing recipients pursuant to § 6.2-2231 of the Code of Virginia ("Code"). Chapter 22.1 establishes registration and other requirements for sales-based financing providers and sales-based financing brokers. Chapter 22.1 became effective on July 1, 2022, and the deadline for registering with the Commission is November 1, 2022. The instant regulations implement Chapter 22.1 by, among other things, defining certain terms and effectuating the disclosure requirements of § 6.2-2231 of the Code.

The Order to Take Notice, proposed regulations, and Disclosure Form were published in the Virginia Register of Regulations on May 23, 2022, posted on the Commission's website, and sent to interested persons. The Order to Take Notice invited all interested persons to participate and required that any comments or requests for a hearing on the proposed regulations or Disclosure Form be submitted in writing on or before June 6, 2022.

Comments on the proposed regulations and Disclosure Form were timely filed by the Small Business Finance Association; the Revenue Based Finance Coalition; the Electronic Transactions Association; Forward Financing LLC; and PayPal, Inc. The Commission did not receive any requests for a hearing.

On June 15, 2022, the Bureau filed an Initial Response to Comments in which it recommended that the Commission: (1) temporarily postpone the adoption of the proposed regulations; (2) temporarily authorize sales-based financing providers to use either the Disclosure Form or any disclosure form of their choosing provided that it contained all of the information specified in § 6.2-2231 of the Code and otherwise complied with Chapter 22.1; and (3) permit the Bureau to file a supplemental response to the comments by July 27, 2022. Through its June 30, 2022 and July 26, 2022 Orders,[1] the Commission: postponed the adoption of the regulations; authorized sales-based financing providers, pending further Commission order, to use either the formatting for the disclosure form that was appended to the Order to Take Notice or any formatting for the disclosure form of their choosing provided that it contained all of the information specified in § 6.2-2231 of the Code and otherwise complied with Chapter 22.1; and permitted the Bureau to file a supplemental response to comments by July 27, 2022.

On July 27, 2022, the Bureau filed its Supplemental Response to Comments ("Supplemental Response"). In its Supplemental Response, the Bureau further responded to the filed comments and also recommended that the Commission amend various sections of the proposed regulations and the proposed formatting for the Disclosure Form.

NOW THE COMMISSION, having considered this matter, finds that the proposed regulations and proposed formatting for the Disclosure Form should be amended to incorporate the specific changes the Bureau recommended in its Supplemental Response, with one exception. We decline to fully adopt the Bureau's recommended definition of the term "sales-based financing broker" or "broker" in proposed Rule 10 VAC 5-240-10 A. Rather, to make clear that the Rule seeks only to clarify the statutory definition of "sales-based financing broker" or "broker," the Bureau's proposed addition to Rule 10 VAC 5-

240-10 A shall be modified by changing "except" to "with clarification." The Commission finds that the modified proposed regulations should be adopted effective October 1, 2022.

Further, sales-based financing providers should be required to use the formatting for the Disclosure Form, as modified herein and attached hereto ("Modified Disclosure Form"), beginning one-hundred and twenty (120) days from the date of entry of this Order. In the interim, sales-based financing providers should be permitted to use either the formatting for the Modified Disclosure Form attached hereto or any formatting for the disclosure form of their choosing provided that it contains all of the information specified in § 6.2-2231 of the Code and otherwise complies with Chapter 22.1. The Commission expresses appreciation to all those who submitted written comments.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as modified herein and attached hereto, are adopted effective October 1, 2022.

(2) Sales-based financing providers shall use the formatting for the Modified Disclosure Form attached hereto beginning one-hundred and twenty (120) days from the date of entry of this Order. In the interim, sales-based financing providers may use either the formatting for the Modified Disclosure Form or any formatting for the disclosure form of their choosing provided that it contains all of the information specified in § 6.2-2231 of the Code and otherwise complies with Chapter 22.1.

(3) This Order, the attached regulations, and the attached Modified Disclosure Form shall be made available on the Commission's website: scc.virginia.gov/pages/Case-Information.

(4) The Commission's Office of General Counsel shall provide a copy of this Order, the regulations, and the Modified Disclosure Form to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(5) This case is dismissed.

A COPY of this Order along with the attached regulations and Modified Disclosure Form shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and to the Commissioner of Financial Institutions, who shall send by e-mail or U.S. mail a copy of this Order along with the attached regulations and Modified Disclosure Form to every person who filed comments in this matter, and to such other interested persons as he may designate.

[1]See Doc. Con. Cen. Nos. 220660030 and 220730153.

Chapter 240
Sales-Based Financing

10VAC5-240-10. Definitions.

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

"Chapter 22.1" means Chapter 22.1 (§ 6.2-2228 et seq.) of Title 6.2 of the Code of Virginia.

"Finance charge" [~~has the meaning assigned to it in 12 CFR 1026.4 regardless of whether a provider or sales based financing transaction is subject to Regulation Z (12 CFR Part 1026) or the Truth in Lending Act (15 USC § 1601 et seq.)~~ for purposes of Chapter 22.1 and this chapter means the amount of any and all costs of the sales-based financing provided to the recipient, represented as a dollar amount, including all charges that would be included in the finance charge under 12 CFR 1026.4 if the transaction was a consumer credit transaction and the provider was a creditor under Regulation Z (12 CFR Part 1026). This definition is intended to require finance charges to include any charge that would be a finance charge under 12 CFR 1026.4, regardless of whether the transaction would be considered an "extension of credit" or the provider would be considered a "creditor" under Regulation Z].

"Registrant" means a person registered under Chapter 22.1.

["Sales-based financing broker" or "broker" has the meaning set forth in § 6.2-2228 of the Code of Virginia, with clarification that the term shall not include a bona fide employee of a provider or broker who is acting on behalf of the provider or broker.]

B. Other terms used in this chapter shall have the meanings set forth in § 6.2-100 or 6.2-2228 of the Code of Virginia.

10VAC5-240-20. Registration; additional requirements; surrender of registration.

A. A provider or broker shall register with the commission in accordance with procedures established by the commissioner. A completed application for registration shall be accompanied by the initial registration fee prescribed in § 6.2-2230 of the Code of Virginia and any information relating to the application that the commissioner may require.

B. Every provider or broker shall (i) be organized under the laws of Virginia; or (ii) if not organized under the laws of Virginia, obtain authority to transact business in Virginia as a foreign entity in accordance with the provisions of Title 13.1 of the Code of Virginia unless such provider or broker is not required to obtain such authority. Every provider or broker, either organized under the laws of Virginia or who has obtained authority to transact business in Virginia as a foreign entity, shall continuously remain authorized to transact business in Virginia under Title 13.1 of the Code of Virginia.

C. A registrant shall notify the bureau in writing within 10 days [~~of~~ after] any change to either its name or contact information.

D. A registrant may surrender its registration by providing written notice to the bureau along with the effective date of the surrender.

10VAC5-240-30. Sales-Based Financing Disclosure Form.

A. A provider shall furnish a completed Sales-Based Financing Disclosure Form to every recipient at the time the provider extends a specific offer of sales-based financing to the recipient. [When a provider allows a recipient to choose from multiple sales-based financing options or to customize the terms of the sales-based financing, a provider shall furnish a Sales-Based Financing Disclosure Form only for the specific offer that the recipient selects.] The format of the Sales-Based Financing Disclosure Form shall be prescribed by the commission.

B. If any information required by the Sales-Based Financing Disclosure Form is inapplicable, the provider shall enter "Not Applicable" or "N/A" in the space provided. [In order to mark a box that appears on the Sales-Based Financing Disclosure Form, the provider shall insert a check mark or "X" in the applicable box.]

C. If any information required by the Sales-Based Financing Disclosure Form does not fit within the space provided on the first page of the form, the provider shall (i) insert a check mark or "X" in the "SEE PAGE 2" box that appears within the applicable section of the first page, (ii) insert a check mark or "X" in each applicable box on the second page of the form, (iii) disclose the information in the large box on the second page of the form, (iv) furnish a recipient with both pages of the completed form, and (v) require the recipient to sign and date both pages of the completed form. A provider may elect to furnish a recipient with the second page of the form even though all of the required information fits on the first page provided that the provider enters "Not Applicable" or "N/A" in the large box on the second page.

D. A provider shall not give a recipient a Sales-Based Financing Disclosure Form that contains any false or misleading information. The Sales-Based Financing Disclosure Form shall be furnished to a recipient as a separate document from any other contracts, agreements, papers, notices, or other disclosures provided to the recipient, but it may be mailed or transmitted in a package or electronic file that contains other documents. A provider shall not modify the prescribed format of the Sales-Based Financing Disclosure Form, or either append to or include within it any information that is not required by this form. [However, if a provider is not furnishing a recipient with the second page of the Sales-Based Financing Disclosure Form because all of the required information fits within the first page of the form, then the provider may remove all "SEE PAGE 2" references and the corresponding boxes from the form.]

E. A provider shall require a recipient to sign and date the Sales-Based Financing Disclosure Form at the time the recipient accepts the provider's offer. A provider may obtain a recipient's electronic signature on the Sales-Based Financing Disclosure Form if the provider complies with all applicable provisions of the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia), the Electronic Signatures in Global and National Commerce Act (15 USC § 7001 et seq.), and any other applicable laws. [A provider is required to obtain only one signature from the recipient on each Sales-Based Financing Disclosure Form.]

F. A provider shall provide a recipient with the Sales-Based Financing Disclosure Form in a format that the recipient may retain. This includes a hard copy or electronic document that the recipient can save for future reference.

G. If a recipient elects to pay off or refinance the sales-based financing prior to full repayment, a provider shall furnish the recipient with an updated and completed Sales-Based Financing Disclosure Form that contains the information as of the date that the sales-based financing is paid off or refinanced [(i.e., immediately prior to the pay off or refinancing)]. The provider shall comply with subsections B through F of this section in connection with the updated Sales-Based Financing Disclosure Form. The provider shall require a recipient to sign and date the updated Sales-Based Financing Disclosure Form at the time the recipient pays off or refinances the sales-based financing.

10VAC5-240-40. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision 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 (10VAC5-240)

[~~Sales-Based Financing Disclosure Form (eff. 7/2022)~~

Sales-Based Financing Disclosure Form (eff. 10/2022)]

VA.R. Doc. No. R22-7168; Filed September 22, 2022, 7:10 a.m.

TITLE 11. GAMING

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

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

Title of Regulation: **11VAC15-50. Texas Hold'em Poker Tournament Regulations (repealing 11VAC15-50-10 through 11VAC15-50-170).**

Statutory Authority: § 3.2-102 of the Code of Virginia.

Effective Date: November 23, 2022.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, FAX (804) 371-7479, or email michael.menefee@vdacs.virginia.gov.

Background: The Charitable Gaming Board promulgated the Texas Hold'em Poker Tournament Regulations (11VAC15-50), effective March 23, 2021. Item 105 of Chapter 552 of the 2021 Acts of Assembly, Special Session I, provided that all regulations promulgated by the Charitable Gaming Board and in effect on March 1, 2021, shall remain in force and no additional regulations shall be promulgated. The third enactment of Chapters 554 and 609 of the 2022 Acts of Assembly (i) provides that "the regulations promulgated by the Charitable Gaming Board regarding Texas Hold'em poker games and tournaments, which became effective on March 23, 2021," shall not take effect; (ii) amends § 3.2-102 of the Code of Virginia to authorize the Commissioner of Agriculture and Consumer Services to promulgate regulations not inconsistent with the laws of Virginia necessary to carry out the provisions of the Charitable Gaming Law (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia; and (iii) eliminates the provisions in § 18.2-340.15 of the Code of Virginia that authorized the Charitable Gaming Board to promulgate regulations.

Summary:

Pursuant to cited statutory changes, the action repeals Texas Hold'em Poker Tournament Regulations (11VAC15-50).

VA.R. Doc. No. R23-7187; Filed September 22, 2022, 9:14 a.m.

Proposed Regulation

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

Title of Regulation: **11VAC20-20. Charitable Gaming Regulations (adding 11VAC20-20-10 through 11VAC20-20-610).**

Statutory Authority: § 18.2-340.15 of the Code of Virginia.

Public Hearing Information: The agency will hold a virtual public hearing.

November 15, 2022 - 10 a.m. - link for WebEx virtual event: https://covaconf.webex.com/covaconf/onstage/g.php?MTID=e8d491d0e8a16718726df496.5f5e8c7d6

Public Comment Deadline: November 23, 2022.

Agency Contact: Michael Menefee, Program Manager, Charitable and Regulatory Programs, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3983, or email michael.menefee@vdacs.virginia.gov.

Background: Item 105 of Chapter 552 of the 2021 Acts of Assembly, Special Session I, provided that all regulations promulgated by the Charitable Gaming Board and in effect on March 1, 2021, shall remain in force and no additional regulations shall be promulgated. The third enactment of Chapters 554 and 609 of the 2022 Acts of Assembly authorizes the Commissioner of Agriculture and Consumer Services to promulgate regulations not inconsistent with the laws of Virginia necessary to carry out the provisions of the Charitable Gaming Law (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia and eliminates the provisions in § 18.2-340.15 of the Code of Virginia that authorized the Charitable Gaming Board to promulgate regulations. Previously, the Charitable Gaming Board adopted Charitable Gaming Regulations (11VAC15-40), which established a regulation for the conduct of charitable gaming in the Commonwealth.

Summary:

The proposed regulatory action moves the Charitable Gaming Regulations from 11VAC15-40 to 11VAC20-20, under the Department of Agriculture and Consumer Services (VDACS), and establishes provisions regarding electronic gaming. The new provisions for electronic gaming include (i) a requirement that 40% of an organization's electronic gaming adjusted gross receipts must be used for the organization's charitable purpose; (ii) a requirement that 10% of an organization's gross receipts from all other charitable gaming must be used for the organization's charitable purpose; (iii) provisions

requiring that the social organizations obtain and maintain authorization from VDACS to conduct electronic gaming, including documents that must be provided to VDACS, prohibited acts, and recordkeeping and bank account requirements; (iv) a process by which VDACS will suspend, revoke, or reinstate authorizations to conduct electronic gaming; (v) a fee of $200 to obtain an authorization to conduct electronic gaming in addition to the required charitable gaming permit fee; (vi) a requirement that a qualified organization that leases from a social organization to conduct electronic gaming to obtain a charitable gaming permit prior to conducting electronic gaming; (vii) the conditions under which a social organization may lease its premises to a qualified organization to conduct electronic gaming, including required documentation and requirements for the lease agreement between the social organization and qualified organization that intends to lease the social organization's premises to conduct charitable gaming and that the lease agreement must be provided to VDACS for review; (viii) clarification that salaries and wages of employees whose primary responsibility is to provide services for the principal benefit of the organization's members do not qualify as a reasonable and proper business expense; (ix) in accordance with § 18.2-340.31 of the Code of Virginia, establishment of an audit and administration fee of 0.5% of an organization's electronic gaming adjusted gross receipts, which is in addition to the fee of 0.25% prescribed in statute; and (x) a late fee to be assessed on an electronic gaming manufacturer that fails to submit required reports.

Chapter 20
Charitable Gaming Regulations

Part I
Definitions

11VAC20-20-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agent" means any person authorized by a supplier, network bingo provider, or manufacturer to act for or in place of such supplier, network bingo provider, or manufacturer.

"Board of directors" means the board of directors, managing committee, or other supervisory body of a qualified organization.

"Calendar day" means the period of 24 consecutive hours commencing at 12:00:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:00:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

"Charitable Gaming Law" means Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 of the Code of Virginia.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face.

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include (i) selling bingo cards or packs, electronic bingo devices, instant bingo or pull-tab cards, electronic pull-tab devices, electronic pull-tabs, network bingo cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; and (iv) any other services provided by game workers.

"Control program" means software involved in any critical game function.

"Daubing" means covering a square containing a number called with indelible ink or otherwise marking a number called on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tabs, or seal cards with the same serial number.

"Decision bingo" means a bingo game where the cost to a player to play is dependent on the number of bingo numbers called, and the prize payout is in direct relationship to the number of participants and the number of bingo numbers called but shall not exceed statutory prize limits for a regular bingo game.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Designator" means an object used in the bingo number selection process, such as a ping-pong ball, upon which bingo letters and numbers are imprinted.

"Device number" means the unique serial number assigned to each electronic gaming device by the department and displayed on the device tag affixed by the department.

"Device tag" means the mark that contains a unique serial number assigned to each electronic gaming device that is affixed by the department to each electronic gaming device indicating that the department has authorized and approved the use of such device.

"Discount" means any reduction in cost of admission or game packs or any other purchases through use of coupons, free packs, or other similar methods.

"Disinterested player" means a player who is unbiased.

"Disposable bingo paper" or "disposable paper" means a nonreusable, paper bingo card manufactured with preprinted numbers.

"Distributed pull-tab system" means a computer system consisting of a computer or computers and associated equipment for the use of distributing a finite number of electronic pull-tabs, a certain number of which entitle a player to prize awards at various levels.

"Door prize" means any prize awarded by the random drawing or random selection of a name or number based solely on attendance at a charitable gaming activity.

"Electronic bingo device" means an electronic unit that uses proprietary software or hardware, or operates in conjunction with commonly available software and computers, to display facsimiles of bingo cards and allows a player to daub such cards or allows for the automatic daubing of such cards.

"Electronic gaming" or "electronic games" means any instant bingo, pull-tabs, or seal card gaming that is conducted primarily by use of an electronic device. "Electronic gaming" does not include (i) the game of chance identified in clause (ii) of the definition of "bingo" in § 18.2-340.16 of the Code of Virginia or (ii) network bingo.

"Electronic gaming device" means an electronic unit used to facilitate the play of an electronic pull-tab. An electronic pull-tab device may take the form of an upright cabinet or a handheld device or may be of any other composition as approved by the department.

"Electronic gaming adjusted gross receipts" means the gross receipts derived from electronic gaming less the total amount in prize money paid out to players.

"Electronic gaming manufacturer" means a manufacturer of electronic devices used to conduct electronic gaming.

"Electronic pull-tabs" means a form of electronic gaming using an electronic version of a single instant bingo card or pull-tab. An electronic pull-tab is a predetermined game outcome in electronic form, distributed on-demand from a finite number of game outcomes by a distributed pull-tab system.

"Equipment and video systems" means equipment that facilitates the conduct of charitable gaming such as ball blowers, flashboards, electronic verifiers, and replacement parts for such equipment. Equipment and video systems shall not include dispensing devices, electronic bingo devices, and electronic pull-tab devices.

"Event game" means a bingo game that is played using instant bingo cards or pull-tabs in which the winners include both instant winners and winners who are determined by the random draw of a bingo ball, the random call of a bingo number, or the use of a seal card, and that is sold in its entirety and played to completion during a single bingo session.

"Fiscal year" or "annual reporting period" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flare" means a printed or electronic display that bears information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, serial number, number of prizes to be awarded, and specific prize amounts in a deal of instant bingo, pull-tab, seal cards, or electronic pull-tabs.

"Free space number," "perm number," "center number," "card number," or "face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game program" means a written list of all games to be played including the sales price of all bingo paper, network bingo cards, and electronic bingo devices, pack configuration, prize amounts to be paid during a session for each game, and an indication whether prize amounts are fixed based on attendance.

"Game set" means the entire pool of electronic pull-tabs that contains predefined and randomized game results assigned under a unique serial number. This term is equivalent to "deal" or "deck."

"Game subset" means a division of a game set into equal sizes.

"Immediate family" means one's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law, or stepchild.

"Interested persons" means the president, an officer, or a game manager of any qualified organization that is exempt or is a permit applicant or holds a permit to conduct charitable gaming; or the owner, director, officer, or partner of an entity engaged in supplying charitable gaming supplies to organizations, engaged in providing network bingo supplies to organizations, or engaged in manufacturing any component of an electronic game that is distributed in the Commonwealth.

"IRS" means the U.S. Internal Revenue Service.

"Management" means the provision of oversight of a gaming operation, which may include the responsibilities of applying for and maintaining a permit or authorization; compiling, submitting, and maintaining required records and financial reports; and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Manufacturer" means a person who or entity that assembles from raw materials or subparts a completed piece of bingo equipment or supplies, a distributed pull-tab system, or other charitable gaming or electronic gaming equipment or supplies. "Manufacturer" also means a person who or entity that modifies, converts, adds, or removes parts to or from bingo equipment or supplies, a distributed pull-tab system, or other

charitable gaming or electronic gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

"Operation" means the activities associated with production of a charitable gaming or electronic gaming activity, which may include (i) the direct on-site supervision of the conduct of charitable gaming and electronic gaming; (ii) coordination of game workers; and (iii) all responsibilities of charitable gaming and electronic gaming designated by the organization's management.

"Organization number" means a unique identification number issued by the department.

"Owner" means any individual with financial interest of 10% or more in a supplier, network bingo provider, or a manufacturer of a distributed pull-tab system or other electronic gaming device or system distributed in the Commonwealth.

"Pack" means sheets of bingo paper or electronic facsimiles assembled in the order of games to be played. This shall not include any raffle.

"Prize" means cash, merchandise, certificate, or other item of value awarded to a winning player.

"Progressive bingo" means a bingo game in which the prize is carried forward to the next game if a predetermined pattern is not completed within a specified number of bingo numbers called.

"Progressive seal card" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number that contains one or more concealed areas that when removed or opened, reveal a predesignated winning number, letter, or symbol located on that board or placard.

"Selection device" means a manually or mechanically operated device used to randomly select bingo numbers.

"Serial number" means a unique number assigned by the manufacturer to each set of bingo cards or network bingo cards; each instant bingo, pull-tab, or seal card in a deal; each electronic bingo device; each door prize ticket; each game set and game subset of electronic pull-tabs; and each electronic gaming device.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards, network bingo cards, or bingo hard cards. A 9000 series, for example, has 9,000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted or during which instant bingo, pull-tabs, seal cards, or electronic gaming may be sold and redeemed. A session begins with the sale of instant bingo, pull-tabs, seal cards, electronic gaming, electronic bingo devices, network bingo cards, or bingo cards or packs.

"Social organization" means the same as that term is defined in § 18.2-340.16 of the Code of Virginia.

"Social quarters" means the same as that term is defined in § 18.2-340.16 of the Code of Virginia.

"Treasure chest" means a raffle including a locked treasure chest containing a prize that a participant, selected through some other authorized charitable game, is afforded the chance to select from a series of keys a predetermined key that will open the locked treasure chest to win a prize.

"Use of proceeds" means the use of funds derived by an organization from its charitable gaming activities, which are disbursed for those lawful religious, charitable, community, or educational purposes.

"Voucher" means a printed ticket tendered to the player, upon request, for any unused game plays or winnings that remain on the electronic pull-tab device.

"WINGO" means a variation of a traditional bingo game that uses visual devices rather than a verbal caller and is intended for play by hearing impaired persons.

Part II
Charitable Gaming Organizations

Article 1
Permits

11VAC20-20-20. Eligibility for permit to conduct charitable gaming; when valid; permit requirements.

A. The conduct of charitable gaming is a privilege that may be granted or denied by the department. Except as provided in § 18.2-340.23 of the Code of Virginia, every eligible organization, volunteer fire department, and rescue squad with anticipated gross gaming receipts that exceed the amount set forth in § 18.2-340.23 of the Code of Virginia in any 12-month period shall obtain a permit from the department prior to the commencement of charitable gaming activities. To be eligible for a permit, an organization must meet all of the requirements of § 18.2-340.24 of the Code of Virginia.

B. Pursuant to § 18.2-340.24 B of the Code of Virginia, the department shall review a tax exempt request submitted to the IRS for a tax exempt status determination and may issue an interim certification of tax-exempt status solely for the purpose of charitable gaming, conditioned upon a determination by the IRS. The department shall charge the fee set forth in § 18.2-340.24 B of the Code of Virginia for this review. The fee shall be payable to the Treasurer of Virginia.

C. A permit shall be valid only for activities, locations, days, dates, and times as listed on the permit. A permit alone does not authorize an organization to conduct electronic gaming. An organization that conducts electronic gaming must have a separate electronic gaming authorization on its permit.

D. In accordance with § 18.2-340.19 A 1 of the Code of Virginia, as a condition of receiving a charitable gaming permit or authorization to conduct electronic gaming, an organization shall use a minimum percentage of its charitable gaming receipts for those lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized as follows:

1. For all charitable gaming other than electronic gaming, the minimum percentage shall be 10% of its gross receipts.

2. For electronic gaming, the minimum percentage shall be 40% of its electronic gaming adjusted gross receipts.

E. If an organization fails to meet the minimum use of proceeds requirement for charitable gaming other than electronic gaming, its permit shall be suspended or revoked; however, the department shall not suspend or revoke the permit for charitable gaming of any organization solely because of its failure to meet the required percentage without having first provided the organization with an opportunity to implement a remedial business plan.

F. An organization may request a temporary reduction in the predetermined percentage specified in subsection D of this section from the department. In reviewing such a request, the department shall consider such factors appropriate to and consistent with the purpose of charitable gaming, which may include (i) the organization's overall financial condition; (ii) the length of time the organization has been involved in charitable gaming; (iii) the extent of the deficiency; and (iv) the progress that the organization has made in attaining the minimum percentage in accordance with a remedial business plan pursuant to subsection E of this section.

G. An organization whose permit is revoked for failure to comply with provisions set forth in subsection D of this section shall be eligible to reapply for a permit at the end of one year from the date of revocation. The department, at its discretion, may issue the permit if it is satisfied that the organization has made substantial efforts toward meeting its remedial business plan.

H. If an organization fails to meet the minimum use of proceeds requirement for electronic gaming:

1. The social organization's authorization to conduct electronic gaming shall be revoked or suspended.

2. The qualified organizations permit for the conduct of electronic gaming only shall be revoked or suspended.

3. If an organization becomes dissolved for any reason, then the department shall either suspend or revoke its authorization to conduct electronic gaming.

4. If the authorization is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that prior to reinstatement of the permit, the organization shall submit a remedial business plan approved by the department to address the conditions that resulted in the suspension.

5. If an organization fails to meet the minimum use of proceeds requirement after having been suspended, the organization's authorization shall be revoked. An organization whose permit is revoked shall be eligible to reapply for an authorization one year from the date of revocation. If the permit is revoked, the organization is required to reapply for an authorization, and if the authorization was revoked less than 18 months prior to reapplying for a permit, then the organization shall submit a remedial business plan approved by the department to address the conditions that resulted in the revocation. The department, at its discretion, may issue the authorization if it is satisfied that the organization's remedial business plan will result in meeting the use of proceeds requirement.

11VAC20-20-30. Charitable gaming permit application process for raffles, bingo, paper pull-tabs, network bingo, paper instant bingo, and paper seal cards.

A. Any organization (i) anticipating gross gaming receipts from raffles that exceed the amount set forth in § 18.2-340.23 of the Code of Virginia or (ii) intending to operate and conduct bingo, electronic gaming, instant bingo, seal cards, pull-tabs, or network bingo shall complete a department-prescribed application to request issuance or renewal of an annual permit to conduct charitable gaming. Organizations shall submit a nonrefundable fee payable to the Treasurer of Virginia in the amount of $200 with the application, unless the organization is exempt from such fee pursuant to § 18.2-340.23 of the Code of Virginia.

B. The department may initiate action against any organization exempt from permit requirements when it reasonably believes the organization is not in compliance with the provisions of Charitable Gaming Law or regulations adopted pursuant thereto.

C. Permits shall be valid for a period of one year from the date of issuance or for a period specified on the permit. The department may issue permits for periods of less than one year.

D. Permits shall be granted only after a background investigation of an organization, interested persons, or both to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity, and the potential harm to public safety and welfare of any criminal offenses. The investigation may include the following:

1. A search of criminal history records for the chief executive officer and chief financial officer of the organization. Information and authorization to conduct these records checks shall be provided in the permit application. In addition, the department shall require that the organization provides assurances that all other members involved in the management, operation, or conduct of charitable gaming meet the requirements of subdivision 12 of § 18.2-340.33 of the Code of Virginia. Applications may be denied if:

a. Any person participating in the management of any charitable gaming has ever been:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. Any person participating in the conduct of charitable gaming has been:

(1) Convicted of any felony in the preceding 10 years; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years;

2. An inquiry as to whether the organization has been granted tax-exempt status pursuant to § 501(c) by the Internal Revenue Service and is in compliance with IRS annual filing requirements;

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any persons for the purpose of organizing or managing, operating, or conducting any charitable gaming activity;

4. Inquiries into the finances and activities of the organization and the sources and uses of funds;

5. Inquiries into the level of community or financial support to the organization and the level of community involvement in the membership and management of the organization; and

6. An inquiry as to whether the organization operates in accordance with the provisions of or is in violation of any provision of the Charitable Gaming Law or regulations promulgated pursuant thereto.

E. The permit application for an organization that has not previously held a permit shall include:

1. A copy of the articles of incorporation, bylaws, charter, constitution, or other appropriate organizing document;

2. A copy of the determination letter issued by the IRS under § 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling. A letter of good standing is not required if the applicable national or state office has furnished the department with a listing of member organizations in good standing in the Commonwealth as of January 1 of each year and has agreed to promptly provide the department any changes to the listing as they occur;

3. A copy of the written lease or proposed written lease agreement and all other agreements if the organization rents or intends to rent a facility where bingo or electronic gaming is or will be conducted. Information on the lease shall include name, address, and telephone number of the landlord; maximum occupancy of the building; and the rental amount per session; and

4. An authorization by an officer or other appropriate official of the organization to permit the department to determine whether the organization has been investigated or examined by the IRS in connection with charitable gaming activities during the previous three years.

F. Any contracts or any other agreements with landlords, suppliers, network bingo providers, social organizations, or manufacturers to which the organization is or may be a party.

G. Copies of minutes of meetings of the organization may be requested by the department prior to rendering a permitting decision.

H. Organizations applying to renew a permit previously issued by the department shall submit articles of incorporation, bylaws, charter, constitution, or other organizing document; IRS determination letter; any new contract or agreement with a landlord, supplier, network bingo provider, social organization, or manufacturer to which the organization is or may be a party; and a copy of any lease with any landlord or social organization if there are any amendments or changes to these documents.

I. Organizations may request permits to conduct joint bingo games as provided in § 18.2-340.29 of the Code of Virginia.

1. In the case of a joint bingo game, each organization shall file a permit application.

2. The nonrefundable permit fee for joint bingo games shall be a total of $200. However, no permit application fee is due if each of the organizations is exempt from the application fee pursuant to § 18.2-340.23 of the Code of Virginia.

3. A single permit may be issued in the names of all the organizations conducting a joint bingo game. All restrictions and prohibitions applying to single organizations shall apply to qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 of the Code of Virginia.

4. No joint bingo game shall be conducted prior to the issuance of a joint permit.

5. Applications for joint bingo games shall include an explanation of the division of manpower, costs, and proceeds for the joint bingo game.

J. An organization wishing to change dates, times, or locations of its charitable gaming shall request an amendment to its permit. Amendment requests shall be made in writing on a form prescribed by the department in advance of the proposed effective date.

K. An organization may cancel its charitable gaming due to inclement weather, disasters, or other circumstances outside the organization's control without an amendment to its permit.

L. An organization may sell raffle tickets for a drawing to be held outside of the Commonwealth of Virginia in the United States provided:

1. The raffle is conducted by the organization in conjunction with a meeting outside the Commonwealth of Virginia or with another organization that is licensed to conduct raffles outside the Commonwealth of Virginia;

2. The raffle is conducted in accordance with this chapter and the laws and regulations of the state where the drawing is to be held; and

3. The portion of the proceeds derived from the sale of raffle tickets in the Commonwealth is reported to the department.

M. Any permitted organization that ceases to conduct charitable gaming shall immediately notify the department in writing and provide the department a report as to the disposition of all unused charitable gaming supplies or electronic gaming devices on a form prescribed by the department.

11VAC20-20-40. Charitable gaming authorization for electronic gaming.

A. The operation and conduct of electronic gaming is a privilege that may be granted or denied by the department. A social organization desiring to operate and conduct electronic gaming shall obtain a permit to conduct charitable gaming and an authorization to operate and conduct electronic gaming from the department prior to the commencement of any electronic gaming. To be eligible for a permit or an authorization, a social organization must meet all of the requirements of the Charitable Gaming Law and regulations adopted pursuant thereto.

B. A social organization desiring to operate and conduct electronic gaming shall complete a department-prescribed application to request a new or to renew an existing authorization. The social organization must provide the number of electronic gaming devices it intends to operate on the premises at the time when the authorization is issued to the organization. In accordance with §§ 18.2-340.23 and 18.2-340.26:3 of the Code of Virginia, a social organization shall submit a nonrefundable application fee payable to the Treasurer of Virginia in the amount of $200 in addition to the fee prescribed for the charitable gaming permit.

C. If an organization's charitable gaming permit is denied pursuant to 11VAC20-20-20 and 11VAC20-20-50, then its request for a new or renewal authorization to operate and conduct electronic gaming shall be denied by the department.

D. An authorization to operate and conduct electronic gaming shall be valid for one year from the date of issuance. The department may issue an authorization that is valid for less than one year or up to two years when it determines that such is necessary. Authorizations shall be noted on the charitable gaming permit, and the expiration date for the authorization shall be the same as the charitable gaming permit expiration date.

E. An authorization to operate and conduct electronic gaming shall be valid only for the operation and conduct of electronic gaming at the primary location; on the days of the week, dates, and times; and for the number of electronic gaming devices listed on the authorization.

1. A social organization shall designate a continuous area within its primary location as its social quarters. A social organization's social quarters shall not include any area that is included in the public space leased to a qualified organization so that the qualified organization may operate and conduct electronic gaming.

2. A social organization shall designate a continuous area within its primary location as its public space. A social organization's public space shall not include any area that is included in its social quarters. A social organization may lease its public space to a qualified organization so that the qualified organization may operate and conduct electronic gaming.

3. The primary location shall have a unique physical address established by the United States Postal Service and a certificate of occupancy issued by the city, county, or town where the building is physically located.

4. The social organization's principal place of business as registered with the State Corporation Commission shall be its primary location so long as the principal place of business is where the organization conducts its business. The operation and conduct of electronic gaming alone does not constitute the conduct of business for the purpose of determining a social organization's primary location. If the social organization is not registered with the State Corporation Commission, then the social organization's primary location shall be (i) the location where the organization conducts its business and (ii) if requested by the department, confirmed by the affiliated national or state organization as the social organization's primary location.

5. Upon request of the department, the social organization shall provide sufficient documentation to identify its primary location. If the social organization is unable or unwilling to provide such documentation, then the department shall deny the social organization's application for authorization to

operate and conduct electronic gaming in accordance with 11VAC20-20-50.

F. A social organization authorized to operate and conduct electronic gaming that wishes to change dates, times, primary location, or the number of electronic gaming devices identified on its authorization shall request an amendment to its authorization. Amendment requests shall be made in writing on a form prescribed by the department. The social organization must receive an amended authorization prior to implementing the requested amendment. At no time shall a social organization's authorization reflect a number of devices that is inconsistent with the number of electronic gaming devices at their location.

G. A social organization shall notify on a form prescribed by the department when it purchases or leases a new distributed pull-tab system or electronic gaming device.

H. A social organization may cancel its scheduled electronic gaming session due to inclement weather, disaster, or other circumstance outside the organization's control without an amendment to its authorization. The social organization shall immediately notify the department of the cancellation.

I. Any authorized social organization that ceases to operate and conduct electronic gaming shall immediately notify the department in writing and provide a report to the department as to the disposition of any distributed pull-tab system or electronic gaming devices.

J. A social organization authorized to operate and conduct electronic gaming shall not use an electronic gaming device that does not bear a device tag affixed by the department.

K. A social organization authorized to operate and conduct electronic gaming shall expend, at a minimum, 40% of its electronic gaming adjusted gross receipts for those lawful religious, charitable, community, or educational purposes for which the organization is specifically chartered or organized.

L. If an organization determines at any point prior to the close of the fiscal year that it may not meet the requirement established in 11VAC20-20-20 D, an organization may request a temporary reduction in the percentage specified in 11VAC20-20-20 D from the department. In reviewing such a request, the department may consider such factors appropriate to and consistent with the purpose of charitable gaming, which may include (i) the organization's overall financial condition; (ii) the length of time the organization has been involved in charitable gaming and electronic gaming; and (iii) the extent of the deficiency. The department may grant a temporary reduction at its discretion; however, the department will not grant a temporary reduction after the close of the fiscal year.

M. A social organization authorized to operate and conduct electronic gaming shall:

1. Maintain a valid charitable gaming permit. If the department suspends or revokes a social organization's charitable gaming permit, the department shall take the same action against the social organization's authorization to operate and conduct electronic gaming;

2. Maintain its federal tax exempt status;

3. Maintain eligibility for its federal tax exempt status by continuing to meet the IRS criteria for that tax exemption;

4. Not possess more electronic gaming devices at its primary location than the number of such devices listed on its authorization;

5. Operate only an electronic gaming device that has a device tag affixed by the department;

6. Acquire, lease, obtain, purchase, rent, or use a distributed pull-tab system or electronic gaming device from a manufacturer or supplier that has a current permit issued by the department pursuant to § 18.2-340.34 of the Code of Virginia;

7. Not inure any part of its net earnings to benefit a private shareholder or individual; and

8. Not violate a provision of or fail to meet a requirement of the Charitable Gaming Law or a regulation adopted pursuant thereto.

N. In addition to the requirements established in subsection M of this section, a social organization authorized to operate and conduct electronic gaming that is a fraternal organization shall:

1. Serve a fraternal purpose;

2. Have a substantial program of fraternal activities, as defined by the IRS;

3. Be distinguishable from its chartering parent organization; and

4. Be largely self-governing and have its own officers, bylaws, or other governing documents and its own general financial independence from its parent organization.

O. In addition to the requirements established in subsection M of this section, a social organization authorized to operate and conduct electronic gaming that is substantially composed of past or present members of the U.S. Armed Forces must continue to be substantially composed of past or present members of the U.S. Armed Forces.

P. The department may suspend or revoke the authorization to operate and conduct electronic gaming of a social organization that does not comply with subsection M, N, or O of this section.

11VAC20-20-50. Suspension, revocation, or denial of permit and authorization.

A. Pursuant to § 18.2-340.20 of the Code of Virginia, the department may suspend, revoke, or deny the permit to conduct

charitable gaming or authorization to operate and conduct electronic gaming of any organization for cause, including any of the following reasons:

1. The organization is found to be in violation of or has failed to meet any of the requirements of the Charitable Gaming Law or regulations governing the management, operation, and conduct of charitable gaming or electronic gaming in the Commonwealth.

2. The organization is found to be not in good standing with its state or national organization.

3. The IRS revokes or suspends the organization's federal tax-exempt status.

4. The organization willfully and knowingly provides false information in its application for a permit to conduct charitable gaming.

5. The organization is found to have a member involved in the management, operation, or conduct of its charitable gaming who has been convicted of any felony or any misdemeanor as follows:

a. For any person participating in the management or operation of any charitable gaming:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. For any person participating in the conduct of charitable gaming:

(1) Convicted of any felony within the preceding 10 years; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

B. The failure to meet any of the requirements of § 18.2-340.24 of the Code of Virginia shall cause the denial of the permit, and no organization shall conduct any charitable gaming until the requirements are met and a permit is obtained.

C. The failure to meet the definition of a social organization or the requirements in § 18.2-340.26:1 shall cause the denial of the authorization to conduct electronic gaming, and no organization shall conduct electronic gaming until the requirements are met and an authorization is obtained.

D. Except when an organization fails to meet any of the requirements of § 18.2-340.24 of the Code of Virginia or fails to file a financial report as required by § 18.2-340.30 of the Code of Virginia or when a manufacturer fails to file a financial report as required by § 18.2-340.30:2 of the Code of Virginia, in lieu of suspending, revoking, or denying a permit to conduct charitable gaming; an authorization to operate and conduct electronic gaming; or a permit to distribute a distributed pull-tab system or electronic gaming devices, the department may afford an organization or manufacturer, at the department's discretion, an opportunity to enter into a compliance agreement specifying additional conditions or requirements as it may deem necessary to ensure an organization's or a manufacturer's compliance with the Charitable Gaming Law and regulations adopted pursuant thereto and may require that an organization or manufacturer participates in such training as is offered by the department.

E. If a social organization's premises of its primary location is deemed a common nuisance pursuant to § 18.2-258 of the Code of Virginia, then the department may suspend, revoke, or deny the social organization's authorization to operate and conduct electronic gaming.

F. If a permit or authorization to operate and conduct electronic gaming is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that, prior to reinstatement of the permit or authorization, the organization shall submit a remedial business plan to address the conditions that resulted in the suspension. The remedial business plan must be approved by the department prior to reinstatement of the permit or authorization.

G. An organization whose authorization to operate and conduct electronic gaming is revoked shall be eligible to reapply for an authorization one year from the date of revocation. If the authorization was revoked less than 18 months prior to the organization reapplying for an authorization, the organization shall submit a remedial business plan approved by the department to address the conditions that resulted in the revocation. The remedial business plan must be approved by the department prior to reinstatement of the permit or authorization. The department at its discretion may issue the authorization if it is satisfied that the organization's remedial business plan will result in compliance with the requirements of the Charitable Gaming Law and regulations adopted pursuant thereto.

H. If an authorization to operate and conduct electronic gaming is suspended, the department shall set the terms of the suspension, which shall include the length of the suspension and a requirement that prior to reinstatement of the authorization, the organization shall submit a remedial business plan approved by the department to address the conditions that resulted in the suspension. The remedial business plan must be approved by the department prior to reinstatement of the permit or authorization.

I. If an organization fails to meet the minimum use of proceeds requirement after having been suspended, the organization's authorization to operate and conduct electronic gaming shall be revoked. An organization whose authorization is revoked shall be eligible to reapply for an authorization at the end of one year from the date of revocation. If the authorization is revoked, the organization is required to reapply for an authorization, and if the authorization was revoked less than 18 months prior to reapplying for an authorization, then the organization shall submit a remedial business plan

approved by the department to address the conditions that resulted in the revocation. The department at its discretion may issue the authorization if it is satisfied that the organization's remedial business plan will result in meeting the use of proceeds requirement.

Article 2
Conduct of Games, Rules of Play, Electronic Bingo

11VAC20-20-60. Conduct of bingo, paper instant bingo, paper pull-tabs, paper seal cards, event games, network bingo, electronic gaming, and raffles.

A. Organizations subject to this chapter shall post their charitable gaming permit or authorization to operate and conduct electronic gaming at all times on the premises where charitable gaming or electronic gaming is conducted.

B. No individual shall provide any information or engage in any conduct that alters or is intended to alter the outcome of any charitable game or electronic game.

C. Individuals younger than 18 years of age may play bingo provided such persons are accompanied by a parent or legal guardian. It shall be the responsibility of the organization to ensure that such individuals are eligible to play. An organization's house rules may further limit the play of bingo or purchase of raffle tickets by minors.

D. Individuals younger than 18 years of age may sell raffle tickets for a qualified organization raising funds for activities in which they are active participants.

E. No individual younger than 18 years of age may participate in the management or operation of bingo games. Individuals 14 through 17 years of age may participate in the conduct of a bingo game provided the organization permitted for charitable gaming obtains and keeps on file written parental consent from the parent or legal guardian and verifies the date of birth of the minor. An organization's house rules may further limit the involvement of minors in the conduct of bingo games. No individual younger than 21 years of age may participate in the management, operation, or conduct of electronic gaming.

F. No qualified organization shall sell any network bingo cards, paper instant bingo, paper pull-tab, or paper seal card to any individual younger than 18 years of age. No individual younger than 18 years of age shall play or redeem any network bingo cards, paper instant bingo, paper pull-tab, or paper seal card. No individual younger than 21 years of age shall play any electronic gaming device or electronic game or redeem anything from the play of such a device or game.

G. Unless otherwise prohibited by the Code of Virginia or this chapter, nonmembers who are under the direct supervision of a bona fide member may participate in the conduct of bingo or electronic gaming.

H. All game workers shall have in their possession a photo identification, such as a driver's license or other government-issued identification, and shall make the photo identification available for inspection upon request by a department agent while participating in the management, operation, or conduct of a bingo game or electronic gaming.

I. A game manager who is a bona fide member of the organization and is designated by the organization's management as the person responsible for the operation of the bingo game or electronic gaming during a particular session shall be present any time a bingo game or electronic gaming is conducted.

J. Organizations shall ensure that all charitable gaming equipment, a distributed pull-tab system, and any electronic gaming device are in working order before charitable gaming activities commence.

K. Each electronic gaming device must have a device tag affixed indicating that such device is authorized and approved by the department. All organizations shall notify the department of any new distributed pull-tab system or electronic gaming devices they purchase or lease.

L. Any organization selling bingo, paper instant bingo, paper pull-tabs, paper seal cards, or network bingo supplies or conducting electronic gaming shall:

1. Maintain a supplier's, network bingo provider's, or manufacturer's invoice or a legible copy thereof at the location where the gaming is taking place and cards are sold. The original invoice or legible copy shall be stored in the same storage space as the gaming supplies. All gaming supplies shall be stored in a secure area that has access limited only to bona fide members of the organization; and

2. Pay for all charitable gaming supplies and electronic gaming supplies, including the use of the electronic gaming device, only by a check drawn on the charitable gaming account of the organization.

A complete inventory of all charitable gaming supplies shall be maintained by the organization on the premises where the gaming is being conducted.

M. A bingo session game worker may receive complimentary food and nonalcoholic beverages provided on premises, as long as the retail value of such food and beverages does not exceed $15 for each session.

N. Permitted organizations shall not commingle records, supplies, or funds from permitted activities with those from paper instant bingo, paper pull-tabs, paper seal cards, or electronic gaming sold in social quarters.

O. Individuals who are not members of an organization or are members who do not participate in any charitable gaming activities may be paid reasonable fees for preparation of quarterly and annual financial reports.

P. Except as allowed pursuant to § 18.2-340.34:1 of the Code of Virginia, no free packs, free electronic bingo devices, free electronic pull-tabs, free network bingo cards, discounts, or

remuneration in any other form shall be provided directly or indirectly to game workers, members of their family, or individuals residing in their household. The reduction of tuition, dues, or any fees or payments due as a result of a member or shareholder or anyone in their household working bingo games, electronic gaming, or raffles is prohibited.

Q. Individuals providing security for an organization's charitable gaming activity shall not participate in the charitable gaming activity and shall not be compensated with charitable gaming supplies, free electronic pull-tabs, or network bingo cards or with rentals of electronic bingo devices or electronic gaming devices.

R. No organization shall award any prize money or any merchandise valued in excess of the amounts specified by the Code of Virginia.

S. Multiple sessions shall be permitted in a single premises as long as the sessions are distinct from one another and are not used to advertise or do not result in the awarding of more in prizes than is permitted for a single qualified organization. All leases for organizations to conduct charitable gaming or electronic gaming in a single premises shall ensure each session is separated by an interval of at least 30 minutes. Bingo sales for the subsequent session may take place during the 30-minute break once the building is cleared of all patrons and workers from the previous session. No other sales of charitable gaming supplies or electronic gaming may occur during the 30-minute break.

T. All bingo and instant bingo, pull-tabs, seal card, or electronic gaming sales, play, and redemption must occur within the time specified on the charitable gaming permit or authorization to operate and conduct electronic gaming. Network bingo card sales must occur within the time specified on the charitable gaming permit.

U. Paper instant bingo, paper pull-tabs, or paper seal cards shall only be sold in conjunction with a bingo session, except as authorized by § 18.2-340.26:1, 18.2-340.26:2, or 18.2-340.26:3 of the Code of Virginia. No paper instant bingo, paper pull-tab, or paper seal card sales shall take place more than two hours before the selection of the first ball for the first bingo game or more than two hours after the selection of the last ball for the last bingo game. If multiple sessions are held at the same location for either bingo or electronic gaming, no paper instant bingo, paper pull-tab, paper seal card, or electronic pull-tab sales shall be conducted during the required 30-minute break between sessions. The department may take action if it believes that a bingo session is not legitimate or is being conducted in a manner such that paper instant bingo, paper pull-tabs, or paper seal cards are not being sold in conjunction with a bingo session.

V. Only a game worker for a qualified organization may rent, exchange, or otherwise provide electronic bingo devices or electronic gaming devices to players.

W. A qualified organization shall conduct only bingo games, network bingo, and raffles listed on a game program for that session. The program shall list all prize amounts. If the prize amounts are determined by attendance or at the end of a game, the game program shall list the attendance required for the prize amount or disclose that prizes shall be determined at the end of a game and the method for determining the prize amount. In such a case, the organization shall announce the prize amount at the end of the game. The percentage of the gross receipts from network bingo cards allocated to the prize pool shall be listed on the game program along with the maximum allowable prize amount for network bingo.

X. A qualified organization selling paper instant bingo, paper pull-tabs, or paper seal cards or conducting electronic gaming shall post a flare provided by the manufacturer at the location where such cards or electronic pull-tabs are sold. All such sales and prize payouts shall be in accordance with the flare for that deal.

Y. Only qualified organizations, facilities in which qualified organizations play bingo, network bingo providers, and suppliers permitted by the department shall advertise a bingo game. Providing players with information about network bingo or bingo games through printed advertising is permitted, provided the name of the qualified organization shall be in a type size equal to or larger than the name of the premises, the hall, or the word "bingo." Printed advertisements shall identify the use of proceeds percentage reported in the past quarter or fiscal year.

Z. Advertisements for electronic gaming are prohibited.

AA. Raffles that award prizes based on a percentage of gross receipts shall use prenumbered tickets.

BB. The following rules shall apply to mechanical dispensing devices used to dispense paper instant bingo, paper pull-tabs, or paper seal cards:

1. A mechanical dispensing device shall only be used at a location and time during which a qualified organization holds a permit to conduct charitable gaming. Only instant bingo, paper pull-tab, or paper seal cards purchased by an organization to be used during the organization's charitable gaming activity shall be in the mechanical dispensing device.

2. Keys to the dispensing area and coin box or cash box shall be in the possession and control of the game manager or designee of the organization's board of directors at all times. Keys shall at all times be available at the location where the mechanical dispensing device is being used.

3. The game manager or designee shall provide access to the mechanical dispensing device to the department, its employees, or its agents for inspection upon request.

4. Only a game worker of an organization may stock the mechanical dispensing device, remove cash, or pay winners' prizes.

CC. Organizations shall only acquire, lease, obtain, purchase, rent, or use charitable gaming supplies from a supplier; network bingo supplies from a network bingo provider; distributed pull-tab system or electronic gaming devices from a manufacturer or supplier who has a current permit issued by the department pursuant to § 18.2-340.34 of the Code of Virginia.

DD. An organization shall not tamper with bingo paper or any other charitable gaming supplies received from a supplier or distributed pull-tab system or electronic gaming devices received from a manufacturer or supplier.

EE. The total amount of all discounts given by any organization for bingo games during any fiscal year shall not exceed 1.0% of the organization's gross receipts.

FF. A social organization may place the same electronic gaming device in its social quarters that it places in the public space in its primary location when operating and conducting electronic gaming. A social organization shall notify the department and manufacturer prior to moving the device between its social quarters and the public space in its primary location and shall only move the device after the manufacturer ensures its system accurately reflects the qualified organization to which the electronic gaming sales must be attributed. The social organization shall ensure no cash is located in the device's bill acceptor prior to moving the device between its social quarters and the public space in its primary location.

11VAC20-20-70. Rules of play.

A. Each organization shall adopt "house rules" regarding conduct of the session. The "house rules" for the network bingo game shall be adopted by a mutual agreement among all of the organizations participating in a particular network bingo or by the network bingo provider. Such rules shall be consistent with the provisions of the Charitable Gaming Law and regulations adopted pursuant thereto. "House rules" shall be conspicuously posted or printed on the game program.

B. All players shall be physically present at the location where the bingo numbers for a bingo game are drawn to play the game or to claim a prize, except when the player, who has purchased a network bingo card, is participating in network bingo. Seal card prizes that can only be determined after a seal is removed or opened must be claimed within 30 days of the close of a deal. All other prizes must be claimed on the game date.

C. The following rules of play shall govern the sale of instant bingo, pull-tabs, and seal cards:

1. No cards that have been marked, defaced, altered, tampered with, or otherwise constructed in a manner that tends to deceive the public or affect the chances of winning or losing shall be placed into play.

2. Winning cards shall have the winning symbol or number defaced or punched immediately after redemption by the organization's authorized representative.

3. An organization may commingle unsold instant bingo cards and pull-tabs with no more than one additional deal. The practice of commingling deals shall be disclosed to the public via house rules or in a similar manner. Seal card deals shall not be commingled.

4. If a deal is not played to completion and unsold cards remain, the remaining cards shall be sold at the next session the same type of ticket is scheduled to be sold. If no future date is anticipated, the organization shall, after making diligent efforts to sell the entire deal, consider the deal closed or completed. The unsold cards shall be retained for a minimum of three years following the close of the fiscal year and shall not be opened.

5. All seal card games purchased shall contain the sign-up sheet, the seals, and the cards packaged together in each deal.

6. Progressive seal card prizes not claimed within 30 days shall be carried forward to the next progressive seal card game in progress and paid to the next progressive seal card game prize winner.

D. No one involved in the conduct of bingo may play bingo, play network bingo, or purchase network bingo cards at any session they have worked or intend to work. No one involved in the sale or redemption of any instant bingo, pull-tabs, seal cards, or electronic gaming may purchase directly or through others instant bingo, pull-tab, seal card, or electronic gaming products from organizations they assist on the day they have worked or from any deal they have helped sell or redeem, whichever occurs later.

E. Electronic bingo.

1. Electronic bingo devices may be used by bingo players in the following manner:

a. Players may input into the device each number called or the device may automatically daub each number as the number is called;

b. Players must notify the game operator or caller of a winning pattern of bingo by a means other than use of the electronic bingo device;

c. Players are limited to playing a maximum of 54 card faces per device per game;

d. Electronic bingo devices shall not be reserved for players. Each player shall have an equal opportunity to use the available electronic bingo devices on a first come, first served basis;

e. Each electronic bingo device shall produce a player receipt with the organization name, date, time, location, sequential transaction or receipt number, number of electronic bingo cards loaded, cost of electronic bingo cards loaded, and date and time of the transaction. Images

of cards or faces stored in an electronic bingo device must be exact duplicates of the printed faces if faces are printed;

f. Department agents may examine and inspect any electronic bingo device and related system. Such examination and inspection shall include immediate access to the electronic bingo device and unlimited inspection of all parts and associated systems and may involve the removal of equipment from the game premises for further testing;

g. All electronic bingo devices must be loaded or enabled for play on the premises where the game will be played;

h. All electronic bingo devices shall be rented or otherwise provided to a player only by an organization and no part of the proceeds of the rental of such devices shall be paid to a landlord or the landlord's employee, agent, or member of the landlord's immediate family; and

i. If a player's call of a bingo is disputed by another player or if a department agent makes a request, one or more cards stored on an electronic bingo device shall be printed by the organization.

2. Players may exchange a defective electronic bingo device for another electronic bingo device provided a disinterested player verifies that the device is not functioning. A disinterested player shall also verify that no numbers called for the game in progress have been keyed into the replacement electronic bingo device prior to the exchange.

F. The following rules of play shall govern the conduct of raffles:

1. Before a prize drawing, each stub or other detachable section of each ticket sold shall be placed into a receptacle from which the winning tickets shall be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

2. All prizes shall be valued at fair market value.

G. The following rules shall apply to decision bingo games:

1. Decision bingo shall be played on bingo cards in the conventional manner.

2. Players shall enter a game by paying a predetermined amount for each card face in play.

3. Players shall pay a predetermined fee for each set of three bingo numbers called for each card in play.

4. The prize amount shall be the total of all fees not to exceed the prize limit set forth for regular bingo in § 18.2-340.33 of the Code of Virginia. Any excess funds shall be retained by the organization.

5. The predetermined amounts in subdivisions 2 and 3 of this subsection shall be printed in the game program. The prize amount for a game shall be announced before the prize is paid to the winner.

H. The following rules shall apply to treasure chest games:

1. The organization shall list the treasure chest game on the bingo game program as a "Treasure Chest Raffle."

2. The organization shall have house rules posted that describe how the game is to be played.

3. The treasure chest participant shall only be selected through some other authorized charitable game at the same bingo session.

4. The organization shall account for all funds as treasure chest/raffle sales on the session reconciliation form.

5. If the player does not open the lock on the treasure chest, the game manager or the game manager's designee shall proceed to try every key until the correct key opens the treasure chest lock to show all players that one of the keys will open the lock.

I. The following rules shall apply to progressive bingo games:

1. Bingo paper sold for use in progressive bingo games shall conform to the standards set forth in 11VAC20-20-140.

2. Organizations shall not include in admission packs the bingo paper intended for use in progressive bingo games.

3. Any progressive bingo game, its prize, and the number of bingo numbers to be called shall be clearly announced before the progressive bingo game is played and shall be posted on the premises where the progressive bingo game is played during each session that a progressive bingo game is played.

4. Pricing for a progressive bingo game card or sheet shall be listed on the game program.

5. If the predetermined pattern is not covered within the predetermined number of bingo numbers to be called, then the number of bingo numbers called will increase by one number for each subsequent session the progressive bingo game is played.

6. If the predetermined pattern is not covered within the predetermined number of bingo numbers to be called for that progressive bingo game, then the game will continue as a regular bingo game until the predetermined pattern is covered and a regular bingo prize is awarded.

7. The prize for any progressive bingo game shall be in accordance with the provisions of subdivision 8 of § 18.2-340.33 of the Code of Virginia.

J. The following rules shall apply to WINGO:

1. WINGO shall be played only for the hearing-impaired players.

2. WINGO shall utilize a visual device such as an oversized deck of cards in place of balls selected from a blower.

3. A caller must be in an area visible to all players and shall randomly select cards or other visual devices one at a time and display them so that all players can see them.

4. The organization must have house rules for WINGO, and the rules shall identify how players indicate that they have won.

5. All financial reporting shall be consistent with reporting for a traditional bingo game.

K. The following rules of play shall apply to event games:

1. No instant bingo cards or pull-tabs that have been marked, defaced, altered, tampered with, or otherwise constructed in a manner that tends to deceive the public or affect the chances of winning or losing shall be placed into play.

2. Instant bingo cards and pull-tabs used in an event game shall not be offered for sale or sold at a purchase price other than the purchase price indicated on the flare for that particular deal.

3. The maximum prize amount for event games shall not exceed the amount set forth in subdivision 8 of § 18.2-340.33 of the Code of Virginia for instant bingo, pull-tab, or seal card.

4. A sign-up sheet is not required for event games in which the winners are determined using a seal card.

5. Organizations shall determine the winners of event games during the same bingo session in which the instant bingo cards or pull-tabs are sold.

6. An authorized representative of the organization shall deface or punch the winning instant bingo cards or winning pull-tabs immediately after redemption.

7. If unsold bingo cards or unsold pull-tabs remain, the unsold cards shall be retained for a minimum of three years following the close of the fiscal year and shall not be opened.

Article 3
Bank Accounts, Recordkeeping, Financial Reporting, Audits, Fees

11VAC20-20-80. Bank accounts.

A. A qualified organization shall maintain a charitable gaming bank account that is separate from any other bank account, and all gaming receipts, except receipts from electronic gaming, shall be deposited into the charitable gaming bank account.

B. Disbursements for expenses other than prizes and reimbursement of meal expenses shall be made by check directly from a charitable gaming bank account or a bank account authorized pursuant to subsection A of this section. However, expenses related to a network bingo game may be disbursed through an electronic fund transfer to the network bingo provider provided that such an arrangement is agreed upon by both the qualified organization and the network bingo provider. A written agreement specifying the terms of this arrangement shall be required prior to any electronic fund transfer occurring between the two parties.

C. All records related to the charitable gaming bank account or the other bank account, authorized pursuant to subsection A of this section, including monthly bank statements, canceled checks or facsimiles thereof, and reconciliations, shall be maintained for a minimum of three years following the close of a fiscal year.

D. All receipts from each session of bingo games, network bingo games, raffles, instant bingo, pull-tabs, seal cards, or electronic gaming shall be deposited by the second business day following the session at which they were received.

E. Raffle proceeds unrelated to a session shall be deposited into the qualified organization's charitable gaming bank account or a bank account authorized pursuant to subsection A of this section no later than the end of the calendar week following the week during which the organization received the proceeds.

F. A social organization operating and conducting electronic gaming or a qualified organization renting a premises from a social organization for the purpose of electronic gaming shall maintain a separate bank account for all receipts from electronic gaming.

11VAC20-20-90. Recordkeeping.

A. In addition to the records required by § 18.2-340.30 D of the Code of Virginia, qualified organizations conducting a session of bingo, electronic gaming, instant bingo, pull-tabs, seal cards, or raffle shall maintain a system of records for a minimum of three years following the close of the fiscal year, unless otherwise specified, for each session on forms prescribed by the department or reasonable facsimiles of those forms approved by the department that include:

1. Charitable gaming supplies, including electronic gaming or network bingo supplies purchased and used;

2. A session reconciliation form; an instant bingo, pull-tab, or seal card reconciliation form; and an electronic gaming reconciliation form completed and signed within 48 hours of the end of the session by the game manager;

3. All discounts provided;

4. A reconciliation to account for cash received from floor workers for the sale of extra bingo sheets for any game or network bingo cards;

5. The summary report that electronic bingo systems are required to maintain pursuant to 11VAC20-20-140 D 11;

6. An admissions control system for a session involving bingo and instant bingo, seal cards, and pull-tabs that provides a cross-check on the number of players in

attendance and admission sales. This may include a ticket control system, cash register, or any similar system;

7. All operating expenses, including rent, advertising, and security. Copies of invoices for all such expenses shall also be maintained;

8. Expected and actual receipts from games played on hard bingo cards and number of games played on hard bingo cards;

9. A record of the name and address of each winner for all seal cards; in addition, the winning ticket and seal card shall be maintained for a minimum of 90 days after the session;

10. A record of all door prizes awarded; and

11. For any prize or jackpot of a value that meets or exceeds the reporting requirements in the Internal Revenue Service's Publication 3079, the name and address of each individual to whom any such prize or jackpot is awarded and the amount of the award.

B. Qualified organizations conducting raffles unrelated to a session shall have a recordkeeping system to account for cash receipts, cash disbursements, raffle tickets purchased or sold, and prizes awarded. All records shall be maintained for a minimum of three years following the close of the fiscal year. The recordkeeping system shall include:

1. Invoices for the purchase of raffle tickets, which shall reflect the following information:

a. Name and address of supplier;

b. Name of purchaser;

c. Date of purchase;

d. Number of tickets printed;

e. Ticket number sequence for tickets printed; and

f. Sales price of individual ticket;

2. A record of cash receipts from raffle ticket sales by tracking the total number of tickets available for sale, the number issued to sellers, the number returned, the number sold, and reconciliation of all raffle sales to receipts;

3. Serial numbers of tickets for raffle sales initiated and concluded at a bingo game or sequentially numbered tickets, which shall state the name, address, and telephone number of the organization, the prize to be awarded, the date of the prize drawing or selection, the selling price of the raffle ticket, and the charitable gaming permit number;

4. For any raffle prize of a value that meets or exceeds the reporting requirements in the Internal Revenue Service's Publication 3079, receipts on which prize winners must provide printed name, residence address, and the amount and description of the prize received; and

5. Deposit records of the required weekly deposits of raffle receipts.

C. All raffle tickets shall have a detachable section; be consecutively numbered with the detachable section having the same number; provide space for the purchaser's name, complete address, and telephone number; and state (i) the name and address of the organization; (ii) the prize to be awarded; (iii) the date, time, and location of the prize drawing; (iv) the selling price of the ticket; and (v) the charitable gaming permit number. Winning tickets and unsold tickets shall be maintained for a minimum of three years following the close of the fiscal year.

D. All unused charitable gaming supplies, including network bingo supplies, shall either be returned for refund to the original supplier in unopened original packaging in resalable condition as determined by the supplier or destroyed following notification to the department on a form prescribed by the department. The organization shall maintain a receipt for all such supplies returned to the supplier or destroyed.

11VAC20-20-100. Financial reporting, penalties, inspections, and audits.

A. Each holder of a charitable gaming permit or an authorization to operate and conduct electronic gaming shall file an annual report of receipts and disbursements by March 15 of each year on a form prescribed by the department. The annual report shall cover the activity for the fiscal year.

B. For all charitable gaming except electronic gaming, the annual report shall be accompanied by the audit and administration fee of 0.5% of the gross receipts and an additional fee of 0.25% for the fiscal year unless the fee has been remitted with quarterly reports, or the organization is exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia.

C. For electronic gaming, the annual report shall be accompanied by the audit and administration fee of 0.5% of the adjusted gross receipts and an additional fee of 0.25% for the fiscal year unless the fee has been remitted with quarterly reports, remitted by the manufacturer pursuant to § 18.2-340.31 of the Code of Virginia. While the manufacturer may pay the audit and administration fee for the organization, it is the sole responsibility of the organization to ensure the fee is paid in full.

D. An organization desiring an extension to file its annual report for good cause shall, prior to the due date established in subsection A of this section, request the extension in writing on a form prescribed by the department and shall pay the projected audit and administration fee, unless remitted by the manufacturer pursuant to § 18.2-340.31 of the Code of Virginia or exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia. The extension request and payment of projected fees shall be made in accordance with the provisions of § 18.2-340.30 of the Code of Virginia.

E. Unless exempted by § 18.2-340.23 of the Code of Virginia, qualified organizations realizing any gross gaming receipts in

any calendar quarter shall file a quarterly report of receipts and disbursements on a form prescribed by the department as follows:

Quarter Ending	Date Due
March 31	June 1
June 30	September 1
September 30	December 1
December 31	March 1

Qualified organizations shall submit quarterly reports with the appropriate audit and administration fee, as established in subsections B and C of this section, for the quarter unless remitted by the manufacturer pursuant to § 18.2-340.31 of the Code of Virginia, or the organization is exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia. An annual financial report may substitute for a quarterly report if the organization has no further charitable gaming income during the remainder of the reporting period and the annual report is filed by the due date for the applicable calendar quarter.

F. An organization desiring an extension to file its quarterly report for good cause shall, prior to the due date as specified pursuant to subsection D of this section, request the extension in writing on a form prescribed by the department and shall pay the projected audit and administration fee, unless remitted by the manufacturer pursuant to § 18.2-340.31 of the Code of Virginia or exempt from payment of the fee pursuant to § 18.2-340.23 of the Code of Virginia. The extension request and payment of projected fees shall be made in accordance with the provisions of § 18.2-340.30 of the Code of Virginia.

G. Organizations failing to file required reports, request an extension, or make fee payments when due shall be charged a penalty of $25 per day from the due date until such time as the required report is filed.

H. Any qualified organization in possession of funds derived from charitable gaming or electronic gaming, including those who have ceased operations, regardless of when such funds may have been received or whether it has a valid permit or authorization to operate and conduct electronic gaming from the department, shall file an annual financial report on a form prescribed by the department on or before March 15 of each year until such funds are depleted. If an organization ceases the operation and conduct of charitable gaming or electronic gaming, it shall provide the department with the name of an individual who shall be responsible for filing financial reports. If no such information is provided, the president of an organization shall be responsible for filing reports until all charitable gaming or electronic gaming proceeds are depleted.

I. If an organization has been identified through inspection, audit, or other means as having deficiencies in complying with the Charitable Gaming Law and regulations adopted pursuant thereto or having ineffective internal controls, the department may impose restrictions or additional recordkeeping and financial reporting requirements.

J. Any records deemed necessary to complete an inspection, audit, or investigation may be collected by the department, its employees, or its agents from the premises of an organization or any location where charitable gaming is conducted. The department shall provide a written receipt of such records at the time of collection.

K. Salaries and wages of employees whose primary responsibility is to provide services for the principal benefit of an organization's members shall not qualify as a business expense.

11VAC20-20-110. Use of proceeds.

A. All payments by an organization intended as use of proceeds must be made by check written from the organization's charitable gaming account or a bank account authorized pursuant to 11VAC20-20-80 A.

B. Use of proceeds payments may be made for scholarship funds or for religious, charitable, educational, or community purposes. In addition, an organization may obtain department approval to establish a special fund account or an irrevocable trust fund for special circumstances. Transfers to such an account or an irrevocable trust fund from the organization's charitable gaming account may be included as a use of proceeds if the payment is authorized by the organization's board of directors.

No payments made to such a special fund account shall be withdrawn for other than the specified purpose, unless prior notification is made to the department.

C. Expenditures of charitable gaming funds for social or recreational activities or for events, activities, or programs that are open primarily to an organization's members and their families shall not qualify as use of proceeds unless substantial benefit to the community is demonstrated.

D. Payments made to or on behalf of indigent, sick, or deceased members or their immediate families shall be allowed as use of proceeds provided they are approved by the organization's board of directors and the need is documented.

E. Payments made directly for the benefit of an individual member, member of an individual member's family, or person residing in an individual member's household shall not be allowed as a use of proceeds unless authorized by the Charitable Gaming Law or regulations adopted pursuant thereto.

F. Use of proceeds payments by an organization shall not be made for any activity that is not permitted by federal, state, or local laws or for any activity that attempts to influence or finance directly or indirectly political persons or committees or

the election or reelection of any person who is or has been a candidate for public office.

G. Organizations shall maintain details of all use of proceeds disbursements for a minimum of three years following the close of the fiscal year and shall make this information available to the department upon request.

H. The department may disallow a use of proceeds payment to be counted against the minimum percentage referred to in 11VAC20-20-20 D. If any payment claimed as use of proceeds is subsequently disallowed, an organization may be allowed additional time as specified by the department to meet minimum use of proceeds requirements.

Article 4
Rent

11VAC20-20-120. Requirements regarding renting premises, agreements, and landlord participation.

A. No qualified organization shall lease, rent, or use any premises to operate or conduct charitable gaming unless all terms and conditions for lease, rental, or use are set forth in a written agreement and signed by the parties thereto prior to the issuance of a permit to operate and conduct charitable gaming or authorization to operate and conduct electronic gaming.

B. Organizations shall not make payments to a landlord or a landlord's agent or employee except by check drawn on the organization's charitable gaming account.

C. No landlord, landlord's agent or employee, member of a landlord's immediate family, or person residing in a landlord's household shall make, directly or indirectly, a loan to any of the organization's officers, directors, or game managers or to any organization involved in the management, operation, or conduct of charitable gaming or electronic gaming of an organization in Virginia that leases its charitable gaming premises from the landlord.

D. No landlord, landlord's agent or employee, member of a landlord's immediate family, or person residing in a landlord's household shall make any direct or indirect payment to any qualified organization or the organization's officers, directors, or game managers involved in the management, operation, or conduct of charitable gaming or electronic gaming conducted on a premise leased from the landlord in Virginia unless the payment is authorized by the lease agreement and is in accordance with the law.

E. No landlord, landlord's agent or employee, member of a landlord's immediate family, or person residing in a landlord's same household shall do any of the following at charitable games or electronic games operated and conducted on the landlord's premises:

1. Participate in the management, operation, or conduct of any charitable games or electronic games;

2. Sell, lease, or otherwise provide any charitable gaming supplies, including bingo cards, pull-tab cards, distributed pull-tab systems, electronic gaming devices, network bingo cards, or other game pieces; or

3. Require as a condition of the lease that a particular manufacturer, distributor, network bingo provider, or supplier of charitable gaming supplies or electronic gaming device is used by the organization.

"Charitable gaming supplies" as used in this chapter shall not include glue, markers, or tape sold from concession stands or from a location physically separated from the location where charitable gaming supplies are normally sold.

F. No member of an organization involved in the management, operation, or conduct of charitable gaming or electronic gaming shall provide any services to a landlord or a landlord's agents or employees or be remunerated in any manner by the landlord of the premises or such landlord's agents or employees where an organization is operating or conducting its charitable gaming or electronic gaming.

G. For the purpose of operating and conducting electronic gaming, a qualified organization shall only lease or rent the premises of a permitted and authorized social organization that is operating and conducting electronic gaming pursuant to §§ 18.2-340.25:1 and 18.2-340.26:3 of the Code of Virginia. All terms and conditions for leasing or renting of the premises shall be set forth in a written agreement and signed by the parties. No qualified organization shall operate and conduct electronic gaming until the written agreement is submitted to the department for review and the department issues a permit authorizing the qualified organization to conduct and operate electronic gaming.

H. The lease agreement between a social organization authorized to operate and conduct electronic gaming and a qualified organization that intends to lease or rent the social organization's public space in order to operate and conduct electronic gaming:

1. Shall not require the qualified organization to acquire, lease, obtain, purchase, rent, or use an electronic gaming device from a specific manufacturer;

2. Shall not provide for the employment or compensation of any member of the social organization for the purpose of organizing, managing, or conducting electronic gaming;

3. Shall establish a fixed rental or lease payment amount that reflects the fair market rental value, as defined in § 18.2-340.16 of the Code of Virginia. The fixed rental or lease payment amount shall not be based on a percentage of the qualified organization's electronic gaming receipts or the number of players at its electronic gaming session;

4. Shall not include a clause or condition that restricts the qualified organization from operating and conducting

electronic gaming at the premises of another social organization; and

5. Shall not authorize the qualified organization to operate and conduct electronic gaming in the social organization's social quarters.

I. A social organization that is permitted and authorized to operate and conduct electronic gaming that leases its premises to a qualified organization so that the qualified organization may operate and conduct electronic gaming:

1. Shall not restrict a qualified organization's ability to conduct electronic gaming at the premise of another social organization;

2. Shall not lease or rent its social quarters to a qualified organization for the purpose of operating and conducting electronic gaming;

3. Shall not enter into any agreement that employs or otherwise compensates any person from the qualified organization to participate in the management, operation, or conduct of electronic gaming; and

4. Shall only lease or rent its premises by means of a fixed rental or lease payment amount that is established in the written agreement and reflects the fair market rental value, as defined in § 18.2-340.16 of the Code of Virginia. The fixed rental or lease payment amount shall not be based on a percentage of the qualified organization's receipts from electronic gaming or the number of players at its electronic gaming session.

Part III
Suppliers

11VAC20-20-130. Suppliers of charitable gaming supplies: application, qualifications, suspension, revocation, or refusal to renew permit.

A. Prior to providing any charitable gaming supplies, a supplier shall submit an application on a form prescribed by the department and receive a permit. A $1,000 application fee payable to the Treasurer of Virginia is required. In addition, a supplier must be authorized to conduct business in the Commonwealth of Virginia, which may include registration with the State Corporation Commission, the Department of Taxation, and the Virginia Employment Commission. The actual cost of background investigations for a permit may be billed by the department to an applicant.

B. The department may refuse to issue a permit or may suspend or revoke a permit if an officer, director, employee, agent, or owner:

1. Is operating without a valid license, permit, or certificate as a supplier, network bingo provider, or manufacturer in any state in the United States;

2. Fails or refuses to recall a product as directed by the department;

3. Conducts business with unauthorized entities or is not authorized to conduct business in the Commonwealth of Virginia;

4. Has been convicted of or pleaded nolo contendere to any crime as specified by § 18.2-340.34 B of the Code of Virginia; has had any license, permit, certificate, or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; has failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth; or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia. As this provision relates to employees or agents, it shall only apply to individuals involved in sales to or solicitations of customers in the Commonwealth of Virginia;

5. Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to charitable gaming or the distribution of charitable gaming supplies involving or concerning the supplier, any officer or director, employee, agent, or owner during the term of its permit;

6. Fails to provide to the department upon request a current Letter for Company Registration on file with the U.S. Department of Justice if required in accordance with the Gambling Devices Act of 1962 (15 USC §§ 1171 through 1178) for any device that it sells, distributes, services, or maintains in the Commonwealth of Virginia; or

7. Has been engaged in conduct that would compromise the department's objective of maintaining the highest level of integrity in charitable gaming.

C. A supplier shall not sell, offer to sell, or otherwise provide charitable gaming supplies, distributed pull-tab systems, or electronic gaming devices for use by anyone in the Commonwealth of Virginia other than to an organization with a permit from the department or another permitted supplier. However, a supplier may:

1. Sell bingo cards and paper to persons or entities other than qualified organizations provided such supplies shall not be sold or otherwise provided for use in charitable gaming activities regulated by the department or in unlawful gambling activities. For each such sale, the supplier shall maintain the name, address, and telephone number of the purchaser. The supplier shall also obtain a written statement from the purchaser verifying that such supplies will not be used in charitable gaming or any unlawful gambling activity. Such a statement shall be dated and kept on file for a minimum of three years from the close of a fiscal year. Payment for such sales in excess of $50 shall be accepted in the form of a check.

2. Sell pull-tabs, seal cards, and electronic pull-tabs to organizations for use only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the pull-tabs, seal cards, or electronic pull-tabs are sold is open only to members and their guests as authorized by § 18.2-340.26:1 of the Code of Virginia. Each such sale shall be accounted for separately and the accompanying invoice shall be clearly marked: "For Use in Social Quarters Only."

3. All such sales shall be documented pursuant to subsection G of this section and reported to the department pursuant to subsection I of this section. This provision shall not apply to the sale to landlords of equipment and video systems as defined in this chapter.

D. A supplier shall not sell, offer to sell, or otherwise provide charitable gaming supplies to any individual or organization in the Commonwealth of Virginia unless the charitable gaming supplies are purchased or obtained from a manufacturer or another permitted supplier. Suppliers may take back for credit and resell supplies received from an organization with a permit that has ceased charitable gaming or is returning supplies not needed.

E. No supplier, supplier's agent, or supplier's employee may be involved in the management, operation, or conduct of charitable gaming in the Commonwealth of Virginia. No member of a supplier's immediate family or person residing in the same household as a supplier may be involved in the management, operation, or conduct of charitable gaming of any customer of the supplier in the Commonwealth of Virginia. No supplier, supplier's agent, or supplier's employee may participate in any charitable gaming of any customer of the supplier in the Commonwealth of Virginia. For the purposes of this regulation, servicing of electronic bingo devices or electronic gaming devices shall not be considered conduct or participation.

F. The department shall conduct a background investigation prior to the issuance of a permit to any supplier. The investigation may include the following:

1. A search of criminal history on all officers, directors, and owners; and

2. Verification of current compliance with Commonwealth of Virginia tax laws.

If the officers, directors, or owners are domiciled outside of the Commonwealth of Virginia or have resided in the Commonwealth of Virginia for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which the officers, directors, or owners have resided during the previous five years shall be provided by the applicant.

G. Appropriate information and authorizations shall be provided to the department to verify information cited in subsection E of this section.

H. Suppliers shall document each sale or rental of charitable gaming supplies to an organization in the Commonwealth of Virginia on an invoice, which reflects the following:

1. Name, address, and organization number of the organization;

2. Date of sale or rental and location where charitable gaming supplies are shipped if different from the billing address;

3. Name, form number, and serial number of each deal of instant bingo, pull-tabs, seal cards, electronic gaming, or bundles and the quantity of cards in each deal;

4. Quantity of deals sold, the cost per deal, the selling price per card, the cash take-in per deal, and the cash payout per deal;

5. Serial number of the top sheet in each pack of disposable bingo paper, the quantity of sheets in each pack or pad, the cut and color, and the quantity of packs or pads sold;

6. Serial number for each series of uncollated bingo paper and the number of sheets sold;

7. Detailed information concerning the type, quantity, and individual price of any other charitable gaming supplies or related items, including concealed face bingo cards, hard cards, markers or daubers and refills, or any other merchandise. For concealed face bingo cards, the quantity of sets, price per set, and the serial number of each set shall be included;

8. Serial number of each electronic gaming device, a description of the physical attributes of the electronic gaming device, the quantity of electronic gaming devices sold or rented, and the physical address to which each electronic gaming device is shipped or delivered;

9. Serial number and description of any other equipment sold or rented that is used to facilitate the distribution, play, and redemption of electronic gaming and the physical address to which the equipment is shipped or delivered; and

10. Any type of equipment, device, or product manufactured for or intended to be used in the conduct of charitable games, including designators, designator receptacles, number display boards, selection devices, dispensing machines, and verification devices.

I. Suppliers shall ensure that two copies of the detailed invoice are provided to the customer for each sale of charitable gaming supplies.

J. Each supplier shall provide a report to the department by March 1 of each year on sales of charitable gaming supplies for the fiscal year ending December 31 of the previous year to each

organization in the Commonwealth of Virginia. This report shall be provided to the department via a department-approved electronic medium. The report shall include the name, address, and organization number of each organization and the following information for each sale or transaction:

1. Bingo paper sales, including purchase price, description of paper to include quantity of sheets in pack and quantity of faces on sheet, and quantity of single sheets or packs shipped;

2. Deals of instant bingo, pull-tabs, seal cards, electronic pull-tabs, or any other raffle sales, including purchase price, deal name, deal form number, quantity of tickets in deal, ticket price, cash take-in per deal, cash payout per deal, and quantity of deals;

3. Electronic bingo device sales, including purchase or rental price and quantity of units;

4. Equipment used to facilitate the distribution, play, and redemption of electronic gaming, including purchase or rental price, description of equipment, quantity of units of each type of equipment, and the physical address to which the equipment is shipped or delivered; and

5. Sales of miscellaneous items such as daubers, markers, and other merchandise, including purchase price, description of product, and quantity of units.

K. The department shall set manufacturing and testing criteria for all electronic bingo devices and other equipment used in the conduct of charitable gaming. An electronic bingo device shall not be sold, leased, or otherwise furnished to any person in the Commonwealth of Virginia for use in the conduct of charitable gaming until an identical sample device containing identical proprietary software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the device conforms, at a minimum, to the restrictions and conditions set forth in this chapter. Once the testing facility reports the test results to the department, the department will either approve or disapprove the submission and inform the manufacturer of the results. If any such equipment does not meet the department's criteria, it shall be recalled and shall not be distributed in the Commonwealth of Virginia. The cost of testing shall be borne by the manufacturer of such equipment.

L. Department employees shall have the right to inspect all electronic and mechanical equipment used in the conduct of charitable gaming.

M. Suppliers, supplier's agents and employees, members of the supplier's immediate family, or persons residing in a supplier's household shall not make any loan directly or indirectly to any organization or officer, director, game manager, or entity involved in the management, operation, or conduct of charitable gaming of a supplier's customer located in the Commonwealth of Virginia.

N. No supplier, supplier's agent, or supplier's employee shall directly or indirectly provide a rebate, discount, or refund to any person other than an organization that purchases supplies or leases or purchases equipment from the supplier. All such transactions shall be recorded on the supplier's account books.

O. A supplier shall not rent, sell, or otherwise provide electronic bingo devices or equipment used to distribute, play, or redeem electronic games unless the supplier possesses a valid permit in the Commonwealth of Virginia.

P. A written agreement specifying the terms of lease or rental shall be required for any electronic bingo devices or equipment used to distribute, play, or redeem electronic games provided to an organization.

11VAC20-20-140. Construction and other standards for bingo, instant bingo, pull-tabs, seal cards, raffles, electronic bingo devices, and dispensing devices.

A. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use charitable gaming supplies unless they conform to the following construction standards:

1. Disposable paper sold shall be of sufficient weight and quality to allow for clearly readable numbers and to prevent ink from spreading, bleeding, or otherwise obscuring other numbers or cards.

2. Each sheet of disposable bingo paper shall be composed of cards bearing a serial number. No serial number shall be repeated on or in the same style, series, and color of cards within a three-year period.

3. Disposable bingo paper assembled in books or packs shall not be separated except for single-sheet specials. This provision does not apply to two-part cards on which numbers are filled by players and one part is separated and provided to an organization for verification purposes.

4. Each unit of disposable bingo paper shall have an exterior label listing the following information:

a. Description of product;

b. Number of packs or loose sheets;

c. Series numbers;

d. Serial number of the top sheet;

e. Number of cases;

f. Cut of paper; and

g. Color of paper.

5. "Lucky Seven" bingo cards or electronic facsimiles thereof shall have a single face where seven numbers shall be chosen. "Lucky Seven" sheets or electronic facsimiles

thereof shall have multiple faces where seven numbers shall be chosen per face.

6. Disposable bingo paper shall have a number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card. This number is commonly referred to as a free space number, perm number, center number, card number, or face number.

B. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use instant bingo, pull-tab, or seal cards unless they conform to the following construction standards:

1. Cards shall be constructed so that concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the card by using a high intensity lamp of 500 watts, with or without utilizing a focusing lens.

2. Deals shall be designed, constructed, glued, and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

3. Each card in a deal shall bear the same serial number. Only one serial number shall be used in a deal. No serial number used in a deal shall be repeated by the same manufacturer on that same manufacturer's form within a three-year period. The flare of each deal shall accompany the deal and shall have affixed to it the same serial number as the tickets in such deal.

4. Numbers or symbols on cards shall be fully visible in the window and shall be placed so that no part of a number or symbol remains covered when the tab is removed.

5. Cards shall be glued on all edges and around each window. Glue shall be of sufficient strength and type to prevent the undetectable separation or delamination of the card. For banded tickets, the glue must be of sufficient strength and quality to prevent the separation of the band from the ticket.

6. The following minimum information shall be printed on a card:

a. Break open pull-tab and instant bingo cards:

(1) Name of the manufacturer or its distinctive logo;

(2) Name of the game;

(3) Manufacturer's form number;

(4) Price per individual card or bundle;

(5) Unique minimum five-digit game serial number printed on the game information side of the card; and

(6) Number of winners and respective winning number or symbols and specific prize amounts unless accompanied by a manufacturer's preprinted publicly posted flare with that information.

b. Banded pull-tabs:

(1) Manufacturer;

(2) Serial number;

(3) Price per individual card or bundle unless accompanied by a manufacturer's preprinted publicly posted flare with that information; and

(4) Number of winners and respective winning numbers or symbols and prize amounts or a manufacturer's preprinted publicly posted flare giving that information.

7. All seal card games sold to organizations shall contain the sign-up sheet, seals, and cards packaged together in each deal.

C. Raffle tickets used independent of a session must conform to the following construction standards:

1. Each ticket shall have a detachable section and shall be consecutively numbered.

2. Each section of a ticket shall bear the same number. The section retained by the organization shall provide space for the purchaser's name, complete address, and telephone number.

3. The following information shall be printed on the purchaser's section of each ticket:

a. Dates and times of drawings;

b. Locations of the drawings;

c. Name of the charitable organization conducting the raffle;

d. Price of the ticket;

e. Charitable gaming permit number; and

f. Prizes.

Exceptions to these construction standards are allowed only with prior written approval from the department.

D. Electronic bingo.

1. The department, at its discretion, may require additional testing of electronic bingo devices at any time. Such additional testing shall be at the manufacturer's expense and shall be a condition of the continued use of such device.

2. All electronic bingo devices shall use proprietary software and hardware or commonly available software and hardware and shall be enabled for play on the premises where the game is to be played.

3. Each electronic bingo device shall have a unique identification number securely encoded into the software of the device. The unique identification number shall not be alterable by anyone other than the manufacturer of the electronic bingo device. Manufacturers of electronic bingo devices shall employ sufficient security safeguards in designing and manufacturing the devices such that it may be verified that all proprietary software components are

authentic copies of the approved software components and all functioning components of the device are operating with identical copies of approved software programs. The electronic bingo device must also have sufficient security safeguards so that any restrictions or requirements authorized by the department or any approved proprietary software are protected from alteration by unauthorized personnel. The electronic bingo device shall not contain hard-coded or unchangeable passwords. Security measures that may be employed to comply with these provisions include the use of dongles, digital signature comparison hardware and software, secure boot loaders, encryption, and key and callback password systems.

4. A firewall or equivalent hardware device configured to block all inbound and outbound traffic that has not been expressly permitted and is not required for the continued use of the electronic bingo system must exist between the electronic bingo system and any external point of access.

5. Electronic bingo devices shall not allow a player to create a card by the input of specific numbers on each card. Manufacturers shall ensure that an electronic bingo device does not allow for the play of any bingo card faces other than those verifiably purchased by the patron.

6. Electronic bingo devices shall not accept cash, currency, or tokens for play.

7. Electronic bingo devices shall require the manual entry of numbers as they are called, the manual verification of numbers as they have been electronically transmitted to the device, or the full automatic daubing of numbers as each number is called. During the play of a bingo game, the transmission of data to electronic bingo devices shall be limited to one-way communication to the electronic bingo device and shall consist only of publicly available information regarding the current game.

8. A device shall not allow the play of more than 54 cards per device per game.

9. The electronic bingo device system shall record a sequential transaction number or audit tracking number for each transaction. The system shall not allow the manual resetting or changing of this number.

10. The system shall produce a receipt for each electronic bingo device rented or otherwise provided containing the following:

a. Organization name;

b. Location of bingo game;

c. Date and time of the transaction;

d. Sequential transaction or receipt number;

e. Description of each electronic bingo product loaded. The description must include the quantity of bingo card faces that appear on each electronic bingo product (i.e., 9 Jackpot) and the sales price of each electronic bingo product;

f. Quantity of each electronic bingo product loaded; and

g. Total sales price of the transaction.

11. The system shall maintain and make available on demand a summary report for each session that includes the following:

a. Organization name;

b. Location of bingo game;

c. Date and time of each transaction;

d. Sequential transaction or receipt number of each transaction;

e. Description of each electronic bingo product loaded each session. The description must include the quantity of bingo card faces that appear on each electronic bingo product and the sales price of each electronic bingo product;

f. Quantity of each electronic bingo product loaded;

g. Total sales price of each electronic bingo product loaded;

h. Total sales price for each transaction;

i. A transaction history correlating the sequential transaction number of each electronic bingo device sale to the unique identification number of the electronic bingo device on which the sale was played;

j. Sufficient information to identify voids and returns, including the date and time of each voided transaction and return, the sequential transaction number, and the cost of voided transactions and returns; and

k. Total gross receipts for each session.

12. Each electronic bingo device shall be programmed to automatically erase all stored electronic bingo cards at the end of the last game of a session, within a set time from their rental to a player, or by some other clearance method approved by the department.

13. All electronic bingo devices shall be reloaded with another set of electronic bingo cards at the beginning of each session if the devices are to be reused at the same location.

E. In instances where a defect in packaging or in the construction of deals or electronic bingo devices is discovered by or reported to the department, the department shall notify the manufacturer of the deals or electronic bingo devices containing the alleged defect. Should the department, in consultation with the manufacturer, determine that a defect exists and should the department determine that the defect affects game security or otherwise threatens public confidence in the game, the department may, with respect to deals or electronic bingo devices for use still located within the Commonwealth of Virginia, require the supplier to:

1. Recall the deals or electronic bingo devices affected that have not been sold or otherwise provided; or

2. Issue a total recall of all affected deals or electronic bingo devices.

F. No supplier shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use an instant bingo, pull-tab, or seal card dispenser unless the dispenser conforms to the following standards:

1. Each dispenser shall be manufactured in a manner that ensures a pull-tab ticket is dispensed only after insertion of United States currency or coinage into the dispenser. Such tickets and any change due shall be the only items dispensed from the machine.

2. Each dispenser shall be manufactured in a manner that ensures the dispenser neither displays nor has the capability of displaying or otherwise identifying an instant bingo, pull-tab, or seal card winning or nonwinning ticket.

3. Each dispenser shall be manufactured in such a manner that any visual animation does not simulate or display rolling or spinning reels or produce audible music or enhanced sound effects.

4. Each dispenser shall be equipped with separate locks for the instant bingo, pull-tab, or seal card supply modules and money boxes. Locks shall be configured so that no one key will operate both the supply modules and money boxes.

G. The department may require testing of a dispensing device at any time to ensure that it meets construction standards and allows for fair play. Such tests shall be conducted at the cost of the manufacturer of such dispensing devices.

H. The face value of the instant bingo, pull-tab, or seal cards being dispensed shall match the amount deposited in the currency acceptor or coin acceptor less change provided.

I. A dispensing device shall only dispense instant bingo, pull-tab, or seal cards that conform to the construction standards established in subsection B of this section and the randomization standards established in 11VAC20-20-150.

J. Suppliers and manufacturers of instant bingo, pull-tab, or seal card dispensers shall comply with the requirements of the Gambling Devices Act of 1962 (15 USC §§ 1171 through 1178).

11VAC20-20-150. Instant bingo, pull-tabs, or seal card randomization standards.

All instant bingo, pull-tabs, or seal cards shall meet the following randomization standards:

1. Deals shall be assembled so that winning tickets are placed throughout each deal.

2. Deals shall be assembled and packaged in a manner that prevents isolation of winning cards due to variations in printing, graphics, colors, sizes, appearances of cut edges, or other markings of cards.

3. Winning cards shall be distributed and mixed among all other cards in a deal so as to eliminate any pattern between deals or portions of deals from which the location or approximate location of any winning card may be determined.

11VAC20-20-160. Electronic random number generator standards.

A. Electronic random number generators shall not be sold, leased, or otherwise furnished to an organization for use in the conduct of bingo until an identical sample device containing identical proprietary software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The cost of testing shall be borne by the manufacturer of such equipment.

B. An electronic random number generator used in the conduct of bingo shall produce output that is statistically random.

1. Numbers produced by an electronic random number generator used in the conduct of bingo shall be statistically random individually and in the permutations and combinations used in the application under the rules of the game.

2. Numbers produced by an electronic random number generator used in the conduct of bingo shall pass the statistical tests for randomness to a 99% confidence level. Statistical tests for randomness may include:

a. Chi-square test;

b. Equi-distribution (frequency) test;

c. Gap test;

d. Poker test;

e. Coupon collector's test;

f. Permutation test;

g. Run test (patterns of occurrences shall not be recurrent);

h. Spectral test;

i. Serial correlation test potency and degree of serial correlation (outcomes shall be independent from the previous game); and

j. Test on subsequences.

C. An electronic random number generator used in the conduct of bingo shall produce output that is unpredictable.

1. It shall not be feasible to predict future outputs of a random number generator even if the algorithm and the past sequence of outputs are known.

2. Unpredictability shall be ensured by reseeding or by continuously cycling the random number generator and by a

sufficient number or random number generator states for the applications supported.

3. Reseeding may be used where the reseeding input is at least as statistically random as and independent of the output of the random number generator being reseeded.

D. An electronic random number generator used in the conduct of bingo shall produce output that is nonrepeating. A random number generator shall not be initialized to reproduce the same output stream that it has produced before nor shall any two instances of a random number generator produce the same stream as each other.

E. Software that calls an electronic random number generator used in the conduct of bingo to derive game outcome events shall immediately use the output returned in accordance with the game rules.

F. The outputs of an electronic random number generator used in the conduct of bingo shall not be arbitrarily discarded or selected.

G. Where a sequence of outputs is required, the whole of the sequence in the order generated shall be used in accordance with the game rules.

H. An electronic random number generator used in the conduct of bingo that provides output scaled to given ranges shall:

1. Be independent and uniform over the range;

2. Provide numbers scaled to the ranges required by game rules and, notwithstanding the requirements of subdivision 3 of this subsection, may discard numbers that do not map uniformly onto the required range but shall use the first number in sequence that does map correctly to the range; and

3. Be capable of producing every possible outcome of a game according to its rules and use an unbiased algorithm. A scaling algorithm is considered to be unbiased if the measured bias is no greater than one in 100 million.

I. An electronic random number generator that an organization is using to conduct bingo prior to November 7, 2012, is not required to be certified.

Part IV
Electronic Distributed Pull-Tab Systems

Article 1
Electronic Gaming Manufacturers

11VAC20-20-170. Manufacturers of electronic gaming devices: application, qualifications, suspension, revocation, or refusal to renew permit.

A. As used in this section, "manufacturer" means an "electronic gaming manufacturer" as defined in § 18.2-340.16 of the Code of Virginia.

B. Prior to providing any electronic gaming device or distributed pull-tab system, a manufacturer shall submit an application on a form prescribed by the department and receive a permit. A $1,000 application fee payable to the Treasurer of Virginia is required. In addition, a manufacturer must be authorized to conduct business in the Commonwealth of Virginia, which may include registration with the State Corporation Commission, the Department of Taxation, and the Virginia Employment Commission. The actual cost of background investigations for a permit may be billed by the department to an applicant.

C. The department may refuse to issue a permit or may suspend or revoke a permit if an officer, director, employee, agent, or owner:

1. Is operating without a valid license, permit, or certificate as a supplier, network bingo provider, or manufacturer in any state in the United States;

2. Fails or refuses to recall a product as directed by the department;

3. Conducts business with unauthorized entities or is not authorized to conduct business in the Commonwealth of Virginia;

4. Has been convicted of or pleaded nolo contendere to any crime as specified by § 18.2-340.34 B of the Code of Virginia; has had any license, permit, certificate, or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; has failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth; or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia. As this provision relates to employees or agents, it shall only apply to individuals involved in sales to or solicitations of customers in the Commonwealth of Virginia;

5. Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to charitable gaming or the distribution of a distributed pull-tab system involving or concerning the manufacturer, any officers or directors, employees, agent, or owner during the term of its permit;

6. Fails to provide to the department upon request a current Letter for Company Registration on file with the U.S. Department of Justice if required in accordance with the Gambling Devices Act of 1962 (15 USC §§ 1171 through 1178) for any device that it distributes in the Commonwealth of Virginia;

7. Has been engaged in conduct that would compromise the department's objective of maintaining the highest level of integrity in charitable gaming; or

8. Violates any provision of the Charitable Gaming Law or regulation adopted pursuant thereto.

D. Before denying, suspending, or revoking a manufacturer's permit, the department shall give the manufacturer a statement documenting the grounds for such action and an opportunity for a hearing as outlined in Part VI (11VAC20-20-600 et seq.) of this chapter.

E. A manufacturer shall not distribute a distributed pull-tab system for use by anyone in the Commonwealth of Virginia other than to an authorized social organization, qualified organization operating and conducting electronic gaming in accordance with the Charitable Gaming Law and regulations established thereto or a permitted supplier.

All such distributions shall be documented pursuant to subsection I of this section and reported to the department pursuant to subsection K of this section.

F. No manufacturer of a distributed pull-tab system, the manufacturer's agent, or the manufacturer's employee shall be involved in the management, operation, or conduct of charitable gaming in the Commonwealth of Virginia. No member of a manufacturer's immediate family or person residing in the same household as a manufacturer may be involved in the management, operation, or conduct of charitable gaming of any customer of the manufacturer in the Commonwealth of Virginia. No manufacturer of a distributed pull-tab system, the manufacturer's agent, or the manufacturer's employee may participate in any charitable gaming of any customer of the manufacturer in the Commonwealth of Virginia. For the purposes of this chapter, servicing a distributed pull-tab system shall not be considered conduct or participation.

G. The department shall conduct a background investigation prior to the issuance of a permit to any manufacturer. The investigation may include the following:

1. A search of criminal history records on all officers, directors, and owners;

2. Verification of current compliance with Commonwealth of Virginia tax laws; and

3. Verification of current compliance with Virginia gaming laws or the gaming laws of any other state.

If the officers, directors, or owners are domiciled outside of the Commonwealth of Virginia or have resided in the Commonwealth of Virginia for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which the officers, directors, or owners have resided during the previous five years shall be provided by the applicant.

H. Appropriate information and authorizations shall be provided to the department to verify information cited in subsection F of this section.

I. Manufacturers shall document each distribution of a distributed pull-tab system to any person for use in the Commonwealth of Virginia on an invoice that reflects the following:

1. Name, address, and organization number of the organization or supplier;

2. Date of sale or rental and location where the distributed pull-tab system is shipped or delivered if different from the billing address;

3. Name, form number, and serial number of each deal of electronic gaming;

4. Quantity of deals sold, the cost per deal, the selling price per card, the cash take-in per deal, and the cash payout per deal;

5. Serial number of each electronic gaming device, a description of the physical attributes of the electronic gaming device, the quantity of electronic gaming devices sold or rented, and the physical address to which each electronic gaming device is shipped or delivered; and

6. Serial number and description of any other equipment sold or rented that is used to facilitate the distribution, play, and redemption of electronic gaming and the physical address to which the equipment is shipped or delivered.

J. Manufacturers shall ensure that two copies of the detailed invoice are provided to the customer for each distribution of a distributed pull-tab system.

K. Each manufacturer shall provide a report to the department by March 1 of each year on the distribution of a distributed pull-tab system for the fiscal year ending December 31 of the previous year to each organization and permitted supplier in the Commonwealth of Virginia. This report shall be provided to the department via a department-approved electronic medium. The report shall include the name, address, and organization number of each organization and permitted supplier and the following information for each sale or transaction:

1. Deals of electronic games, including purchase price, deal name, deal form number, quantity of electronic gaming in deal, electronic pull-tab price, cash take-in per deal, cash payout per deal, and quantity of deals;

2. Equipment used to facilitate the distribution, play, and redemption of electronic games, including purchase or rental price, description of equipment, quantity of units of each type of equipment, and the physical address to which the equipment is shipped or delivered; and

3. Complete record of all electronic gaming adjusted gross receipts, itemized by organization.

L. A manufacturer that fails to file the annual sales report in accordance with subsection J of this section shall be subject to

a penalty of $25 per day for each day following the report's due date until such time as the report is filed.

M. A manufacturer, a manufacturer's agents and employees, members of a manufacturer's immediate family, or persons residing in a manufacturer's household shall not make any loan directly or indirectly to any organization or officer, director, game manager, or entity involved in the management, operation, or conduct of charitable gaming of the manufacturer's customer located in the Commonwealth of Virginia.

N. A manufacturer, a manufacturer's agent, or a manufacturer's employee shall not directly or indirectly provide a rebate, discount, or refund to any person other than an organization that purchases, rents, or leases a distributed pull-tab system from the manufacturer. All such transactions shall be recorded on the manufacturer's account books.

O. A written agreement specifying the terms of lease or rental shall be required for any equipment used to distribute, play, or redeem electronic gaming provided to an organization or permitted supplier.

P. A manufacturer shall notify the department when an electronic gaming device bearing a device tag affixed by the department is moved from one location to any other location.

Article 2
General Requirements

11VAC20-20-180. Approval of distributed pull-tab systems, validation systems, point-of-sale stations, and redemption terminals; approval of game themes and sounds.

A. The department shall set manufacturing and testing criteria for all distributed pull-tab systems, validation systems, point-of-sale stations, redemption terminals, and other equipment used in the conduct of charitable gaming. A distributed pull-tab system, validation system, point-of-sale station, redemption terminal, or other equipment shall not be sold, leased, or otherwise furnished to any person in the Commonwealth of Virginia for use in the conduct of charitable gaming until an identical sample system or equipment containing identical software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the distributed pull-tab system and associated hardware and software conform, at a minimum, to the requirements set forth in this chapter. Once the testing facility reports the test results to the department, the department will either approve or disapprove the distributed pull-tab system or system components and inform the manufacturer of the results. If any such system or equipment does not meet the department's criteria, it shall be recalled and shall not be distributed in the Commonwealth of Virginia. The cost of testing shall be borne by the manufacturer of such equipment.

B. No supplier or manufacturer shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use a distributed pull-tab system, validation system, point-of- sale station, redemption terminal, or other equipment used to conduct charitable gaming unless it conforms to the requirements set forth in this chapter.

C. If a defect in a distributed pull-tab system, validation system, point-of-sale station, redemption terminal, or other equipment used to conduct charitable gaming is discovered by or reported to the department, the department shall notify the manufacturer of the system or equipment containing the alleged defect. Should the department, in consultation with the manufacturer, determine that a defect exists and should the department determine the defect affects game security or otherwise threatens public confidence in the game, the department may, with respect to any distributed pull-tab system, validation system, point of sale station, redemption terminal, or other equipment used to conduct charitable gaming still located within the Commonwealth of Virginia, require the supplier or manufacturer to issue a recall of all affected distributed pull-tab systems, validation systems, point-of-sale stations, redemption terminals, or other equipment.

D. All game themes, sounds, and music shall be approved by the department prior to being available for play on an electronic gaming device in the Commonwealth of Virginia.

E. All distributed pull-tab systems and electronic gaming devices, including the device's internal system and records, shall be fully accessible to the department at all times upon request.

Article 3
System Requirements

11VAC20-20-190. Distributed pull-tab system.

A distributed pull-tab system shall be dedicated primarily to electronic accounting, reporting, and the presentation, randomization, and transmission of electronic gaming to the electronic gaming devices. It shall also be capable of generating the data necessary to provide the reports required within this article or otherwise specified by the department.

11VAC20-20-200. Dispensing of electronic pull-tabs.

A distributed pull-tab system shall dispense, upon request, an electronic pull-tab. All games must be played without replacement, drawing from a single finite game set.

11VAC20-20-210. Game set requirements.

Each game set shall meet the following minimum requirements:

1. Each game set shall be made up of a finite number of electronic pull-tabs;

2. The game set shall consist of a maximum of 25,000 electronic pull-tabs;

3. All electronic pull-tabs in a particular game set shall be of the same purchase price;

4. The maximum win amount awarded per any one electronic pull-tab shall not exceed the value set forth for pull-tabs by § 18.2-340.33 of the Code of Virginia;

5. Each game set shall be assigned a unique serial number;

6. After randomization, game sets may be broken into subsets of equal size. If game subsets are used, they shall each be assigned a unique serial number and be traceable to a parent game set; and

7. Game sets shall not be commingled.

11VAC20-20-220. Game set definition.

If the system has the capability to create a game set from a predefined set of criteria, the criteria must contain the following information:

1. Game identification;

2. Game set version;

3. Manufacturer;

4. Game name;

5. Paytable identification;

6. Purchase price per electronic pull-tab;

7. Subset size;

8. Total number of subsets; and

9. Prize values with an associated index and frequency.

11VAC20-20-230. Data required to be available for each game set.

A. The following data shall be available prior to the opening of a game set for distribution and shall be maintained and be viewable both electronically and, if requested, by printed report, upon demand:

1. A unique serial number identifying each game set or subset;

2. A description of the game set sufficient to categorize the game set or subset relative to other game sets;

3. The total number of electronic pull-tabs in the game set;

4. The number of game subsets to be created from the game set and the number of electronic pull-tabs in each subset when applicable;

5. The payout percentage of the entire game set;

6. The purchase price per electronic pull-tab assigned to the game set; and

7. Prize values with an associated index and frequency.

B. The following data shall be available subsequent to the completion of a game set and shall be maintained and viewable both electronically and, if requested, by printed report, upon demand:

1. A unique serial number identifying each game set or subset;

2. Description of the game set sufficient to categorize the game set relative to other game sets;

3. The total number of electronic pull-tabs unsold;

4. The total number of electronic pull-tabs purchased;

5. The time and date that the game set or each game subset became available for play;

6. The time and date that the game set or each game subset was completed or removed from play;

7. Location where game set or subset was played;

8. The final payout percentage of the game set when removed from play; and

9. The purchase price per electronic pull-tab assigned to the game set.

C. In order to provide maximum game integrity, no audit or other determination of the status of any game set or any subset, including a determination of the prizes won or prizes remaining to be won, shall be conducted by anyone while a game set or subset is in play without causing termination of the entire game set or subset. Only upon game set termination shall the details of the associated game set and subsets be revealed to the individual performing the audit.

D. Once terminated, a game set shall not be able to be reopened.

11VAC20-20-240. Security requirements.

A. A distributed pull-tab system computer must be in a locked, secure enclosure with key controls in place.

B. A distributed pull-tab system shall provide a means for terminating the game set if information about electronic pull-tabs in an open game set has been accessed or at the discretion of the department. In such cases, traceability of unauthorized access, including time and date, users involved, and any other relevant information shall be available.

C. A distributed pull-tab system shall not permit the alteration of any accounting or significant event information that was communicated from the electronic gaming device without supervised access controls. In the event financial data is changed, an automated audit log must be capable of being produced to document the following:

1. Data element altered;

2. Data element value prior to alteration;

3. Data element value after alteration;

4. Time and date of alteration; and

5. Personnel that performed alteration.

D. A distributed pull-tab system must provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components through the following means:

1. All programs and data files must only be accessible via the entry of a password that will be known only to authorized personnel;

2. The distributed pull-tab system must have multiple security access levels to control and restrict different classes;

3. The distributed pull-tab system access accounts must be unique when assigned to the authorized personnel and shared accounts amongst authorized personnel must not be allowed;

4. The storage of passwords and personal identification numbers must be in an encrypted, nonreversible form; and

5. A program or report must be available that will list all registered users on the distributed pull-tab system, including the registered user's privilege level.

E. All components of a distributed pull-tab system that allow access to users, other than end- users for game play, must have a password sign-on with two-level codes comprising the personal identification code and a personal password.

1. The personal identification code must have a length of at least six American Standard Code for Information Interchange (ASCII) characters; and

2. The personal password must have a minimum length of six alphanumeric characters, which should include at least one nonalphabetic character.

F. A distributed pull-tab system must have the capability to control potential data corruption that can be created by multiple simultaneous log-ons by system management personnel.

1. A distributed pull-tab system shall specify which of the access levels allow for multiple simultaneous sign-ons by different users and which of the access levels do not allow for multiple sign-ons, and if multiple sign-ons are possible, what restrictions, if any, exist; or

2. If a distributed pull-tab system does not provide adequate control, a comprehensive procedural control document must be drafted for the department's review and approval.

G. Distributed pull-tab system software components or modules shall be verifiable by a secure means at the system level. A distributed pull-tab system shall have the ability to allow for an independent integrity check of the components or modules from an outside source, and an independent integrity check is required for all control programs that may affect the integrity of the distributed pull-tab system. This must be accomplished by being authenticated by a third-party device, which may be embedded within the distributed pull-tab system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check will provide a means for field verification of the distributed pull-tab system components.

H. A distributed pull-tab system may be used to configure and perform security checks on electronic gaming devices, provided such functions do not affect the security, integrity, or outcome of any game and meets the requirements set forth in this chapter regarding program storage devices.

11VAC20-20-250. Backup and recovery.

A. A distributed pull-tab system computer shall have a separate physical medium for securely storing game sets or subsets on the computer, which shall be mirrored in real time by a backup medium.

B. All data required to be available or reported by this chapter must be retained for a period of not less than three years from the close of the fiscal year.

C. All storage of critical data shall utilize error checking and be stored on a nonvolatile physical medium.

D. The database shall be stored on redundant media so that no single failure of any portion of the system would result in the loss or corruption of data.

E. In the event of a catastrophic failure when the distributed pull-tab system cannot be restarted in any other way, it shall be possible to reload the distributed pull-tab system from the last viable backup point and fully recover the contents of that backup, to consist of at least the following information:

1. All significant events;

2. All accounting information;

3. Auditing information, including all open game sets and the summary of completed game sets; and

4. Employee files with access levels.

11VAC20-20-260. Electronic accounting and reporting.

A. One or more electronic accounting systems shall be required to perform reporting and other functions in support of distributed pull-tab systems. The electronic accounting system shall not interfere with the outcome of any gaming function.

B. The following reporting capabilities must be provided by the electronic accounting system:

1. Electronic pull-tab game set report – game sets in play. An electronic pull-tab game set report must be available on demand for each game set currently in play. Game cards, outcomes, or prizes must not be revealed. The report must contain the following information:

a. A unique serial number identifying each game set or subset;

b. A description of the game set sufficient to categorize the game set or subset relative to other game sets;

c. The total number of electronic pull-tabs in the game set;

d. The number of game subsets to be created from the game set and the number of electronic pull-tabs in each subset when applicable;

e. The theoretical payout percentage of the entire game set;

f. The purchase price per electronic pull-tab assigned to the game set;

g. The time and date that the game set or each game subset became available for play; and

h. The location where the game set or subset is being played.

2. Electronic pull-tab game set report – completed game set. An electronic pull-tab game set report must be available on demand, for each completed game set. The report must contain the following information:

a. A unique serial number identifying each game set or subset;

b. Description of the game set sufficient to categorize the game set relative to other game sets;

c. The total number of electronic pull-tabs unsold;

d. The total number of electronic pull-tabs purchased;

e. The time and date that the game set or each game subset became available for play;

f. The time and date that the game set or each game subset was completed or removed from play;

g. The location where game set or subset was played;

h. The final payout percentage of the game set when removed from play; and

i. The purchase price per electronic pull-tab assigned to the game set.

3. A report that shall indicate all prizes that exceed the threshold that triggers additional procedures to be followed for the purpose of compliance with federal tax reporting requirements. At a minimum, on a daily and monthly basis, the report shall provide the following information per electronic gaming device:

a. The date and time won;

b. The location of prize award; and

c. The amount of each prize occurrence.

4. Liability report. A liability report shall provide a summary of the outstanding funds that carry from business day to business day. At a minimum, this report shall include:

a. Amount of prizes or vouchers that were awarded in dollars and cents, but have not yet been claimed that have not yet expired; and

b. Summary of all outstanding accounts.

C. A distributed pull-tab system shall be capable of providing an electronic file in a format specified by the department on a periodic basis to a location specified by the department. The data to be reported will contain, at a minimum, the following items per session:

1. Organization information;

2. Session date;

3. Total cash in;

4. Total cash out;

5. Total cash played;

6. Total cash won;

7. For all game sets on the system in play or in inventory:

a. Serial number;

b. Description;

c. Ticket price;

d. Number of subsets if applicable;

e. Number of tickets or number of tickets per subset;

f. Theoretical return percentage; and

g. Date game set was opened for play, when applicable; and

8. For all game sets completed or close since the previous reporting date:

a. Serial number;

b. Description;

c. Ticket price;

d. Number of subsets, if applicable;

e. Number of tickets or number of tickets per subset;

f. Theoretical return percentage;

g. Date game set was opened;

h. Date game set was closed;

i. Total tickets sold;

j. Total dollars in;

k. Total prizes paid; and

l. Actual return percentage.

11VAC20-20-270. Randomization.

A. As used in this section, unless the context requires a different meaning:

"Card position" means the first card dealt, second card dealt in sequential order.

"Number position" means the first number drawn in sequential order.

B. A distributed pull-tab system shall utilize randomizing procedures in the creation of game sets for electronic pull-tabs or externally generated randomized game sets that have been created using a method previously approved by the department.

C. Any random number generation, shuffling, or randomization of outcomes used in connection with a distributed pull-tab system must be by use of a random number generation application that has successfully passed standard tests for randomness and unpredictability including:

1. Each card position or number position satisfies the 99% confidence limit using the standard chi-squared analysis. "Chi-squared analysis" is the sum of the ratio of the square difference between the expected result and the observed result to the expected result.

2. Each card position or number position does not produce a significant statistic with regard to producing patterns of occurrences. Each card position or number position will be considered random if it meets the 99% confidence level with regard to the "run test" or any similar pattern testing statistic. The "run test" is a mathematical statistic that determines the existence of recurring patterns within a set of data.

3. Each card position or number position is independently chosen without regard to any other card or number drawn within that game play. This test is the "correlation test." Each pair of card positions or number positions is considered random if it meets the 99% confidence level using standard correlation analysis.

4. Each card position or number position is independently chosen without reference to the same card position or number position in the previous game. This test is the "serial correlation test." Each card position or number position is considered random if it meets the 99% confidence level using standard serial correlation analysis.

11VAC20-20-280. Communications and network requirements.

A. Where the distributed pull-tab system components are linked with one another in a network, communication protocols shall be used that ensure that erroneous data or signals will not adversely affect the operations of any such system components.

B. All data communication shall incorporate an error detection and correction scheme to ensure the data is transmitted and received accurately.

C. Connections between all components of the distributed pull-tab system shall only be through the use of secure communication protocols that are designed to prevent unauthorized access or tampering, employing Advanced Encryption Standard (AES) or equivalent encryption.

D. A firewall or equivalent hardware device configured to block all inbound and outbound traffic that has not been expressly permitted and is not required for continued use of the distributed pull-tab system must exist between the distributed pull-tab system and any external point of access.

E. The minimum width (size) for encryption keys is 112 bits for symmetric algorithms and 1024 bits for public keys.

F. There must be a secure method implemented for changing the current encryption key set. It is not acceptable to only use the current key set to "encrypt" the next set.

G. There must be a secure method in place for the storage of any encryption keys. Encryption keys must not be stored without being encrypted themselves.

H. If a wireless network is used, wireless products used in conjunction with any gaming system or system component must meet the following minimum standards:

1. Employ a security process that complies with the Federal Information Processing Standard 140-2 (FIPS 140-2); or

2. Employ an alternative method, as approved by the department.

11VAC20-20-290. Significant events.

The following significant events, if applicable, shall be collected from the electronic gaming device or point of sale and communicated to the system for storage and a report of the occurrence of the significant event must be made available upon request:

1. Power resets or power failure.

2. Communication loss between an electronic gaming device and any component of the distributed pull-tab system.

3. Electronic gaming device jackpot (any award in excess of the single win limit of the electronic gaming device).

4. Door openings (any external door that accesses a critical area of the electronic gaming device).

5. Bill validator errors:

a. Stacker full (if supported); and

b. Bill jam.

6. Printer errors:

a. Printer empty; and

b. Printer disconnect or failure.

7. Corruption of the electronic gaming device RAM or program storage device.

8. Any other significant events as defined by the protocol employed by the distributed pull-tab system.

11VAC20-20-300. Validation system and redemption.

A distributed pull-tab system may utilize a voucher validation system to facilitate gaming transactions. The validation system

may be entirely integrated into a distributed pull-tab system or exist as a separate entity.

1. A distributed pull-tab system may allow voucher out only; vouchers shall not be inserted, scanned, or used in any way at the electronic gaming device for redemption.

2. The validation system must process voucher redemption correctly according to the secure communication protocol implemented.

3. The algorithm or method used by the validation system or distributed pull-tab system to generate the voucher validation numbers must guarantee an insignificant percentage of repetitive validation numbers.

4. The validation system must retrieve the voucher information correctly based on the secure communication protocol implemented and store the voucher information in a database. The voucher record on the host system must contain, at a minimum, the following voucher information:

a. Validation number;

b. Date and time the electronic gaming device printed the voucher;

c. Value of voucher in dollars and cents;

d. Status of voucher;

e. Date and time the voucher will expire;

f. Serial number of electronic gaming device; and

g. Location name or site identifier.

5. The validation system or distributed pull-tab system must have the ability to identify the following occurrences and notify the cashier when the following conditions exist:

a. Voucher cannot be found on file;

b. Voucher has already been paid; or

c. Amount of the voucher differs from the amount on file (requirement may be met by display of voucher amount for confirmation by cashier during the redemption process).

6. If the connection between the validation system and the distributed pull-tab system fails, an alternate method or procedure of payment must be available and shall include the ability to identify duplicate vouchers and prevent fraud by redeeming vouchers that were previously issued by the electronic gaming device.

7. The following reports related to vouchers shall be generated on demand:

a. Voucher Issuance Report shall be available from the validation system that shows all vouchers generated by an electronic gaming device; and

b. Voucher Redemption Report shall detail individual vouchers and the sum of the vouchers paid by the validation terminal or point of sale by session and shall include the following information:

(1) The date and time of the transaction;

(2) The dollar value of the transaction;

(3) The validation number;

(4) A transaction number; and

(5) The point-of-sale identification number or name.

8. The validation system database must be encrypted and password protected and should possess an unalterable user audit trail to prevent unauthorized access.

9. The normal operation of any device that holds voucher information shall not have any options or method that may compromise voucher information. Any device that holds voucher information in its memory shall not allow removal of the information unless it has first transferred that information to the ticketing database or other secured component of the validation system.

11VAC20-20-310. Point of sale; validation terminal.

A. A distributed pull-tab system may utilize a point-of-sale or validation terminal that is capable of facilitating the sale of the organization's pull tab outcomes or used for the redemption of credits from player accounts or vouchers. The point of sale may be entirely integrated into a distributed pull-tab system or exist as a separate entity.

B. Point-of-sale use is only permissible when the device is linked to an approved validation system or distributed pull-tab system.

C. If a distributed pull-tab system utilizes a point of sale, it shall be capable of printing a receipt for each sale, void, or redemption. The receipt shall contain the following information:

1. Date and time of the transaction;

2. Dollar value of the transaction;

3. Validation number, if applicable;

4. Quantity of associated products, if applicable;

5. Transaction number;

6. Account number, if applicable; and

7. Point-of-sale identification number or name.

D. The following point-of-sale or validation terminal reports shall be generated on demand:

1. Sales transaction history report shall show all sales and voids by session and include the following information:

a. Date and time of the transaction;

b. Dollar value of the transaction;

c. Quantity of associated products;

d. Transaction number; and

e. Point of sale identification number or name.

2. Voucher redemption report shall detail individual voucher redemptions paid by the validation terminal or point of sale by session and include the following information:

a. Date and time of the transaction;

b. Dollar value of the transaction;

c. Validation number;

d. Transaction number; and

e. Point of sale identification number or name.

11VAC20-20-320. Location of equipment.

All equipment used to facilitate the distribution, play, or redemption of electronic games must be physically located within the boundaries of the Commonwealth of Virginia. This includes the distributed pull-tab system, electronic gaming devices, redemption terminals, and point-of-sale stations.

Article 4
Electronic Gaming Devices

11VAC20-20-330. Electronic gaming device general requirements.

A. Each electronic gaming device shall bear a tamper evident seal and individual serial number affixed by the department.

B. An electronic gaming device shall only be used for electronic gaming.

C. In addition to a video monitor or touch screen, each electronic gaming device may have one or more of the following: a bill acceptor, printer, and electromechanical buttons for activating the game and providing player input, including a means for the player to make selections and choices in games.

D. For each electronic gaming device, there shall be located anywhere within the distributed pull-tab system, nonvolatile memory or its equivalent. The memory shall be maintained in a secure location for the purpose of storing and preserving a set of critical data that has been error checked in accordance with the critical memory requirements of this chapter.

E. An electronic gaming device shall not have any switches, jumpers, wire posts, or other means of manipulation that could affect the operation or outcome of a game. The electronic gaming device may not have any functions or parameters adjustable through any separate video display or input codes except for the adjustment of features that are wholly cosmetic.

F. An electronic gaming device shall not have any of the following attributes: spinning or mechanical reels, pull handle, sounds or music solely intended to entice a player to play, flashing lights, tower light, top box, coin tray, ticket acceptance, hopper, coin acceptor, enhanced animation, cabinet or payglass artwork, or any other attribute identified by the department.

G. An electronic gaming device shall be robust enough to withstand forced illegal entry that would leave behind physical evidence of the attempted entry or such entry that causes an error code that is displayed and transmitted to the distributed pull-tab system. Any such entry attempt shall inhibit game play until cleared and shall not affect the subsequent play or any other play, prize, or aspect of the game.

H. The number of electronic gaming devices present at a social organization's location at which electronic gaming is operated and conducted shall not exceed the number authorized by the department for such location.

11VAC20-20-340. Cabinet wiring.

A. Proof of Underwriter Laboratories (UL) or equivalent certification shall be required for all submitted electronic devices.

B. An electronic gaming device shall be designed so that power and data cables into and out of the electronic gaming device can be routed so that the cables are not accessible to the general public.

11VAC20-20-350. Electronic gaming device identification.

An electronic gaming device shall have a permanently affixed device tag that cannot be removed without leaving evidence of tampering. This device tag shall be affixed to the exterior of the electronic gaming device and shall include the following information:

1. The manufacturer name;

2. A unique serial number;

3. The electronic gaming device model number;

4. The date of manufacture; and

5. Any other information required by the department.

11VAC20-20-360. Doors; compartments.

A. If an electronic gaming device possesses an external door that allows access to the interior of the machine the following rules shall apply:

1. Doors and their associated hinges shall be capable of withstanding determined illegal efforts to gain access to the inside of the electronic gaming device and shall leave evidence of tampering if an illegal entry is made;

2. All external doors shall be locked and monitored by door access sensors that shall detect and report all external door openings by way of an audible alarm, on-screen display, or both;

3. The electronic gaming device shall cease play when any external door is opened;

4. It shall not be possible to disable a door open sensor when the machine's door is closed without leaving evidence of tampering;

5. The sensor system shall register a door as being open when the door is moved from its fully closed and locked position; and

6. Door open conditions shall be recorded in an electronic log that includes a date and time stamp.

B. Electronic gaming devices that contain control programs located within an accessible area shall have a separate internal locked logic compartment that shall be keyed differently than the front door access lock. The logic compartment shall be a locked cabinet area with its own locked door that houses critical electronic components that have the potential to significantly influence the operation of the electronic gaming device. There may be more than one such logic area in an electronic gaming device. Electronic component items that are required to be housed in one or more logic areas are:

1. Central processing units and other electronic components involved in the operation and calculation or display of game play;

2. Communication controller electronics and components housing the communication program storage media or the communication board for the online system may reside outside the electronic gaming device; and

3. Logic compartment door open conditions shall be recorded in a log that includes a date and time stamp.

C. Electronic gaming devices that do not contain a door shall have adequate security for any panels or entry points that allow access to the interior of the device.

11VAC20-20-370. Memory clear.

A. Following the initiation of a memory reset procedure utilizing a certified reset method, the program shall execute a routine that initializes the entire contents of memory to the default state. For electronic gaming devices that allow for partial memory clears, the methodology in doing so must be accurate and the game application must validate the uncleared portions of memory. The electronic gaming device display after a memory reset shall not be the top award.

B. It shall not be possible to change a configuration setting that causes an alteration or obstruction to the electronic accounting meters without a memory clear.

11VAC20-20-380. Critical memory.

A. Critical memory shall be used to store all data that is considered vital to the continued operation of the electronic gaming device. Critical memory storage shall be maintained by a methodology that enables errors to be identified and corrected in most circumstances. This methodology may involve signatures, checksums, partial checksums, multiple copies, timestamps, or use of validity codes. This includes:

1. All electronic meters required in 11VAC20-20-440 E;

2. Current unused credits;

3. Electronic gaming device or game configuration data;

4. Recall of all wagers and other information necessary to fully reconstruct the game outcome associated with the last 10 plays;

5. Software state, which is the last state the electronic gaming device software was in before interruption; and

6. Error conditions that may have occurred on the electronic gaming device that may include:

a. Memory error or control program error;

b. Low memory battery, for batteries external to the memory itself or low power source;

c. Program error or authentication mismatch; and

d. Power reset.

B. Comprehensive checks of critical memory shall be made continually to test for possible corruption. In addition, all critical memory:

1. Shall have the ability to retain data for a minimum of 180 days after power is discontinued from the electronic gaming device. If the method used is an off-chip battery source, it shall recharge itself to its full potential in a maximum of 24 hours. The shelf life shall be at least five years. Memory that uses an off-chip back-up power source to retain its contents when the main power is switched off shall have a detection system that will provide a method for software to interpret and act upon a low battery condition;

2. Shall only be cleared by a department certified memory clear method; and

3. Shall result in an error if the control program detects an unrecoverable memory error.

11VAC20-20-390. Program storage devices.

A. All program storage devices (writable/nonwritable), including erasable programmable read only memory (EPROM), DVD, CD-ROM, compact flash, and any other type of program storage device shall be clearly marked with sufficient information to identify the software and revision level of the information stored in the devices.

B. Program storage devices shall meet the following requirements:

1. Program storage, including CD-ROM, shall meet the following rules:

a. The control program shall authenticate all critical files by employing a hashing algorithm that produces a "message digest" output of at least 128 bits at minimum, as certified by the recognized independent test laboratory and agreed upon by the department. Any message digest shall be stored on a read-only memory device within the electronic gaming device. Any message digest that resides on any other medium shall be encrypted using a

public/private key algorithm with a minimum of a 512-bit key or an equivalent encryption algorithm with similar security certified by the independent test laboratory and agreed upon by the department.

b. The electronic gaming device shall authenticate all critical files against the stored message digests. In the event of a failed authentication, the electronic gaming device should immediately enter an error condition with the appropriate indication, such as an audible signal, on-screen display, or both. This error shall require operator intervention to clear. The electronic gaming device shall display specific error information and shall not clear until the file authenticates properly or the electronic gaming device's memory is cleared, the game is restarted, and all files authenticate correctly.

2. CD-ROM specific based program storage shall:

a. Not be a rewritable disk; and

b. The "write session" shall be closed to prevent any further writing to the storage device.

C. Electronic gaming devices where the control program is capable of being erased and reprogrammed without being removed from the electronic gaming device or other equipment or related peripheral devices shall meet the following requirements:

1. Reprogrammable program storage shall only write to alterable storage media containing data, files, and programs that are not critical to the basic operation of the game.

2. Notwithstanding subdivision 1 of this subsection, data may be written to media containing critical data, files, and programs provided that:

a. A log of all information that is added, deleted, and modified be stored on the media;

b. The control program verifies the validity of all data, files, and programs that reside on the media using the methods required herein;

c. The electronic gaming device's program contains appropriate security to prevent unauthorized modifications; and

d. The electronic gaming device's program does not allow game play while the media containing the critical data, files, and programs is being modified.

D. The control program shall ensure the integrity of all critical program components during the execution of said components and the first time the files are loaded for use even if only partially loaded. Space that is not critical to machine security (e.g., video or sound) is not required to be validated, although the department recommends a method be in place for the files to be tested for corruption. If any of the video or sound files contain payout amounts or other information needed by the player, the files are to be considered critical.

11VAC20-20-400. Touch screens.

Any touch screen must meet the following rules:

1. A touch screen shall be accurate once calibrated;

2. A touch screen shall be able to be recalibrated; and

3. A touch screen shall have no hidden or undocumented buttons or touch points anywhere on the touch screen, except as provided for by the game rules that affect game play.

11VAC20-20-410. Bill acceptors.

A. An electronic gaming device may have a mechanism that accepts United States currency and provides a method to enable the electronic gaming device software to interpret and act appropriately upon a valid or invalid input.

B. An acceptance device shall be electronically based and be configured to ensure that it only accepts valid bills and rejects all others in a highly accurate manner.

C. A bill input system shall be constructed in a manner that protects against vandalism, abuse, or fraudulent activity. In addition, a bill acceptance device shall only register credits when:

1. The bill has passed the point where it is accepted and stacked; and

2. The bill acceptor has sent the "irrevocably stacked" message to the machine.

D. A bill acceptor shall communicate to the electronic gaming device using a bidirectional protocol.

E. A bill acceptor shall be designed to prevent the use of cheating methods such as stringing, the insertion of foreign objects, and any other manipulation that may be deemed as a cheating technique.

F. If a bill acceptor is designed to be factory set only, it shall not be possible to access or conduct maintenance or adjustments to that bill acceptor in the field, other than:

1. The selection of bills and their limits;

2. Changing of a certified erasable programmable read-only memory or downloading of certified software;

3. The method for adjustment of the tolerance level for accepting bills of varying quality should not be accessible from the exterior of the electronic gaming device. Adjustments of the tolerance level should only be allowed with adequate levels of security in place. This can be accomplished through lock and key, physical switch settings, or other accepted methods approved on a case-by-case basis;

4. The maintenance, adjustment, and repair per approved factory procedures; and

5. The options that set the direction or orientation of bill acceptance.

G. An electronic gaming device equipped with a bill acceptor shall have the capability of detecting and displaying an error condition for the following events:

1. Stacker full (it is recommended that an explicit "stacker full" error message not be utilized since this may cause a security issue);

2. Bill jams;

3. Bill acceptor door open. If a bill acceptor door is a machine door, a door open signal is sufficient;

4. Stacker door open; and

5. Stacker removed.

H. An electronic gaming device equipped with a bill acceptor shall maintain sufficient electronic metering to be able to report the following:

1. Total monetary value of all bills accepted;

2. Total number of all bills accepted;

3. A breakdown of the bills accepted for each denomination; and

4. The value of the last five items accepted by the bill acceptor.

11VAC20-20-420. Payment by voucher printers.

A. If the electronic gaming device has a printer that is used to issue payment to the player by issuing a printed voucher for any unused game plays or winnings, the electronic gaming device shall meet the following rules:

1. The printer shall be located in a secure area of the electronic gaming device, but shall not be located in the logic area or any cash storage area. The bill acceptor stacker or logic areas containing critical electronic components shall not be accessed when the printer paper is changed; and

2. Data printed on a voucher shall include the following information regarding each voucher printed:

a. Value of unused game plays or winnings in United States currency, in numerical form;

b. Time the voucher was printed;

c. Date the voucher was printed;

d. Location name or site identifier;

e. Serial number of electronic gaming device;

f. Unique validation number or barcode if used in conjunction with a validation system; and

g. Expiration date and time.

B. If the electronic gaming device is capable of printing a duplicate voucher, the duplicate voucher shall clearly state the word "DUPLICATE" on its face.

C. The printer shall use printer paper containing security features such as a watermark as approved by the department.

D. A printer shall have mechanisms to allow the electronic gaming device to interpret and act upon the following conditions that must disable the game, and produce an error condition that requires attendant intervention to resume play:

1. Out of paper;

2. Printer jam or failure; and

3. Printer disconnect. The electronic gaming device may detect this error condition when the game tries to print.

E. An electronic gaming device that uses a voucher printer shall maintain a minimum of the last 25 transactions in critical memory. All voucher transactions shall be logged with a date and time stamp.

11VAC20-20-430. Payment by account.

A. Credit may be added to a player account via a cashier or point of sale station. Credit may also be added by any supporting electronic gaming device through credits won or bills.

B. Money may be removed from a player account either through downloading of credits to the electronic gaming device or by cashing out at a cashier's or point-of-sale station.

C. All monetary transactions between a supporting electronic gaming device and the distributed pull-tab system must be secured by means of a card insertion into a magnetic card reader and personal identification number (PIN) entry or by other protected means.

Article 5
Game Requirements

11VAC20-20-440. Game play requirements.

A. A player receives an electronic pull-tab in return for consideration. A player wins if the player's electronic pull-tab contains a combination of symbols or numbers that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game. Electronic versions of instant bingo and pull-tabs, as authorized by the department, shall only utilize electronic gaming devices that allow players to play electronic pull-tabs. An electronic gaming device shall meet the following minimum requirements:

1. A player may purchase an opportunity to play an electronic pull-tab by:

a. Insertion of United States currency (bills only);

b. Purchase made at a point of sale terminal; or

c. Withdrawing deposits available in a player account.

2. The available games, flare, and rules of play shall be displayed on the electronic gaming device's video screen. Rules of play shall include all winning combinations.

3. Any number of game themes may be selectable for play on any given electronic gaming device. Only one of the game themes shall be playable at any given time.

4. An electronic gaming device shall be clearly labeled so as to inform the public that no one younger than 21 years of age is allowed to play.

5. An electronic gaming device shall not be capable of displaying any enticing animation while in an idle state. An electronic gaming device may use simple display elements or screen savers to prevent monitor damage.

6. The results of the electronic pull-tab shall be shown to the player using a video display. No rolling, flashing, or spinning animations are permitted. No rotating reels marked into horizontal segments by varying symbols are permitted.

7. Any sound or music solely intended to entice a player to play is prohibited. Any sound or music emitted by an electronic gaming device must not be played at a level sufficient to disturb other players or patrons.

8. The electronic gaming device shall have one or more buttons, electromechanical or touch screen, to facilitate the following functions:

a. Viewing of the game "help" screens;

b. Viewing of the game rules;

c. Initiating game play;

d. Cashout or logout; and

e. One or more buttons designated to reveal the pull-tab or instant bingo windows.

9. Following play on an electronic gaming device, the result shall be clearly shown on the video display along with any prizes that may have been awarded. Prizes may be dispensed in the form of:

a. Voucher;

b. Added to the machine balance meter; or

c. Added to the player's account balance.

10. An available balance may be collected from the electronic gaming device by the player pressing the "cashout" button or logging off of the electronic gaming device at any time other than during:

a. A game being played;

b. While in an audit mode or screen;

c. Any door open;

d. Test mode;

e. A machine balance meter or win meter incrementation unless the entire amount is placed on the meter when the "cashout" button is pressed; or

f. An error condition.

11. The default electronic gaming device display, upon entering game play mode, shall not be the top award.

B. An electronic gaming device shall not have hardware or software that determines the outcome of any electronic pull-tab, produce its own outcome, or affect the order of electronic pull-tabs as dispensed from the distributed pull-tab system. The game outcome shall be determined by the distributed pull-tab system as outlined within this chapter.

C. Game themes shall not contain obscene or offensive graphics, animations, or references. The department shall determine what constitutes obscene or offensive graphics, animations, or references.

D. Prior to approval for use, each electronic gaming device must meet the following specifications with respect to its operation:

1. After accepting an allowable cash payment from the player, the player shall press a "play" button to initiate a game.

2. The electronic gaming device shall not display in any manner, the number of electronic pull-tabs of each finite category, or how many cards remain.

3. Awards of merchandise prizes in lieu of cash are prohibited.

4. The player must interact with the device to initiate a game and reveal a win or loss. This may involve a button press on the console or on the touch screen.

5. The electronic pull-tab must be initially displayed with a cover and require player interaction to reveal the symbols and game outcome.

6. In no event may an electronic gaming device simulate play of roulette, poker, keno, lotto or lottery, twenty-one, blackjack, or any other card game, or simulate play of any type of slot machine game, regardless of whether the machine has a payback feature or extra play awards.

7. Card symbols such as ace, king, queen, or heart are acceptable, provided the device abides by the prohibition in subdivision 6 of this subsection.

8. Games must not contain any elements of skill.

E. Each electronic gaming device must meet the following specifications with respect to its metering system:

1. An electronic gaming device shall contain electronic metering whereby meters record and display on the video screen the following information at a minimum:

a. Total cash in for the bill acceptor if equipped with a bill acceptor;

b. Total cash played;

c. Total cash won;

d. Total cash removed from electronic gaming device;

e. Total count of electronic pull-tabs played; and

f. Total count of electronic pull-tabs won.

2. An electronic meter shall be capable of maintaining correct totals and be of no less than 10 digits in length.

3. An electronic gaming device shall not be capable of displaying the number of electronic pull-tabs that remain in the game set or the number of winners or losers that have been drawn or still remain in the game set while the game set is still being played.

4. An electronic meter shall not be capable of being automatically reset or cleared, whether due to an error in any aspect of the meter's or a game's operation or otherwise.

5. Currency meters shall be maintained in dollars and cents.

Part V
Network Bingo

Article 1
Network Bingo Providers

11VAC20-20-450. Network bingo providers: application, qualifications, suspension, revocation or refusal to renew permit, maintenance, and production of records.

A. Prior to providing network bingo, a network bingo provider shall submit an application on a form prescribed by the department and receive a permit. A $500 application fee payable to the Treasurer of Virginia is required. In addition, a network bingo provider must be authorized to conduct business in the Commonwealth of Virginia, which may include registration with the State Corporation Commission, the Department of Taxation, and the Virginia Employment Commission. The actual cost of background investigations for a permit may be billed by the department to an applicant.

B. The department may refuse to issue a permit or may suspend or revoke a permit if an officer, director, partner, employee, agent, or owner:

1. Is operating without a valid license, permit, or certificate as a supplier, manufacturer, or network bingo provider in any state in the United States;

2. Fails or refuses to recall a product as directed by the department;

3. Conducts business with unauthorized entities or is not authorized to conduct business in the Commonwealth of Virginia;

4. Has been convicted of or pleaded nolo contendere to any crime as specified by § 18.2- 340.34:2 B of the Code of Virginia; has had any license, permit, certificate, or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; has failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth; or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia. As this provision relates to employees or agents, it shall only apply to individuals involved in sales to or solicitations of customers in the Commonwealth of Virginia;

5. Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to charitable gaming or network bingo involving or concerning the network bingo provider, any officer or director, employees, agent, or owner during the term of its permit;

6. Fails to provide to the department upon request a current Letter for Company Registration on file with the U.S. Department of Justice if required in accordance with the Gambling Devices Act of 1962 (15 USC §§ 1171 through 1178) for any device that it distributes in the Commonwealth of Virginia; or

7. Has been engaged in conduct that would compromise the department's objective of maintaining the highest level of integrity in charitable gaming.

C. A network bingo provider shall not distribute a network bingo system, network bingo supplies, or other incidental items to perform network bingo to anyone in the Commonwealth of Virginia or to an organization for use upon the premises owned or exclusively leased by the organization in which the portion of the premises are qualified to sell pull-tabs to members and their guests only as authorized by § 18.2-340.26:1 of the Code of Virginia. However, a network bingo provider may:

1. Distribute such a system, supply, or item to a qualified organization authorized to conduct charitable gaming for use during a session that is open to the public and not limited to members and their guests only.

2. Distribute such a system, supply, or item to an organization that expects to gross the amount set forth in § 18.2-340.23 of the Code of Virginia or less in any 12-month period, providing that the amount of such purchase would not be reasonably expected to produce more than the amount set forth in § 18.2-340.23 of the Code of Virginia in gross sales. For each such organization, the network bingo provider shall maintain the name, address, and telephone number. The network bingo provider shall also obtain a written and signed statement from an officer or game manager of such organization confirming that gross receipts are expected to be the amount set forth in § 18.2-340.23 of the Code of Virginia or less. Such statements shall be dated and kept on file for a minimum of three years from the close of a fiscal year.

All such distributions shall be documented pursuant to subsection G of this section and reported to the department pursuant to subsection I of this section.

D. No network bingo provider, its agents, or its employees may be involved in the management, operation, or conduct of charitable gaming in the Commonwealth of Virginia. A network bingo provider, its agents, or its employees may call a network bingo game or distribute network bingo prizes associated with the network bingo provider's network bingo system. No member of a network bingo provider's immediate family or person residing in the same household as a network bingo provider may be involved in the management, operation, or conduct of charitable gaming of any customer of the network bingo provider in the Commonwealth of Virginia. No network bingo provider, its agents, or its employees may participate in any charitable gaming of any customer of the network bingo provider in the Commonwealth of Virginia. For the purposes of this chapter, servicing of the network bingo system shall not be considered conduct or participation.

E. The department shall conduct a background investigation prior to the issuance of a permit to any network bingo provider. The investigation may include the following:

1. A search of criminal history records on all officers, directors, and owners; and

2. Verification of current compliance with Commonwealth of Virginia tax laws.

If the officers, directors, owners, or partners are domiciled outside of the Commonwealth of Virginia or have resided in the Commonwealth of Virginia for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which the officers, directors, owners, or partners have resided during the previous five years shall be provided by the applicant.

F. Appropriate information and authorizations shall be provided to the department to verify information cited in subsection E of this section.

G. Network bingo providers shall document each sale of network bingo supplies, equipment, and other incidental items to perform network bingo to any person for use in the Commonwealth of Virginia on an invoice, which reflects the following:

1. Name, address, and organization number of the organization;

2. Date of sale, lease, or rental and location where the network bingo supplies, equipment, and other incidental items to perform network bingo is shipped or delivered if different from the billing address;

3. Form number, serial number, quantity, and purchase or rental price of the network bingo supplies, equipment, and other incidental items to perform network bingo;

4. Quantity of network bingo cards sold, the cost per card, and the selling price per card; and

5. Date of the network bingo game in which the qualified organization participated, the start time and end time of the game, and the number of balls called during the game.

H. Network bingo providers shall ensure that two copies of the detailed invoice are provided to the customer for the sale of network bingo supplies, equipment, and other incidental items to perform network bingo.

I. Each network bingo provider shall provide a report to the department by March 1 of each year on the sale of network bingo supplies, equipment, and other incidental items to perform network bingo for the fiscal year ending December 31 of the previous year to each organization in the Commonwealth of Virginia. This report shall be provided to the department via a department-approved electronic medium. The report shall include the name, address, and organization number of each organization and the following information for each sale or transaction:

1. Date of sale, lease, or rental and location where the network bingo supplies, equipment, and other incidental items to perform network bingo is shipped or delivered if different from the billing address;

2. Serial number, quantity, and purchase or rental price of the network bingo supplies, equipment, and other incidental items to perform network bingo;

3. Quantity of network bingo cards sold, the cost per card, and the selling price per card;

4. Date of the network bingo game in which qualified organizations participated, the start time and end time of the game, the number of balls called during the game, the total gross receipts for the game; and

5. Prize amount awarded to the winning player and which organization sold the winning network bingo card.

J. A network bingo provider shall maintain documentation on all deposits and disbursements into the prize pool for the network bingo game.

K. A network bingo provider, its agents, and its employees; members of a network bingo provider's immediate family; or persons residing in a network bingo provider's household shall not make any loan directly or indirectly to any organization or officer, director, game manager, or entity involved in the management, operation, or conduct of charitable gaming of the network bingo provider's customer located in the Commonwealth of Virginia.

L. A network bingo provider, its agent, or its employee shall not directly or indirectly provide a rebate, discount, or refund to any person other than an organization that purchases, rents, or leases network bingo supplies, equipment, and other incidental items to perform network bingo. All such

transactions shall be recorded on the network bingo provider's account books.

M. A network bingo provider shall not rent, sell, or otherwise provide network bingo supplies, equipment, and other incidental items to perform network bingo unless the network bingo provider possesses a valid permit in the Commonwealth of Virginia.

N. A written agreement specifying the terms of lease or rental between the network bingo provider and the qualified organization shall be required for any equipment used to perform network bingo.

O. A network bingo provider shall record the following information on each winner of a network bingo game:

1. Name and address of the winner;

2. Name of the qualified organization that sold the winning network bingo card;

3. Date and time when the winning network bingo card was purchased by the winner; and

4. Location where the winning network bingo card was purchased by the winner.

Article 2
General Requirements

11VAC20-20-460. Approval of equipment used to perform network bingo.

A. The department shall set manufacturing and testing criteria for all equipment used to perform network bingo. Equipment used to perform network bingo shall not be sold, leased, or otherwise furnished to any person in the Commonwealth of Virginia for use as part of network bingo until an identical sample of equipment containing identical proprietary software has been certified by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the equipment conforms, at a minimum, to the requirements set forth in this chapter. Once the testing facility reports the test results to the department, the department will either approve or disapprove the equipment and inform the network provider of the results. If any such equipment does not meet the department's criteria, it shall be recalled and shall not be distributed in the Commonwealth of Virginia. The cost of testing shall be borne by the network provider of such equipment.

B. No network bingo provider shall knowingly sell or otherwise provide to an organization and no organization shall knowingly use equipment to perform network bingo unless it conforms to the requirements set forth in this chapter.

C. If a defect in any equipment used to perform network bingo is discovered by or reported to the department, the department shall notify the network bingo provider that is using the equipment containing the alleged defect. Should the department, in consultation with the network bingo provider, determine that a defect exists and should the department determine the defect affects game security or otherwise threatens public confidence in the game, the department may, with respect to any equipment used to perform network bingo still located within the Commonwealth of Virginia, require the network bingo provider to issue a recall of all affected equipment.

D. Department employees shall have the right to inspect all equipment used to perform network bingo. The department, at its discretion, may require additional testing of any equipment to perform network bingo at any time. Such additional testing shall be at the network provider's expense and shall be a condition of the continued use of such equipment.

E. Equipment used to perform network bingo shall have a permanently affixed identification badge that cannot be removed without leaving evidence of tampering. This badge shall be affixed to the exterior of the equipment and shall include the following information:

1. The manufacturer name;

2. A unique serial number;

3. The equipment model number;

4. The date of manufacture; and

5. Any other information required by the department.

Article 3
System Requirements

11VAC20-20-470. Location of equipment.

All equipment used to perform network bingo must be physically located within the boundaries of the Commonwealth of Virginia.

11VAC20-20-480. Communications and network requirements.

A. Where the network bingo system components are linked with one another in a network, communication protocols shall be used that ensure that erroneous data or signals will not adversely affect the operations of any such system components.

B. All data communication shall incorporate error detection and correction schemes to ensure the data is transmitted and received accurately.

C. Connections between all components of the network bingo system shall only be through the use of secure communication protocols that are designed to prevent unauthorized access or tampering, employing Advanced Encryption Standard (AES) or equivalent encryption.

D. A firewall or equivalent hardware device configured to block all inbound and outbound traffic that has not been expressly permitted and is not required for continued use of the

network bingo system must exist between the network bingo system and any external point of access.

E. The minimum width (size) for encryption keys is 112 bits for symmetric algorithms and 1024 bits for public keys.

F. There must be a secure method implemented for changing the current encryption key set. It is not acceptable to only use the current key set to encrypt the next set.

G. There must be a secure method in place for the storage of encryption keys. Encryption keys must not be stored without being encrypted themselves.

H. If a wireless network is used, wireless products used in conjunction with any gaming system or system component must meet the following minimum standards:

1. Employ a security process that complies with the Federal Information Processing Standard 140-2 (FIPS 140-2); or

2. Employ an alternative method, as approved by the department.

11VAC20-20-490. Backup and recovery.

A. A network bingo system shall have a separate physical medium for securely storing data for the network bingo game, which shall be mirrored in real time by a backup medium.

B. All data required to be available or reported by this chapter must be retained for a period of not less than three years from the close of the fiscal year.

C. All storage of critical data shall utilize error checking and be stored on a nonvolatile physical medium.

D. The database shall be stored on redundant media so that no single failure of any portion of the system would result in the loss or corruption of data.

E. In the event of a catastrophic failure when the network bingo system cannot be restarted in any other way, it shall be possible to reload the network bingo system from the last viable backup point and fully recover the contents of that backup, to consist of at least the following information:

1. All significant events;

2. All accounting information;

3. Auditing information, including all sales and disbursements; and

4. Employee files with access levels.

11VAC20-20-500. Security requirements.

A. A network bingo system shall not permit the alteration of any accounting or significant event information that was communicated from a point-of-sale terminal without supervised access controls. In the event financial data is changed, an automated audit log must be capable of being produced to document the following:

1. Data element altered;

2. Data element value prior to alteration;

3. Data element value after alteration;

4. Time and date of alteration; and

5. Personnel that performed alteration.

B. A network bingo system must provide password security or other secure means of ensuring data integrity and enforcing user permissions for all system components through the following means:

1. All programs and data files must only be accessible via the entry of a password that will be known only to authorized personnel;

2. The network bingo system must have multiple security access levels to control and restrict different classes;

3. The network bingo system access accounts must be unique when assigned to the authorized personnel and shared accounts amongst authorized personnel must not be allowed;

4. The storage of passwords and personal identification numbers (PINs) must be in an encrypted, nonreversible form; and

5. A program or report must be available that will list all registered users on the network bingo system, including their privilege level.

C. All components of a network bingo system that allow access to users, other than the player, must have a password sign-on with at least two-level codes comprising the personal identification code and a personal password.

1. The personal identification code must have a length of at least six American Standard Code for Information Interchange (ASCII) characters; and

2. The personal password must have a minimum length of six alphanumeric characters, which should include at least one nonalphabetic character.

D. A network bingo system must have the capability to control potential data corruption that can be created by multiple simultaneous log-ons by system management personnel.

1. A network bingo system shall specify which of the access levels allow for multiple simultaneous sign-ons by different users and which of the access levels do not allow for multiple sign-ons, and if multiple sign-ons are possible, what restrictions, if any, exist; or

2. If a network bingo system does not provide adequate control, a comprehensive procedural control document must be drafted for the department's review and approval.

E. Network bingo system software components or modules shall be verifiable by a secure means at the system level. A

network bingo system shall have the ability to allow for an independent integrity check of the components or modules from an outside source and an independent integrity check is required for all control programs that may affect the integrity of the network bingo system. This must be accomplished by being authenticated by a third-party device, which may be embedded within the network bingo system software or having an interface or procedure for a third-party application to authenticate the component. This integrity check will provide a means for field verification of the network bingo system components.

F. A network bingo system may be used to configure and perform security checks on the point-of-sale terminals, provided such functions do not affect the security, integrity, or outcome of any game and meets the requirements set forth in this chapter regarding program storage devices.

11VAC20-20-510. Randomization.

A. As used in this section, unless the context requires a different meaning:

1. "Card position" means the first card dealt, second card dealt in sequential order.

2. "Number position" means the first number drawn in sequential order.

B. A network bingo system shall utilize randomizing procedures in the creation of network bingo cards.

C. Any random number generation, shuffling, or randomization of network bingo cards used in connection with a network bingo system must be by use of a random number generation application that has successfully passed standard tests for randomness and unpredictability including:

1. Each card position or number position satisfies the 99% confidence limit using the standard chi-squared analysis. "Chi-squared analysis" is the sum of the ratio of the square difference between the expected result and the observed result to the expected result.

2. Each card position or number position does not produce a significant statistic with regard to producing patterns of occurrences. Each card position or number position will be considered random if it meets the 99% confidence level with regard to the "run test" or any similar pattern testing statistic. The "run test" is a mathematical statistic that determines the existence of recurring patterns within a set of data.

3. Each card position or number position is independently chosen without regard to any other card or number drawn within that game play. This test is the "correlation test." Each pair of card positions or number positions is considered random if it meets the 99% confidence level using standard correlation analysis.

4. Each card position or number position is independently chosen without reference to the same card position or number position in the previous game. This test is the "serial correlation test." Each card position or number position is considered random if it meets the 99% confidence level using standard serial correlation analysis.

11VAC20-20-520. Point of sale terminal.

A. A network bingo system may utilize a point-of-sale terminal that is capable of facilitating the sale of network bingo cards. The point of sale may be entirely integrated into a network bingo system or exist as a separate entity.

B. Point-of-sale use is only permissible when the device is linked to an approved network bingo system.

C. If a network bingo system utilizes a point of sale, it shall be capable of printing a receipt for each sale or void. The receipt shall contain the following information:

1. Date and time of the transaction;

2. Dollar value of the transaction;

3. Validation number, if applicable;

4. Quantity of network bingo cards purchased;

5. Transaction number;

6. Point-of-sale identification number or name; and

7. Date and time when the network bingo game will begin.

D. The following point-of-sale report shall be generated on demand. Sales transaction history report shall show all sales and voids by session and include the following information:

1. Date and time of the transaction;

2. Dollar value of the transaction;

3. Quantity of network bingo cards sold;

4. Transaction number;

5. Point of sale identification number or name; and

6. Date and time of the network bingo game.

11VAC20-20-530. Game play requirements.

A. Any device that sells network bingo cards shall be clearly labeled so as to inform the public or game worker that no one younger than 18 years of age is allowed to play or redeem a network bingo card.

B. A network bingo provider shall have physical on-site independent supervision while the numbers for a network bingo game are called by a live caller. This independent supervision shall be unbiased in verifying the outcome of the network bingo game and uphold the department's objective of maintaining the highest level of integrity in charitable gaming. A written agreement specifying the terms of any arrangement between the entity or person providing the physical on- site independent supervision and the network bingo provider shall be required prior to any supervision being performed on the

network bingo game. This written agreement shall be maintained by the network bingo provider for a minimum of three years from the close of the fiscal year, unless otherwise specified.

C. A network bingo provider shall ensure qualified organizations participating in its network bingo comply with § 18.2-340.28:1 F of the Code of Virginia.

D. A network bingo provider or the live caller shall announce the prize amount and the predetermined pattern to players immediately before the start of the network bingo game. Each location where a qualified organization is selling network bingo cards shall be equipped to visually display the broadcast or signal of the numbers as they are being called by a live caller.

E. Gross receipts from the sale of network bingo cards shall be allocated in the following manner:

1. Up to 50% of such receipts to the organization selling network bingo cards;

2. Up to 50% of gross receipts to the prize pool; and

3. Any remaining amount to the network bingo provider.

However, if the prize pool reaches the maximum prize limitation, then the network bingo provider shall enable the organization to retain those gross receipts normally allocated to the prize pool.

F. All written agreements specifying the terms of any arrangement between the qualified organization and network bingo provider shall be maintained by both parties for a minimum of three years from the close of the fiscal year, unless otherwise specified.

G. Network bingo prizes must be claimed by the player within 30 days of winning the game and if not, the network bingo provider shall roll the unclaimed prize into the prize pool for the next network bingo game. The network bingo provider shall pay the prize by check to the winning player within 30 days. If the outcome of a network bingo game results in multiple winning players, then the prize amount shall be equally divided among them.

H. No single network bingo prize shall exceed the prize limitation set forth in § 18.2-340.28:1 H of the Code of Virginia.

Part VI
Administrative Process

11VAC20-20-600. Procedural rules for the conduct of fact-finding conferences and hearings.

A. As used in this part, "manufacturer" means a person or entity that assembles from raw materials or subparts a distributed pull-tab system.

B. Fact-finding conference; notification, appearance, and conduct.

1. Unless automatic revocation or immediate suspension is required by law, no permit to conduct charitable gaming, sell charitable gaming supplies, or distribute a distributed pull-tab system or no authorization to operate and conduct electronic gaming shall be denied, suspended, or revoked except upon notice stating the basis for such proposed action and the time and place for a fact-finding conference as set forth in § 2.2-4019 of the Administrative Process Act.

2. If a basis exists for a refusal to renew, suspend, or revoke a permit or authorization, the department shall notify by certified mail or by hand delivery the interested persons at the address of record maintained by the department.

3. Notification shall include the basis for the proposed action and afford interested persons the opportunity to present written and oral information to the department that may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations, suppliers, or manufacturers who wish to waive their right to a conference shall notify the department at least 14 days before the scheduled conference.

4. If after consideration of evidence presented during an informal fact-finding conference, a basis for action still exists, the interested persons shall be notified in writing within 60 days of the fact-finding conference via certified or hand-delivered mail of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

C. Hearing; notification, appearance, and conduct.

1. If after a fact-finding conference, a sufficient basis still exists to deny, suspend, or revoke a permit or authorization, interested persons shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If an organization, supplier, or manufacturer desires to request a hearing, the organization, supplier, or manufacturer shall notify the department within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to or subsequent to an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in the interested party's or representative's absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

D. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization, supplier, or manufacturer is located. If the parties agree, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference, or similar technology, in order to expedite the hearing process.

E. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law, or discretion presented on the record.

2. The department shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief, or denial thereof as to each issue.

F. Agency representation. The commissioner's designee may represent the department in an informal conference or at a hearing.

11VAC20-20-610. Reporting violations.

A. Unless otherwise required by law, the identity of any individual who provides information to the department or its agents regarding alleged violations shall be held in strict confidence.

B. Any officer, director, or game manager of a qualified organization or social organization or any officer or director of a supplier or manufacturer shall immediately report to the department any information pertaining to the suspected misappropriation or theft of funds or any other violation of the Charitable Gaming Law or regulations promulgated pursuant thereto.

C. Failure to report the information required by subsection B of this section may result in the denial, suspension, or revocation of a permit to conduct charitable gaming, permit to sell charitable gaming supplies, or authorization to operate and conduct electronic gaming.

D. Any officer, director, or game manager of a qualified organization or social organization involved in the management, operation, or conduct of charitable gaming or electronic gaming shall immediately notify the department upon being convicted of a felony or a crime involving fraud, theft, or financial crimes.

E. Any officer, director, partner, or owner of a supplier or manufacturer shall immediately notify the department upon being convicted or of pleading nolo contendere to a felony or a crime involving gambling or an action against any license or certificate held by the supplier or manufacturer in any state in the United States.

F. Failure to report information required by subsection D or E of this section by any officer, director, or game manager of a qualified organization or social organization or by any supplier or manufacturer may result in the denial, suspension, or revocation of a permit to conduct charitable gaming, permit to sell charitable gaming supplies, or authorization to operate and conduct electronic gaming.

G. Any officer, director, or game manager of a qualified organization involved in charitable gaming or electronic gaming shall immediately report to the department any change the IRS makes in the tax status of the organization, or if the organization is a chapter of a national organization covered by a group tax exempt determination, the tax status of the national organization.

H. All organizations regulated by the department shall display prominently a (i) poster advising the public of a telephone number where complaints relating to charitable gaming may be made and (ii) a poster that bears a toll-free telephone number for "Gamblers Anonymous" or other organization that provides assistance to compulsive gamblers. Such posters shall be in a format prescribed by the department.

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 (11VAC20-20)

GAME MANAGEMENT FORMS

Bingo Session Reconciliation Summary, Form 103 (rev. 8/2013).

Admission Sales Reconciliation - Paper, Form 104-A (rev. 8/2013).

Floor Sales Reconciliation - Paper, Form 104-B (rev. 12/2014).

Decision Bingo Reconciliation, Form 104-C (rev. 8/2013).

Raffle/Treasure Chest Sales Reconciliation - Bingo Session, Form 104-D (rev. 8/2013).

Paper Instant Bingo/Seal Cards/Pull-Tabs Reconciliation, Form 105 (rev. 8/2013).

Storeroom Inventory Issue - Paper, Form 106-A (rev. 8/2013).

Storeroom Inventory Issue - Instant Bingo/Seal Cards/Pull-Tabs, Form 106-B (rev. 8/2013).

List of Bingo Workers, Form 107 (rev. 8/2013).

Prize Receipt, Form 108 (rev. 8/2013).

Storeroom Inventory - Paper, Form 109-A (rev. 8/2013).

Storeroom Inventory - Instant Bingo/Seal Cards/Pull-Tabs, Form 109-B (rev. 8/2013).

Raffle Sales Reconciliation - Stand Alone Raffle, Form 110 (rev. 8/2013).

Instant Bingo/Seal Cars/Pull-tabs Reconciliation (Non-Bingo), Form 111 (rev. 8/2013).

Instant Bingo/Seal Cars/Pull-tabs Reconciliation Continuation (Non-Bingo), Form 111-A (rev. 8/2013).

Destruction of Unused Charitable Gaming Supplies, Form 112 (rev. 3/2014).

ORGANIZATION LICENSING FORMS

Charitable Gaming Permit Application - New Applicants Only, Form 201 - N (rev. 8/2021).

Gaming Personnel Information Update (rev. 7/2013).

Report of Game Termination (rev. 7/2013).

MANUFACTURER OF ELECTRONIC GAMING DEVICES, SUPPLIER, AND NETWORK BINGO PROVIDER LICENSING FORMS

Charitable Gaming Supplier Permit Application, Form 301 (rev. 2/2018).

Annual Supplier/Manufacturer Sales and Transaction Report, Form 302 (rev. 8/2013).

Certification of Non-Charitable Gaming/Gambling, Form 304 (rev. 7/2013).

Manufacturer of Electronic Pull-tab System Permit Application, Form 305 (rev. 10/2012).

Manufacturer of Electronic Pull-tab System Permit Application - Personal Information, Form 305A (rev. 10/2012).

Manufacturer of Electronic Pull-tab System Permit Renewal Application, Form 306 (rev. 10/2013).

Manufacturer of Electronic Pull-tab System Permit Renewal Application - Personal Information, Form 306A (rev. 10/2013).

Network Bingo Provider Permit Application, Form 307 (eff. 5/2014).

Network Bingo Provider Permit Application - Personal Information, Form 307A (eff. 5/2014).

BINGO MANAGER AND BINGO CALLER REGISTRATION FORMS

Charitable Gaming Bingo Caller Certificate of Registration Application, Form 401 (rev. 7/2018).

Charitable Gaming Bingo Manager Certificate of Registration Application, Form 402 (rev. 7/2018).

DOCUMENTS INCORPORATED BY REFERENCE (11VAC20-20)

IRS Publication 3079, Tax-Exempt Organizations and Gaming (rev. 6/2010).

Security Requirements for Cryptographic Modules, Federal Information Processing Standard, FIPS Pub 140-2 (rev. 12/2002).

VA.R. Doc. No. R23-7359; Filed October 5, 2022, 10:51 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health 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: **12VAC5-421. Food Regulations (amending 12VAC5-421-55).**

Statutory Authority: §§ 35.1-11 and 35.1-14 of the Code of Virginia.

Effective Date: November 23, 2022.

Agency Contact: Kristin Marie Clay, Senior Policy Analyst, Office of Environmental Health Services, Virginia Department of Health, 109 Governor Street, 5th Floor, Richmond, VA 23219, telephone (804) 864-7474, or email kristin.clay@vdh.virginia.gov.

Summary:

Pursuant to Chapter 393 of the 2022 Acts of Assembly, the amendment allows an establishment that sells only prepared foods to operate without having a certified food protection manager on site during all hours of operation.

12VAC5-421-55. Certified food protection manager.

A. At least one employee with supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager, demonstrating proficiency of required knowledge and information through passing a test that is part of an accredited program.

B. This section does not apply to food establishments that serve only non-time/temperature control for safety food and food establishments that store and prepare food only to the

extent that they reheat or cold hold commercially processed, fully cooked time/temperature control for safety foods. Food establishments exempt from the certified food protection manager requirement may not cool time/temperature control for safety foods.

~~C. The person in charge shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program. For purposes of enforcing this subsection, this requirement take effect on June 24, 2023.~~

VA.R. Doc. No. R23-7184; Filed September 29, 2022, 9:27 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-140, 12VAC30-50-150).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 23, 2022.

Effective Date: December 8, 2022.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations, and § 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance and to promulgate regulations according to the board's requirements.

Purpose: The purpose of this action is to add licensed school psychologists to the list of allowed providers of outpatient psychiatric services. Several of Virginia's child development clinics have identified the need to allow licensed school psychologists to bill for outpatient psychiatric services provided in their clinics to increase access to the number of children that they serve. Outpatient psychiatric services are currently provided by licensed mental health professionals (LMHPs), LMHP-residents, LMHP-residents in psychology, and LMHP-supervisees acting within their scope of practice. LMHP is defined in 12VAC35-105-20 by the Department of Behavioral Health and Developmental Services (DBHDS). DMAS met with DBHDS staff to review Board of Psychology licensing regulations and agree that while a licensed school psychologist does not meet the definition of a LMHP in accordance with DBHDS regulations, there are Medicaid covered outpatient psychiatric services that fall within the scope of practice for a licensed school psychologist. The scope of practice of licensed school psychologists includes "testing and measuring" which is a primary function of child development clinics and are covered under outpatient psychiatric current procedural terminology (CPT) codes. This regulatory change protects the health, safety, and welfare of Medicaid members by ensuring that DMAS regulations and current DMAS practices are aligned.

Rationale for Using Fast-Track Rulemaking Process: These regulatory changes are expected to be noncontroversial because they do not represent changes in practice and do not involve any costs to Medicaid providers or to the Commonwealth.

Substance: The amendments add school psychologists to the list of mental health professionals who can provide psychiatric services.

Issues: The primary advantage of this action to both the public and the agency is to broaden the scope of allowable outpatient psychiatric service providers. These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The director of the Department of Medical Assistance Services (DMAS), on behalf of the Board of Medical Assistance Services, proposes to add licensed school psychologists to the list of allowed providers of outpatient psychiatric services.

Background. Via a Medicaid Memo dated February 17, 2009,[2] the agency began directly enrolling licensed school psychologists[3] as Medicaid and FAMIS participating providers and reimbursing them for the services they provide to eligible Medicaid and FAMIS recipients. Nevertheless, this allowance was not added to 12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care and Services. As DMAS shifted to using the Licensed Mental Health Professional term, licensed school psychologists were unintentionally[4] left out of the list of allowed professionals for outpatient psychiatric services. Most licensed school psychologists work in school settings and provide services to Medicaid members through school health services.[5]

A Medicaid Memo dated August 20, 2021,[6] and this regulatory action were prompted when the Behavioral Health Division of DMAS was approached by child development clinics who use licensed school psychologists to provide testing services to children in their clinics and were unsure if they were still eligible to be reimbursed through Medicaid for these services.

The August 20, 2021, memo specifies that licensed school psychologists are allowed to be reimbursed for psychiatric services (e.g., outpatient psychotherapy and assessment services) provided outside of the school setting in accordance with 12VAC30-50-150 D of the regulation as follows:

> In accordance with 42 CFR 440.60, licensed practitioners (including an LMHP,[7] LMHP-R,[8] LMHP-RP,[9] or LMHP-S,[10] as defined in 12VAC30-50-130) may provide medical care or any other type of remedial care or services, other than physician's services, within the scope of practice as defined by state law.

DMAS proposes to amend 12VAC30-50-150 D so it would read as follows:

> In accordance with 42 CFR 440.60, licensed practitioners (including an LMHP,[11] LMHP-R,[12] LMHP-RP,[13] or LMHP-S,[14] as defined in 12VAC30-50-130), or a licensed school psychologist as defined in § 54.1-3600) may provide medical care or any other type of remedial care or services, other than physician's services, within the scope of practice as defined by state law.

Additionally, 12VAC30-50-140 D 1 of the regulation is as follows:

> Psychiatric services can be provided by or under the supervision of an individual licensed under state law to practice medicine or osteopathy. Only the following licensed providers are permitted to provide psychiatric services under the supervision of an individual licensed under state law to practice medicine or osteopathy: an LMHP, LMHP-R, LMHP-RP, or LMHP-S as defined in 12VAC30-50-130. Medically necessary psychiatric services shall be covered by the Department of Medical Assistance Services (DMAS) or its designee and shall be directly and specifically related to an active written plan designed and signature dated by one of the health care professionals listed in this subdivision.

DMAS proposes to amend 12VAC30-50-140 D 1 so it would read as follows:

> Psychiatric services can be provided by or under the supervision of an individual licensed under state law to practice medicine or osteopathy. Only the following licensed providers are permitted to provide psychiatric services under the supervision of an individual licensed under state law to practice medicine or osteopathy: an LMHP, LMHP-R, LMHP-RP, or LMHP-S as defined in 12VAC30-50-130, or licensed school psychologist as defined in § 54.1-3600. Medically necessary psychiatric services shall be covered by the Department of Medical Assistance Services (DMAS) or its designee and shall be directly and specifically related to an active written plan designed and signature dated by one of the health care professionals listed in this subdivision.

Estimated Benefits and Costs. According to DMAS, there have been no known denials of Medicaid reimbursement for psychiatric services provided by school psychologists outside of the school setting. The proposed amendments to the regulation clarify what has been intended. Thus, the proposed amendments to the regulation would not likely have a substantial impact on what occurs in practice, but would be beneficial in that clarity for the public would be enhanced.

Businesses and Other Entities Affected. The proposed amendments pertain to the 97 licensed school psychologists in the Commonwealth.[15]

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[16] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed amendments neither increase cost nor reduce revenue. Thus, adverse impact is not indicated.

Small Businesses[17] Affected.[18] The proposed amendments do not appear to adversely affect small businesses.

Localities[19] Affected.[20] The proposed amendments neither disproportionately affect any particular localities nor introduce costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://www.virginiamedicaid.dmas.virginia.gov/ECMPdfWeb/ECMServlet?memospdf=Medicaid+Memo+2009.02.17.pdf

[3]Licensed by the Virginia Department of Health Profession's Board of Psychology.

[4]Source: DMAS

[5]Ibid

[6]See https://www.virginiamedicaid.dmas.virginia.gov/ECMPdfWeb/ECMServlet?memospdf=Medicaid+Memo+2021.08.20.pdf

[7]"LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

[8]"LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance abuse treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision

for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling.

[9]"LMHP-RP" means the same as an individual in a residency, as that term is defined in 18VAC125-20-10, program for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology.

[10]"LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work.

[11]"LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

[12]"LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance abuse treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling.

[13]"LMHP-RP" means the same as an individual in a residency, as that term is defined in 18VAC125-20-10, program for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology.

[14]"LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work.

[15]Data source: https://www.dhp.virginia.gov/about/stats/2022Q1/04CurrentLicenseCountQ1FY2022.pdf

[16]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[18]If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[20]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments add school psychologists to the list of mental health professionals who are allowed to provide outpatient psychiatric services.

12VAC30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Outpatient psychiatric services.

1. Psychiatric services can be provided by or under the supervision of an individual licensed under state law to practice medicine or osteopathy. Only the following licensed providers are permitted to provide psychiatric services under the supervision of an individual licensed under state law to practice medicine or osteopathy: an LMHP, LMHP-R, LMHP-RP, or LMHP-S as defined in 12VAC30-50-130, or a licensed school psychologist as defined in § 54.1-3600 of the Code of Virginia. Medically necessary psychiatric services shall be covered by the Department of Medical Assistance Services (DMAS) or its designee and shall be directly and specifically related to an active written plan designed and signature dated by one of the health care professionals listed in this subdivision.

2. Psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels that have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

c. Is at risk for developing or requires treatment for maladaptive coping strategies; and

d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of life to the mother if the fetus was carried to term.

G. Physician visits to inpatient psychiatric hospital patients are restricted to medically necessary authorized (for enrolled providers)/approved (for nonenrolled providers) inpatient psychiatric hospital days as determined by DMAS or its contractor.

H. (Reserved.)

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. (Reserved.)

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys, corneas, hearts, lungs, and livers shall be covered for all eligible persons. High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma, breast cancer, leukemia, or myeloma. Transplant services for any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow/stem cell transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require service authorization by DMAS. Cornea transplants do not require service authorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Standards for coverage of organ transplant services are in 12VAC30-50-540 through 12VAC30-50-580.

L. Breast reconstruction/prostheses following mastectomy and breast reduction.

1. If prior authorized, breast reconstruction surgery and prostheses may be covered following the medically necessary complete or partial removal of a breast for any medical reason. Breast reductions shall be covered, if prior authorized, for all medically necessary indications. Such procedures shall be considered noncosmetic.

2. Breast reconstruction or enhancements for cosmetic reasons shall not be covered. Cosmetic reasons shall be defined as those which are not medically indicated or are intended solely to preserve, restore, confer, or enhance the aesthetic appearance of the breast.

M. Admitting physicians shall comply with the requirements for coverage of out-of-state inpatient hospital services. Inpatient hospital services provided out of state to a Medicaid recipient who is a resident of the Commonwealth of Virginia shall only be reimbursed under at least one the following conditions. It shall be the responsibility of the hospital, when requesting service authorization for the admission, to demonstrate that one of the following conditions exists in order to obtain authorization. Services provided out of state for circumstances other than these specified reasons shall not be covered.

1. The medical services must be needed because of a medical emergency;

2. Medical services must be needed and the recipient's health would be endangered if he were required to travel to his state of residence;

3. The state determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other state; or

4. It is general practice for recipients in a particular locality to use medical resources in another state.

N. In compliance with 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy, or abortion procedures were performed shall be subject to review of the required DMAS forms corresponding to the procedures. The claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

O. Prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging (MRI), including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA), or Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury. The referring physician ordering nonemergency outpatient Magnetic Resonance Imaging (MRI), Computerized Axial Tomography (CAT) scans, or Positron Emission Tomography (PET) scans must obtain prior authorization from DMAS for those scans. The servicing provider will not be reimbursed for the scan unless

proper prior authorization is obtained from DMAS by the referring physician.

P. Addiction and recovery treatment services shall be covered in physician services consistent with 12VAC30-130-5000 et seq.

12VAC30-50-150. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometrists' services. Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services are not provided.

D. In accordance with 42 CFR 440.60, licensed practitioners (including an LMHP, LMHP-R, LMHP-RP, or LMHP-S~~,~~ as defined in 12VAC30-50-130 or a licensed school psychologist as defined in § 54.1-3600 of the Code of Virginia) may provide medical care or any other type of remedial care or services, other than physician's services, within the scope of practice as defined by state law.

E. Addiction and recovery treatment services shall be covered in other licensed practitioner services consistent with Part XX (12VAC30-130-5000 et seq.) of 12VAC30-130.

VA.R. Doc. No. R23-6939; Filed September 21, 2022, 9:38 a.m.

Final Regulation

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

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-20, 12VAC30-50-60).**

Statutory Authority: § 32.1-325 of the Code of Virginia, 42 USC § 1396 et seq.

Effective Date: November 23, 2022.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Summary:

In accordance with § 210 of the Consolidated Appropriations Act of 2021 and the Centers for Medicare and Medicaid Services State Medicaid Director letter #21-005, which provides for coverage for routine patient costs furnished in connection with a member's participation in a qualifying clinical trial, the amendments allow the State Plan for Medical Assistance to cover any item or service provided to the individual under the qualifying clinical trial, including (i) any item or service provided to prevent, diagnose, monitor, or treat complications resulting from participation in the qualifying clinical trial to the extent that the provision of such items or services to the beneficiary would otherwise be covered outside the course of participation in the qualifying clinical trial under the state plan or waiver, including a demonstration project under § 1115 of the Social Security Act, and (ii) any item or service required to administer the investigation item or service.

12VAC30-50-20. Services provided to the categorically needy without limitation.

The following services as described in Part III (12VAC30-50-100 et seq.) of this chapter are provided to the categorically needy without limitation:

1. Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

2. Services for individuals 65 years of age or older in institutions for mental diseases: inpatient hospital services; skilled nursing facility services; and services in an intermediate care facility.

3. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902(a)(31)(A) of the Social Security Act (the Act), to be in need of such care, including such services in a public institution (or distinct part thereof) for persons with intellectual or developmental disability or related conditions.

4. Hospice care (in accordance with § 1905(o) of the Act).

5. Any other medical care and any type of remedial care recognized under state law, specified by the U.S. Secretary of Health and Human Services: care and services provided in religious nonmedical health care institutions, nursing facility services for patients younger than 21 years of age, or emergency hospital services.

6. Private health insurance premiums, coinsurance, and deductibles when cost effective (pursuant to P.L. No. 101-508 § 4402).

7. Program of All-Inclusive Care for the Elderly (PACE) services are provided for eligible individuals as an optional State Plan service for categorically needy individuals without limitation.

8. Pursuant to P.L. No. 111-148 § 4107, counseling and pharmacotherapy for cessation of tobacco use by pregnant women shall be covered.

a. Counseling and pharmacotherapy for cessation of tobacco use by pregnant women means diagnostic, therapy, and counseling services and pharmacotherapy (including the coverage of prescription and nonprescription tobacco cessation agents approved by the U.S. Food and Drug Administration) for cessation of tobacco use by pregnant women who use tobacco products or who are being treated for tobacco use that is furnished (i) by or under the supervision of a physician, (ii) by any other health care professional who is legally authorized to provide tobacco cessation services under state law and is authorized to provide Medicaid coverable services other than tobacco cessation services, or (iii) by any other health care professional who is legally authorized to provide tobacco cessation services under state law and who is specifically designated by the U.S. Secretary of Health and Human Services in federal regulations for this purpose.

b. No cost sharing shall be applied to these services. In addition to other services that are covered for pregnant women, 12VAC30-50-510 also provides for other smoking cessation services that are covered for pregnant women.

9. Inpatient psychiatric facility services and residential psychiatric treatment services (including therapeutic group homes and psychiatric residential treatment facilities) for individuals younger than 21 years of age.

10. Coverage of routine patient cost for items and services as defined in § 1905(gg) of the Social Security Act (42 USC § 1396 et seq.) that are furnished in connection with participation in a qualifying clinical trial.

12VAC30-50-60. Services provided to all medically needy groups without limitations.

Services as described in Part III (12VAC30-50-100 et seq.) of this chapter are provided to all medically needy groups without limitations.

1. Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

2. Early and periodic screening and diagnosis of individuals younger than 21 years of age, and treatment of conditions found.

3. Pursuant to P.L. No. 111-148 § 4107, counseling and pharmacotherapy for cessation of tobacco use by pregnant women shall be covered.

a. Counseling and pharmacotherapy for cessation of tobacco use by pregnant women means diagnostic, therapy, and counseling services and pharmacotherapy (including the coverage of prescription and nonprescription tobacco cessation agents approved by the U.S. Food and Drug Administration) for cessation of tobacco use by pregnant women who use tobacco products or who are being treated for tobacco use that is furnished (i) by or under the supervision of a physician, (ii) by any other health care professional who is legally authorized to provide tobacco cessation services under state law and is authorized to provide Medicaid coverable services other than tobacco cessation services, or (iii) by any other health care professional who is legally authorized to provide tobacco cessation services under state law and who is specifically designated by the U.S. Secretary of Health and Human Services in federal regulations for this purpose.

b. No cost sharing shall be applied to these services. In addition to other services that are covered for pregnant women, 12VAC30-50-510 also provides for other smoking cessation services that are covered for pregnant women.

4. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with § 1905(a)(4)(A) of the Social Security Act (the Act) to be in need of such care.

5. Hospice care (in accordance with § 1905(o) of the Act).

6. Any other medical care or any other type of remedial care recognized under state law, specified by the U.S. Secretary of Health and Human Services, including: care and services provided in religious nonmedical health care institutions, skilled nursing facility services for patients younger than 21 years of age, and emergency hospital services.

7. Private health insurance premiums, coinsurance and deductibles when cost effective (pursuant to P.L. No. 101-508 § 4402).

8. Program of All-Inclusive Care for the Elderly (PACE) services are provided for eligible individuals as an optional State Plan service for medically needy individuals without limitation.

9. Inpatient psychiatric facility services and residential psychiatric treatment services (including therapeutic group

homes and psychiatric residential treatment facilities) for individuals younger than 21 years of age.

10. Coverage of routine patient cost for items and services as defined in § 1905(gg) of the Social Security Act (42 USC § 1396 et seq.) that are furnished in connection with participation in a qualifying clinical trial.

VA.R. Doc. No. R23-7167; Filed October 4, 2022, 2:48 p.m.

Fast-Track Regulation

Titles of Regulations: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-181).**

12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-5060).

Statutory Authority: § 32.1-325 of the Code of Virginia (42 USC § 1396 et seq.).

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 4, 2022.

Effective Date: December 8, 2022.

Agency Contact: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Policy, Regulations, and Member Engagement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Basis: Section 32.1 325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to promulgate regulations, and § 32.1-324 of the Code of Virginia grants the Director of the Department of Medical Assistance Services (DMAS) the authority of the board when it is not in session.

Item 313 PPPPP of the 2021 Appropriations Act states that DMAS shall seek federal authority through waiver and State Plan amendments under Titles XIX and XXI of the Social Security Act to expand the preferred office-based opioid treatment (OBOT) model to include individuals with substance use disorders that are covered in the addiction and recovery treatment services (ARTS) benefit.

Purpose: The purpose of this action is to expand the substance use disorder service called preferred office-based opioid treatment in accordance with a General Assembly mandate and incorporate ARTS utilization review changes. These regulatory changes are essential to protect the health, safety, and welfare of Medicaid members.

Previously OBOT was available only to individuals with a primary diagnosis of opioid use disorder. The action expands the program as preferred office-based addiction treatment (OBAT) to individuals with a substance-related or addictive disorder. In 2016, DMAS transformed the Medicaid substance use disorder benefit to address the opioid epidemic. According to data from the Virginia Department of Health, the number of fatal non-opioid illicit drug overdoses is increasing. This mandate allows DMAS to increase member access to preferred office-based addiction treatment to address other forms of substance-related or addictive disorders.

The purpose of the ARTS utilization review change to extend the time for credentialed addiction treatment professionals to sign and date multidimensional assessments and individualized services plans (ISPs) from one to three days was requested by the provider community. The intent is to reduce the administrative burden on providers and provide more realistic timeframes for completion. The updates to the ARTS utilization review regulations that include: prohibiting health care entities with provisional licenses by the Department of Behavioral Health and Developmental Services to be reimbursed as Medicaid providers; changing OBOT to OBAT; and stating that prescriptions for naloxone must be included in providers' documentation do not reflect changes in practice but rather align DMAS regulations with the department's existing practices. Lastly, the ARTS utilization regulations are being revised to allow certified substance abuse counselors-supervisees (CSAC-supervisees) to complete multidimensional assessments and ISPs in accordance with the Board of Counseling's scope of practice.

Rationale for Using Fast-Track Rulemaking Process: These regulatory changes are expected to be noncontroversial. A state plan amendment has been approved by Centers for Medicare and Medicaid Services, and these changes will generally replicate the state plan text in the Virginia Administrative Code.

The ARTS utilization review regulation changes are expected to be noncontroversial because they incorporate changes requested by the provider community, make changes that document existing DMAS practices, and make changes to align with the Board of Counseling's scope of practice for CSAC-supervisees.

Substance: Item 313 PPPPP of the 2021 Appropriations Act requires DMAS to revise the state plan to expand the substance use disorder service called preferred office-based opioid treatment.

The ARTS utilization review regulation changes incorporate modifications that (i) were requested by the provider community; (ii) document existing DMAS practices rather than changes in practice; and (iii) align with the Board of Counseling's scope of practice for CSAC-supervisees.

Issues: The advantages of this regulatory action include expanding preferred office-based opioid treatment, which has been available only to individuals with a primary diagnosis of opioid use disorder, to individuals with a substance-related or addictive disorders, reduced administrative burden for providers, alignment of DMAS regulations with the department’s existing practices and alignment with the Board of Counseling's scope of practice for certified substance abuse counseling supervisees. These changes create no

disadvantages to the public, the agency, the Commonwealth, or the regulated community.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented below represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. Pursuant to the 2021 Appropriations Act, Item 313.PPPPP, the Board of Medical Assistance Services (Board) proposes to expand the Medicaid treatment services previously offered only to individuals with opioid use disorder to now include individuals with other substance-related or addictive disorders. The Board also proposes to update the regulatory text to reflect certain current practices.

Background. The 2021 Appropriations Act, Item 313.PPPPP[2] states that the Department of Medical Assistance Services (DMAS) "shall seek federal authority through waiver and State Plan amendments under Titles XIX and XXI of the Social Security Act to expand the Preferred Office-Based Opioid Treatment (OBOT) model to include individuals with substance use disorders (SUD) that are covered in the Addiction and Recovery Treatment Services (ARTS) benefit." Consequently, DMAS obtained approval from the Centers for Medicare and Medicaid Services with an effective date of October 1, 2021. Consequently, this action would incorporate the legislatively mandated expanded eligibility for treatment services to cover individuals with other substance use disorders.

Additionally, this action would update the regulatory text to reflect certain current practices including: 1) aligning the regulatory text with the Board of Counseling's scope of practice for certified substance abuse counselor supervisees, and 2) allowing three days rather than one day to sign and date multidimensional assessments and individual service plans in response to requests by the provider community.

Estimated Benefits and Costs. Preferred Office-Based Opioid Treatment is a type of outpatient addiction treatment designed for people with opioid use disorder. In 2016, DMAS transformed the Medicaid substance use disorder benefit to address the opioid epidemic. However, DMAS reports that data from the Virginia Department of Health indicate the number of fatal non-opioid illicit drug overdoses is increasing. The purpose of the General Assembly mandate appears to be to offer similar treatment options to individuals with a substance-related or addictive disorder in addition to opioid use disorder. Prior to the legislative mandate, this type of treatment was available only to individuals with a primary diagnosis of opioid use disorder. The mandate expanded this treatment to cover individuals with other substance (e.g. alcohol, cannabis, hallucinogens, inhalants, sedatives/hypnotics, stimulants, polysubstance, etc.) use disorders.

The 2021 General Assembly appropriated $881,306 in general funds and $1,296,254 in federal funds to expand this treatment. DMAS estimates that approximately 1,400 members would be using the newly eligible services. The main benefit of this change is the treatment of approximately 1,400 individuals with additional types of substance use disorders. Additionally, the use of federal funds for this expanded coverage represents an injection of new resources into Virginia's economy with an expected expansionary effect.

The Board also proposes to update the regulatory text to reflect certain current practices in ARTS utilization review. One of these changes would allow certified substance abuse counselor supervisees to complete multidimensional assessments and individual service plans, to be consistent with the Board of Counseling's scope of practice. This assessment is not reimbursable and no thus fiscal impact is expected. Another change would extend the time for credentialed addiction treatment professionals to sign and date multidimensional assessments and individual service plans; this would be extended from one to three days in response to requests by the provider community. Providers stated to DMAS that the additional time would allow edits if needed to the assessment and the individual service plan based on the clinical judgment of the supervisor. The intent of this change was to reduce the administrative burden on providers and provide more realistic timeframes for completion. Since these changes have already been incorporated in to current practices, no significant economic effect is expected upon finalizing these proposed changes.

Businesses and Other Entities Affected. According to DMAS there are currently 178 providers offering treatment services for opioid use disorder. Fifty-two of these providers are Community Services Boards, eight are Federally Qualified Health Centers, and the remaining are private providers/clinics. DMAS projects that approximately 1,400 individuals are covered by the proposed expansion.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed action updates regulatory text to expand treatment services to a broader population pursuant to a legislative mandate. No adverse impact is indicated.

Small Businesses[4] Affected.[5] The proposed action does not appear to adversely affect small businesses.

Localities[6] Affected.[7] The proposed changes do not disproportionately affect particular localities or introduce costs for local governments.

Projected Impact on Employment. The proposed expansion of treatment services to substance abuse disorders other than opioid would add to the demand for such services. Consequently, employment may increase.

Effects on the Use and Value of Private Property. The additional coverage of other substance use disorder treatment services would add to demand for such services and have a

positive impact on such providers' revenues and their asset values. Other than that, no effect on the use and value of private property or real estate development costs is expected.

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[1]Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]https://budget.lis.virginia.gov/item/2021/2/HB1800/Chapter/1/313/

[3]Pursuant to § 2.2-4007.04 D of the Code of Virginia: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[5]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[7]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments (i) in accordance with Item 313 PPPPP of the 2021 Appropriation Act, expand substance use disorder service preferred office-based treatment to individuals with a substance-related or addictive disorder other than opioid use disorder; and (ii) incorporate Addiction and Recovery Treatment Services benefits utilization review modifications that allow substance abuse counselor-supervisees to complete a multidimensional assessment under supervision if a credentialed addiction treatment professional signs the assessment within three business days.

12VAC30-60-181. Utilization review of addiction and recovery treatment services.

A. Providers shall be required to maintain documentation detailing all relevant information about the Medicaid individuals who are in the provider's care. Such documentation shall fully disclose the extent of services provided in order to support provider's claims for reimbursement for services rendered. This documentation shall be written and dated at the time the services are rendered. Claims that are not adequately supported by appropriate up-to-date documentation may be subject to recovery of expenditures.

B. Utilization reviews shall be conducted by the Department of Medical Assistance Services or its designated contractor.

C. Service authorizations shall be required for American Society of Addiction Medicine (ASAM) Levels 2.1, 2.5, 3.1, 3.3, 3.5, 3.7, and 4.0.

D. A multidimensional assessment by a credentialed addiction treatment professional (CATP), as defined in 12VAC30-130-5020, shall be required for ASAM Levels 1.0 through 4.0. Certified substance abuse counselors (CSACs) and CSAC-supervisees are able to complete a multidimensional assessment under supervision to make recommendations for an ASAM level of care, which shall be signed and dated by a CATP within ~~one~~ three business ~~day~~ days. The multidimensional assessment shall be maintained in the individual's record by the provider. Medical necessity for all ASAM levels of care shall be based on the outcome of the individual's multidimensional assessment.

E. Individual service plans (ISPs) and treatment plans shall be developed upon admission to medically managed intensive inpatient services (ASAM Level 4.0), substance use residential and inpatient services (ASAM Levels 3.1, 3.3, 3.5, and 3.7), and substance use intensive outpatient and partial hospitalization programs (ASAM Levels 2.1 and 2.5). ISPs or treatment plans shall be developed upon initiation of opioid treatment services (OTP), office-based ~~opioid~~ addiction treatment ~~(OBOT)~~ (OBAT), and substance use outpatient services (ASAM Level 1.0).

1. The provider shall include the individual and the family or caregiver, as may be appropriate, in the development of the ISP or treatment plan. To the extent that the individual's condition requires assistance for participation, assistance shall be provided. The ISP shall be updated at least annually and as the individual's needs and progress change. An ISP that is not updated either annually or as the individual's needs and progress change shall be considered outdated.

2. All ISPs shall be completed and contemporaneously signed and dated by the CATP preparing the ISP. ~~For ASAM Levels 3.1, 3.3, and 3.5, the~~ The ISP may be completed by a CSAC or CSAC-supervisee under supervision if the CATP signs and dates the ISP within ~~one~~ three business ~~day~~ days.

3. The child's or adolescent's ISP shall also be signed by the parent or legal guardian, and the adult individual shall sign his own ISP. If the individual, whether a child, adolescent, or adult, is unwilling or unable to sign the ISP, then the service provider shall document the reasons why the individual was not able or willing to sign the ISP.

F. A comprehensive ISP, as defined in 12VAC30-130-5020, shall be fully developed within 30 calendar days of the initiation of services. The comprehensive ISP shall be developed with the individual, in consultation with the individual's family, as appropriate, and shall address (i) a summary or reference to the individual's identified needs; (ii) short-term and long-term goals and measurable objectives for addressing each identified individually specific need; (iii) services and supports and frequency of services to accomplish the goals and objectives; (iv) target dates for accomplishment of goals and objectives; (v) estimated duration of service; (vi) medication assisted treatment assessment, which shall be provided onsite or through referral; and (vii) the role of other agencies if the plan is a shared responsibility and the staff designated as responsible for the coordination and integration of services. The ISP shall be reviewed at least every 90 calendar days and shall be modified as the needs and progress of the individual change. Documentation of the ISP review shall include the dated signatures of the CATP and the individual. CSACs and CSAC-supervisees may perform the ISP reviews ~~in ASAM Levels 3.1, 3.3, and 3.5~~ if a CATP signs and dates the ISP review within ~~one~~ three business ~~day~~ days.

G. Progress notes, as defined in 12VAC30-60-185, shall disclose the extent of services provided and corroborate the units billed. Each progress note shall be individualized to the member to demonstrate the individual member's particular circumstances, treatment, and progress. Claim payments shall be retracted for services that are not supported by documentation that is individualized to the member.

H. Documentation shall include assessment and referral for medication assisted treatment as medically indicated. This shall include prescriptions for naloxone.

I. Health care entities with provisional licenses issued by the Department of Behavioral Health and Developmental Services shall not be reimbursed as Medicaid providers.

12VAC30-130-5060. Covered services: clinic services - preferred office-based ~~opioid~~ addiction treatment.

A. Preferred office-based ~~opioid~~ addiction treatment ~~(OBOT)~~ (OBAT) shall be provided by a buprenorphine-waivered practitioner and may be provided in a variety of practice settings, including primary care clinics, outpatient health system clinics, psychiatry clinics, FQHCs, CSBs, BHAs, local health department clinics, and physician offices. The practitioner shall be contracted by DMAS or its contractor or an MCO to perform ~~OBOT~~ OBAT services. ~~OBOT~~ OBAT services shall meet the criteria established in this section.

B. ~~OBOT~~ OBAT service components.

1. Access to emergency medical and psychiatric care.

2. Affiliations with more intensive levels of care such as intensive outpatient programs and partial hospitalization programs to which individuals can be referred when clinically indicated.

3. Individualized, patient-centered multidimensional assessment and treatment.

4. Assessing, ordering, administering, reassessing, and regulating medication and dose levels appropriate to the individual; supervising withdrawal management from opioid analgesics and other substances; and overseeing and facilitating access to appropriate treatment for ~~opioid~~ substance use disorder ~~and alcohol use disorder~~.

5. Medication for other physical and mental health disorders shall be provided as needed either onsite or through collaboration with other providers.

6. Assurance that ~~buprenorphine products~~ medications for opioid use disorder and alcohol use disorder are only dispensed onsite during the induction phase. After the induction phase, ~~buprenorphine products~~ medications shall be prescribed to the member.

7. Assurance that buprenorphine monoproduct is only prescribed in accordance with Board of Medicine rules related to the prescribing of buprenorphine for addiction.

8. Cognitive, behavioral, and other substance use disorder-focused counseling and psychotherapies, reflecting a variety of treatment approaches, shall be provided to the individual on an individual, group, or family basis and shall be provided by CATPs working in collaboration with the buprenorphine-waivered practitioner ~~who is prescribing buprenorphine products or naltrexone products to individuals with a primary opioid use disorder~~. These therapies can be provided via telemedicine as long as they meet DMAS requirements for an ~~OBOT~~ OBAT and for the use of telemedicine. ~~(See the Medicaid Memo entitled "Updates to Telemedicine Coverage" dated May 13, 2014.)~~ Preferred ~~OBOTs~~ OBATs may utilize CSACs and CSAC-supervisees to provide substance use disorder counseling and psychoeducational services within their scope of practice as defined in § 54.1-3507.1 of the Code of Virginia.

9. Substance use care coordination provided, including interdisciplinary care planning between the buprenorphine-waivered practitioner and the treatment team to develop and monitor individualized and personalized treatment plans focused on the best outcomes for the individual. This care coordination includes monitoring individual progress, tracking individual outcomes, linking the individual with community resources to facilitate referrals and respond to social service needs, and tracking and supporting the

individual's medical, behavioral health, or social services received outside the practice.

10. Provision of onsite screening or referral for screening for clinically indicated infectious disease testing for diseases such as HIV; hepatitis A, B, and C; syphilis; and tuberculosis at treatment initiation and then at least annually or more often based on risk factors and the ability to provide or refer for treatment of infectious diseases as necessary.

11. Onsite medication administration treatment during the induction phase, which shall be provided by a physician, nurse practitioner, physician assistant, ~~or~~ registered nurse, or licensed practical nurse.

12. Ability to provide pregnancy testing for women of childbearing age.

13. For individuals of childbearing age, the ability to provide family planning services or to refer the individual for family planning services.

C. ~~OBOT~~ OBAT staff requirements.

1. Buprenorphine-waivered practitioners are required.

2. CATPs are required and shall work in collaboration with the buprenorphine-waivered practitioner ~~who is prescribing buprenorphine products or naltrexone products to individuals with a primary opioid use disorder~~. This collaboration can be in person or via telemedicine as long as it meets the department's requirements for the ~~OBOT~~ OBAT setting and for telemedicine. CSACs, CSAC-supervisees, and CSAC-As are also recognized in the preferred ~~OBOT~~ OBAT setting as well as registered peer recovery specialists. A registered peer recovery specialist shall meet the definition in § 54.1-3500 of the Code of Virginia.

D. ~~OBOT~~ OBAT risk management shall be documented in each individual's record and shall include:

1. Random drug screening, using either urine or blood serums, for all individuals, conducted at a minimum of eight times per year. Drug screenings include presumptive and definitive screenings and shall be accurately interpreted. Definitive screenings shall only be utilized when clinically indicated. Outcomes of the drug screening shall be used to support positive patient outcomes and recovery.

2. A check of the Virginia Prescription Monitoring Program prior to initiation of buprenorphine products or naltrexone products and at least quarterly for all individuals thereafter.

3. Prescription of naloxone.

4. ~~Opioid overdose~~ Overdose prevention education, including the purpose of and the administration of naloxone and the impact of polysubstance use. Education shall include discussion of the role of medication assisted treatment and the opportunity to reduce harm associated with polysubstance use. The goal is to help individuals remain in treatment to reduce the risk for harm.

5. Periodic monitoring of unused medication and opened medication wrapper counts when clinically indicated.

6. Clinically indicated infectious disease testing for diseases such as HIV; hepatitis A, B, and C; syphilis; and tuberculosis at treatment initiation and then annually or more frequently, depending on the clinical scenario and the patient's risk. Those individuals who test positive shall be treated either onsite or through referral.

7. For individuals without immunity to the hepatitis B virus, vaccination either onsite or through referral.

8. For patients without HIV infection, pre-exposure prophylaxis to prevent HIV infection shall be offered either onsite or through referral.

9. Women of child-bearing age shall be tested for pregnancy and shall be offered contraceptive services either onsite or through referral.

VA.R. Doc. No. R23-6959; Filed September 21, 2022, 8:34 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final 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: **14VAC5-260. Rules Governing Insurance Holding Companies (amending 14VAC5-260-30, 14VAC5-260-80; adding 14VAC5-260-87).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: November 1, 2022.

Agency Contact: Jackie Myers, Chief Insurance Market Examiner, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9630, or email jackie.myers@scc.virginia.gov.

Summary:

Pursuant to Chapter 113 of the 2022 Acts of Assembly, the amendments require certain insurers that are members of an insurance holding company system to file a group capital calculation in accordance with the National Association of Insurance Commissioners (NAIC) Group Capital Calculation Instructions. The amendments (i)

establish criteria for when the Commissioner of Insurance may exempt an insurance holding company system from filing the annual group capital calculation and accept a limited filing or report; (ii) establish criteria for when a nonreciprocal jurisdiction is considered to recognize and accept the group capital calculation as the worldwide group capital assessment for the U.S. insurance groups that operate in that jurisdiction; (iii) incorporate 2022 amendments to § 38.2-1330 of the Code of Virginia regarding provisions to ensure the continuity of essential services and functions to an insurer in receivership and further clarify ownership of data and records of the insurer; and (iv) align the regulations with the current NAIC Holding Company System Model Regulation, which was revised most recently in August 2021, and update the NAIC Accounting Practices & Procedures Manual incorporated by reference and a required form.

AT RICHMOND, SEPTEMBER 27, 2022

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2022-00072

Ex Parte: In the matter of Amending Rules
Governing Insurance Holding Companies

ORDER ADOPTING REGULATIONS

On July 26, 2022, the State Corporation Commission ("Commission") entered an Order to Take Notice to amend rules set forth in Chapter 260 of Title 14 of the Virginia Administrative Code, 14 VAC 5-260-10 et seq., entitled "Rules Governing Insurance Holding Companies" ("Rules").

The Order to Take Notice and proposed amendments to the Rules were posted on the Commission's website, sent to all carriers licensed in Virginia that write insurance and to all persons known to the Bureau of Insurance ("Bureau") to have an interest on July 28, 2022, sent to the Virginia Attorney General's Division of Consumer Counsel ("Consumer Counsel"), and published in the Virginia Register of Regulations on August 15, 2022. Licensees, Consumer Counsel and other interested parties were afforded the opportunity to file written comments or request a hearing on or before September 15, 2022.

No comments were filed, and no request for a hearing was made, with the Clerk of the Commission.

The amendments to the Rules are necessary to implement amendments to § 38.2-1329 of the Code of Virginia ("Code"),[1] which require certain insurers that are members of an insurance holding company system to file a group capital calculation in accordance with the National Association of Insurance Commissioners Group Capital Calculation Instructions. The proposed amendments to the Rules establish criteria for when the Commissioner of Insurance may: (1) exempt an insurance holding company system from filing the annual group capital calculation; and (2) accept a limited filing or report. The proposed amendments also establish criteria for when a non-reciprocal jurisdiction is considered to recognize and accept the group capital calculation as the worldwide group capital assessment for the U.S. insurance groups that operate in that jurisdiction.

The proposed amendments to the Rules also reflect amendments to § 38.2-1330 of the Code,[2] regarding provisions to ensure the continuity of essential services and functions to an insurer in receivership as well as to further clarify ownership of data and records of the insurer. The proposed amendments to the Rules clarify that the terms of cost sharing agreements between an insurer and an affiliated entity must include terms related to the insurer's ownership of data and records; the duty of the affiliated entity to furnish data and records in usable format in the event of seizure, conservatorship or receivership; and the continued provision by an affiliate of essential services and systems in the event of seizure, conservatorship or receivership.

The Bureau has recommended to the Commission that the amendments to the Rules be adopted.

NOW THE COMMISSION, having considered the proposal to amend the Rules and the recommendation of the Bureau to adopt the amendments to the Rules, concludes that the attached amendments to the Rules should be adopted, effective November 1, 2022.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the "Rules Governing Insurance Holding Companies," as set out at 14 VAC 5-260-30, 14 VAC 5-260-80 and 14 VAC 5-260-87 of the Virginia Administrative Code, which are attached hereto and made a part hereof, are hereby ADOPTED effective November 1, 2022.

(2) The Bureau shall provide notice of the adopted amendments to the Rules to all carriers licensed in Virginia and to interested persons.

(3) The Commission's Office of General Counsel shall cause a copy of this Order and the amendments to the Rules to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached amendments on the Commission's website: scc.virginia.gov/pages/Case-Information.

(5) The Bureau shall file with the Clerk of the Commission a certificate of compliance with the notice requirements of Ordering Paragraph (2) above.

(6) This case is dismissed.

A COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Senior Assistant Attorney General, at MBrowder@oag.state.va.us, Office of the Attorney General, Division of Consumer Counsel, 202 N. 9th Street, 8th Floor,

Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte.

[1]See 2022 Va. Acts Ch. 113.

[2]Id.

14VAC5-260-30. Definitions.

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

"Commission" means the State Corporation Commission.

~~"Commissioner of Insurance" means the administrative or executive officer of the division or bureau of state government established to administer the insurance laws of a state other than Virginia.~~

"Commissioner" means the Commissioner of Insurance of Virginia.

"Executive officer" means chief executive officer, chief operating officer, chief financial officer, president, vice president, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

"Foreign insurer" shall include an alien insurer except where clearly noted otherwise.

"NAIC" means National Association of Insurance Commissioners.

"The Act" means Articles 5 and 6 of Chapter 13 (§ 38.2-1322 et seq. and § 38.2-1335 et seq.) of Title 38.2 of the Code of Virginia.

~~"Ultimate controlling person" means that person which is not controlled by any other person.~~

Other terms found in this chapter are used as defined in § 38.2-1322 of the Code of Virginia, or industry usage if not defined by the Code of Virginia.

14VAC5-260-80. Transactions subject to prior notice filing.

A. An insurer required to give notice of a proposed transaction pursuant to § 38.2-1330 B of the ~~Act~~ Code of Virginia shall furnish the required information in the format designated on Form D, as specified in the instructions of that form, which is a part of this chapter.

B. Agreements for cost-sharing services and management services ~~shall at a minimum and as applicable~~ must:

1. Identify the person providing services and the nature of such services;

2. Set forth the methods to allocate costs;

3. Require timely settlement~~, not less frequently than~~ on at least a quarterly basis~~,~~ and compliance with the requirements in the ~~National Association of Insurance Commissioners~~ NAIC Accounting Practices and Procedures Manual, ~~As of~~ March ~~2014~~ 2022;

4. Prohibit advancement of funds by the insurer to ~~the~~ an affiliate except to pay for services defined in the agreement;

5. State that the insurer will maintain oversight for functions provided to the insurer by ~~the~~ an affiliate and that the insurer will monitor services annually for quality assurance;

6. Define ~~books and~~ records and data of the insurer to include all ~~books and~~ records and data developed or maintained under or related to the agreement that are otherwise the property of the insurer, in whatever form maintained, including (i) claims and claim files, (ii) policyholder lists, (iii) application files, (iv) litigation files, (v) premium records, (vi) rating manuals and rating algorithms, (vii) underwriting manuals, (viii) personnel records, (ix) financial records, or (x) similar records within the possession, custody, or control of the affiliate;

7. Specify that all ~~books and~~ records and data of the insurer are and remain the property of the insurer and are (i) subject to control of the insurer, (ii) identifiable, and (iii) segregated from all other persons' records and data or readily capable of segregation at no additional cost to the insurer;

8. State that all funds and invested assets of the insurer are the exclusive property of the insurer, held for the benefit of the insurer, and subject to the control of the insurer;

9. Include standards for termination of the agreement with and without cause;

10. Include provisions for indemnification of the insurer in the event of gross negligence or willful misconduct on the part of the affiliate providing the services and for any actions by the affiliate that violate provisions of the agreement required in subdivisions 11 through 15 of this subsection;

11. Specify ~~that,~~ if the insurer is placed in supervision, seizure, conservatorship, or receivership ~~or seized~~ by the commission under the Rehabilitation and Liquidation of Insurers statute (Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia):

a. All ~~of the~~ rights of the insurer under the agreement extend to the receiver or commission pursuant to Title 38.2 of the Code of Virginia; ~~and~~

b. All ~~books and~~ records ~~will immediately be made available to the receiver or the commission, and shall be turned over to the receiver or commission immediately upon the receiver or the commission's request~~ and data of the insurer must be identifiable and segregated from all other persons' records and data or must be readily capable of segregation at no additional cost to the receiver or the commission;

c. A complete set of records and data of the insurer will be provided to the receiver or the commission immediately in a usable format upon the receiver or the commission's request, and any cost to transfer data to the receiver or the commission shall be fair and reasonable; and

d. Affiliates will make available all employees essential to the operations of the insurer and the services associated with the operations of the insurer for the immediate continued performance of the essential services ordered or directed by the receiver or commission;

12. Specify that ~~the~~ an affiliate has no automatic right to terminate the agreement if the insurer is placed ~~in~~ into supervision, seizure, conservatorship, or receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia; ~~and~~

13. Specify that an affiliate will provide essential services for a specific period of time after termination of the agreement if the insurer is placed into supervision, seizure, conservatorship, or receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia as ordered or directed by the receiver or commission. Performance of the essential services will continue to be provided without regard to pre-receivership unpaid fees, as long as an affiliate continues to receive timely payment for post-receivership services rendered unless such affiliate is released by the receiver, commission, or supervising court;

14. Specify that ~~the~~ an affiliate will continue to maintain any systems, programs, or other infrastructure notwithstanding ~~a seizure by the commission~~ supervision, seizure, conservatorship, or receivership under Chapter 15 of Title 38.2 of the Code of Virginia, and will make them available ~~to the receiver for so~~ as ordered or directed by the receiver or commission as long as ~~the~~ such affiliate continues to receive timely payment for post-receivership services rendered unless such affiliate is released by the receiver, commission, or supervising court; and

15. Specify that, in furtherance of the cooperation between the receiver and the affected guaranty association and subject to the receiver's authority over the insurer, if the insurer is placed into supervision, seizure, conservatorship, or receivership pursuant to Chapter 15 of Title 38.2 of the Code of Virginia and portions of the insurer's policies or contracts are eligible for coverage by one or more guaranty associations, the affiliate's commitments under subdivisions 11 through 14 of this subsection will extend to such guaranty association.

C. The approval of any material transactions pursuant to § 38.2-1330 B of the ~~Act~~ Code of Virginia shall be deemed an amendment to an insurer's registration statement under § 38.2-1329 C 6 of the ~~Act~~ Code of Virginia without further filing other than written confirmation under oath or affirmation by the registrant that the transaction as approved by the commission has been consummated. The confirmation shall be filed within two business days following consummation of the approved transaction.

14VAC5-260-87. Group capital calculation.

A. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the commissioner, if the lead state commissioner, has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the commissioner makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

1. Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1 billion;

2. Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

3. Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

4. The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and

5. The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

B. Where an insurance holding company system has previously filed the annual group capital calculation at least once, the commissioner, if the lead state commissioner, has the discretion to accept in lieu of the group capital calculation a limited group capital filing if the insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than $1 billion, and all of the following additional criteria are met:

1. Has no insurers within its holding company structure that are domiciled outside of the United States or one of its territories;

2. Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and

3. The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the commissioner, and the non-insurers within the holding company system do not pose a material

financial risk to the insurers' ability to honor policyholder obligations.

C. For an insurance holding company that has previously met an exemption with respect to the group capital calculation pursuant to subsection A or B of this section, the commissioner, if the lead state commissioner, may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

1. Any insurer within the insurance holding company system is in a Risk-Based Capital action level event as set forth in § 38.2-5503 of the Code of Virginia or a similar standard for a non-U.S. insurer;

2. Any insurer within the insurance holding company system meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in 14VAC5-290-30; or

3. Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the commissioner based on unique circumstances including the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

D. A non-U.S. jurisdiction is considered to recognize and accept the group capital calculation if the jurisdiction satisfies the following criteria.

1.The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner, if the lead state commissioner, in accordance with a memorandum of understanding or similar document between the commission and such jurisdiction. Such memorandum of understanding or similar document may include the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The commission shall determine, in consultation with the NAIC, if the requirements of the information sharing agreements are in force.

2. In addition to the requirements in subdivision 1 of this subsection, one of the following provisions applies:

a. The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital by providing confirmation by a competent regulatory authority in such jurisdiction that insurers and insurance groups whose lead state is accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision, including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

b. Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state, with a copy to the International Association of Insurance Supervisors, that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in subdivision 2 a of this subsection.

E. 1. A list of jurisdictions that recognize and accept the group capital calculation is published by the NAIC to assist the lead state commissioner in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which an insurance company holding system may be exempted from filing a group capital calculation. The list will also identify whether a jurisdiction for an insurance company holding system that is exempted requires a group capital calculation filing for any U.S. based insurance group's operations in that non-U.S. jurisdiction.

2. For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of subdivisions D 2 b of this section will serve as support for recommendation to be published by the NAIC as a jurisdiction that recognizes and accepts the group capital calculation.

3. If the commissioner, if the lead state commissioner, makes a determination that differs from the NAIC list, the commissioner shall provide thoroughly documented justification to the NAIC and other states.

4. Upon determination by the commissioner, if the lead state commissioner, that a non-U.S. jurisdiction no longer meets one or more of the requirements to recognize and accept the group capital calculation, the commissioner may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that recognize and accepts the group capital calculation.

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 (14VAC5-260)

~~Form A, Instructions for Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Application (rev. 1/15)~~

Form A, Instructions for Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Application (rev. 7/2022)

Form B, Instructions for Insurance Holding Company System Annual Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia, and Statement (rev. 1/2015)

Form C, Instructions for Summary of Changes to Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia, and Summary (rev. 1/2015)

Form D, Instructions for Prior Notice and Application for Approval of Certain Transactions Pursuant to § 38.2-1330 B of the Code of Virginia, and Notice and Application (rev. 1/2015)

Form E, Instructions for Pre-Acquisition Notification Form Regarding the Potential Competitive Impact of a Proposed Merger or Acquisition by a Non-Domiciliary Insurer Doing Business in this Commonwealth or by a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia, and Notification (rev. 1/2015)

Form F, Instructions for Enterprise Risk Report Pursuant to § 38.2-1329 L of the Code of Virginia, and Report (eff. 1/2015)

Form G, Instructions for Notice of Dividends and Distributions to Shareholders Pursuant to §§ 38.2-1329 F and 38.2-1330.1 of the Code of Virginia, and Notice (rev. 1/2015)

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-260)

~~Accounting Practices & Procedures Manual, As of March 2014,~~

NAIC Accounting Practices & Procedures Manual March 2022, National Association of Insurance Commissioners, 1100 Walnut Street, Suite 1500, Kansas City, MO 64106, www.naic.org

VA.R. Doc. No. R22-7136; Filed September 27, 2022, 4:50 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 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: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322, 18VAC110-20-323).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: November 23, 2022.

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

Summary:

The amendments remove from regulatory text compounds placed in Schedules I, II, IV, and V of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) by Chapters 114 and 115 of the 2022 Acts of Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

~~A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:~~

~~1. Synthetic opioid. N,N diethyl 2 [(4 methoxyphenyl)methyl] 1H benzimidazole 1 ethanamine (other name: Metodesnitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.~~

~~2. Compounds expected to have hallucinogenic properties.~~

~~a. 4 fluoro 3 methyl alpha pyrrolidinovalerophenone (other name: 4 fluoro 3 methyl alpha PVP), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~b. 4 fluoro alpha methylamino valerophenone (other name: 4 fluoropentedrone), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.~~

~~c. N (1,4 dimethylpentyl) 3,4 dimethoxyamphetamine (other name: N (1,4 dimethylpentyl) 3,4 DMA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.~~

~~d. 4,5 methylenedioxy N,N diisopropyltryptamine (other name: 4,5 MDO DiPT), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.~~

~~e. Alpha pyrrolidinocyclohexanophenone (other name: alpha PCYP), its salts, isomers, and salts of isomers~~

whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

f. 3,4 methylenedioxy alpha pyrrolidinoheptiophenone (other name: MDPV8), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers (optical, position, and geometric), and salts of isomers is possible within the specific chemical designation.

3. Compounds expected to have depressant properties.

a. Bromazolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. Deschloroetizolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 7 chloro 5 (2 fluorophenyl) 1,3 dihydro 1,4 benzodiazepin 2 one (other name: Norfludiazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. Cannabimimetic agents.

a. Methyl 2 [1 (4 fluorobutyl) 1H indole 3 carboxamido] 3,3 dimethylbutanoate (other name: 4 fluoro MDMB BUTICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. Ethyl 2 [1 (5 fluoropentyl) 1H indole 3 carboxamido] 3 methylbutanoate (other name: 5 fluoro EMB PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until October 27, 2022, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1 3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioids.

a. 1 {1 [1 (4 bromophenyl)ethyl] 4 piperidinyl} 1,3 dihydro 2H benzimidazol 2 one (other name: Brorphine), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N (4 chlorophenyl) N [1 (2 phenylethyl) 4 piperidinyl] propanamide (other names: para chlorofentanyl, 4 chlorofentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. 2 [(4 methoxyphenyl)methyl] N,N diethyl 5 nitro 1H benzimidazole 1 ethanamine (other name: Metonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

d. N,N diethyl 2 {[(4 ethoxyphenyl) methyl] 1H benzimidazol 1 yl} ethan 1 amine (other name: Etazene, Desnitroetonitazene), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Depressant.

5 (2 chlorophenyl) 1,3 dihydro 3 methyl 7 nitro 2H 1,4 benzodiazepin 2 one (other name: Meclonazepam), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Cannabimimetic agent. Ethyl 2 [1 (5 fluoropentyl) 1H indole 3 carboxamido] 3,3 dimethylbutanoate (other name: 5 fluoro EDMB PICA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until December 23, 2022, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1 3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Compound expected to have hallucinogenic properties. 4 chloro alpha methylaminobutiophenone (other name: 4 chloro Buphedrone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Cannabimimetic agents.

a. Ethyl 2 [1 (5 fluoropentyl) 1H indazole 3 carboxamido] 3 methylbutanoate (other names: 5 fluoro EMB PINACA, 5F AEB), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N (1 amino 3,3 dimethyl 1 oxobutan 2 yl) 1 (pent 4 enyl)indazole 3 carboxamide (other name: ADB 4en PINACA), its salts, isomers, and salts of isomers

~~whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.~~

~~The placement of drugs listed in this subsection shall remain in effect until March 14, 2023, unless enacted into law in the Drug Control Act.~~

~~D.~~ A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. 1-(4-cinnamyl-2,6-dimethylpiperazin-1-yl)propan-1-one (other name: AP-238), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

a. 4-methallyloxy-3,5-dimethoxyphenethylamine (other name: Methallylescaline), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. Alpha-pyrrolidino-2-phenylacetophenone (other name: alpha-D2PV), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Cannabimimetic agents.

a. Ethyl 2-[1-pentyl-1H-indazole-3-carboxamido]-3,3-dimethylbutanoate (other name: EDMB-PINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-phenethyl-1H-indazole-3-carboxamide (other name: ADB-PHETINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until August 16, 2023, unless enacted into law in the Drug Control Act.

~~E.~~ B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid. 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole (other names: N-pyrrolidino etonitazene, etonitazepyne), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Compounds expected to have hallucinogenic properties.

a. 1-(1,3-benzodioxol-5-yl)-2-(propylamino)-1-butanone (other names: 3,4-Methylenedioxy-alpha-propylaminobutiophenone; N-propyl butylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

b. 2-(ethylamino)-1-phenylpentan-1-one (other names: N-ethylpentedrone, alpha-ethylaminopentiophenone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

c. 3,4-methylenedioxy-alpha-cyclohexylaminopropiophenone (other name: Cyputylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

d. 3,4-methylenedioxy-alpha-cyclohexylmethylaminopropiophenone (other name: 3,4-Methylenedioxy-N,N-cyclohexylmethcathinone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

e. 3,4-methylenedioxy-alpha-isopropylaminobutiophenone (other name: N-isopropyl butylone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

f. 4-chloro-N-butylcathinone (other names: 4-chlorobutylcathinone, para-chloro-N-butylcathinone), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

g. 4-hydroxy-N-methyl-N-ethyltryptamine (other names: 4-hydroxy MET, Metocin), its salts, isomers (optical, position, and geometric), and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Central nervous system stimulant. 4-methylmethamphetamine (other names: N-alpha,4-trimethyl-benzeneethanamine, 4-MMA), including its salts, isomers, and salts of isomers.

4. Cannabimimetic agent. N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indole-3-acetamide (other names: ADB-FUBIATA, AD-18, FUB-ACADB), its

salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until March 14, 2024, unless enacted into law in the Drug Control Act.

18VAC110-20-323. Scheduling for conformity with federal law or rule.

Pursuant to subsection E of § 54.1-3443 of the Code of Virginia and in order to conform the Drug Control Act to recent scheduling changes enacted in federal law or rule, the board:

1. Adds MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine) to Schedule I;

2. Adds Dronabinol ((-)-delta-9-trans tetrahydrocannabinol) in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration to Schedule II;

3. Deletes naldemedine from Schedule II;

~~4. Adds methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (other name: MDMB-CHMICA, MMB-CHMINACA), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in Schedule I;~~

~~5. Adds solriamfetol (2-amino-3-phenylpropyl carbamate), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, to Schedule IV;~~

~~6. Adds noroxymorphone, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, to Schedule II;~~

~~7. Adds lasmiditan [2,4,6-trifluoro-N-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl benzamide], including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, to Schedule V;~~

~~8. Adds brexanolone (3α-hydroxy-5α-pregnan-20-one), including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in Schedule IV;~~

~~9.~~ 4. Deletes naloxegol and 6β-naltrexol from Schedule II; and

~~10.~~ 5. Replaces 4-anilino-N-phenethyl-4-piperidine (CASRN 21409-26-7) in Schedule II with 4-anilino-N-phenethylpiperidine (ANPP)~~;~~

~~11. Adds ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate (other name: 5F-EDMB-PINACA), methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate (other name: 5F-MDMB-PICA), and 1-5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide (other name: 5F-CUMYL-PINACA), and their optical, positional, and geometric isomers, salts, and salts of isomers to Schedule I; and~~

~~12. Adds other name 5F-APINACA to N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (other name: FUB-AKB48) which is currently placed in Schedule I.~~

VA.R. Doc. No. R23-7143; Filed September 29, 2022, 11:25 a.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final 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: **20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-20).**

Statutory Authority: §§ 12.1-13 and 56-594 of the Code of Virginia.

Effective Date: October 14, 2022.

Agency Contact: Mike Cizenski, Deputy Director, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email mike.cizenski@scc.virginia.gov.

Summary:

Pursuant to Chapter 266 of the 2021 Acts of Assembly, Special Session I, the amendment conforms the definition of "small agricultural generator" to § 56-594.2 of the Code of Virginia to include any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1 of the Code of Virginia.

AT RICHMOND, SEPTEMBER 29, 2022

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2021-00251

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER ADOPTING REGULATIONS

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Code"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

On November 12, 2021, the Commission entered an Order Establishing Proceeding ("Order Establishing Proceeding") in this docket to consider revisions to the Net Energy Metering Rules to reflect a statutory change enacted by Chapter 266 of the 2021 Acts of Assembly, Special Session I ("Chapter 266"), which amended the definition of "[s]mall agricultural generator" in § 56-594.2 of the Code as follows:

> "Small agricultural generator" means a customer that: . . . 2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1; . . .

The Staff of the Commission prepared a proposed amendment to Rule 20 VAC 5-315-20 of the Net Energy Metering Rules ("Proposed Amendment") to reflect the revisions mandated by Chapter 266.

It came to the Commission's attention that the Order Establishing Proceeding was entered without the Proposed Amendment being appended thereto. Therefore, the Commission entered an Order Nunc Pro Tunc on November 16, 2021, to which the Proposed Amendment was appended and made a part of the record.[1]

Ordering Paragraph (4) of the Order Establishing Proceeding, as modified by Ordering Paragraph (3) of the Order Nunc Pro Tunc, required each Virginia electric distribution company to which the Net Energy Metering Rules apply to serve a copy of the Order Establishing Proceeding and the Order Nunc Pro Tunc (including the attached Proposed Amendment) upon each of their respective net metering customers and each of their existing small agricultural generators.

On November 22, 2021, Virginia Electric and Power Company ("Dominion") and Appalachian Power Company (collectively, "the Companies") filed a joint motion seeking an order from the Commission replacing the above-referenced notice and service requirement with a provision authorizing the Companies to provide notice of this proceeding by publication in newspapers of general circulation throughout their respective service territories in Virginia. The Companies also sought to extend the service deadline. On November 24, 2021, the Virginia Electric Cooperatives ("the Cooperatives") filed a motion requesting that the Commission allow for notice of this proceeding by publication, as well as to modify the procedural schedule.

Upon consideration of the Companies' and the Cooperatives' motions, the Commission entered the Order Modifying Notice Requirements and Procedural Schedule ("Modifying Order") on December 3, 2021. In the Modifying Order, the Commission amended Ordering Paragraph (4) of the Order Establishing Proceeding, as modified by Ordering Paragraph (3) of the Order Nunc Pro Tunc, to allow the option for notice of this proceeding and the Proposed Amendment by publication. The Commission also amended procedural deadlines to accommodate such publication.

Notice of this proceeding and the Proposed Amendment were published in the Virginia Register of Regulations on December 6, 2021 and January 17, 2022. Interested persons were directed to file any comments and requests for hearing on the Proposed Amendment on or before May 27, 2022.

Dominion and the Cooperatives filed comments. No one requested a hearing on the Proposed Amendment. Dominion states that "the proposed revisions track the changes made to Va. Code § 56-594.2." The Cooperatives state that they "strongly support the amendment" to the Net Energy Metering Rules.

Additionally, on May 16, 2022, Kentucky Utilities Company d/b/a Old Dominion Power Company in the Commonwealth of Virginia ("KU-ODP") filed its Motion for Deviation from Notice Requirements ("Motion").[2]

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the revised regulation attached hereto as Appendix A should be adopted as a final rule, as discussed herein.

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Net Energy Metering, as shown in Appendix A to this Order, are hereby adopted and are effective as of October 14, 2022.

(2) A copy of this Order with Appendix A including the Regulations Governing Net Energy Metering shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Appendix A shall be made available on the Division of Public Utility Regulation's section of the Commission's website: scc.virginia.gov/pages/Rulemaking.

(4) On or before January 3, 2023, each Virginia electric distribution company to which the Regulations Governing Net Energy Metering apply shall file in this docket, with the Clerk of the Commission, any revised tariff provisions necessary to implement the regulations adopted herein, and shall also provide a copy of the document containing the revised tariff

provisions with the Commission's Division of Public Utility Regulation. The Clerk of the Commission need not distribute copies but shall make such filings available for public inspection in the Clerk's Office and post them on the Commission's website at: scc.virginia.gov/pages/Case-Information.

(5) This docket shall remain open to receive the filings from electric utilities pursuant to Ordering Paragraph (4).

(6) KU-ODP's Motion is granted.

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.

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[1]The Order Nunc Pro Tunc also removed and replaced an incorrect date reference in Ordering Paragraph (7) of the Order Establishing Proceeding.

[2]In its Motion, KU-ODP asserts that it served a copy of the Order Nunc Pro Tunc (including the attached Proposed Amendment) on each of its net metering customers. KU-ODP also states that it has no existing small agricultural generators. However, KU-ODP explains that it inadvertently failed to include copies of the Order Establishing Proceeding and Modifying Order in such service, but upon becoming aware of such omission, it mailed all three Commission orders to net metering customers on May 12, 2022, which was past the April 1, 2022 service deadline. See Motion at 2.

20VAC5-315-20. Definitions.

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

"Agricultural business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter S) corporation, or limited liability company engaged primarily in the production and sale of plants and animals, products collected from plants and animals, or plant and animal services that are useful to the public.

"Agricultural net metering customer" means a customer that operates an electrical generating facility consisting of one or more agricultural renewable fuel generators having an aggregate generation capacity of not more than 500 kilowatts as part of an agricultural business under a net metering service arrangement. An agricultural net metering customer may be served by multiple meters serving the agricultural net metering customer that are located at the same or adjacent sites and that may be aggregated into one account. This account shall be served under the appropriate tariff.

"Agricultural renewable fuel generator" or "agricultural renewable fuel generating facility" means one or more electrical generators that:

1. Use as their sole energy source solar power, wind power, or aerobic or anaerobic digester gas;

2. The agricultural net metering customer owns and operates, or has contracted with other persons to own or operate, or both;

3. Are located on land owned or controlled by the agricultural business;

4. Are connected to the agricultural net metering customer's wiring on the agricultural net metering customer's side of the agricultural net metering customer's interconnection with the distributor;

5. Are interconnected and operated in parallel with an electric company's distribution facilities; and

6. Are used primarily to provide energy to metered accounts of the agricultural business.

"Billing period" means, as to a particular agricultural net metering customer or a net metering customer, the time period between the two meter readings upon which the electric distribution company and the energy service provider calculate the agricultural net metering customer's or net metering customer's bills.

"Billing period credit" means, for a nontime-of-use agricultural net metering customer or a nontime-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the agricultural net metering customer's agricultural renewable fuel generator or by the net metering customer's renewable fuel generator in excess of the electricity supplied to the customer over the billing period. For time-of-use agricultural net metering customers or time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

"Contiguous sites" means a group of land parcels in which each parcel shares at least one boundary point with at least one other parcel in the group. Property whose surface is divided only by public right-of-way is considered contiguous.

"Customer" means a net metering customer or an agricultural net metering customer.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric cooperative" means an electric distribution company organized pursuant to Chapter 9.1 (§ 56-231.15 et

seq.) of Title 56 of the Code of Virginia, owned by its members.

"Electric distribution company" means the entity that owns or operates the distribution facilities delivering electricity to the premises of an agricultural net metering customer or a net metering customer.

"Energy service provider (supplier)" means the entity providing electricity supply service, either tariffed or competitive service, to an agricultural net metering customer or a net metering customer.

"Excess generation" means the amount of electrical energy generated in excess of the electrical energy consumed by the agricultural net metering customer or net metering customer over the course of the net metering period. For time-of-use agricultural net metering customers or net metering customers, excess generation is determined separately for each time-of-use tier.

"Generator" or "generating facility" means an electrical generating facility consisting of one or more renewable fuel generators or one or more agricultural renewable fuel generators that meet the criteria under the definition of "net metering customer" and "agricultural net metering customer," respectively.

"Low-income utility customer" means the same as that term is defined in § 56-576 of the Code of Virginia.

"Net metering customer" means for an electric cooperative, a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers. The generating facility shall be operated under a net metering service arrangement. For an investor-owned electric distribution company, "net metering customer" means a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 25 kilowatts for residential customers and not more than three megawatts for nonresidential customers. The generating facility shall be operated under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the final interconnection of an agricultural net metering customer or a net metering customer's generating facility consisting of one or more agricultural renewable fuel generators or one or more renewable fuel generators, respectively, with the electric distribution company's distribution facilities.

"Net metering service" means providing retail electric service to an agricultural net metering customer operating an agricultural renewable fuel generating facility or a net metering customer operating a renewable fuel generating facility and measuring the difference, over the net metering period, between the electricity supplied to the customer from the electric grid and the electricity generated and fed back to the electric grid by the customer.

"Nonprofit customer" or "not-for-profit customer" means a person that is exempt from federal income taxation, including (without limitation) schools, hospitals, institutions of higher education, public charities, and churches and other houses of religious worship, as determined by the Internal Revenue Service.

"Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity, the Commonwealth, or any city, county, town, authority, or other political subdivision of the Commonwealth.

"Phase I Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Phase II Utility" shall be defined in accordance with subdivision A 1 of § 56-585.1 of the Code of Virginia.

"Purchase power agreement provider" or "PPA provider" means, in an electric cooperative service territory, a person registered with the commission's Division of Public Utility Regulation pursuant to 20VAC5-315-77 to offer third-party partial requirements power purchase agreements to customers.

"Registry" means, in reference to a PPA provider, the list of those persons registered with the commission's Division of Public Utility Regulation as PPA providers.

"Renewable Energy Certificate" or "REC" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy by a generator.

"Renewable fuel generator" or "renewable fuel generating facility" means one or more electrical generators that:

1. Use renewable energy, as defined by § 56-576 of the Code of Virginia, as their total fuel source;

2. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;

3. Are located on land owned or leased by the net metering customer and connected to the net metering customer's wiring on the net metering customer's side of its interconnection with the distributor;

4. Are interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's distribution facilities; and

5. Are intended primarily to offset all or part of the net metering customer's own electricity requirements. For an electric cooperative, the capacity of any generating facility installed on or after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available. For an investor-owned electric distribution company, the capacity of any generating facility installed between July 1, 2015, and July 1, 2020, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Small agricultural generating facility" means an electrical generating facility that:

1. Has a capacity of not more than 1.5 megawatts and does not exceed 150% of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;

2. Uses as its total source of fuel renewable energy;

3. Is located on the customer's premises and is interconnected with the utility's distribution system through a separate meter;

4. Is interconnected and operated in parallel with an electric utility's distribution system but not transmission facilities;

5. Is designed so that the electricity generated is expected to remain on the utility's distribution system; and

6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Small agricultural generator" means a customer that:

1. Is not an eligible agricultural customer-generator pursuant to § 56-594 of the Code of Virginia;

2. Operates a small agricultural generating facility as part of (i) an agricultural business or (ii) any business granted a manufacturer license pursuant to subdivisions 1 through 6 of § 4.1-206.1 of the Code of Virginia;

3. May be served by multiple meters that are located at separate but contiguous sites;

4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating 150% of the customer's expected annual energy consumption but not for billing or retail service purposes, provided that the same utility serves all of its meters;

5. Uses not more than 25% of the contiguous land owned or controlled by the agricultural business for purposes of the renewable energy generating facility; and

6. Provides the electric utility with a certification, attested under oath, as to the amount of land being used for renewable generation.

"System peak" for an electric cooperative, means the highest peak, based on the noncoincident peak of the electric cooperative or the coincident peak of all of the electric cooperative's customers of the past three years listed in Part O, Line 20 of Form 7 (Financial And Operating Report - Electric Distribution) filed with the U.S. Department of Agriculture's Rural Utilities Service (RUS), or an equivalent form if a cooperative is not an RUS borrower, less any portion of the cooperative's total load that is served by a competitive service provider or by a market-based rate.

"Third-party partial requirements power purchase agreement" or "third-party PPA" means, for an electric cooperative, an agreement entered into pursuant to § 56-594.01 K of the Code of Virginia between a customer engaging in net energy metering and a registered PPA provider pursuant to 20VAC5-315-77.

"Time-of-use customer" means an agricultural net metering customer or net metering customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier" or "tier" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour)-based charges. The rates associated with a particular tier may vary by day and by season.

VA.R. Doc. No. R22-6231; Filed September 29, 2022, 4:11 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-160. Fee Requirements for Processing Applications (amending 22VAC40-160-10).**

Statutory Authority: §§ 63.2-217, 63.2-1732, 63.2-1733, and 63.2-1734 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: November 23, 2022.

Effective Date: December 8, 2022.

Agency Contact: Sherri Williams, Department of Social Services, 801 East Main Street, Richmond, VA 23219,

telephone (804) 726-7132, or email sherri.williams@dss.virginia.gov.

Basis: Sections 63.2-217 and 63.2-1734 of the Code of Virginia mandates promulgation of regulations for the activities, services, and facilities to be employed by persons and agencies required to be licensed that shall be designed to ensure that such activities, services, and facilities are conducive to the welfare of adults and children.

Purpose: This regulatory change is needed to allow licensed programs the option to pay fees for processing applications for licenses using an online payment system. This action is necessary to allow online payments to be processed in a convenient manner.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because there will be no additional regulatory requirements. This action is intended to expand the method of payments to make it more convenient for licensed providers and department staff.

Substance: This amendment will allow application fees for licenses to be submitted manually by check or using an online payment system.

Issues: The primary advantage of this action is to expand the method of payment options to allow online payments for licensure fees. This regulatory change poses no disadvantages to the public, the agency, the Commonwealth, or other pertinent matters of interest to the regulated community or government officials.

The Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to amend the acceptable payment methods used by facilities or agencies to pay license application processing fees. The Department of Social Services (DSS) is developing an online system that will allow the fees for processing applications for licenses to be paid electronically. The proposed amendment would add online payments and remove money orders as an acceptable payment method.

Background. The regulation is derived from § 63.2-1700 of the Code of Virginia, which allows the Board to "adopt regulations and schedules for fees to be charged for processing applications for licenses to operate assisted living facilities, adult day care centers, and child welfare agencies."[2] The regulation currently allows these facilities to make payments to DSS via personal check, money order, or certified check. The Board proposes to remove money orders as an acceptable payment method and add "the online process determined by the Department." DSS expects that allowing facilities to use online payments would make it more convenient for them to pay the annual license application fees. All payments would be made through a third-party payment processor who does not accept money orders; thus, money orders would be removed as an allowable payment method. Lastly, the text would be amended to replace "personal checks" and "certified checks" with simply "checks" to reflect current practice, since DSS no longer distinguishes between personal and certified checks.

Estimated Benefits and Costs. The online option is primarily intended to benefit facilities by offering a convenient and secure payment option for annual license application fees. Providers choosing to use the DSS online payment process will be assessed an additional 2.3% transaction processing fee if they choose to use a debit or credit card. This fee will be directly paid to the third-party payment processor. In addition, DSS will pay the payment processor $10 per month for each "Merchant Identification" (merchant IDs) used. DSS currently has 10 merchant IDs, which allow for different types of payments and program cost codes. If the provider pays by e-check there is an 18-cent fee per transaction. DSS expects to absorb these costs. Thus, the third-party payment processor would also benefit from the fees they collect. The full amount of the transaction processing fees paid by facilities and DSS to the payment processor will depend on the number of facilities that elect to use this option.

DSS will continue to accept payments made by check and will not charge a transaction processing fee for paper or electronic check payments. DSS does not anticipate that removing money orders as an allowable payment method would create any costs for facilities, since money orders are typically more expensive than checks. DSS does not track the payment type for licensing fees, so the number of facilities that regularly use money orders is unknown. Lastly, the proposed changes are not expected to impact recordkeeping costs for facilities or DSS.

Businesses and Other Entities Affected. DSS reports that there are currently 816 licensed programs that are all required to pay license application fees every year. These programs would be affected to the extent that they choose to use the online payment process; they would not be affected if they continue to pay license application fees using a check. Five of these licensed programs are operated by localities, while the other 811 licensed programs are privately operated. No facilities appear to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. As noted above, the proposed amendments are intended to provide greater convenience by offering an online payment process as an option. Only entities choosing to use the online payment option

would face the additional 2.3% transaction processing fee. Although some facilities that have chosen to use money orders in the past would no longer be allowed to do so, the use of checks is reported to be less expensive and the number of money orders is not known, therefore any potential impact is unclear. Accordingly, an adverse impact is not indicated.

Small Businesses[4] Affected.[5] In accordance with the above analysis, the proposed amendments do not appear to adversely affect small businesses.

Types and Estimated Number of Small Businesses Affected. DSS reports that the 811 privately-run licensed facilities that would be affected by the proposed changes are all small businesses.

Costs and Other Effects. The proposed amendments would not appear to create new costs for small businesses unless they choose to use the online payment process to pay license application fees.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities[6] Affected.[7] DSS reports there are five locality-operated licensed programs. Four are Assisted Living Facilities (ALF), each operated by a different community services board (CSB) and one ALF is operated by a Health Center Commission under local government. The breakdown of the affected localities is listed below.

Region Ten CSB	New River Valley CSB	Mt. Rogers CSB	Western Tidewater CSB	Health Center Commission
Charlottesville City	Floyd	Bland	Franklin County	Chesterfield
Albemarle	Giles	Carroll	Suffolk	
Fluvanna	Montgomery	Grayson	Isle of Wight	
Greene	Pulaski	Smyth County	Southampton	
Louisa	Radford City	Wythe		
Nelson		Galax City		

However, localities would only be affected if they choose to use the online payment process to pay license application fees. Consequently, an adverse economic impact[8] is not indicated for localities.

Projected Impact on Employment. The proposed amendments would not be expected to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments would not affect the value of private facilities that operate children's welfare or adult services programs. The proposed amendments do not affect real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]Although these fees are referred to as application fees, the regulation notes that the fees are collected annually over the length of the applicable licensure period (one, two, or three years).

[3]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[5]If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[7]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[8]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

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

Summary:

The amendment changes how fees may be paid for processing applications by allowing licensed programs to pay fees by submitting a check or using an online payment system as determined by the department.

22VAC40-160-10. Fees.

By act of the General Assembly and effective February 1, 1984, the Department of Social Services is authorized to charge fees for processing applications for licenses (§ 63.2-1700 of the Code of Virginia).

Such fees are to be used for the development and delivery of training for operators and staff of facilities or agencies for adults or children subject to licensure solely by the Department of Social Services.

Each license and renewal of it may be issued for a period of up to three successive years. The required fee for each licensed facility or agency will be based upon its licensed capacity and the length of the total licensure period. However, the fee will be collected annually and licensees will be billed each year by the Department of Social Services for the appropriate portion of the fee. (Example: A facility with a capacity of 55 participants is issued a license for a period of 24 months. The fee for that facility for the two-year period would be $210. The facility will be charged $105 at the beginning of the licensure period and billed again for $105 at the beginning of the second year of licensure.) No fee will be charged directly following the issuance of a conditional license.

Applicants shall use the following schedule of fees to determine the correct fee to pay for processing all applications.

Schedule of Fees			
Capacity	1 year	2 years	3 years
1–12	$14	$28	$42
13–25	$35	$70	$105
26–50	$70	$140	$210
51–75	$105	$210	$315
76–200	$140	$280	$420
201 & up	$200	$400	$600
Flat Fees			
Child Placing Agencies	$70	$140	$210

The fee shall be paid by ~~personal check, money order, or certified~~ check~~,~~ made payable to "Treasurer of Virginia" or through the online process determined by the department.

A fee that is incorrect in amount or is made payable other than to the Treasurer of Virginia will be returned to the applicant. Otherwise, no fee will be returned or refunded for any reason.

Failure to submit the appropriate fee within the timeframe specified by the Department of Social Services may result in negative action against a facility's or agency's license.

A fee will be charged for checks that must be returned to the applicant because of insufficient funds.

VA.R. Doc. No. R23-7049; Filed September 28, 2022, 1:42 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF TRANSPORTATION

Proposed Regulation

Title of Regulation: **24VAC30-640. Parking on Primary and Secondary Highways (adding 24VAC30-640-10 through 24VAC30-640-50).**

Statutory Authority: § 46.2-1223 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 23, 2022.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Basis: Section 46.2-1223 of the Code of Virginia provides that the Commissioner of Highways may regulate parking on any part of the primary and secondary systems of state highways by regulation.

Purpose: The Virginia Department of Transportation (VDOT) is responsible for the safe and efficient flow of traffic on state maintained highways. Preserving the safe and efficient flow of vehicular traffic entails controlling and limiting access and the manner of use of highways, including parking where the extent, character, or frequency of such parking impedes the safe or efficient flow of vehicular traffic or the proper operation of the highway.

Substance: The proposed regulation characterizes and distinguishes the specific factors that VDOT will consider in determining whether to restrict or prohibit parking, stopping, or standing on a portion of a primary or secondary highway, including when the parking impedes the safe or efficient flow of vehicular traffic or the proper operation or maintenance of the highway. The regulation specifies that the restriction or prohibition shall be indicated by signs that meet the relevant standards for traffic control devices. The regulation includes enforcement provisions that meet the requirements specified in § 46.2-1227 of the Code of Virginia. The regulation clarifies when VDOT will not regulate parking, such as where localities or other state agencies have authority to regulate parking pursuant to the Code of Virginia.

Issues: The proposed parking regulation requires VDOT to consider the safety and mobility of the public in determining where parking should be located or restricted, and a safe and efficient driving environment is a main advantage for the public due to this regulation. There are no disadvantages to the public.

The proposed parking regulation also advantages VDOT in allowing VDOT to regulate parking in a manner to ensure the

safe and efficient use of the highways, which reduces costs for VDOT in the construction, operation, and maintenance of those highways. The main disadvantage to VDOT is the cost of placing signs informing the public of any parking regulation.

Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The Commissioner of Highways (Commissioner) proposes to promulgate 24VAC30-640, Parking on Primary and Secondary Highways, as a new chapter in the Virginia Administrative Code.

Background. Section 46.2-830 of the Code of Virginia states that "The Commissioner of Highways may classify, designate, and mark state highways and provide a uniform system of traffic control devices for such highways under the jurisdiction of the Commonwealth." The definition of traffic control device includes signs.[2] VDOT has in practice placed no parking signs in appropriate areas for public safety and to facilitate the mobility of traffic.

Section 46.2-1223 of the Code of Virginia states that "Except as otherwise provided in this article, the Commissioner of Highways may, by regulation, regulate parking on any part of the primary and secondary systems of state highways." The Virginia Department of Transportation (VDOT) does not currently have a parking regulation. The Commissioner proposes to establish a new regulation to clarify the parking-related issues of concern to VDOT that are not in conflict with localities' authority to regulate parking under other sections of the Code of Virginia. Such parking-related issues of concern to VDOT include areas along highways where parking impedes the safe or efficient flow of vehicular traffic or the proper operation of the highway. The agency believes it is highly desirable that counties and towns continue to address, through their ordinances, parking issues on their local streets within their boundaries and that are otherwise maintained by VDOT. Such streets are typically classified as local (or collectors that serve a similar purpose) and primarily serve to provide access to residences or businesses (including parking for those residences and businesses). These streets typically have speed limits of 25 mph and are within a neighborhood or subdivision or in a "residence district" or "business district" of a town.

Estimated Benefits and Costs. The proposed new regulation has five sections: 24VAC30-640-10, Definitions; 24VAC30-640-20, Prohibition on parking generally; 24VAC30-640-30, Signs; 24VAC30-640-40, Enforcement; and 24VAC30-640-50, Exceptions and authority of localities. Section 10 "Definitions" is self-explanatory.

In Section 20 "Prohibition on parking generally," Subsection A states that "The Department may restrict or prohibit parking, stopping or standing on any portion of the right-of-way of a primary or secondary highway where, in the Department's discretion, such parking, stopping or standing impedes the safe or intended use of the highway." Subsection B states that "Parking, stopping or standing is prohibited on any bridge or in any tunnel and on any bicycle lane or shared use path unless otherwise indicated by the Department." Subsection C lists the factors VDOT shall consider when determining whether to restrict or prohibit parking, stopping, or standing in a location, including: 1) the intended use of the highway, 2) the roadway design, speed and traffic, 3) where parking, stopping or standing may cause undue damage to any portion of the highway maintained by VDOT, and 4) where parking, stopping or standing obstructs the actions required by VDOT for operating, maintaining or constructing the highway.

Section 30 "Signs" simply states that: a) any restriction or prohibition on parking, stopping or standing pursuant to Section 20 shall be indicated by signs erected in the area of the restriction or prohibition, and b) all signs erected in accordance with this section shall conform in content, location and design with the uniform standards for traffic control devices established by the Commissioner of Highways pursuant to § 46.2-830.[3]

Subsection A of Section 40 "Enforcement" states that "Any vehicle parked, stopped or standing in violation of this regulation may be issued a citation by an appropriate law enforcement officer for a traffic infraction and shall be subject to penalties set in accordance with § 46.2-113[4] and the Rules of the Supreme Court of Virginia." Subsection B indicates that uncontested citations are to be paid to the local government in which the part of the highway lies.[5] Subsection C states that "Citations issued under the provisions of this section and which are contested or delinquent shall be certified or a complaint, summons, or warrant shall be issued as provided in § 46.2-1225[6] to the general district court in whose jurisdiction the part of the highway lies. Any sums collected by such court, minus court costs, shall be promptly paid by the clerk into the general fund of the state treasury." VDOT has indicated that it has not, and has no future plans to issue its own citations. When violations come to the attention of agency employees, appropriate law-enforcement agencies may be contacted.

Subsection A of Section 50 "Exceptions and authority of localities" exempts law-enforcement vehicles, emergency vehicles, and VDOT vehicles acting in the performance of their official duties from restrictions and prohibitions on parking pursuant to this regulation. Subsections B, C, and D state that nothing in this regulation shall be construed so as to infringe on: B) localities" authority to regulate or prohibit parking in accordance with the Code of Virginia, C) the authority of any board of visitors or other governing body of an educational institution relating to parking on property owned by the institution in accordance with the Code of Virginia, and D) the authority of the State Board of Behavioral Health and Developmental Services relating to parking on property owned

by the Department of Behavioral Health and Developmental Services in accordance with the Code of Virginia.

The promulgation of the regulation is not likely to have a large impact in practice, but is beneficial in that it helps clarify for the public VDOT's rules and procedures concerning parking.

Businesses and Other Entities Affected. The regulation pertains to all business, other entities, and individuals who use motor vehicles on the Commonwealth's highways.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[7] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. No adverse impact is indicated.

Small Businesses[8] Affected.[9] The proposed regulation does not appear to adversely affect small businesses.

Localities[10] Affected.[11] The proposed regulation neither disproportionately affects particular localities nor substantively affects costs for local governments.

Projected Impact on Employment. The proposed regulation is unlikely to affect total employment.

Effects on the Use and Value of Private Property. The proposed regulation is unlikely to substantively affect either the use and value of private property or real estate development costs.

[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See § 46.2-100 of the Code of Virginia: https://law.lis.virginia.gov/vacode/title46.2/chapter1/section46.2-100/

[3]See https://law.lis.virginia.gov/vacode/title46.2/chapter8/section46.2-830/

[4]See https://law.lis.virginia.gov/vacode/title46.2/chapter1/section46.2-113/

[5]More specifically, "Citations issued under the provisions of this regulation and which are uncontested shall be paid to the administrative official or officials appointed under the provisions of § 46.2-1227 of the Code of Virginia in the locality in which the part of the highway lies, or for any locality where there is no such appointed administrative official the citations shall be paid to the local treasurer, who shall promptly pay them into the general fund of the state treasury."

[6]See https://law.lis.virginia.gov/vacode/title46.2/chapter12/section46.2-1225/

[7]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

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

[9]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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

[11]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The agency agrees with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

This proposed action establishes a new regulation to address the parking-related issues of concern to the Virginia Department of Transportation (VDOT) that are not in conflict with any locality's authority to regulate parking under the Code of Virginia, including (i) the specific factors that VDOT will consider in determining whether to restrict or prohibit parking, stopping, or standing on a portion of a primary or secondary highway; (ii) a requirement that any restriction or prohibition shall be indicated by signs that meet the relevant standards for traffic control devices; (iii) enforcement provisions that meet the requirements specified in § 46.2-1227 of the Code of Virginia; and (iv) instances when VDOT will not regulate parking, such as where localities or other state agencies have authority to regulate parking pursuant to the Code of Virginia.

Chapter 640
Parking on Primary and Secondary Highways

24VAC30-640-10. Definitions.

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

"Bicycle lane" means that portion of a roadway designated by signs or pavement markings for the preferential use of bicycles, electric power-assisted bicycles, motorized skateboards or scooters, and mopeds.

"Business district" means the territory contiguous to a highway where 75% or more of the property contiguous to a highway, on either side of the highway, for a distance of 300 feet or more along the highway, is occupied by land and buildings actually in use for business purposes.

"Clear zone" means the total border area of a roadway, including, if any, parking lanes or planting strips, that is sufficiently wide for an errant vehicle to avoid a serious accident. Details on the clear zone are in VDOT's Road Design Manual (see 24VAC30-151-760).

"Commissioner" means the Commissioner of Highways, the individual who serves as the chief executive officer of the Virginia Department of Transportation or his designee.

"Department" or "VDOT" means the Virginia Department of Transportation.

"Highway" means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys, and, for law-enforcement purposes, (i) the entire width between the boundary lines of all private roads or private streets that have been specifically designated "highways" by an ordinance adopted by the governing body of the county, city, or town in which such private roads or streets are located and (ii) the entire width between the boundary lines of every way or place used for purposes of vehicular travel on any property owned, leased, or controlled by the United States government and located in the Commonwealth.

"Parking" means halting a vehicle, whether occupied or not, other than "stopping" or "standing," for an appreciable period of time.

"Primary highway" means any highway in or component of the primary state highway system as defined in § 33.2-100 of the Code of Virginia.

"Residence district" means the territory contiguous to a highway, not comprising a business district, where 75% or more of the property abutting such highway, on either side of the highway, for a distance of 300 feet or more along the highway consists of (i) land improved for dwelling purposes or is occupied by dwellings, (ii) land or buildings in use for business purposes, or (iii) territory zoned residential or territory in residential subdivisions created under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

"Secondary highway" means any highway in or component of the secondary state highway system as defined in § 33.2-100 of the Code of Virginia.

"Shared-use path" means a bikeway that is physically separated from motorized vehicular traffic by an open space or barrier and is located either within the highway right-of-way or within a separate right-of-way. Shared-use paths may also be used by pedestrians, skaters, users of wheel chairs or wheel chair conveyances, joggers, and other nonmotorized users and personal delivery devices.

"Shoulder" means that part of a highway between the portion regularly traveled by vehicular traffic and the lateral curbline or ditch.

"Standing" means the halting of a vehicle, while still occupying the vehicle, for the purpose of and while actually engaged in receiving or discharging passengers.

"Stopping" means the momentary halting of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device.

"Travel lane" means that portion of a roadway designed or designated to accommodate the forward movement of a single line of vehicles.

"Vehicle" means every device in, on, or by which any person or property is or may be transported or drawn on a highway, except personal delivery devices and devices moved by human power or used exclusively on stationary rails or tracks.

24VAC30-640-20. Regulation of parking generally.

A. The commissioner may restrict or prohibit parking, stopping, or standing on any portion of the right-of-way of a primary or secondary highway where, in the commissioner's discretion, such parking, stopping, or standing impedes the safe or intended use of the highway.

B. Parking, stopping, or standing is prohibited on any bridge or in any tunnel and on any sidewalk, bicycle lane, or shared-use path unless otherwise indicated by the department.

C. The commissioner shall consider the following factors when determining whether to restrict or prohibit parking, stopping, or standing in a location pursuant to subsection A of this section:

1. The intended use of the highway. Generally, highways with a federal functional classification of arterial or collector facilitate the mobility of traffic and typically have higher speed limits (such as greater than 35 miles per hour). Highways with a federal functional classification of local generally serve to provide access, including parking to adjacent residences and businesses, and generally have speed limits of 35 miles per hour or less, such as in a business district or residence district.

2. The roadway design, speed, and traffic. Generally, parking, stopping, or standing may be prohibited where the roadway features, traffic and speeds do not conform to VDOT's design standards for the provision of parking (such design standards include design speed, traffic volume, truck percentage and the widths of pavement, travel lane, shoulder, parking lane, clear zone as well as geometric and sight distance standards). The proximity of parking to horizontal or vertical curves, intersections, entrances, or crosswalks should be considered as parking may impede the ability of vehicles or pedestrians to safely see the highway and other vehicles or pedestrians ahead or for vehicles to negotiate a turn onto or off the highway.

3. Potential damage to the highway or right of way. Where parking, stopping, or standing may cause undue damage to any portion of the highway or right of way maintained by VDOT.

4. Potential for obstruction. Where parking, stopping, or standing obstructs the actions required by VDOT for operating, maintaining, or constructing the highway or right of way.

24VAC30-640-30. Signs.

A. Any restriction or prohibition on parking, stopping, or standing pursuant to 24VAC30-640-20 shall be indicated by signs erected in the area of the restriction or prohibition.

B. All signs erected in accordance with this section shall conform in content, location, and design with the uniform standards for traffic control devices established by the commissioner pursuant to § 46.2-830 of the Code of Virginia.

24VAC30-640-40. Enforcement.

A. Any vehicle parked, stopped, or standing in violation of this chapter may be issued a citation by an appropriate law-enforcement officer for a traffic infraction and shall be subject to penalties set in accordance with § 46.2-113 of the Code of Virginia and the Rules of the Supreme Court of Virginia.

B. Citations issued under the provisions of this chapter that are uncontested shall be paid to the administrative official appointed under the provisions of § 46.2-1227 of the Code of Virginia in the locality in which the part of the highway lies, or for any locality where there is no such appointed administrative official, the citations shall be paid to the local treasurer, who shall promptly pay them into the general fund of the state treasury.

C. Citations issued under the provisions of this section that are contested or delinquent shall be certified or a complaint, summons, or warrant shall be issued as provided in § 46.2-1225 of the Code of Virginia to the general district court in whose jurisdiction the part of the highway lies. Any sums collected by such court minus court costs shall be promptly paid by the clerk into the general fund of the state treasury.

24VAC30-640-50. Exceptions and authority of localities.

A. Any restriction or prohibition on parking pursuant to this chapter shall not apply to law-enforcement vehicles, emergency vehicles, and VDOT vehicles being operated in the performance of the operator's official duties.

B. Nothing in this chapter shall be construed so as to infringe on locality authority to regulate or prohibit parking in accordance with the Code of Virginia.

C. Nothing in this chapter shall be construed so as to infringe on the authority of any board of visitors or other governing body of an educational institution relating to parking on property owned by the institution in accordance with the Code of Virginia.

D. Nothing in this chapter shall be construed so as to infringe on the authority of the State Board of Behavioral Health and Developmental Services relating to parking on property owned by the Department of Behavioral Health and Developmental Services in accordance with the Code of Virginia.

E. Notwithstanding the provisions of 24VAC30-640-30, no signs shall be required to be posted at the locations specified in § 46.2-1239 of the Code of Virginia. The provisions of § 46.2-1239 shall be valid and enforceable whether or not signs are placed prohibiting or restricting parking at those locations.

VA.R. Doc. No. R21-5832; Filed September 21, 2022, 8:41 a.m.

EXECUTIVE ORDER NUMBER TWENTY-TWO (2022)

Declaration of a State of Emergency Due to Hurricane Ian

Importance of the Issue

The Virginia Emergency Operations Center has been monitoring Hurricane Ian that, as of 0500 this morning, was located 75 miles WSW of Naples, FL, moving at 10 mph. Ian is expected to make landfall in Florida this afternoon as a catastrophic Category 4 hurricane. Although the forecasted tracks will become more certain in the coming days, Virginia is leaning forward given the likelihood of severe rainfall, flooding, wind damage, tornadoes, and other storm-related impacts as Ian moves north into the Commonwealth and neighboring jurisdictions. The effects of this weather system are also likely to cause significant impacts to infrastructure, roadways, and utilities. Pre-positioning supplies will be necessary to assist our local partners, and the Virginia Emergency Support Team will continue to support this incident.

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, Virginia National Guard, 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.

Directive

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

1. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.

2. 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.

3. 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.

4. Activation of § 59.1-525 et seq. of the Code related to price gouging.

5. Authorization of a maximum of $2,750,000 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 $750,000.00 for the Department of Military Affairs.

6. Activation of the Virginia National Guard to State Active Duty.

Effective Date of this Executive Order

This Executive Order shall be effective September 28, 2022, and shall remain in full force and in effect until October 27, 2022, 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 28th day of September 2022.

/s/ Glenn Youngkin, 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.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: Virginia Broadband Availability Map Internet Service Provider Service Territory Data Submission Guidelines.

Public Comment Deadline: November 23, 2022.

Effective Date: November 24, 2022.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, or email kyle.flanders@dhcd.virginia.gov.

BOARD OF PSYCHOLOGY

Titles of Documents: Confidential Consent Agreements.

Guidance on Electronic Communication and Telepsychology.

Guidance on Use of Assessment Titles and Signatures.

Public Comment Deadline: November 23, 2022.

Effective Date: November 24, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Title of Document: Transit and Commuter Assistance Grant Application Manual.

Public Comment Deadline: November 23, 2022.

Effective Date: November 24, 2022.

Agency Contact: Andrew Wright, Senior Legislative and Policy Specialist, Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219, telephone (804) 241-0301, or email andrew.wright@drpt.virginia.gov.

BOARD OF SOCIAL WORK

Titles of Documents: Confidential Consent Agreements.

Possible Disciplinary Actions for Non-Compliance with Continuing Education Requirements.

Public Comment Deadline: November 23, 2022.

Effective Date: November 24, 2022.

Agency Contact: Erin Barrett, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 367-4688, or email erin.barrett@dhp.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for Gutterman Iron and Metal Corporation

An enforcement action has been proposed for Gutterman Iron and Metal Corporation for violations of the State Water Control Law and regulations in Norfolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov from October 24, 2022, through November 24, 2022.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, telephone (757) 647-8060, FAX (804) 698-4178, or email russell.deppe@deq.virginia.gov.

Midway Solar LLC Revised Notice of Intent - Small Renewable Energy Project (Solar) - Albemarle County

Midway Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Albemarle County, Virginia. Midway Solar LLC will be located approximately 1.5 miles southwest of the Town of Batesville. Latitude and longitude coordinates are 37.98511, -78.740200. The project's maximum generating capacity will be eight megawatts alternating current. The project will encompass approximately 80 acres of a single 136-acre parcel. Approximately 35 acres of clearing will be required to construct the project; this clearing will largely be constrained to existing mature timber farm areas. The project will include approximately 23,984 panels.

Contact Information: Susan Tripp, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, telephone (804) 664-3470, or email susan.tripp@deq.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Addiction and Recovery Treatment Services Provider Manual

The draft Addiction and Recovery Treatment Services Provider Manual Chapter IV is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Draft Provider Manual Chapter II

The text in Chapter 2 that appears in all provider manuals has been updated. This text will be added to the beginning of Chapter 2 for each manual. The text is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until October 30, 2022.

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

Public Meeting and Opportunity for Public Comment for a Cleanup Study and Cleanup Plan for Moores and Mill Creek

Purpose of notice: The Department of Environmental Quality (DEQ) seeks public comment on the development of a cleanup study, also known as a total maximum daily load (TDML) report for Moores and Mill Creeks, located in Rockbridge County. This meeting will also be used to kick-off the upcoming development of a cleanup plan, also known as an implementation plan (IP), and to find participants for a stakeholder advisory group to guide development of the plan. These streams are listed as impaired since monitoring data does not meet Virginia's water quality standards for aquatic life impairments (benthics). Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law require DEQ to develop cleanup studies to address pollutants responsible for causing waters to be on Virginia's § 303(d) list of impaired waters. A component of a cleanup study is the wasteload allocation (WLA); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for adoption of the WLA into the Water Quality Management Planning Regulation (9VAC25-720) after completion of the study. A study has been completed for the Moores and Mill Creek watersheds to identify pollutant sources and recommend reductions needed from the sources to meet water quality standards. DEQ will present the results of the study at the public meeting and provide an overview of the draft report. Citizens are invited to provide comment on the study.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. DEQ is developing an IP to identify the actions necessary to address the water quality impairment in Moores and Mill Creeks. The IP should provide measurable goals and the date of expected

achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts. The implementation planning process will begin for these streams at this meeting.

Cleanup study location: Moores Creek is located in northern Rockbridge County with its headwaters just south of the Augusta and Rockbridge County line. The impaired segment begins at the headwaters in Raphine and continues nine miles south to the confluence with South River. Mill Creek is located in Rockbridge County north of the City of Lexington. The impaired segment is 9.14 miles in length. It begins at the headwaters of the stream south of Fairfield and continues to the confluence with the Maury River north of Lexington.

Advisory group: A technical advisory committee (TAC) to assist in development of this cleanup study was convened on November 3, 2021, and August 11, 2022.

Public meeting: The final public meeting on the development of the cleanup study and the first public meeting on development of the cleanup plan will be held on October 26, 2022, in the Board of Supervisors Meeting Room, 1st Floor, Rockbridge County Administration Building, 150 South Main Street, Lexington, VA 24450 at 5:30 p.m. In the event of inclement weather, the meeting will be held on October 28, 2022, at the same time and location.

Public comment period: October 27, 2022, to November 29, 2022.

How to comment: DEQ accepts comments orally or by email, fax, or postal mail. All comments must be received by DEQ during the comment period. Submittals must include the name, organization an individual is representing, if any, mailing addresses, and telephone numbers of the commenter or requester.

Contact the DEQ staff member listed at the end of this notice for public comments, document requests, and additional information. The public may review the cleanup study at https://www.deq.virginia.gov/water/water-quality/tmdl-development/tmdls-under-development.

Contact Information: Nesha McRae, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 28801, telephone (540) 217-7173, FAX (804) 698-4178, or email nesha.mcrae@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.

VIRGINIA LOTTERY BOARD

Title of Regulation: **11VAC5-90. Casino Gaming.**

Publication: 38:13 VA.R. 1833-1977 February 14, 2022.

Correction to Final Regulation:

Page 1859, column 1, 11VAC5-90-90 H 4, line 3, after "subdivision" replace "2" with "3"

VA.R. Doc. No. R21-6662; Filed September 30, 2022, 10:22 a.m.

STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-481. Virginia Radiation Protection Regulations.**

Publication: 32:24 VA.R. 3264-3265 July 25, 2016.

EDITOR'S NOTE: The final regulation was published in Volume 32, Issue 24 of the Virginia Register as a summary only pursuant to § 2.2-4031 of the Code of Virginia with a link to the full text at http://register.dls.virginia.gov/documents/agency_resources/12VAC5-481.pdf. The references in this errata are to the full text document.

Correction to Final Regulation:

Page 147 of 273, 12VAC5-481-1100 D, replace "(804) 674-1110" with "(804) 674-2400"

Page 147 of 273, 12VAC5-481-1110 A 1, replace "(804) 624-2400" with "(804) 674-2400"

Page 148 of 273, 12VAC5-481-1110 C, replace "(804) 624-2400" with "(804) 674-2400"

VA.R. Doc. No. R16-3585; Filed September 26, 2:42 p.m.

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Title of Regulation: **12VAC5-481. Virginia Radiation Protection Regulations.**

Publication: 37:25 VA.R. 3795-3877 August 2, 2021

Correction to Final Regulation:

Page 3810, column 1, 12VAC5-481-10, definition of "Mobile nuclear medicine service," line 1, after "transportation" insert "of byproduct material to"

line 2 after "and" insert "its" and after "use" strike "of radioactive material" and insert "at the client's address"

Page 3859, column 2, 12VAC5-481-1930 C, line 4, after "strontium-82 and" replace "strontium-82" with "strontium-85"

subsection D, line 2, after "strontium-82 and" replace "strontium-82" with "strontium-85"

VA.R. Doc. No. R21-6434; Filed September 26, 2:42 p.m.